

**Landsman Meat Co. LLC v Farmhood Fields, LLC**

2025 NY Slip Op 31384(U)

April 9, 2025

Supreme Court, New York County

Docket Number: Index No. 659013/2024

Judge: Anar Rathod Patel

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  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

-----X

LANDSMAN MEAT CO. LLC,

Plaintiff,

- v -

FARMHOOD FIELDS, LLC, JACK ROTH

Defendants.

INDEX NO. 659013/2024

MOTION DATE 03/13/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

-----X

**HON. ANAR RATHOD PATEL:**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29–41 were read on this motion to/for SANCTIONS.

This action arises from interactions among Plaintiff Landsman Meat Co. LLC (“Landsman”), Defendants Farmhood Fields, LLC (“Farmhood”) and Jack Roth (“Roth”), and a pre-deceased party, Schneur Zalman Alenick (“Alenick”). NYSCEF Doc. No. 1 at ¶ 1 (Summons and Compl.).

**Relevant Factual and Procedural History**

Plaintiff Landsman Meat Co. LLC (“Plaintiff”) moves to impose costs and sanctions against Farmhood and Roth individually, in his own right, and as Executor of the Estate of Alenick, and Defendants’ counsel Thomas J. McGowan (“Defendants’ counsel” or “Counselor McGowan”) pursuant to 22 NYCRR § 130-1.1 for alleged frivolous conduct. NYSCEF Doc. No. 29 at 1. Defendants filed their cross-motion to sanction Plaintiff and its counsel for allegedly frivolously seeking sanctions in violation of 22 NYCRR §130-1.1. NYSCEF Doc. No. 37 at 1 (Notice of Cross-Motion).

Plaintiff filed the present suit by filing the Summons and Complaint on November 13, 2024. NYSCEF Doc. No. 1. The Complaint names Defendants as: (1) Farmhood Fields, LLC; (2) Jack Roth, in his individual capacity; and (3) Jack Roth, as Executor to the Estate of Shneur Zalman Alenick, deceased. *Id.* at 1. Plaintiff named Roth as the executor to Alenick’s estate based on Alenick’s representation that Alenick, at the time, was battling Stage IV cancer and that, upon his death, Roth would be the executor of his estate. *Id.* at ¶ 31.

Plaintiff filed the Request for Judicial Intervention on January 30, 2025. NYSCEF Doc. No. 6. This matter was subsequently assigned to the present Court, which scheduled a Preliminary Conference for February 26, 2025. NYSCEF Doc. No. 7 (Notice of Prelim. Conf.).

On February 10, 2025, Defendants' Counsel filed a signed letter *via* NYSCEF stating, "that this lawsuit was automatically stayed by operation of CPLR [§] 1015(a) since it names a decedent as to whom no executor has yet been appointed (who would then be substituted as the proper party defendant)." NYSCEF Doc. No. 10 (Letter to Judge re: Automatic Stay by Operation of CPLR § 1015(a)). Further, it stated that Plaintiff's counsel would be advised when a proper executor is appointed to substitute for the decedent. *Id.*

On February 13, 2025, this Court issued an order staying the action pursuant to CPLR § 1015 (a) based on the Defendants' letter. NYSCEF Doc. No. 11 (Order Staying Case Pursuant to CPLR § 1015(a)). The same day, Plaintiff filed a letter stating, "counsel for the Defendants does not state who has died. Defendant Jack Roth is alive and well. Thus [*sic*] Defendants' counsel can only be referring to the death of Schneur Zalman Alenick, who passed before the filing of this action and who is not a party to the litigation." NYSCEF Doc. No. 12 (Letter to Judge: Request to Vacate Stay). In response, Defendants filed a letter arguing that Alenick remains a necessary party to the action as "Plaintiff's fictional complaint . . . is replete with vitriolic allegations in virtually every paragraph thereof against the decedent, Mr. Alenick . . . and seeks relief against the decedent's estate." NYSCEF Doc. No. 13 (Letter to Judge: Resp. to Letter Request for Removal of Stay). Defendants point out that they had previously contacted Plaintiff regarding Alenick's death and that Plaintiff never disputed the stay of the action between Defendants' letter dated December 6, 2024 and their letter dated February 13, 2025. *Id.*

On February 14, 2025, the Court directed parties to file briefs regarding the stay and attaching any relevant exhibits *via* NYSCEF on or before February 21, 2025. NYSCEF Doc. No. 14 (Court Notice). Said notice reads, in relevant part, "Counsel is directed to e-file briefs, not to exceed seven (7) pages and attaching as exhibits any relevant documents, as to whether the Stay should remain in place on or before February 21, 2025." *Id.* The parties filed their respective briefs on February 21, 2025. NYSCEF Doc. Nos. 16–17 (Letter to Judge: P.'s Letter Brief in Supp. of Lifting Stay, Letter to Judge: Letter Brief and Statutory Caselaw in Supp. of Stay of Action). Plaintiff's brief asserted that Complaint does not name anyone who is deceased and therefore CPLR § 1015(a) is not applicable. NYSCEF Doc. No. 16. Defendants' brief argued that the proceedings should remain stayed until an executor of deceased Alenick's estate is appointed and substituted as a party in this case, correcting Plaintiff's erroneous identification of Roth. NYSCEF Doc. No. 17.

On March 5, 2025, the parties appeared before this Court regarding the stay of the action and, based on representations made on the record, the Court vacated the stay because CPLR § 1015(a) was not applicable. NYSCEF Doc. Nos. 21, 34 (Order Vacating Stay, Exhibit 5: Defs.' Letter to the Court, dated March 6, 2025). During the appearance, the Court stated that it was the role of the parties to provide complete and accurate information about the deceased party, and that Defendants had not corrected the Court's misunderstanding of their letter seeking a stay. NYSCEF Doc. No. 26 at 5:1–4 (3/5/25 Tr.). When questioned about the estate, Defendants' counsel represented to the Court that "the executor has not yet been appointed, but my team is handling

that. All I know is it has not been done yet. I think they are in the process of gearing up for that . . . I do not know the status of what is going on with the estate.” *Id.* at 5:17–18, 20:5–6. Defendants’ counsel confirmed that Roth had not been appointed as an executor for Alenick’s estate. *Id.*

The Court directed Defendants to file “evidence or documentation with respect to whatever is going on in terms of appointing an executor for the estate of Mr. Alenick” by March 12, 2025. *Id.* at 18:17–22. On March 6, 2025, Defendants filed a letter attaching the March 6, 2025, Petition for Probate and Letters Testamentary filed with Orange County Surrogate’s Court naming Roth as an executor of Alenick’s estate. NYSCEF Doc. No. 23 (Letter to Judge: Letter Providing Proof of Filing of Petition for Probate and Letters Testamentary).

On March 13, 2024, Plaintiff filed the present motion to impose sanctions pursuant to 22 NYCRR § 130 1.1 against Defendants and their counsel for misrepresentation and omission of material facts. NYSCEF Doc. No. 29 (Motion for Sanctions). On March 17, 2025, Defendants filed an opposition to Plaintiff’s motion and their cross-motion for imposing sanctions on Plaintiff and its counsel for frivolous motion for sanctions. NYSCEF Doc. No. 37. On March 20, 2025, Plaintiff filed its opposition to Defendants’ cross-motion. NYSCEF Doc. No. 41 (Mem. of Law in Opp. to Cross-Motion for Sanctions).

Plaintiff argues that Counselor McGowan’s representations, through his filings and on the record, espouse a frivolous argument. NYSCEF Doc. No. 36 (Mem. of Law in Supp.). Plaintiff argues that Defendants’ filings regarding the death of a named party (NYSCEF Doc. No. 10) were intentionally vague to confuse the Court and delay litigation with no legal basis. NYSCEF Doc. No. 36 at 5–7. Plaintiff argues that Defendants have misled the Court and that Defendants had an affirmative obligation to correct the Court’s initial mistaken belief that Defendant Roth was deceased. *Id.* at 5. Plaintiff further argues that Defendants’ delay in filing the estate filings was a dilatory tactic that resulted in a three-month delay of the present proceedings.<sup>1</sup> *Id.* at 6–7. Plaintiff seeks: (1) attorneys’ fees incurred as a result of Defendants’ conduct; (2) the imposition of monetary sanctions against Defendants and their Counsel; (3) to preclude Defendants from filing an answer in the present matter; and (4) “any further relief the Court deems just and proper.” *Id.* at 8.

Defendants cross-move for sanctions against Plaintiff arguing that Plaintiff’s motion for sanctions is “sanctionably frivolous.” NYSCEF Doc. No. 40 at 9–13 (Mem. in Opp. to Mot. and in Supp. of Cross-Motion). Defendants argue that Plaintiff’s motion is entirely based on “conclusory speculations, innuendo and assertions made by Plaintiff’s counsel without support in the record.” *Id.* at 10. Defendants further renew their argument that the death of a party, regardless of the relative time the case was commenced, stays an action and, as such, Defendants’ request was not frivolous. *Id.* at 12.<sup>2</sup>

---

<sup>1</sup> Plaintiff relies on this argument in requesting that the Court deny Defendants from filing an answer. NYSCEF Doc. No. 36 at 5

<sup>2</sup> This argument was previously addressed when the Court vacated the stay. NYSCEF Doc. No. 21 at 2. Applying *Marte v. Graber*, the Court held that Defendants were not entitled to a stay, regardless of whether Defendant Alenick is a necessary party, because Alenick predeceased the filing of the present case. 867 N.Y.S.2d 71, 73 (1st Dept. 2008). In renewing their argument, Defendants do not provide any case law binding on this Court. NYSCEF Doc. No. 40 at 12.

### Legal Analysis

The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part . . . .

22 NYCRR § 130-1.1 (a).

For purposes of this Part, conduct is frivolous if:

- (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;
- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

22 NYCRR § 130-1.1(c). “A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Rules of Professional Conduct (22 NYCRR Part 1200) shall take appropriate action.” 22 NYCRR § 100.3(D)(2). “Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.” 22 NYCRR § 100.3(D)(3).

#### *I. Sanctions Against Counselor McGowan (Plaintiff's Motion)*

Counselor McGowan's filings and assertions do not sufficiently fit within any of the categories listed above. First, Defendants' assertions are not without support in law. As Defendants pointed out in their opposition, the Second Department has held that “a plaintiff is unable to commence an action during the period between the death of a potential defendant and the appointment of a representative of the estate.” *Laurenti v. Teatom*, 619 N.Y.S.2d 754, 755 (2d Dept. 1994); *accord Marte v. Graber*, 867 N.Y.S.2d 71, 73 (1st Dept. 2008) (“In this case, since the summons and complaint were filed after the death of Herman Graber . . . there was no party

for whom substitution could be effected pursuant to CPLR [§] 1015(a).”). Here, the First Department has held that an action which names a party that predeceases the filing of the summons and complaint does not implicate CPLR § 1015; while the Second Department has held that a party simply cannot commence an action against a predeceased defendant absent the appointment of an administrator. As such, Defendants’ request to stay the action was based on persuasive, albeit not binding, case law.

Second, Defendants provided the Court with justification regarding the delay in filing the proper paperwork and seeking an executor. As Defendants state, Plaintiff has not provided evidence of intentionally dilatory action other than noting that Alenick’s will names Roth as an administrator. NYSCEF Doc. No. 36 at 3. However, at the March 5, 2025 appearance, Counselor McGowan stated, “[t]here is [*sic*] a lot of estate issues. A lot of the Estate is going to charity.” NYSCEF Doc. No. 34 at 5:19–20. Accordingly, Defendants establish justification for their delay in appointing an administrator. When coupled with Defendants’ argument that the case should be stayed due to Alenick’s death, the Court cannot determine that Defendants’ actions were taken with the primary purpose of delaying, harassing, or maliciously injuring Plaintiff.<sup>3</sup>

Finally, Counselor McGowan technically never made a material misrepresentation to the Court. Rule 3.3(a) of the Rules of Professional Conduct states, in relevant part, that a lawyer shall not knowingly “make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” Plaintiff argues that Defendants falsely misrepresented that the Complaint “names” a deceased party and that, when the action was stayed by the Court, Counselor McGowan had the affirmative obligation to correct the Court. NYSCEF Doc. No. 36 at 5–6. However, as Defendants state in their previous letter brief, “Plaintiff’s fictional complaint . . . is replete with vitriolic allegations in virtually every paragraph thereof against the decedent, Mr. Alenick . . . and seeks relief against the decedent’s estate.” NYSCEF Doc. No. 13. Thus, while Alenick, individually, was not named as a Defendant in the caption of this case, he was named repeatedly in the Complaint. Further, Defendants may not have been given sufficient opportunity to correct the Court’s error considering Plaintiff filed their letter with the Court the same day the Court entered the order staying the matter. NYSCEF Doc. Nos. 11–12.<sup>4</sup> While Defendants’ statement was not unambiguous, the Court cannot assume Defendants were acting maliciously absent additional evidence.

Notwithstanding the foregoing, Rule 1.1 of the Rules of Professional Conduct specifically requires counsel be prepared for court appearances:

---

<sup>3</sup> Further, while Plaintiff argues that Plaintiff’s case has been delayed for almost a year since the passing of Alenick, Plaintiff is not without blame. *Harding v. Noble Taxi Corp.*, 547 N.Y.S.2d 29, 31 (1st Dept. 1989) (holding that plaintiff may seek appointment of temporary administrator in the Supreme Court as the “Supreme Court is a court of general jurisdiction with the power to appoint a guardian to serve as temporary administrator, and that court also has broad discretion to act in matters involving substitution.”). Despite commencing this action in a court of general jurisdiction, with the knowledge that Mr. Alenick had predeceased the matter, Plaintiff did not commence any proceedings in this Court seeking to appoint Roth as the administrator of the estate.

<sup>4</sup> Again, Plaintiff is not without blame here. While Plaintiff is the party that corrected the Court’s ultimate error, Plaintiff failed to file any opposition on this matter to prevent the stay when Defendants filed their letter requesting the stay. NYSCEF Doc. No. 10. Defendants’ letter seeking a stay was filed February 10, 2025, while the stay was not implemented until February 13, 2025. In that time, neither party clarified or corrected Defendants’ alleged misstatement.

(a) A lawyer should provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(b) A lawyer shall not handle a legal matter that the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it.

On February 25, 2025, the Court notified all parties that the matter would be adjourned to March 5, 2025, and that the Court would inquire as to the propriety of the stay in the present action. NYSCEF Doc. No. 18 (Court Not.). Accordingly, Defendants had, at least, eight (8) days to prepare to answer questions regarding the estate of Mr. Alenick, or, in the alternative, request the attendance of a member of his firm’s Trusts and Estates team. Nonetheless, on March 5, 2025, despite the fact that his own firm was handling the appointment of an administrator, Counselor McGowan repeatedly stated that he had no information regarding the appointment or any steps taken towards appointing any person. See, e.g., NYSCEF Doc. No. 26 at 5:17–18.

Based on the foregoing, the Court finds that it is improper to sanction Counselor McGowan at this time.

II. Sanctions Against Plaintiff (Defendants’ Cross-Motion)


Defendants argue that Plaintiff should be sanctioned for seeking sanctions without sufficient evidence. NYSCEF Doc. No. 40 at 9–13. As discussed supra, it cannot be argued convincingly that Plaintiff’s motion seeking sanctions was frivolous. Accordingly, Defendants’ cross-motion seeking sanctions against Plaintiff is denied.

As such, it is hereby

ORDERED that Plaintiff’s Motion seeking sanctions against Defendants is DENIED in its entirety; and it is further

ORDERED that Defendants’ Cross-Motion seeking sanctions against Plaintiff is DENIED in its entirety.

The foregoing constitutes the Decision and Order of the Court.

|                       |   |   |
|-----------------------|---|---|
| <u>April 9, 2025</u>  |   |  |
| DATE                  |   | ANAR RATHOD PATEL, A.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 checked="" type="checkbox"/> DENIED          | <input type="checkbox"/> 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  |