

Carter v Fairfield Props. Group LLC
2025 NY Slip Op 35414(U)
March 3, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 605075/2020
Judge: Maureen T. Liccione
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Short Form Order

Index No. 605075/2020

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY**P R E S E N T:****Hon. Maureen T. Liccione**

Justice Supreme Court

-----X
JOHN CARTER and KATHLEEN
HOEHMANN,

Plaintiffs,

-against-

FAIRFIELD PROPERTIES GROUP LLC, THE
RANCHES AT MT. SINAI HOMEOWNERS
ASSOCIATION, INC., TIBI DEVELOPMENT
CORP., MICHAEL CASALE
INVESTIGATIONS, LTD., MCI SECURITY
LLC and JOHN RUGGERIO a/k/a JOHN
RUGGIERO,Defendants.
-----XMot. Seq. No. 001 – MG
Orig. Return Date: 08/14/2024
Mot. Submit Date: 02/05/2025**DECISION AND ORDER****PLAINTIFFS' ATTORNEY**SIVIN & MILLER, LLP
20 Vesey Street, Suite 1400
New York, NY 10007**DEFENDANTS' ATTORNEYS**O'CONNOR & O'CONNOR
Attorneys for Fairfield Properties
Group, LLC, The Ranches at Mt. Sinai
Homeowners Association, Inc.
7 Bayview Avenue
Northport, NY 11768CONNELL FOLEY, LLP
Attorneys for Michael Casale
Investigations, Ltd., and MCI Security
LLC
888 7th Avenue, 9th Fl
New York, NY 10106SMITH MAZURE, PC
Attorneys for John Ruggiero a/k/a
John Ruggiero
39 Broadway, 29th Fl
New York, NY 10006

Upon the reading and consideration of NYSCEF document nos. 47 through 62, 69 and 70,
and upon due consideration, it is hereby:

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ORDERED that plaintiffs' motion for an order pursuant to CPLR 1015 and 1021 substituting John M. Carter, as executor of the Estate of John Carter, as plaintiff in this action in place and instead of John Carter; lifting the stay in this action; and pursuant to CPLR 3025 (b) granting plaintiffs leave to file a third amended verified complaint to add a cause of action on behalf of plaintiffs for wrongful death, is granted in its entirety; and it is further

ORDERED that plaintiff John M. Carter, as executor of the estate of John Carter, shall be substituted for plaintiff John Carter; and it is further

ORDERED that the stay in this matter is lifted and this matter is restored to active status; and it is further

ORDERED that the caption shall be amended to read as follows:

-----X
JOHN M. CARTER, as Executor of the Estate of
JOHN CARTER, and KATHLEEN HOEHMANN,

Plaintiffs,

-against-

FAIRFIELD PROPERTIES GROUP LLC, THE
RANCHES AT MT. SINAI HOMEOWNERS
ASSOCIATION, INC., TIBI DEVELOPMENT
CORP., MICHAEL CASALE INVESTIGATIONS,
LTD., and MCI SECURITY LLC,

Defendants.
-----X

and it is further

ORDERED that plaintiffs' counsel shall file a notice of appearance for his client John M. Carter, as executor of the estate of John Carter, within 5 days of entry of this Order; and it is further

ORDERED that the third amended verified complaint filed under NYSCEF Doc No. 51 shall be deemed served upon service of a copy of this decision and Order with notice of entry upon the defendants; and it is further

ORDERED that the defendants shall serve an answer to the third amended verified complaint within 20 days from the date of said service; and it is further

ORDERED that counsel are directed to appear for a **status conference on March 18, 2025 at 9:30am. at the Alan D. Oshrin Supreme Court Building, Court Annex Part 78, 1 Court Street, Riverhead, New York 11901.**

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Plaintiffs John Carter and Kathleen Hoehmann filed this action to recover damages for the personal injuries John Carter allegedly sustained on August 14, 2019 when he was assaulted and battered by defendant John Ruggerio a/k/a John Ruggiero, who at the time was employed as a security guard by defendants Michael Casale Investigations, Ltd. and MCI Security LLC. The alleged incident occurred at a condominium complex that plaintiffs allege was owned, operated, and managed by defendants Fairfield Properties Group LLC, The Ranches at Mt. Sinai Homeowners Associates, Inc., and Tibi Development Corp.

Via So-Ordered Stipulation (St. George, A.J.S.C.) dated October 22, 2021, this action and the action *Ruggiero v Tibi Development Corp. et. al.*, with the Index no. 608050/2020 (Ruggiero Action), were joined for purposes of discovery and trial.

On September 1, 2022, John Carter passed away allegedly due to the injuries sustained in the August 14, 2019 incident. On April 18, 2023, John Ruggiero also passed away. This action has been stayed ever since.

On July 31, 2024, counsel for plaintiffs filed a motion seeking the substitution of plaintiff John Carter with his son, John M. Carter, to lift the stay, and to grant plaintiffs leave to file a third amended verified complaint to add a cause of action on behalf of plaintiffs for wrongful death. In support of their motion, plaintiffs included, inter alia, the proposed third party amended verified complaint, the letters testamentary issued to John M. Carter, and the autopsy report for John Carter. The attorneys for the defendants John Ruggiero and defendants Fairfield Properties Group LLC and the Ranches at Mt. Sinai Homeowners Association, Inc. filed oppositions arguing that as there had been no substitution of a legal representative for the decedent John Ruggiero pursuant to CPLR 1015 (a), the action was stayed and consequently the Court could not determine the merits of plaintiffs' motion. The opposition papers did not address the merits of plaintiffs' motion but just the fact that there had been no substitution for defendant John Ruggiero. In reply, plaintiffs agreed to discontinue all their claims against defendant John Ruggiero.

Via Order dated November 26, 2024 and pursuant to CPLR 1021, this Court dismissed this action as to defendant John Ruggiero and dismissed the Ruggiero Action. The Court provided the parties with the opportunity to further brief the motion filed by plaintiffs on July 31, 2024, which "may include additional opposition and reply papers and a revised proposed Third Amended Verified Complaint to account for the dismissal of defendant John Ruggiero" (NYSCEF Doc No.

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69). No further papers were filed by the parties regarding this motion after the November 26, 2024 Order.

Substitution

Pursuant to CPLR 1021, a motion for substitution may be made by the successors or representatives of a party. John M. Carter is the representative of the estate of his father, John F. Carter. The motion papers show that letters testamentary appointing John M. Carter as the executor of the estate of John F. Carter have been issued. Accordingly, John M. Carter, as executor of the estate of John F. Carter, shall be substituted for plaintiff John Carter and the caption shall be amended accordingly. Plaintiffs' counsel is directed to file a notice of appearance for John M. Carter as the executor of the estate of John Carter in accordance with 22 NYCRR 205.10 within 5 days of entry of this Order.

Amendment of the Complaint

"A party may amend his or her pleading or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties" (CPLR 3025 [b]). "In the absence of prejudice or surprise resulting directly from the delay in seeking leave, such applications are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit" (*Shields v Darpoh*, 207 AD3d 586, 587 [2d Dept 2022], quoting *Onewest Bank, FSB v N & R Family Trust*, 200 AD3d 902, 903 [2d Dept 2021]; see also CPLR 3025 [b]). "The burden of demonstrating prejudice or surprise, or that a proposed amendment is palpably insufficient or patently devoid of merit, falls upon the party opposing the motion" (*Ditech Fin., LLC v Khan*, 189 AD3d 1360, 1360 [2d Dept 2020]). A determination whether to grant such leave is within the trial court's broad discretion, and "the exercise of that discretion will not be lightly disturbed" (*Bank of Smithtown v 219 Sagg Main, LLC*, 107 AD3d 654, 655 [2d Dept 2013] [internal quotation marks omitted]). "No evidentiary showing of merit is required under CPLR 3025(b)" (*Favia v Harley-Davidson Motor Co.*, 119 AD3d 836, 836 [2d Dept 2014]).

Here, defendants failed to show that the amendment to include a cause of action for wrongful death was palpably insufficient or patently devoid of merit. Furthermore, the proposed amendment did not prejudice or unfairly surprise the defendants as defendants have been aware of John Carter's death since the stay has been instituted (see *Gonzalez v City of New York*, 227 AD3d 958, 961 [2d Dept 2024]).

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Accordingly, plaintiffs' motion is granted in its entirety.

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: March 3, 2025
Riverhead, NY


HON. MAUREEN T. LICCIONE, J.S.C.

___ FINAL DISPOSITION X NON-FINAL DISPOSITION