

Bregoli v FSF Soho, LLC

2025 NY Slip Op 33355(U)

September 8, 2025

Supreme Court, New York County

Docket Number: Index No. 158245/2018

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. 158245/2018

FRANK BREGOLI,
Plaintiff,

**MOTION SEQ. NO. 008; 009; 010;
011**

- v -

FSF SOHO, LLC, ZARA USA, INC., 503 BROADWAY LLC, 507
BROADWAY LLC and JAMES M. BARB CONSTRUCTION
INC.,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

JAMES M. BARB CONSTRUCTION INC.,
Third-Party Plaintiff,

Third-Party
Index No. 595993/2019

-against-

STAR CONSTRUCTION & STONE, INC.,
Third-Party Defendant.

-----X

FSF SOHO, LLC, ZARA USA, INC.
Second Third-Party Plaintiff,

Second Third-Party
Index No. 595459/2020

-against-

STAR CONSTRUCTION & STONE INC and L&L STONE & TILE,
LLC
Second Third-Party Defendant.

-----X

FSF SOHO, LLC, ZARA USA, INC.,
Third Third-Party Plaintiff,

Third Third-Party
Index No. 595160/2021

-against-

CARBEL, LLC,
Third Third-Party Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 219, 224, 225, 226, 230, 281

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 215, 216, 217, 218, 221, 222, 223, 228, 229, 231, 251, 282

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 252, 253, 254, 255, 283

were read on this motion to/for

DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 011) 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 284

were read on this motion to/for

DISMISS

This personal injury action stems from an accident on September 25, 2015, at 503 Broadway, New York, NY, where, during the performance of construction work at the premises, plaintiff FRANK BREGOLI (“Bregoli”) was allegedly injured after a pallet of tiles fell on him (NYSCEF Doc. No. 1, *summons and complaint*).

On March 23, 2022, plaintiff’s counsel notified the court via letter that plaintiff had passed away on November 21, 2021, and that they were in the process of obtaining an administrator (NYSCEF Doc. No. 185). On May 24, 2022, plaintiff’s counsel filed a subsequent letter notifying the court that Bregoli’s wife, who was to be made administrator of the estate, had also passed away on May 18, 2024, and that they were in the process of obtaining an administrator and setting up the estate (NYSCEF Doc. No. 186). In another letter dated July 27, 2023, counsel for plaintiff updated the court as follows: “[a]n administrator has not been appointed in this case due to the complexity involved: plaintiff’s wife died as well, and there is currently no one with standing to apply for Letters of Administration on behalf of plaintiff’s minor children.” (NYSCEF Doc. No. 187).

Defendant/third party plaintiff JAMES M. BARB CONSTRUCTION, INC. moves for dismissal of the complaint, pursuant to CPLR 1021, for failure to timely substitute after Bregoli passed away in 2021 and failure to appoint a representative to prosecute this instant action (NYSCEF Doc. No. 188) (Mot. Seq. 008). Second third-party defendant, L&L STONE & TILE, LLC, third third-party defendant CARBEL, LLC, and third-party defendant/second third-party defendant STAR CONSTRUCTION CORP each move, separately, for similar relief (Mot. Seqs. 009-011).

The motions are consolidated herein for disposition.

Movants argue, *inter alia*, that, at the time of the filing of the motion, it had been more than three years after plaintiff’s passing and two years after the death of plaintiff’s wife, and that the failure to appoint an administrator for substitution of the estate warrants dismissal of the action pursuant to CPLR 1021.

In opposition to the motions, plaintiff’s counsel argues that the motions overlook a crucial aspect of CPLR 1021, i.e., that, in the event a timely substitution is not made, the court may dismiss the action only after affording the persons interested in the decedent’s estate an opportunity to show cause why the action should not be dismissed. Counsel further posits that the plaintiff’s heirs were not put on notice of the application to dismiss and that inclusion of the Public Administrator of Richmond County as a party to be served does not suffice to put the heirs on notice. Additionally, the delay in having an estate represented appointed here was

further complicated by the death of plaintiff's spouse and, thus, was not unreasonable. Counsel for plaintiff also argues that, in contrast to cases where a plaintiff dies prior to significant discovery, plaintiff and other defendants were already deposed, belying the argument that the passage of time alone constitutes prejudice (NYSCEF Doc. No. 224).

On May 22, 2025, following oral argument on the motions, counsel for plaintiff informed the court via letter that a decree granting letters of Administration on decedent's estate had been issued on May 19, 2025 (NYSCEF Doc. Nos. 281-284).

"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].) However, the procedures under CPLR 1021 allow for a limited exception to this principle, allowing for the court to entertain an application to dismiss a complaint for failure to timely substitute after the death of said party (*see* CPLR 1021).

CPLR 1021 provides as follows:

"if the event requiring substitution is the death of a party, and timely substitution has not been made, the court, before proceeding further, shall, on such notice as it may in its discretion direct, order the persons interested in the decedent's estate to show cause why the action or appeal should not be dismissed."

Here, while it is not lost on this court the delays in seeking substitution of a representative for the estate in this matter, given the strong public policy of resolving cases on the merits (*see Peters v City of N.Y. Health & Hosps. Corp.*, 48 AD3d 329 [1st Dept 2008]), the motions are denied in the interest of justice (*see Dugger v Conrad*, 189 AD3d 478, 479 [1st Dept 2020]). The particular facts of this case, i.e., the stated complications occasioned by the passing of Bregoli's wife shortly after his death and before her appointment as administrator, the resulting Family Court proceedings required to establish care for and custody/guardianship of the Bregoli's two minor children, and counsel's stated difficulties in obtaining an adequate representative warrant denial of the motions. The prejudice alleged here is undermined by the procedural posture of this case, and it appears that denial of the motions will not unduly delay this action further, given plaintiff's counsel's representation to this court that limited letters of administration were issued to a Christine Bregoli on May 19, 2025, proof of which was submitted to the court by court filings after argument on the motions (NYSCEF Doc. Nos. 281-284). Additionally, to promote the expeditious resolution of this matter and prevent unreasonable delays, plaintiff shall have twenty (20) days from the date of this decision and order to move the court for appropriate substitution and, upon failure to duly move, defendants are empowered to renew their motions for dismissal. Accordingly, it is hereby

ORDERED that the dismissal motions (Mot. Seqs. 008; 009; 010; and 011) are denied in accordance with this decision and order; and it is further

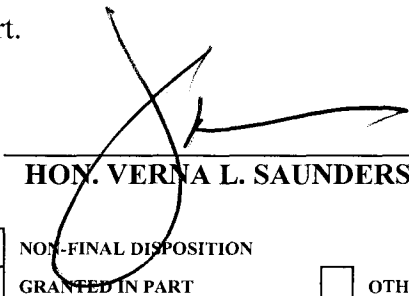
ORDERED that counsel for plaintiff shall move for substitution of the estate within thirty (30) days from the date this decision and order is uploaded to NYSCEF; and it is further

ORDERED that movants may renew their motions for dismissal upon plaintiff's failure to move for substitution as directed; and it is further

ORDERED that, within ten (10) days from the date of this decision and order, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon all parties.

This constitutes the decision and order of this court.

September 8, 2025



HON. VERNA L. SAUNDERS, JSC

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