

Public Admr. of the County of N.Y. v Yurt

2025 NY Slip Op 32623(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 805109/2015

Judge: John J. Kelley

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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. JOHN J. KELLEY **PART** **56M**

Justice

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PUBLIC ADMINISTRATOR OF THE COUNTY OF NEW YORK, as Administrator of the Estate of TASSIA LIVADAS, deceased,

Plaintiff,

- v -

ROGER W. YURT, M.D., PALMER Q. BESSEY, M.D., JOSEPH RELLA, and THE NEW YORK AND PRESBYTERIAN HOSPITAL,

Defendants.

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INDEX NO. 805109/2015

MOTION DATE 03/06/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 51, 52, 53, 54, 55, 56

were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

In this action to recover damages for medical malpractice, the plaintiff, Public Administrator of the County of New York, as Administrator of the Estate of Tassia Lavidas, deceased (the Public Administrator) moves pursuant to CPLR 602 to consolidate this action into another action entitled *Public Administrator of the County of New York v First Denco Realty, Inc., et al.*, which had been commenced in the Supreme Court, New York County, under Index No. 159505/2014 (the 2014 action), and thereupon pursuant to EPTL 5-4.6(a) to authorize Dahlia Damas, as the Public Administrator, to compromise the claims asserted on behalf of her decedent, Tassia Livadas, in both the 2014 action and this action. No party or interested person opposes the motion. The motion is granted only to the extent that the Public Administrator is authorized to compromise the claims that she asserted on behalf of her decedent in this medical malpractice action for the sum of \$250,000.00, as agreed to on January 25, 2021, and the motion is otherwise denied.

The 2014 action arose in connection with a July 21, 2012 fire in the decedent's building that caused her to sustain personal injuries. The instant medical malpractice action arises from medical treatment that the defendants in this action rendered to the decedent between July 22, 2012 and September 12, 2012. The decedent died on September 14, 2017, and the automatic stay of proceedings imposed by operation of law on that date (see *Perez v City of New York*, 95 AD3d 675, 677 [1st Dept 2012]) was memorialized in the 2014 action in an order dated September 26, 2017 (Bannon, J.), and in the instant action in an order dated October 30, 2017 (Shulman, J.). Sometime in mid-to-late 2018, the Public Administrator was appointed by the Surrogate's Court, New York County, as administrator of the decedent's estate. In an order dated October 9, 2018 (Bannon, J.), the Public Administrator was substituted for the decedent as the plaintiff in the 2014 action and, in a so-ordered stipulation dated December 4, 2018 and entered January 16, 2019 (Shulman, J.), the Public Administrator was substituted for the plaintiff in the instant medical malpractice action.

On June 24, 2020, the Public Administrator settled the 2014 personal injury action for the sum \$130,000.00. In an order dated January 29, 2021 and entered February 1, 2021, the court in that action (Bannon, J.) ordered that "upon the plaintiff's communication dated June 24, 2020, informing the court that the matter had settled, the complaint is dismissed, . . . the parties shall file a proper Notice of Discontinuance within 20 days, and . . . the Clerk shall mark the file as disposed." On January 25, 2021, the instant medical malpractice action was settled for the sum of \$250,000.00.

"Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, 'unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right'" (*Raboy v McCrory Corp.*, 210 AD2d 145 [1st Dept 1994], quoting *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept 1993]). The dates that the defendants in this action rendered medical treatment to the decedent appear to be related to the treatment of the

injuries that she sustained in the fire that underpinned the 2014 action. The 2014 action, however, “is no longer pending before the court and may not be consolidated with the later action” (*Wells Fargo Bank Minn. Natl. Assn. v Connelly*, 13 Misc 3d 1234[A], 2006 NY Slip Op 52114[U], *2, 2006 NY Misc LEXIS 3220, *4 [Sup Ct, Suffolk County, Sep. 19, 2006]), that is, the 2014 action may not be consolidated with the instant medical malpractice action (see *Rosado v Hamilton*, 2024 NY Misc LEXIS 40318, * [Sup Ct, Kings County, May 23, 2024] [“a dismissed action cannot be consolidated into an active action”]; *Ware v USAA Ins. Co.*, 2023 NY Misc. LEXIS 30777, *4 [Sup Ct, Suffolk County, Mar. 22, 2023]). Hence, the branch of the Public Administrator’s motion seeking consolidation must be denied.

EPTL 5-4.6(a) permits the trial court in which a wrongful death action is pending to approve the compromise of the action in such amount as it determines is adequate, including attorneys’ fees and other payable expenses such as medical bills, funeral costs, and other liens on the estate. The court approves the \$250,000.00 settlement of this medical malpractice action, approves reimbursement of the expenses identified in the moving affirmation of the plaintiff’s attorney, and approves an award of attorneys’ fees calculated on the net recovery in this action (see 22 NYCRR 603.25[e][1]), calculated on the sliding scale fee schedule set forth in Judiciary Law § 474-a(2). This court has no authority to approve the settlement in the 2014 action at this juncture. If the plaintiff seeks approval of a decedent’s compromise order in connection with the settlement of that action, she would have to move to restore that action to active status, and submit a separate, proposed decedent’s compromise order to the justice presiding over that action. If, on the other hand, she renewed that branch of the instant motion which was for consolidation, she not only would need to restore the 2014 action to active status, but this action would have to be consolidated into the 2014 action, not the other way around, as she sought to do here. That is because the complaint in the 2014 action had been served on the defendants therein earlier than the complaint in this action had been served on the defendants herein (see *Graev v Graev*, 219 AD2d 535, 535-536 [1st Dept 1995] [related actions

should be consolidated into the action in which the complaint had been served earlier]; *Barone v Norris*, 2024 NY Misc LEXIS 60115, *1 [Sup Ct, Nassau County, Jun. 24, 2024] [justice assigned to the earlier-filed action would preside over consolidated action]). The court concludes that, under the circumstances presented here, and contrary to the Public Administrator's contention, the issuance of separate decedent's compromise orders in each of the two related actions would be more appropriate than a consolidated compromise order.

The court notes that, although the Public Administrator is entitled to the entry of a decedent's compromise order, the proper procedure requires her to submit a proposed decedent's compromise order and supporting papers to the ex parte motion office for review, vetting, and approval. Once approved, that office forwards a marked-up order to the court for consideration and signature. The court notes that the appropriate checklists and forms for the proposed decedent's compromise order, as set forth in court form WD-7, may be found at the court's web site under forms/surrogates/wrongfuldeath/shtml.

Accordingly, it is,

ORDERED that the plaintiff's motion is granted, without opposition, only to the extent that she is granted leave to compromise the claims that she asserted on behalf of her decedent against the defendants Roger W. Yurt, M.D., Palmer Q. Bessey, M.D., Joseph Rella, M.D., and The New York and Presbyterian Hospital, in accordance with terms of settlement set forth in her attorney's affirmation and the January 25, 2021 settlement agreement, which was for the gross settlement amount of \$250,000.00, and she shall submit a proposed decedent's compromise order, in the format set forth in Form WD-7, as accessible on the court's website at forms/surrogates/wrongfuldeath.shtml under the heading "decree," with appropriate revisions applicable to this Supreme Court action, along with all papers in support of the application, to the ex parte motion support office for review, vetting, and mark-up, and the motion is otherwise denied.

This constitutes the Decision and Order of the court.

6/30/2025
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: