

Friedfeld v Citibank N.A.

2025 NY Slip Op 32173(U)

June 13, 2025

Supreme Court, New York County

Docket Number: Index No. 161344/2015

Judge: Verna L. Saunders

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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. VERNA L. SAUNDERS, JSC **PART 36**
Justice
-----X **INDEX NO.** 161344/2015
 ARLEEN FRIEDFELD, as executor of the Estate
 of SAMUEL FRIEDFELD, Deceased,
Plaintiff, **MOTION SEQ. NO.** 002,003

- v - **DECISION + ORDER ON**
CITIBANK N.A., **MOTION**
Defendant.

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 The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52, 53
 were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65
 were read on this motion to/for PARTY SUBSTITUTION.

The allegations as set forth in the summons and complaint are as follows: In or around 1982, Samuel Friedfeld opened an Individual Retirement Account (IRA) at a branch of EAB in Rockville Center, New York, with the purchase of a Certificate of Deposit (CD). Upon information and belief, between 1982 and 1987, Samuel Friedfeld continued to fund the IRA with purchases of additional CDs (each, an IRA CD). Samuel Friedfeld died on September 4, 1987, leaving a last will and testament in which and by which plaintiff Arleene Friedfeld (“plaintiff”) was appointed the sole executor of Samuel Friedfeld’s estate. Plaintiff commenced this action to recover all such funds, along with accrued interest, which plaintiff claims remain on deposit with Citibank as successor to European American Bank (“EAB”) (NYSCEF Doc. No. 1, *summons and complaint*).

Plaintiff Arleene Friedfeld died on February 10, 2021.

Defendant now moves the court, by order to show cause, pursuant to CPLR 1021, for dismissal of the instant proceeding for failure to make a timely substitution. Defendant also seeks attorneys’ fees as sanctions for plaintiff’s counsel’s “frivolous conduct” in engaging in court-ordered mediation without a proper substitution after plaintiff’s passing (NYSCEF Doc. No. 51, *order to show cause*).¹

Plaintiff moves separately, pursuant to CPLR 1015(a) and 1021, for an order substituting Elyce Friedfeld in her capacity as Administrator, c.t.a. of the Estate of Samuel Friedfeld (“the

¹ During oral argument on February 19, 2025, this court denied that branch of plaintiff’s motions seeking dismissal of the action and granted that branch of the cross-motion seeking substitution.

estate”) as plaintiff in this action and amending the caption accordingly. Plaintiff also moves, pursuant to CPLR 3212, for leave to treat Elyce Friedfeld’s opposition and cross-motion papers as a motion for partial summary judgment on the issue of defendant’s liability to pay the estate the funds deposited in the IRA Samuel Friedfeld opened with its predecessor in interest, EAB, plus the accumulated interest.”

The motions were largely resolved by the court on the record following oral argument on February 19, 2025, which granted the substitution and denied that branch of plaintiff’s motion seeking summary judgment. The balance of the relief sought pertains to sanctions sought by defendant.

With respect to its request for sanctions, defendant argues that sanctions should be awarded in its favor and against plaintiff because plaintiff’s counsel participated in this case and attended several court-ordered mediation conferences without disclosing plaintiff’s death, even though she knew or should have known that plaintiff’s death stayed the case and terminated her authority to act on behalf of the deceased client. Defendant maintains that plaintiff’s counsel admitted at a court ordered mediation on October 10, 2024, that she was aware of plaintiff’s death and that she had to submit a motion for substitution. As such, defendant seeks attorney’s fees from the time of plaintiff’s death until the present (NYSCEF Doc. No. 49, *memo of law*).

In opposition to defendant’s motion and in furtherance of her own motion, plaintiff argues that no sanctionable conduct occurred. Plaintiff contends, *inter alia*, that “during the latter two mediation sessions, had the parties been able to reach an accord, the case could have been settled as Citibank had knowledge the plaintiff was deceased and could have waived the jurisdictional defect.” (NYSCEF Doc. No. 61, *memo of law in opposition*).

Susan M. Smith, Esq., counsel for plaintiff, avers that she learned in July 2023 that Arleene Friedfeld was deceased. According to Smith, she advised Elyce Friedfeld, decedent’s daughter, that Elyce Friedfeld would need to be substituted as the plaintiff in the action. Smith attended a court-ordered mediation with the court on July 24, 2023. Elyce Friedfeld petitioned the Kings County Surrogate’s Court to be appointed as administrator, c.t.a. of the Estate of Samuel Friedfeld. The letters were issued on August 10, 2024. At a second mediation scheduled and held on October 10, 2024, Smith avers she informed defense counsel that Arleen Friedfeld was deceased and provided him with a copy of the decree appointing Elyce Friedfeld as the Administrator of her late father’s estate. Smith affirms that the mediator, Melissa Sealy, Esq., Senior Settlement Coordinator, suggested that Smith hold off on making a motion for substitution. At a third mediation session held on November 1, 2024, Smith claims she reiterated her intention to file a motion for substitution. On November 25, 2024, Smith e-mailed a motion for substitution to Elyce Friedfeld for review but before she could file the motion, defendant moved for the instant relief (NYSCEF Doc. No. 55, *Smith aff*).

Defendant responds that attorney’s fees are warranted because, although plaintiff’s counsel knew of plaintiff’s passing in July 2023, defense counsel independently learned of plaintiff’s passing during a court ordered mediation session on October 10, 2024, two and a half years after the plaintiff’s death. This, argues defendant, warrants sanctions (NYSCEF Doc. No. 65, *memo in reply*).

A court may, in its discretion, award a party “costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney’s fees, resulting from frivolous conduct” (22 NYCRR 130-1.1 [a]). “[C]onduct 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” (22 NYCRR 130-1.1 [c]).

22 NYCRR § 202.28, entitled “Discontinuance of civil actions and notice to the court,” states that “[c]ounsel, including self-represented litigants, are under a continuing obligation to notify the court as promptly as possible in the event that an action is settled, discontinued or otherwise disposed of or if a case or motion has become wholly or partially moot, *or if a party has died* or filed a petition in bankruptcy. Such notification shall be made to the assigned judge in writing” (Emphasis added).

Here, this court agrees with defendant that plaintiff was under an obligation to inform both the court and defense counsel that Arlene Friedfeld was deceased, since it is well-settled that the death of a party triggers an automatic stay of all proceedings until a proper substitution is made (see *Schnapp v Miller’s Launch, Inc.*, 135 AD3d 655, 656 [1st Dept 2016]). Smith proffers no explanation as to why the information about decedent’s death was not revealed at the initial mediation. And, notwithstanding Smith’s assertion that the assigned mediator advised her not to file the motion for substitution, knowledge of the automatic stay and the court’s lack of jurisdiction upon the death of a party is presumed and does not excuse counsel’s noncompliance with 22 NYCRR § 202.28. Thus, this court is persuaded that said conduct, i.e., engaging in court-ordered mediation despite having full knowledge that said administrator was deceased, rises to the level of frivolous conduct and warrants sanctions. It is hereby

ORDERED that defendant’s motion for dismissal of the complaint is denied, as stated on the record on February 19, 2025; and it is further

ORDERED that plaintiff’s motion is granted solely to the extent it seeks substitution, as stated on the record on February 19, 2025, and it is otherwise denied; and it is further

ORDERED that the caption shall be amended as follows:

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ELYCE FRIEDFELD, as Executor of the
Estate of SAMUEL FRIEDFELD, Deceased,
Plaintiff,

-v-

Index No. 161344/2015

CITIBANK, N.A.,
Defendant.

-----X
and it is further

ORDERED that that branch of the motion seeking attorney’s fees pursuant to 22 NYCRR 130-1.1(a) is granted, and defendant is granted reasonable attorney’s fees from the date of plaintiff Arlene Friedfeld’s death on February 10, 2021, until the filing of the motion for substitution; and it is further

ORDERED that within ten (10) days of service of this decision and order, with notice of entry, defendant shall submit documentary proof of reasonable attorney’s fees incurred from February 10, 2021, the date of plaintiff Arlene Friedfeld’s death, until the filing of the motion for substitution, in accordance with the foregoing; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, plaintiff’s counsel shall serve a copy of this order, with notice of entry, upon defendant and upon the Clerk of the Court (60 Centre Street, Room 141 B), and upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption; 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 at the address www.nycourts.gov/supetmanh); and it is further

ORDERED that this constitutes the decision and order of this Court.

June 13, 2025



 HON. VERNA L. SAUNDERS, JSC

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