

Blount v City of New York

2025 NY Slip Op 32241(U)

June 4, 2025

Supreme Court, New York County

Docket Number: Index No. 950687/2020

Judge: Adam Silvera

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. ADAM SILVERA **PART 01**

Justice

-----X

<p>NICOLE BLOUNT,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>CITY OF NEW YORK, NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES, LITTLE FLOWER CHILDREN AND FAMILY SERVICES OF NEW YORK F/K/A LITTLE FLOWER CHILDREN'S SERVICES, DAVID ARNOLD, JOSEPH ARNOLD</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>INDEX NO. <u>950687/2020</u></p> <p>MOTION DATE <u>08/24/2021</u></p> <p>MOTION SEQ. NO. <u>001</u></p>
---	--

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents and for the reasons set forth below, the motion of the plaintiff, Nicole Blount ("Plaintiff"), is granted in part.

Plaintiff seeks (1) to amend the caption to reflect the appointment of Erin Lee as Administrator of Plaintiff's estate, (2) to amend the complaint to add a cause of action for Plaintiff's conscious pain and suffering, and (3) to amend the complaint to add a cause of action for wrongful death. Plaintiff's first and second requests are unopposed. *See* Affirmation in Partial Opposition ¶ 2. For this reason, and because leave to amend "shall be freely given," CPLR § 3025(b), Plaintiff's first two requests are granted. *See Calvert v Le Tam Realty Corp.*, 118 AD2d 426, 427-428 (1st Dep't 1986); *HSBC Bank USA, N.A. v Alexander*, 124 AD3d 838, 840 (2d Dep't 2015).

Plaintiff's third request, however, to add a wrongful death claim, must be denied as palpably insufficient. When seeking "to amend a personal injury complaint to assert a cause of

action for wrongful death,” as here, the motion to amend ““must be supported by competent medical proof of the causal connection between the alleged [negligence] and the death of the original plaintiff.”” *See Cruz v Brown*, 129 AD3d 455, 456 (1st Dep’t 2015), quoting *McGuire v Small*, 129 AD2d 429, 429 (1st Dep’t 1987) (alteration in original). As Plaintiff has not provided such proof, the portion of Plaintiff’s motion to amend to add the wrongful death cause of action is “palpably insufficient.” *See id.*

Although Plaintiff provided an autopsy report and a death certificate, these documents, absent more, do not suffice as competent medical proof of causation warranting leave to amend to include the wrongful death cause of action, pursuant to the Appellate Division, First Department, decisions. *See Affirmation in Support of Motion to Amend Complaint and Add New Cause of Action (“Support”), Exhs. E, F.* The autopsy report indicates that Plaintiff died from an accidental drug overdose. *See id.*, Exh. F. To be sure, Plaintiff alleges that the accidental overdose was caused by personal injuries attributable to the underlying action. *See Support* ¶¶ 29-31. But the plaintiff in *Cruz* made the same claim and was, unlike here, supported by a doctor who affirmed that the overdose was “causal[ly] link[ed]” to the underlying action. *See Cruz*, 129 AD3d at 456. Still, the Appellate Division, First Department, did not grant leave to amend, discrediting the doctor’s “conclusory” affirmation. *Id. A fortiori*, Plaintiff’s request for leave to amend to add a wrongful death claim, unsupported by competent medical proof connecting Plaintiff’s death to the underlying alleged negligence, must be denied. *See id.*

Accordingly, it is

ORDERED that the portion of Plaintiff’s motion for leave to amend the caption to reflect the appointment of Erin Lee as Administrator of Plaintiff’s estate is granted; and it is further

ORDERED that the portion of Plaintiff's motion for leave to amend the complaint to add a cause of action for Plaintiff's conscious pain and suffering is granted; and it is further

ORDERED that the portion of Plaintiff's motion for leave to amend the complaint to add a cause of action for wrongful death is denied; and it is further

ORDERED that, within 14 days, Plaintiff shall serve and file the amended summons and complaint upon the defendants, reflecting the amended caption and the added cause of action for conscious pain and suffering only, without prejudice to Plaintiff to move to further amend the complaint if necessary; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto within 30 days from the date of said service; and it is further

ORDERED that the action shall bear the following caption:

ERIN MARIE LEE, as
Administrator of the Estate of
NICOLE BLOUNT,

Plaintiff,

-against-

Index No. 950687/2020

CITY OF NEW YORK, NEW YORK
CITY ADMINISTRATION FOR
CHILDREN'S SERVICES, LITTLE
FLOWER CHILDREN AND FAMILY
SERVICES OF NEW YORK F/K/A
LITTLE FLOWER CHILDREN'S
SERVICES, DAVID ARNOLD,
JOSEPH ARNOLD,

Defendants.

And it is further

ORDERED that counsel for Plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and 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 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 at the address (ww.nycourts.gov/suptctmanh); and it is further

This constitutes the Decision/Order of the Court.



6/4/2025

DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE