

**Blumenfeld v Carerite Ctrs., LLC**

2025 NY Slip Op 33056(U)

August 8, 2025

Supreme Court, New York County

Docket Number: Index No. 805285/2021

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 IAS MOTION 56EFM

Justice

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MATTHEW BLUMENFELD as Executor of the Estate of MURIEL BLUMENFELD, Deceased, and ELLIOTT BLUMENFELD,

Plaintiffs,

- v -

CARERITE CENTERS, LLC, doing business as RIVERSIDE PREMIER REHABILITATION AND HEALING CENTER,

Defendant.

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The following e-filed documents, listed by NYSCEF document number 28, 29, 30 (Motion 002)

SUBSTITUTE ESTATE REPRESENTATIVE/DISSOLVE STAY/AMEND CAPTION

were read on this motion to/for

In this medical malpractice action, Matthew Blumenfeld, as the duly appointed representative of the estate of the deceased plaintiff Elliott Blumenfeld, moves pursuant to CPLR 1015 and 1021 to be substituted as a party plaintiff in place and stead of Elliott Blumenfeld, to vacate the automatic stay of proceedings imposed by operation of law upon that decedent's death, and pursuant to CPLR 305(c) for leave to amend the caption accordingly.

The motion is granted, without opposition.

On September 15, 2021, Matthew Blumenfeld, as attorney-in-fact for Muriel Blumenfeld, along with Elliott Blumenfeld, the husband of Muriel Blumenfeld, commenced this action against the defendant to recover damages for medical malpractice and loss of consortium. On October 14, 2021, the defendant served an answer to the complaint, along with numerous demands for discovery and inspection. Muriel Blumenfeld died on November 14, 2021, and all proceedings in this action thus were automatically stayed by operation of law on that date, pending substitution of a representative of the decedent's estate (see Perez v City of New York, 95

AD3d 675, 677 [1st Dept 2012]). On March 25, 2022, the decedent's attorneys informed the court of her death. By order dated March 31, 2022, this court memorialized the automatic stay that had gone into effect on November 14, 2021. On June 24, 2022, the Surrogate's Court, New York County, appointed Matthew Blumenfeld as the executor of the estate of Muriel Blumenfeld, and issued letters testamentary to Matthew Blumenfeld. In an order dated October 4, 2022 and entered October 5, 2022, this court granted Matthew Blumenfeld's motion to vacate that stay, substitute himself as a plaintiff for Muriel Blumenfeld, and amend the caption accordingly (MOT SEQ 001). On April 4, 2024, this court issued a preliminary conference order, scheduling deadlines for completing discovery and the filing of the note of issue.

Although the court issued a compliance conference order on September 24, 2024, and a status conference order on January 30, 2025, both of which extended the discovery and note of issue filing deadlines, the plaintiff Elliott Blumenfeld had died on August 27, 2024 and, thus, prior to the entry of those orders. Moreover, despite the fact that the Surrogate's Court, New York County, appointed Matthew Blumenfeld as executor of Elliott Blumenfeld's estate on December 30, 2024, his attorneys did not notify the court of the latter's death until July 24, 2025.

It is well settled that "the death of a party divests a court of jurisdiction to conduct proceedings in an action until a proper substitution has been made pursuant to CPLR 1015(a)" (*Griffin v Manning*, 36 AD3d 530, 532 [1st Dept 2007]; see *Perez v City of New York*, 95 AD3d at 677; *Manto v Cerbone*, 71 AD3d 1099 [2d Dept 2010]; *Nieves v 331 E. 109th St. Corp.*, 112 AD2d 59, 60 [1st Dept 1985]). Any determination rendered or proceedings held without such a substitution generally is deemed a nullity (see *Griffin v Manning*, 36 AD3d at 532; *Stancu v Cheon Hyang Oh*, 74 AD3d 1322, 1322-1323 [2d Dept 2010]; *Morrison v Budget Rent A Car Syst., Inc.*, 230 AD2d 253 [2d Dept 1997]; *Nieves v 331 E. 109th St. Corp.*, 112 AD2d at 60). Rather, the action is automatically stayed upon the party's death (see *Perez v City of New York*, 95 AD3d at 677). Nor can the parties "by agreement confer subject matter jurisdiction upon [a] court where there is none" (*Cuomo v Long Island Lighting Co.*, 71 NY2d 349, 351 [1988]; see

*Haverstraw Park, Inc. v Runcible Properties Corp.*, 33 NY2d 637 [1973]; *Stancu v Cheon Hyang Oh*, 74 AD3d at 1323) by stipulating to conducting further proceedings prior to the substitution of a personal representative for the deceased party. Indeed, any such stipulation is “legally inoperative” (*Morrison v Budget Rent A Car Syst., Inc.*, 230 AD2d at 261). Hence, the compliance conference order and status conference order must be vacated as nullities.

Nonetheless, the Surrogate’s Court’s issuance of letters testamentary to Matthew Blumenfeld with respect to the estate of Elliott Blumenfeld authorized him to prosecute this action. Matthew Blumenfeld, in his capacity as executor, now moves to be substituted in this action as a party plaintiff in place and instead of Elliott Blumenfeld, to vacate the automatic stay imposed by operation of law on August 27, 2024, and for leave to amend the caption. It is well settled that, where an administrator or executor is appointed as representative of the estate of a decedent who was the party to a pending action, substitution and amendment of the caption is appropriate (see *Tag 380, LLC v Estate of Howard P. Ronson*, 69 AD3d 471, 473-474 [1st Dept 2010]). Matthew Blumenfeld has submitted sufficient proof of his due appointment as executor of the estate of Elliott Blumenfeld. Hence, the motion must be granted.

Accordingly, it is,

ORDERED that, on the court’s own motion, the compliance conference order dated September 23, 2024 and entered September 24, 2024, and the status conference order dated and entered January 30, 2025, be, and hereby are, vacated as nullities; and it is further,

ORDERED that the motion of Matthew Blumenfeld, as executor of the estate of Elliott Blumenfeld, deceased, to be substituted as party plaintiff in this action, dissolve the stay imposed upon that decedent’s death, and amend the caption accordingly, is granted, without opposition; and it is further,

ORDERED that Matthew Blumenfeld, in his capacity as executor of the estate of Elliott Blumenfeld, deceased, is substituted as party plaintiff in this action in place and stead of Elliott Blumenfeld; and it is further,

ORDERED that the automatic stay of proceedings imposed by operation of law upon that decedent’s death on August 27, 2024 is vacated and dissolved; and it is further,

ORDERED that the caption is amended to read as follows:

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MATTHEW BLUMENFELD as Executor of the Estate of MURIEL  
BLUMENFELD, deceased, and as Executor of the Estate of  
ELLIOTT BLUMENFELD, deceased,

Plaintiff,

Index No. 805285/2021

v

CARERITE CENTERS, LLC, doing business as RIVERSIDE  
PREMIER REHABILITATION AND HEALING CENTER,

Defendant.  
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and it is further,

ORDERED that, within 15 days of the entry of this decision and order, the plaintiff shall serve a copy of this decision and order upon both the County Clerk and the Clerk of the General Clerk’s Office, which shall be effectuated 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, and, to comply with those procedures, the plaintiff shall (1) upload the decision and order to the NYSCEF system under document title “SERVICE ON SUPREME COURT CLERK (GENL CLERK) W/COPY OF ORDER” **AND** (2) separately file and upload the notice required by CPLR 8019(c) in a completed Form EF-22, along with a copy of the decision and order, under document title “NOTICE TO COUNTY CLERK CPLR 8019(C),” and the County Clerk and all appropriate court support offices shall thereupon amend the court records accordingly; and it is further,

ORDERED that the parties shall submit a proposed compliance conference order to the Part 56 Part Clerk on September 10, 2025, in a form which shall be provided by the court, whereupon the note of issue filing deadline will be extended.

This constitutes the Decision and Order of the court.

8/8/2025  
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: