

Jones v Penn Cent. Corp.

2024 NY Slip Op 30366(U)

February 1, 2024

Supreme Court, New York County

Docket Number: Index No. 154342/2023

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

471, 473-474 [1st Dept 2010]). In this case, movant has submitted sufficient proof that she is the duly appointed executor of the decedent's estate (i.e., the Last Will and Testament and Death Certificate of decedent and New Jersey Monmouth County Surrogate's Court Executor Short Certificate). Accordingly, that branch of the motion to vacate the stay of this action, substitute movant for plaintiff James V. Jones, and amend the caption to reflect this substitution is granted without opposition.

However, that branch of the motion to amend the complaint to add a wrongful death claim is denied without prejudice. Generally, "[o]n a motion for leave to amend a pleading, movant need not establish the merit of the proposed new allegations, but must simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit" (Miller v Cohen, 93 A.D.3d 424, 425 [1st Dept 2012] [internal quotation marks omitted]). However, "[a] motion seeking leave to amend a personal injury complaint to assert a cause of action for wrongful death must be supported by competent medical proof of the causal connection between the alleged [negligence] and the death of the original plaintiff" (Cruz v Brown, 129 AD3d 455, 456 [1st Dept 2015] [internal citations omitted]; see also Griffin v New York City Auth., 1 AD3d 141, 142 [1st Dept 2003]). Here, no expert affidavit or other competent medical proof has been submitted.

While a decedent's death certificate may, under certain circumstances, be sufficient to establish a causal connection (See e.g., Gosse v St. Peter's Hosp. of City of Albany, 23 Misc 3d 892, 900 [Sup Ct, Albany County 2009]) it is insufficient to do so here—the proposed amended complaint alleges that as a proximate result of defendants' negligence, the decedent sustained injuries including bladder cancer and lymphoma, resulting in his eventual death (NYSCEF Doc. No. 24 [Proposed Am. Compl. at ¶86]) while the death certificate lists the cause of death as cardiopulmonary arrest due to (or as a consequence of) congestive heart failure.

Accordingly, it is

ORDERED that the motion of Geraldine Herlihy, as executor of the estate of James V. Jones, deceased, to be substituted as plaintiff in this action and amend the caption accordingly is granted, without opposition; and it is further,

ORDERED that the automatic stay of proceedings imposed by operation of law upon the decedent's death is dissolved; and it is further

ORDERED that the caption is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
GERALDINE HERLIHY, Executrix for the
Estate of JAMES V. JONES,

Plaintiff,

Index No. 154342/2023

-against-

THE PENN CENTRAL CORPORATION a/k/a
AMERICAN PREMIER UNDERWRITERS, INC.,
CONSOLIDATED RAIL CORPORATION and
METRO-NORTH RAILROAD,

Defendants.

-----X

and it is further

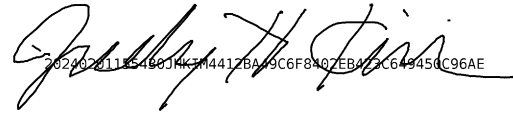
ORDERED that the branch of plaintiff's motion for leave to amend the complaint to add a cause of action for wrongful death is denied without prejudice; and it is further

ORDERED that movant shall, within twenty days of the date of this decision and order, serve a copy of this decision and order, with notice of entry, upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse*

and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision and order of the Court.



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2/1/2024
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	<input type="checkbox"/>
				OTHER	
				REFERENCE	