

**Acosta v City of New York**

2025 NY Slip Op 33869(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 158499/2016

Judge: Carol Sharpe

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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. CAROL SHARPE PART 52M**

*Justice*

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ALBERT ACOSTA, FRANK CRAWLEY, JEFFREY  
DEMORAH A/K/A JEFFREY WILLIAMS, NAQUAN  
EDMUNDSON, TROY GLASSEN, JOSEPH KELLY,  
YHVANNY PEGUERO, AMBROSE WAN

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

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INDEX NO. 158499/2016  
MOTION DATE 08/22/2024  
MOTION SEQ. NO. 001

**INTERIM  
DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31

were read on this motion to/for SEVER.

Upon the foregoing documents, the motion is decided as follows:

Plaintiffs Albert Acosta, Frank Crawley, Jeffery Demorah a/k/a Jeffery Williams, Naquan Edmundson, Troy Glassen, Joseph Kelly, Yhvanny Peguero, and Ambrose Wan (“plaintiffs”) commenced this personal injury action against the defendant The City of New York (“The City”), by filing their Summons and Complaint on October 7, 2016 (NYSCEF Doc. #1). Issue was joined on October 4, 2024 (NYSCEF Doc. #25).

Plaintiffs alleged that on July 14, 2015, while they were inmates in the custody of The City at the jail known as the Tombs located at 125 White Street, New York County, plaintiffs were locked in their cells and not permitted to exit after a fire was started in a nearby cell. Plaintiffs allege they suffered physical and mental injuries from exposure to fire and smoke inhalation.

Plaintiffs’ counsel sought to sever plaintiffs Albert Acosta and Joseph Kelly from this action pursuant to CPLR §603, and to withdraw as their counsel pursuant to CPLR §321(b); to lift

any automatic stay necessitated by the death of plaintiff Tory Glassen pursuant to CPLR §1015 and §1021; and to compel The City to interpose an answer to the complaint pursuant to the written Stipulation dated October 26, 2017 (NYSCEF Doc. #2), in which the parties agreed that the plaintiffs were permitted to commence this action prior to appearing for the GML §50-h hearing, that they would appear for the hearing within 30 days of their respective release from prison, and that The City would file its answer after the completion of the hearings.

Plaintiff's counsel stated in his affirmation in support of the motion that in 2020 or 2021 he was notified by Karen Glassen that her son, plaintiff Troy Glassen, died on November 21, 2018, from causes unrelated to this action. He also submitted the letter he sent to Karen Glassen dated March 24, 2025, advising her that the hearing on the motion to be relieved was to be heard on June 11, 2025, at 12pm and that she could appear in person or by video. Plaintiffs' counsel informed the Court in his reply, which was filed after the hearing on March 24, 2025, that Ms. Glassen told him over the telephone that she did not wish to pursue the action and that she would not attend the hearing on June 11, 2025 (NYSCEF Doc. # 29). Plaintiffs' counsel seeks to note the death of plaintiff Tory Glassen on the record and to permit the action to proceed on behalf of the surviving plaintiffs.

CPLR 1015 (a) provides that “[i]f a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties.” Moreover, “[i]t is well settled that the death of a party divests the court of jurisdiction to render a judgment until a proper substitution has been made, so that any step taken without it may be deemed void, including an appellate decision” (*Nieves v 331 E. 109th St. Corp.*, 112 AD2d 59, 60, 491 NYS2d 350 [1st Dept 1985]).” (*Dugger v Conrad*, 189 AD3d 478, 479 138 NYS3d 7 [1st Dept 2020]).

CPLR §1021 provides in pertinent parts that “...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.” Failure to move for substitution within a reasonable time may result in the dismissal of the action. (*see Palmer v. Selpan Elec. Co.*, 5 AD3d 248, 773 NYS2d 289 [1st Dept 2004]; *Washington v Min Chung Hwan*, 20 AD3d 303, 305 [1st Dept 2005]; *Quijano v. City of N.Y.*, 76 AD3d 937, 907 NYS2d 865 [1st Dept 2010]). Accordingly, it is hereby:

**ORDERED**, that The City is authorized to file an Order to Show cause seeking the dismissal of the action commenced on behalf of Troy Glassen for failure to make a substitution upon the death of plaintiff Tory Glassen pursuant to CPLR §1021; it is further

**ORDERED**, that The City shall file that Order to Show cause within 30 days of the date of this Order; it is further

**ORDERED**, that the motion seeking to compel The City to file an answer is denied as moot as The City interposed an answer on October 4, 2024; it is further

**ORDERED**, that all other branches of the motion are held in abeyance pending the hearing and determination of the motion to dismiss for failure to make a substitution; it is further

**ORDERED**, that the parties shall appear for the hearing and determination of the motion to dismiss for failure to make a substitution on **December 3, 2025, at 10:00am** in Part 52, located at 111 Centre Street, Rm. 1045, New York, NY 10013; it is further

**ORDERED**, that service of this Order upon the Clerk of the Court shall be made in hard-copy format if this action is a hard-copy matter, or if it is an e-file case, shall be made 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).

This constitutes the Decision and Order of the Court.

ENTER:

October 7, 2025

DATE



HON. CAROL SHARPE, J.S.C.

**HON: CAROL SHARPE  
J.S.C.**

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