

73 Warren St. LLC v Yummy Meep LLC

2024 NY Slip Op 33771(U)

October 9, 2024

Supreme Court, New York County

Docket Number: Index No. 653414/2022

Judge: Louis L. Nock

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

-----X

73 WARREN STREET LLC,

Plaintiff,

- v -

YUMMY MEEP LLC, MICHELLE GAUTHIER, and
GENEVIEVE LYNCH,

Defendants.

-----X

GENEVIEVE LYNCH,

Third-Party Plaintiff,

-against-

YUMMY MEEP, LLC, MICHELLE GAUTHIER, and BCJR, LLC,

Third-Party Defendants.

-----X

INDEX NO. 653414/2022

MOTION DATE 06/07/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595953/2022

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37

were read on this motion to APPOINT FIDUCIARY.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, it is ORDERED that third-party plaintiff Genevieve Lynch’s motion, joined by plaintiff, for appointment of the Public Administrator of New York City as the administrator of the estate of defendant Michelle Gauthier, deceased, and for the Public Administrator to be substituted as a defendant and third-party defendant in this action pursuant to CPLR 1021, is granted, without opposition, for the reasons set forth in the moving affirmations of Deanna L. Koestel, Esq. (NYSCEF Doc. No. 23) and Harry Shapiro, Esq.

(NYSCEF Doc. No. 37), and the exhibits attached thereto, in which the court concurs, as summarized herein.

“A motion for substitution may be made by the successors or representatives of a party or by any party” (CPLR 1021). “However, in the event no such representative exists, an appropriate appointment should be made and that individual should be substituted in place of the decedent” (*Dieye v Royal Blue Services, Inc.*, 104 AD3d 724, 725 [2d Dept 2013]). The Supreme Court has concurrent jurisdiction with the Surrogate’s Court to appoint a representative for the estate (*Harding v Noble Taxi Corp.*, 155 AD2d 265, 266 [1st Dept 1989]). Here, as evidenced by the moving papers, no restate representative has been appointed for Gauthier’s late in the more than a year that has passed since her death. In order to “avoid delay and prejudice,” therefore, the court will grant the motion so that the case can move forward; and it is further

ORDERED that the Public Administrator of New York County is named the temporary administrator of the estate of defendant/third-party defendant Michelle Gauthier; and it is further

ORDERED that the Public Administrator of New York County, as temporary administrator of the estate of Michelle Gauthier, deceased, be substituted as defendant/third-party defendant in the above-entitled action in the place and stead of the defendant/third-party defendant, Michelle Gauthier, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the name of the Public Administrator of New York County, as temporary administrator of the estate of Michelle Gauthier, deceased, as defendant/in the place and stead of said decedent, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that the action shall henceforth be captioned as follows:

-----X
73 WARREN STREET LLC
Plaintiff, Index No. 654632/2021,

-v-

YUMMY MEEP LLC, PUBLIC ADMINISTRATOR OF
NEW YORK COUNTY, as Temporary Administrator for the
Estate of MICHELLE GAUTHIER, GENEVIEVE LYNCH,
Defendants.

-----X
GENEVIEVE LYNCH
Third-Party Plaintiff, Third-Party
Index No. 595953/2022

-against-

YUMMY MEEP, LLC, PUBLIC ADMINISTRATOR OF
NEW YORK COUNTY, as Temporary Administrator for the
Estate of MICHELLE GAUTHIER, BCJR, LLC
Third-Party Defendants.

-----X
and it is further

ORDERED that counsel for third-party plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court 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); and it is further

ORDERED that counsel for third-party plaintiff shall serve the Public Administrator of New York County with a copy of this order with notice of entry as prescribed by Article 3 of the CPLR (*GMAC Mtge. Corp. v Tuck*, 299 AD2d 315, 316 [2d Dept 2002]).

This constitutes the decision and order of the court.

ENTER:



<u>10/9/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> OTHER
	<input type="checkbox"/>		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/>		<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/>		<input type="checkbox"/> REFERENCE