

**Lashley v Brooklyn Standard IV, LLC**

2023 NY Slip Op 34411(U)

December 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 511515/2022

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 14<sup>th</sup> day of December 2023

HONORABLE FRANCOIS A. RIVERA

-----X  
VALERIE LASHLEY

Plaintiff;

- against -

THE BROOKLYN STANDARD IV, LLC,  
and DERRICK SIBBLES

Defendants.  
-----X

**DECISION & ORDER**

Index No.: 511515/2022

Ms. 2

Recitation in accordance with CPLR 2219 of the papers considered on the notice of motion, filed on October 4, 2023, under motion sequence number two, on behalf of Valerie Lashley<sup>1</sup> (hereinafter the movant) seeking, among other things, an order: (1) pursuant to CPLR § 3215 granting a default judgment against defendants The Brooklyn Standard IV, LLC, and Derrick Sibbles<sup>2</sup>; and (2) pursuant to CPLR § 1021 substituting Star C. Jones, the executor of the estate of the Valerie Lashley, as the plaintiff; and (3) amending the caption to reflect the substitution.

- Notice of motion
- Affidavit in support
- Affirmation in support
- Exhibits A-E

**BACKGROUND**

On April 20, 2022, plaintiff commenced the instant action for damages for, among other things, breach of contract, by filing a summons and verified complaint (hereinafter the

<sup>1</sup> The movant was Juan C. Restrepo-Rodriguez, Esq., from the Law Office of Juan C. Restrepo-Rodriguez, LLC, the lawyers retained by the plaintiff to prosecute the instant action.

<sup>2</sup> Although the notice of motion seeks a default judgment against both defendants, the affirmation of plaintiff's counsel only seeks a default judgment as against defendant The Brooklyn Standard IV, LLC.

commencement papers) with the Kings County Clerk's office (KCCO). Pursuant to CPLR 3020(d)(3), plaintiff's counsel, Juan C. Restrepo-Rodriguez verified the complaint.

Neither defendant appeared in the action.

### MOTION PAPERS

The movant's instant motion consists of the notice of motion and an affirmation of plaintiff's counsel in support. The affirmation of plaintiff's counsel refers to five annexed exhibits labeled A through E. Exhibit A is a copy of the verified complaint. Exhibit B is the affidavit of service of the commencement papers upon defendant The Brooklyn Standard IV, LLC. Exhibit C is denominated as a default letter. Exhibit D is a copy of a document denominated as Certificate of Appointment of Executor. The document is from the Surrogate's Court of the State of New York Queens County and reflects the appointment of Starr C. Jones as executor of the estate of plaintiff Valerie Lashley who died on December 13, 2022. Exhibit E is the proposed amended verified complaint sought by the movant.

### LAW AND APPLICATION

Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a legal representative for the decedent (*Aurora Bank FSB v Albright*, 137 AD3d 1177, 1178 [2nd Dept 2016], citing *NYCTL 2004-A Trust v Archer*, 131 AD3d 1213, 1214 [2nd Dept 2015]; see CPLR 1015, 1021). Furthermore, the death of a party terminates the authority of the attorney for that person to act on his or her behalf (*Aurora Bank FSB*, 137 AD3d at 1178, quoting *Hyman v Booth Mem. Hosp.*, 306 AD2d 438 [2nd Dept 2003]). CPLR 1021 creates an exception to the court's lack of jurisdiction to the extent of permitting a motion for substitution and, conversely, a motion for dismissal for failure

to make timely substitution (N.Y. C.P.L.R. 1021 (McKinney) (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of N.Y. Practice Commentary CPLR C1021:2).

Here, the notice of motion was made by plaintiff's prior counsel and the certificate of appointment that counsel annexed established that plaintiff Valerie Lashley died on December 13, 2022. Consequently, the movant's authority to act on behalf of the plaintiff terminated on that date (*see Aurora Bank FSB*, 137 AD3d at 1178). Accordingly, the movant has no standing to make the instant motion.

Furthermore, when a motion for substitution is made by a party other than the estate of the decedent, the motion papers must be served on the decedent's personal representative with all the formalities that CPLR Article 3 prescribes for service of process (*Horseman Antiques, Inc. v. Huch*, 50 AD3d 963, 856 [2nd Dept 2008]; *GMAC Mortgage Corp. v. Tuck*, 299 AD2d 315 [2nd Dept 2002]).

The instant motion was not served upon Starr C. Jones, the executor of the estate of Valerie Lashley, with all the formalities that CPLR Article 3 prescribes for service of process. On December 13, 2022, the date Valerie Lashley died, the instant action was automatically stayed by operation of law (*Gonzalez v. Ford Motor Co.*, 295 A.D.2d 474 [2nd Dept. 2002]). The action will remain stayed until a proper substitution of the decedent by a representative of her estate or until a further order of the Court.

## CONCLUSION

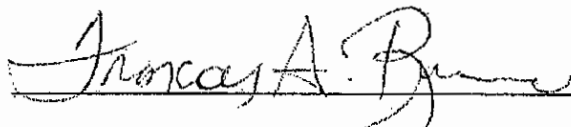
The branch of the instant motion filed by prior counsel to Valerie Lashley for an order pursuant to CPLR 1021 substituting Starr C. Jones, as executor of the estate of Valerie Lashley, as plaintiff and amending the caption to reflect the substitution is denied without prejudice.

If such an application is to be made in the future, the movant must proceed by order to show cause.

The branch of the motion filed by prior counsel to Valerie Lashley seeking an order pursuant to CPLR § 3215 directing that a default judgment be entered against defendants The Brooklyn Standard IV, LLC. and Derrick Sibbles is denied without prejudice.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

**HON. FRANCOIS A. RIVERA**