

Lee v Salzman & Winer, LLP
2023 NY Slip Op 35011(U)
December 22, 2023
Supreme Court, Queens County
Docket Number: Index No. 703677/2019
Judge: Sally E. Unger
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NEW YORK STATE SUPREME COURT, PART 24- QUEENS COUNTY

Present: HON. SALLY E. UNGER

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BRUCE LEE and YONGJA LIM,

Index No. 703677/2019

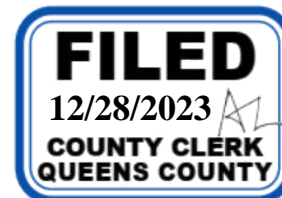
Plaintiffs,

Motion Date: December 19, 2023

-against-

Motion Seq. 6

SALZMAN & WINER, LLP,



Defendant.
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The following papers were electronically filed and considered on an order to show cause by defendant for an order dismissing the complaint as to Bruce Lee, pursuant to CPLR §1021 for failure to substitute the Estate of Bruce Lee as a plaintiff in place and instead of Bruce Lee, individually; and duly submitted as motion sequence 6.

	<u>NYSCEF Doc. Nos.</u>
Notice of Motion – Exhibits, Affirmation and Affidavit Annexed	EF124-EF136
Interim Orders	EF137-EF138
Answering Affidavits	EF141-EF147
Reply	EF148-EF149

The defendant’s motion by order to show cause is determined as follows.

Defendant moves this court for an order dismissing the action pursuant to CPLR §1021 due to the plaintiffs’ failure to make a timely substitution of the plaintiff, Bruce Lee’s Estate for Bruce Lee. This action was commenced on or about March 1, 2019, and sounds in legal malpractice against defendant. The decedent, Bruce Lee, and Yongja Lim allegedly were involved in a motor vehicle collision on October 13, 2015. They retained defendant to commence a personal injury action, which defendant did not, leading to the commencement of this action.

After the note of issue was filed in this case, it was learned approximately 3 years ago, that the plaintiff Bruce Lee was deceased. By order dated July 15, 2021, this Court ordered the plaintiffs’ representative to obtain limited or full letters testamentary or letters of administration within 60 days. As this was not done, the defendant brought a prior motion to dismiss. That motion was denied by order dated April 28, 2023, because the defendant did not make the application by order to show cause and failed to demonstrate that notice of the motion was served upon a person interested in decedent’s estate. When a timely substitution is not made, a court may not order dismissal without first ordering the persons interested in the decent’s estate to show cause why the action should not be dismissed. See CPLR §§1015(a), 1021; *Noriega v. Presbyterian Hospital in the City of New York*, 305 AD2d 220, 761 NYS2d 18 (1st Dept., 2003).

The movant seemingly justifiably argues that Bruce Lee's interested parties in his estate did not follow this Court's order to obtain limited or full letters testamentary or letters of administration within 60 days of July 15, 2021.

The petition was filed in the Surrogate's Court in June 2022. The processing of the petition is now what is delaying the instant matter. However, that is beyond the control of the plaintiffs, who should not be penalized for this. The Covid pandemic slowed the workings of many institutions across the country. The plaintiffs bear no responsibility for those delays.

While ordinarily, the additional 10 months would be viewed as an inordinate amount of time, to file the requisite petition, this case is complicated by the fact that the individual who was decided would be the personal representative in the Surrogate's Court is a resident of South Korea. This coupled with delays stemming from the family's internal difficulties in deciding who would be the personal representative accounted for the additional 10 months. And while the Court does believe it is imperative to move cases along to resolution rather than languish in limbo, the need to complete a case on the merits is more important, where, such as here, the stumbling block has been overcome.

Nonetheless, contrary to plaintiff's counsel's representation that plaintiff is simply waiting on the Surrogate's Court to "process the petition", there remains an outstanding list of numerous items which were requested by the Surrogates Court on August 8, 2023 (Administration of the Estate of Bruce Lee File No.: 2644-2022) as reflected in that court's public website. While this Court is averse to hurting a party based upon the acts or omissions of its counsel, the Court's patience also has its limits. The outstanding items must be submitted to the Surrogate's Court in due haste for the court to arrive at its final resolution or the instant matter shall be dismissed. Specifically, they are as follows:

1. Attorney's affirmation to amend petition
 - a. Page 1 and section 9(c) should be limited administration
2. Section 1 and Section 7(a) for Kyungah Jun should be "US permanent resident"
3. Notice to consul for Ahrum
4. Photocopy of marriage certificate
5. Corrected waiver from Youngja
 - a. Limited Letters of Administration
 - b. Indicate whether the bond will be dispensed with
 - c. The relationship to decedent should be spouse (not mother)
6. Corrected Waiver from Ahrum
 - a. Limited Letters of Administration
 - b. Indicate whether the bond will be dispensed with
 - c. Relationship to deceased is son not sibling
 - d. Must be signed and notarized by Ahrum (not his attorney)
7. Proposed COA decree
8. Heirship Affidavit
9. Itemized funeral bill, stamped paid in full
10. Provide a stamped self-addressed envelope

Accordingly, it is

ORDERED, that defendant's motion is denied; and it is further

ORDERED, that plaintiff shall submit the required documentation to the Surrogate's Court within 90 days from the date of this order; and it is further

ORDERED, that in the event plaintiff fails to comply with this Order, defendant shall have leave to make a new motion to dismiss.

This constitutes the decision and order of the Court.

Dated: December 22, 2023


SALLY E. UNGER, A.J.S.C.

