

Bey v Fowler

2025 NY Slip Op 33336(U)

July 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 508090/2023

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York on the 7th day of July 2025

HONORABLE FRANCOIS A. RIVERA

-----X
GERALD SEASE BEY, as Administrator
of the Estate of ARTHURINE BUTLER

Plaintiff,

- against -

DEWAN FOWLER, JOHN and JANE DOE

Defendants.
-----X

**SUPERSEDING
DECISION & ORDER¹**

Index No.: 508090/2023

Oral Argument: 4/17/2025

Cal. No.: 8

Ms. Seq. No.: 3

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on November 11, 2024, under motion sequence number three, by Adam Kalish, Esq.² (hereinafter the movant) for an order: (1) pursuant to CPLR 1015 and 1021 substituting Stephanie Sease-Bey as plaintiff in the place of Gerald Sease Bey and, (2) an order pursuant to CPLR 3215 granting leave to enter a default judgment against Dewan Fowler and John and Jane Doe (hereinafter the defendants). The motion is unopposed.

- Notice of motion
- Affirmation in support
 - Exhibits A-D
 - Exhibit (i) and (ii)³
- Affidavit in support

¹ The instant decision and order supersedes and explains the short form order filed on April 17, 2025, under NYSCEF Doc No. 31.

²As of the date of the filing of the instant motion, Adam Kalish, Esq., was counsel to the plaintiff, Gerald Sease Bey, the former administrator of the estate of Arthurine Butler, and is the counsel of Stephanie Sease-Bey, the newly appointed administrator of the estate of Gerald Sease Bey.

³ Exhibits (i) and (ii) were annexed to the movant's papers. They were not referred to by anyone and their attachment to the motion was unexplained.

BACKGROUND

On March 16, 2023, the plaintiff commenced the instant action by filing a summons and verified complaint (hereinafter the commencement papers) with the Kings County Clerk's office (KCCO). The plaintiff is seeking relief pursuant to New York Real Property Actions and Proceedings Law (RPAPL) Article 6, for a judgment of ejectment arising from the defendants' allegedly improper and unlawful license agreement.

No defendant has answered the verified complaint.

MOTION PAPERS

The movant's motion papers consist of a notice of motion, an affirmation in support, an affidavit in support, and six annexed exhibits labeled A through D, (i), and (ii). The affirmation in support is by Adam Kalish, Esq. (hereinafter Kalish), the former counsel of Gerald Sease Bey and the current counsel of Stephanie Sease-Bey. The affidavit in support is by Stephanie Sease-Bey, the newly appointed administrator of the estate of Arthurine Butler.

The affirmation of Kalish refers to four exhibits labeled A through D. Exhibit A is a copy of the commencement papers. Exhibit B is a copy of the affidavit of service of the commencement papers on the defendants. Exhibit C is a copy of a court order by Judge Bourne-Clarke that was dated October 13, 2023, and so ordered by a stipulation. Judge Bourne-Clarke's order noted that attorney Lisa George, Esq., had not yet filed a notice of appearance, but had answered the calendar call on behalf of the defendants. Judge Bourne-Clarke gave Lisa George, Esq., thirty days from the date of the order to either make a motion or answer the verified complaint. Exhibit D is a certificate of appointment of administrator by the Surrogate's Court of the State of New York, Kings County, dated October 31, 2024, appointing Stephanie Sease-Bey

as the administrator of the estate of Gerald Sease Bey. The affidavit of Stephanie Sease-Bey averred that she had replaced her husband, Gerald Sease Bey, as the administrator of the Estate of Arthurine Butler upon his passing. It further averred that she had retained the law firm of Adam Kalish, P.C., to represent her in the instant action and had asked the movant to continue with the prosecution of this matter.

Also annexed to the movant's papers are two exhibits labeled (i) and (ii). Exhibit (i) is a certificate of appointment of administrator by the Surrogate's Court of the State of New York, Kings County, dated March 28, 2024, appointing Stephanie Sease-Bey as the administrator of the estate of Arthurine Butler. Exhibit (ii) is another copy of Exhibit D.

LAW AND APPLICATION

Substitution of Plaintiff

The movant, as counsel to Stephanie Sease-Bey, seeks, among other things, an order substituting Stephanie Sease-Bey as the plaintiff in the place of Gerald Sease Bey. The movant's documentary evidence established that Gerald Sease Bey, the former administrator of the estate of Arthurine Butler, had passed away on October 28, 2023. It also established that on January 19, 2024, Stephanie Sease-Bey was granted letters of administration for the estate of Gerald Sease Bey.

"Generally, the death of a party divests a court of jurisdiction to act, and automatically stays proceedings in the action pending the substitution of a legal representative for the decedent pursuant to CPLR 1015 (a)." (*Aurora Bank FSB v Albright*, 137 AD3d 1177, 1178 [2d Dept 2016], quoting *NYCTL 2004-A Trust v Archer*, 131 AD3d 1213, 1214 [2d Dept 2015]; see CPLR 1015; see CPLR 1021). Furthermore, "[t]he death of a party terminates the authority of the

attorney for that person to act on his or her behalf” (*Aurora Bank FSB*, 137 AD3d at 1178 [2d Dept 2016], quoting *Hyman v Booth Mem. Hosp.*, 306 AD2d 438, 438 [2d Dept 2003]). CPLR 1021 provides an exception to the court's lack of jurisdiction to the extent of permitting a motion for substitution and, conversely, a motion for dismissal for failure to make timely substitution. (*see Hyman v Booth Mem. Hosp.*, 306 AD2d at 438; *see* CPLR 1021). “If a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties.” (CPLR 1015 [a]).

Here, the notice of motion was made by the plaintiff's prior counsel and the certificate of appointment that counsel annexed established that plaintiff Gerald Sease Bey died on October 28, 2023. Consequently, the movant's authority to act on behalf of the plaintiff Gerald Sease Bey terminated on the date of his death (*see Aurora Bank FSB*, 137 AD3d at 1178).

However, before the instant motion was made, three crucial events occurred. The first was that Stephanie Sease-Bey was appointed the administrator of the estate of her deceased husband, Gerald Sease Bey. The second was that she was also appointed the administrator of the estate of Arthurine Butler. The third was that she hired the law firm of Adam Kalish P.C. to represent her with the intent of continuing the prosecution of the instant action. These three events not only endowed Adam Kalish Esq. with the authority to make the instant motion on behalf of his client Stephanie Sease-Bey, but they also gave Stephanie Sease-Bey standing to make the motion for substitution. The movant established its entitlement to the relief requested. This branch of the movant's motion is granted. The automatic stay imposed by CPLR 1015 is lifted, and the new caption is as follows.

-----X
STEPHANIE SEASE-BEY, AS ADMINISTRATOR
OF THE ESTATE OF ARTHURINE BUTLER

Plaintiff,

- against -

DEWAN FOWLER, JOHN AND JANE DOE

Defendants.

-----X

Default Judgment

The movant also seeks leave to enter a default judgment against Dewan Fowler, John Doe, and Jane Doe, based on their failure to answer the verified complaint.

CPLR 3215 provides, in pertinent part, as follows:

(a) Default and entry. When a defendant has failed to appear, plead, or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him.

(f) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint . . . and proof of the facts constituting the claim, the default and the amount due . . . by affidavit made by the party . . . Where a verified complaint has been served, it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or the party's attorney.

“On a motion for leave to enter a default judgment pursuant to CPLR 3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting its claim, and proof of the defaulting party's default in answering or appearing” (*Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651 [2d Dept 2011], citing CPLR 3215 [f]). “CPLR 3215 (f) states, among other things, that upon any application for a judgment by default, proof of the facts constituting the claim, the default, and the amount due are to be set forth in an affidavit ‘made by the party’” (*HSBC Bank USA, N.A. v Betts*, 67 AD3d 735, 736 [2d Dept 2009], citing CPLR 3215 [f]). The complaint in the instant action was verified by Gerald Sease Bey. CPLR

105 (u) permits a verified complaint to substitute an affidavit if needed (*see* CPLR 105 [u]). The burden of proving that personal jurisdiction has been acquired over a defendant in an action rests with the plaintiff (*see Gottesman v Friedman*, 90 AD3d 608, 609 [2d Dept 2011]).

In the case at bar, the movant filed two affidavits of service of its process server, Kenric Lever (hereinafter Lever), to demonstrate service of the commencement papers on each one of the defendants. Both were filed under NYSCEF Doc. No 2.

Examining the first affidavit of service, Lever filed only one affidavit to prove service on all three defendants, wherein he alleged the following facts. On April 5th, 2023, at 11:36 AM, he served the summons with verified complaint on Robert Fowler, Olivia Doe, John Doe, and Jane Doe, by leaving a true copy of said paper with Jane Doe, a name not given, a person of suitable age and discretion at a certain address in Brooklyn. The court notes that the named defendants in the commencement papers are Devan Fowler and John and Jane Doe, and the affidavit of service inexplicably avers service on Robert Fowler and Olivia Doe as well as John and Jane Doe. Robert Fowler and Olivia Doe are not named as defendants in the instant action. The determination to serve these individuals was perplexing and unexplained.

Lever averred that on April 11, 2023, he mailed the commencement papers in a “postedpaid,sealed [sic] envelope” marked “Personal and Confidential” addressed to each of the defendant’s last known residence, located at the same address the papers were hand delivered. The affidavit did not restate the names of everyone to whom he mailed the commencement papers. On April 17, 2023, he filed the one affidavit of service with the KCCO. The movant was attempting service of the commencement papers pursuant to CPLR 308 (2).

Examining the second affidavit of service, Lever avers the same address of attempted service on the same date and time. The second affidavit of service is nearly identical to the first affidavit of service, with the following exception. The parties served in the second affidavit of service are Dewar Fowler, John Doe, and Jane Doe. There was no explanation for the difference between the two affidavits of service.

CPLR 308 (2) provides as follows:

Personal service upon a natural person shall be made by any of the following methods:

2. by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later; service shall be complete ten days after such filing; proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions where service hereunder may be made pursuant to an order made in accordance with the provisions of subdivision a of section two hundred thirty-two of the domestic relations law.

“The affidavit of a process server generally constitutes prima facie proof of proper service.” (*Sinay v Schwartzman*, 148 AD3d 1068, 1070 [2d Dept 2017], citing *U.S. Bank, N.A. v Peralta*, 142 AD3d 988, 988 [2d Dept 2016]). In the case at bar, however, it demonstrates that the plaintiff failed to effectuate service of the commencement papers on any defendant.

Lever’s affidavits of service both aver that he gave Jane Doe, a person of suitable age and discretion, only one set of the commencement papers. Since three defendants were named in the summons, however, the process server was required to deliver two or leave three complete sets

of the commencement papers, one for each defendant intended to be served (*see Raschel v Rish*, 69 NY2d 694, 696-697 [1986]).

Even though Lever averred that he mailed each one of the defendants a complete set of the motion papers, the service was, nevertheless, defective and did not confer personal jurisdiction over any one of the defendants. “Jurisdiction is not acquired pursuant to CPLR 308 (2) unless both the delivery and mailing requirements have been strictly complied with” (*Josephs v AACT Fast Collections Services*, 155 AD3d 1010, 1012 [2d Dept 2017], citing *Gray-Joseph v Shuhai Liu*, 90 AD3d 988, 989 [2d Dept 2011]).

“Service is only effective when it is made pursuant to the appropriate method authorized by the CPLR. Actual notice alone will not sustain the service or subject a person to the court's jurisdiction when there has not been compliance with prescribed conditions of service” (*HSBC Bank USA, N.A. v Assouline*, 177 AD3d 603, 605 [2d Dept 2019] [alterations omitted], quoting *Markoff v South Nassau Community Hosp.*, 61 NY2d 283, 288 [1984]). “When the requirements for service of process have not been met, it is irrelevant that defendant may have actually received the documents” (*HSBC Bank USA, N.A.*, 177 AD3d at 605, citing *Raschel v Rish*, 69 NY2d 694, 697 [1986]).

Based on the movant's defective service, personal jurisdiction was not obtained over any defendant and no defendant was required to answer the verified complaint. The branch of the movant's motion seeking leave to enter a default judgment against the defendants is denied. The denial is without prejudice.

CONCLUSION

The branch of the motion by movant Adam Kalish Esq. made on behalf of Stephanie Sease-Bey for an order substituting Stephanie Sease-Bey as plaintiff in the place of her deceased husband Gerald Sease Bey is granted.

The branch of the motion by movant Adam Kalish Esq. made on behalf of Stephanie Sease-Bey for an order pursuant to CPLR 3215 granting leave to enter a default judgment against defendant Dewan Fowler and John and Jane Doe is denied without prejudice.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA