

Conceicao v Chavez

2025 NY Slip Op 33647(U)

September 26, 2025

Supreme Court, New York County

Docket Number: Index No. 805066/2021

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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CREMILDA CONCEICAO,
Plaintiff,

- v -

DORIS MARILU CHAVEZ, M.D., NAOMI MECKLER MOLNER,
M.D., DALILA THOMAS, RN, BOLANLE OLAWULE, LPN, ERIN
MARIE SULLIVAN, M.D., and TERENCE CARDINAL COOKE
HEALTH CARE CENTER,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 69, 70, 72

were read on this motion to/for DISMISS/CPLR 1021.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 66, 67, 68, 71, 73

were read on this motion to/for DISMISS/CPLR 1021.

In this action to recover damages for medical malpractice, the defendants Dalila Thomas, RN, Bolanle Olawule, LPN, and Terence Cardinal Cooke Health Care Center (collectively the TCC defendants) move pursuant to CPLR 1021 to dissolve the stay imposed by operation of law upon the plaintiff's death on December 12, 2023, as memorialized in this court's January 2, 2024 order, and thereupon to dismiss the complaint insofar as asserted against them on the ground that no timely motion has been made to substitute a representative of the deceased plaintiff's estate in place and instead of the plaintiff in this action (MOT SEQ 001). The defendants Doris Marilu Chavez, M.D., Naomi Meckler Molner, M.D., and Erin Marie Sullivan, M.D. (collectively the physician defendants) move for the same relief insofar as asserted against them (MOT SEQ 002). The Public Administrator of the County of New York and the decedent's stepson, Angelo Del Guercio,¹ who are persons interested in the decedent's

¹ Del Guercio had commenced a special proceeding in which he requested the court to appoint him as the decedent's guardian ad litem (see *Matter of Del Guercio v Conceicao*, New York County Index No.

estate and claims, as well as the decedent's former attorney, were served with the orders to show cause and supporting papers initiating these motions, but submitted no opposition thereto. The motions are granted, the stay is vacated and dissolved, and the complaint is dismissed insofar as asserted against both the TCC defendants and the physician defendants.

CPLR 1021 provides, in relevant part, that,

“[a] motion for substitution may be made by the successors or representatives of a party or by any party. If a person who should be substituted does not appear voluntarily he may be made a party defendant. If the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made, however, such dismissal shall not be on the merits unless the court shall so indicate.”

The issue of what constitutes a reasonable time depends on the circumstances of the case (see *Randall v Two Bridges Assoc. Ltd. Partnership*, 139 AD3d 435 [1st Dept 2016]), including the diligence of the party who will ultimately seek substitution, the prejudice to the other parties, and whether the party who eventually will be substituted has shown that the action has potential merit (see *Green v Maimonides Med. Ctr.*, 172 AD3d 824, 826 [2d Dept 2019]).

The court “may not order dismissal for such failure without first ordering the persons interested in the decedent's estate to show cause why the action should not be dismissed” (*Petty v Meadowbrook Distributing Corp.*, 266 AD2d 88, 88 [1st Dept 1999]; see *Velez v New York Presbyterian Hosp.*, 145 AD3d 632, 633 [1st Dept 2016]). Here, those persons were indeed ordered to show cause why the complaint should not be dismissed, and none of them responded to the motion. Moreover, although the plaintiff's former counsel no longer has an obligation to represent any person who was or will be appointed as the representative of her estate (see *Homemakers, Inc. of Long Is. v Williams*, 131 AD2d 636, 638 [2d Dept 1987]; *Wisdom v Wisdom*, 111 AD2d 13, 14-15 [1st Dept 1985]; *Hemphill v Rock*, 87 AD2d 836, 836

150727/2023). In a decision and order dated April 24, 2025, the court denied the petition as academic, in light of the decedent's death on December 12, 2023.

[2d Dept 1982]), he nonetheless also was served with the motion papers, and expressly averred that he was taking no position in connection with the motions.

Where, as here, almost two years have elapsed since the plaintiff's death, and no attempt at substitution has been made or is anticipated, the court concludes that persons interested in the plaintiff's estate failed to seek substitution "within a reasonable time" after the plaintiff's death, and that the dismissal of the complaint against the movants thus is warranted (*see Giroux v Dunlop Tire Corp.*, 16 AD3d 1068, 1069 [4th Dept 2005]; *see also Sanders v New York City Hous. Auth.*, 85 AD3d 1005, 1005 [2d Dept 2011]). Since the complaint now has been dismissed insofar as asserted against all of the defendants, the action must now be marked disposed.

Accordingly, it is

ORDERED that the motion of the defendants Dalila Thomas, RN, Bolanle Olawule, LPN, and Terence Cardinal Cooke Health Care Center to vacate and dissolve the stay of proceedings memorialized in this court's order dated January 2, 2024, and thereupon to dismiss the complaint insofar as asserted against them (MOTION SEQUENCE 001) is granted, without opposition, the stay is vacated and dissolved, and the complaint is thereupon dismissed insofar as asserted against those defendants; and it is further,

ORDERED that, on the court's own motion, the action is severed insofar as asserted against the defendants Dalila Thomas, RN, Bolanle Olawule, LPN, and Terence Cardinal Cooke Health Care Center; and it is further,

ORDERED that the Clerk of the court is directed to enter judgment dismissing the complaint insofar as asserted against the defendants Dalila Thomas, RN, Bolanle Olawule, LPN, and Terence Cardinal Cooke Health Care Center; and it is further,

ORDERED that the motion of the defendants Doris Marilu Chavez, M.D., Naomi Meckler Molner, M.D., and Erin Marie Sullivan, M.D., to vacate and dissolve the stay of proceedings memorialized in this court's order dated January 2, 2024, and thereupon to dismiss the

complaint insofar as asserted against them (MOTION SEQUENCE 002) is granted, without opposition, the stay is vacated and dissolved, and the complaint is dismissed insofar as asserted against those defendants; and it is further,

ORDERED that, inasmuch as, upon this court’s severance of the action against the defendants Dalila Thomas, RN, Bolanle Olawule, LPN, and Terence Cardinal Cooke Health Care Center, the only defendants remaining in the action are the defendants Doris Marilu Chavez, M.D., Naomi Meckler Molner, M.D., and Erin Marie Sullivan, M.D., the Clerk of the court is directed to enter judgment dismissing the complaint insofar as asserted against the defendants Doris Marilu Chavez, M.D., Naomi Meckler Molner, M.D., and Erin Marie Sullivan, M.D.

This constitutes the Decision and Order of the court.

9/26/2025
DATE

JOHN J. KELLEY, J.S.C.

MOTION 001:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
MOTION 002:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
CROSS MOTION:	<input type="checkbox"/>	CASE DISPOSED		NON-FINAL DISPOSITION	<input type="checkbox"/>	