

Cullum v 122 Fifth Assoc., LLC

2024 NY Slip Op 34530(U)

December 18, 2024

Supreme Court, New York County

Docket Number: Index No. 159517/2023

Judge: Denise M. Dominguez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DENISE M DOMINGUEZ PART 35M

Justice

INDEX NO. 159517/2023

JOHN CULLUM, EMILY FRANKEL

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION + ORDER ON MOTION

122 FIFTH ASSOCIATES, LLC, 122 FIFTH ASSOCIATES,

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon reading the above listed documents, the motion by Farber Schneider Ferrari LLP, counsel for Plaintiff JOHN CULLUM and Plaintiff EMILY FRANKEL, deceased, is granted.

As per the complaint, Plaintiffs seek to recover for damages to their property, located at 13 West 17th Street in Manhattan, allegedly caused by the Defendants' construction/development project, known as 122 5th Avenue, located adjacent to the Plaintiffs' property.

This action was commenced on September 27, 2023 by the filing of the summons and complaint. Per correspondence from Farber Schneider Ferrari LLP, dated May 21, 2024, this action was stayed due to the death of Plaintiff EMILY FRANKEL (NYSCEF Doc. 16, 28).

Farber Schneider Ferrari LLP now moves for an order to amend the complaint and caption to substitute the deceased Plaintiff EMILY FRANKEL with JOHN C. CULLUM and ROGER S. HABER, as Co-Executors of the Estate of Emily Frankel and to lift the stay and restore this matter to active status. No opposition to the motion has been submitted. Upon review, the motion is granted.

Pursuant to CPLR §1021, a motion for substitution due to the death of a party shall be made within a reasonable time. (CPLR §1021; *Strum v. Bressler*, 214 A.D.3d 465 [1st Dept 2023]; *Riedel v. Kapoor*, 123 A.D.3d 996, [2d Dept 2014]). Farber Schneider Ferrari LLP have shown that diligent efforts were made to identify an individual(s) to be appointed as the Executors of Plaintiff EMILY FRANKEL's estate and that the within motion for substitution was pursued shortly after the appointment of John C. Collum and Roger S. Haber as Executors (NYSCEF Doc. 29). Farber Schneider Ferrari LLP also submitted, at this Court's request, a clearer copy of the Certificate of Appointment of Executors.

In light of the appointment of John C. Collum and Roger S. Haber as Executors of the estate of EMILY FRANKEL, pursuant to CPLR §1021, that portion of the motion which seeks to substitute John C. Collum and Roger S. Haber as Co-Executors of the Estate of EMILY FRANKEL, deceased, in place of EMILY FRANKEL, is granted. Additionally, in light of the substitution, the complaint shall be amended as proposed (NYSCEF Doc. 31) and the stay shall be lifted. Additionally, the parties are directed to submit a joint proposed Preliminary Conference Order on consent as per Part 35 rules by January 27, 2025.

Accordingly, it is hereby

ORDERED that the motion to amend the complaint is granted, and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the name of John C. Collum and Roger S. Haber as Co-Executors of the Estate of EMILY FRANKEL, deceased, in place and stead of said decedent, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that the caption be amended as follows:

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

-----X
JOHN C. CULLUM and ROGER S. HABER, as Co-
Executors of the Estate of EMILY AMENDED
SUMMONS FRANKEL, Deceased, and JOHN
CULLUM, individually,

Index No. 159517/2023

Plaintiffs,

- against -

122 FIFTH ASSOCIATES, LLC and 122 FIFTH
ASSOCIATES

Defendants.

-----X

and it is further,

ORDERED that the Plaintiff's motion for leave to amend the complaint pursuant to CPLR §3025 (b), is granted; and it is further

ORDERED that Plaintiff file the supplemental summons and amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. 31) within 30 days of service of a copy of this order with notice of entry; and it is further

ORDERED that the amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. 31) shall be deemed served upon Defendants by service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of service of this order with notice of entry; and it is further

ORDERED that the stay is hereby lifted; and it is further

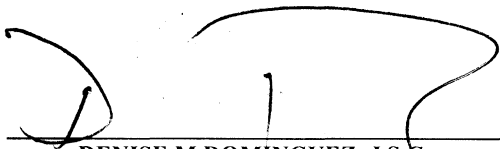
ORDERED that per Part 35 Rules, the parties are directed to submit a joint proposed Preliminary Conference Order, setting forth the dates for the completion of any outstanding

discovery to the Part 35 Clerk via email at sfc-part35-clerk@nycourts.gov on January 27, 2025 by 5:00 p.m. to be So Ordered; and it is further

ORDERED that Farber Schneider Ferrari LLP, 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).

12/18/2024
DATE


DENISE M DOMINGUEZ, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE