

Urena v Danny's Furniture Inc.

2025 NY Slip Op 30388(U)

January 29, 2025

Supreme Court, New York County

Docket Number: Index No. 156994/2020

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 156994/2020

RAMON URENA,

MOTION DATE 07/18/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

DANNY'S FURNITURE INC., RENT -A-CENTER EAST INC.

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

were read on this motion to/for DISMISS.

Upon the foregoing documents, and after a final submission date of November 19, 2024, Defendant Rent-A-Center East Inc.'s ("Defendant") motion to dismiss Plaintiff Ramon Urena's ("Decedent") Complaint pursuant to CPLR 1021 for failure to substitute an administrator of Decedent's estate is denied. The cross-motion to substitute Mariel Elisa Urena as administrator of Decedent's estate and to amend the caption is granted.

Plaintiff passed away in December of 2020 while hospitalized for a heart attack in the Dominican Republic. The appointment of an administrator was complicated by Plaintiff's somewhat unique familial circumstances: Decedent was survived by a biological daughter, two adoptive daughters, a spouse, a divorce from a prior marriage in the Dominican Republic, two other daughters born in the Dominican Republic, and as represented by counsel, a live-in girlfriend of 38 years. Appointment of an administrator was further delayed due to documentation required from the Dominican Republic, and although the estate was pending review in Surrogate's Court, Letters of Administration were only issued on August 1, 2024 (*see* NYSCEF Doc. 31).

Meanwhile, just prior to the Letters of Administration being issued, Defendant moved to dismiss this action in July of 2024. On August 27, 2024, counsel cross-moved to substitute Decedent's eldest daughter, Mariel Elisa Urena as administrator of his estate. Defendant argues that this case should be dismissed because substitution was not made "within a reasonable time." This Court disagrees and denies Defendant's motion.

As a preliminary matter, there is a strong public policy in favor of having cases decided on the merits (*Gecaj v Gjonaj Realty & Management Corp.*, 149 AD3d 600 [1st Dept 2017]). Moreover, the Court finds that the Decedent's complicated and international family structure provides a reasonable excuse for the delay in substituting an administrator, and once letters of administration were issued, counsel for the decedent showed diligence by promptly cross-moving for substitution (*see Velez v New York Presbyterian Hosp.*, 145 AD3d 632 [1st Dept 2016] [showing of reasonable excuse and merits of action warranted denial of motion to dismiss and granting substitution]). Further, the Court is satisfied with a demonstration of the potential merits of the action as the Decedent personally verified the pleadings (*see* NYSCEF Doc. 1).

Defendant's bare allegations of prejudice due to the passage of time are insufficient to defeat Plaintiff's cross-motion (*see Public Adm'r v Levine*, 142 AD3d 467 [1st Dept 2016]). This is especially the case where Defendant, who is presumably an owner or lessee of the premises, has not provided any affidavit that it does not have in its possession CCTV footage of the incident or an incident report. Further, there are likely patient narratives within the medical records detailing the incident and the decedent's sister may be a witness who can testify further as to how the incident happened.

Although Defendant seeks to obtain dismissal based on Plaintiff's failure to include a word count certification, the Court finds dismissal of a Complaint based on such a minor technicality

would run afoul of this State’s public policy in favor of having cases decided on the merits, and in any event, CPLR § 2001 allows this Court to overlook this minor mistake. Likewise, the Court finds dismissal of the action because Plaintiff’s counsel failed to strictly follow the wording of CPLR § 2106 in authoring their affirmation to be too harsh of a result. In any event, CPLR § 2106 does not state that it must be followed strictly, but that an affirmation must be “substantially” in the following form – with the thrust of the mandate being that the affirmation is made under the penalties of perjury. Here, Plaintiff’s counsel’s affirmation was made “under penalties of perjury” (*see* NYSCEF Doc. 30). Therefore, Defendant’s motion is denied, and Plaintiff’s cross-motion is granted.

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss Plaintiff’s Complaint for failure to substitute timely an administrator is denied; and it is further

ORDERED that Plaintiff’s cross-motion to substitute Mariel Elisa Urena as administrator of Decedent’s estate and to amend the caption is granted; and it is further

ORDERED that Mariel Elisa Urena, as limited administrator of the estate of Ramon Urena, is substituted as the plaintiff in place and instead of Ramon Urena, now deceased; and it is further

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ORDERED that the caption of the action is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK

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 MARIEL ELISA URENA, as Limited Administrator of the Estate
 Of RAMON URENA, Deceased,

Index No.: 157481/2022

Plaintiff,

-against-

DANNY'S FURNITURE INC and RENT-A-CENTER EAST,
 Inc.,

Defendants

-----X ; and it is further
 ORDERED that within ten days of entry, Plaintiff shall serve a copy of this Order with notice of entry upon the Trial Support Office, and shall file the notice required by CPLR § 8019(c) and a completed Form EF-22 with the County Clerk 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 at the address www.nycourts.gov/supctmanh), and the Trial Support Office shall thereupon amend the court records accordingly; and it is further

ORDERED that the automatic stay imposed by decedent Ramon Urena's death hereby is vacated and dissolved; and it is further

ORDERED that the parties are directed to meet and confer and, on or before February 25, 2025, submit a proposed preliminary conference order to the Court via e-mail to bgilmartin@nycourts.gov. In the event the parties cannot agree to a proposed preliminary conference order, they shall appear for an in-person preliminary conference on February 26, 2025 at 9:30 a.m. in Room 442, 60 Centre Street, New York, New York; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

1/29/2025
DATE

Mary V Rosado Jsc
HON/MARY V. ROSADO, 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"/>
			DENIED		OTHER
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"/>
					REFERENCE