

Kuvykin v New York Community Hosp.
2026 NY Slip Op 31181(U)
March 19, 2026
Supreme Court, Kings County
Docket Number: Index No. 508369/2013
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of March, 2026.

P R E S E N T :
HON. WAVNY TOUSSAINT,
Justice.

VALENTINA KUVYKIN,

Plaintiff,

-against-

NEW YORK COMMUNITY HOSPITAL, and
NEW YORK-PRESBYTERIAN HEALTH CARE
SYSTEM, their agents, servants, employees and assigns,

Defendants.

Index No.: 508369/2013

**DECISION AND
ORDER**

The following papers numbered 1 to read herein
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

Papers Numbered

29-36

39-45

47-54; 55-62

Plaintiff moves (Seq. 02) for an order: (1) substituting as plaintiffs Jane Blyke and Leonid Kuvykin, as Administrators of the Estate of Valentina Kuvykin, pursuant to CPLR § 1015, (2) lifting the stay and restoring the matter to active status and (3) granting plaintiff leave to amend the complaint, pursuant to CPLR § 3025 [b]. Defendants cross-move (Seq. 03) for an order, pursuant to CPLR § 1021, dismissing the action with prejudice, for the

Administrators' failure to timely move to substitute a representative for the deceased plaintiff. Both motions are opposed.

In the complaint of this medical malpractice action, plaintiff, 88 years old at the relevant time herein, alleges that on July 14, 2011, she was an admitted inpatient at defendant New York Community Hospital, located at 2525 Kings Highway, Brooklyn, New York. She further alleges she was left unattended by defendant's medical staff and fell to the floor sustaining serious, permanent personal injuries. Defendant New York-Presbyterian Health Care System allegedly hired and trained the medical staff which attended to deceased plaintiff. This action was commenced on December 31, 2013. Defendants interposed an answer on or about January 28, 2014. Plaintiff died on August 25, 2014.

The Administrators filed Motion Seq. 02 on June 6, 2025 seeking their substitution for the deceased plaintiff. Defendants filed the cross-motion within a month thereafter. On their motion, the Administrators argue counsel had been divested of authority to act in the matter upon the death of plaintiff and that the substitution motion was delayed as they awaited the decree granting letters of administration to them. They also argue that the related request to amend the complaint should be granted, and the stay lifted, as defendants are not unfairly surprised or prejudiced by these requested reliefs. Defendants argue primarily that the passage of over eleven years (from plaintiff's death to the filing of Motion Seq. 02) warrants denial of plaintiff's motion in every respect, and the granting of the cross-motion.

The Court finds merit in plaintiff's application. Upon plaintiff's death in August of 2014, the action was automatically stayed pursuant to CPLR § 1015 [a] (*Neuman v Neuman*, 85 AD3d 1138, 1139 [2d Dept 2011]).¹ Thereafter, on or about April 27, 2017, counsel for plaintiff filed a Notice of Intention to Continue/Resume Prosecution of Action, advising the court that due to plaintiff's death, "an application for Letters of Limited Administration [had been filed] with the Surrogates, Court Kings County" and that there was no intention to abandon the action (*See* NYSCEF Doc. No. 34). This notice indicates counsel had acted proactively to secure Surrogate Court authority to act. Further, the record indicates proceedings before the Surrogate were ongoing, including the filing of an Affidavit of Heirship (2017), a Consent to Change attorney (2019), an Amended Administration Petition (2020), and a second Amended Administration Petition (2023) (*See* NYSCEF Doc. Nos. 48 and 50). Notwithstanding the pending Surrogate's Court proceedings, nine years after plaintiff's death, the matter was marked disposed by the court (Knipel, J.) as of July 13, 2023. Letters of Administration finally were issued to the Administrators on April 1, 2024.

Although defendant argues substitution should be denied given "the potential unavailability of the witnesses", "degeneration of the witnesses' ability to testify", and that it is "likely" medical records would be impossible to obtain (NYSCEF Doc. No. 40 at par. 27); the Court finds these arguments conclusory and unavailing, as defendants have failed

¹ While the death of a party generally divests the court of jurisdiction, the determination of a motion pursuant to CPLR § 1021 made by the successors or representatives of a party, or by any party, is an exception to a court's lack of jurisdiction (*Pierre v King*, 240 AD3d 531, 532 [2d Dept 2025]; *see also Rumola v Maimonides Medical Center*, 37 AD3d 696, 697-698 [2d Dept 2007]; *Hyman v Booth Memorial Hosp.*, 306 AD2d 438, 438 [2d Dept 2003]).

to demonstrate prejudice arising from the delayed substitution of the proposed representatives (*Petion v New York City Health and Hospitals Corporation*, 175 AD3d 519, 520 [2d Dept 2019]). Defendants have long since been on notice of the claims against them, and they possessed all of the relevant medical records regarding the deceased plaintiff's claims. For this reason, the Court finds defendants' argument alluding to the likelihood that it would be impossible to obtain said records particularly meritless. Additionally, in these same eleven years, defendants did not move themselves for substitution, as permitted under CPLR § 1021 (*Dieye v Royal Blue Servs., Inc.*, 104 AD3d 724, 725 [2d Dept 2013]). In *Dieye*, the Second Department clearly instructs that "[a] motion for substitution may be made by the successors or representatives of a party *or by any party*" (*Id.*, *emphasis supplied*).

Additionally, the proposed amended complaint, on its face, is neither insufficient nor patently devoid of merit, as it does not assert any new causes of action and merely seeks to amend the allegations of various paragraphs to align with the substitution of the Administrators for the deceased plaintiff. Further, there has been no contention that discovery has been concluded and a note of issue has not been filed (CPLR § 3025 [b]; *Wilmington Savings Fund Society, FSB v Thompson*, 245 AD3d 866, 867-868 [2d Dept 2026]; *Krakovski v Stavros*, 173 AD3d 1146, 1147-1148 [2d Dept 2019]).

It appears to the Court that the protracted delay before letters of administration were issued was due, in large measure, to the pace of the Surrogate's Court proceedings (coinciding with the COVID-19 pandemic), which precluded the attorneys for the deceased plaintiff from timely obtaining appointment of the Administrators (*Pierre*, 240 AD3d at

532). The Court finds the delayed filing of the within substitution motion reasonable under the circumstances.

Accordingly, it is hereby

ORDERED, that plaintiff's motion (Seq. 02) for an order: (1) substituting as plaintiffs Jane Blyke and Leonid Kuvykin, as Administrators of the Estate of Valentina Kuvykin, pursuant to CPLR § 1015, (2) lifting the stay and restoring the matter to active status and (3) granting plaintiff leave to amend the complaint, pursuant to CPLR § 3025, is granted. The stay is lifted and the matter is restored to the active calendar; and it is further

ORDERED, that defendants' cross-motion (Seq. 03) for an order, pursuant to CPLR § 1021, seeking dismissal of the action with prejudice, for plaintiffs' failure to timely move to substitute a representative for the deceased plaintiff, is denied in every respect; and it is further

ORDERED, that the Proposed Amended Complaint (NYSCEF Doc. No. 35) is deemed served. Defendants must interpose an answer within thirty (30) days from the date of service of this order with notice of entry; and it is further

ORDERED, that the amended caption shall read as follows:

-----X
JANE BLYKE and LEONID KUVYKIN, as
Administrators of the Estate of VALENTINA
KUVYKIN, deceased, Index No.: 508369/2013

Plaintiffs,
-against-

NEW YORK COMMUNITY HOSPITAL and

NEW YORK-PRESBYTERIAN HEALTH CARE SYSTEM, their agents, servants, employees and assigns,


Defendants.

-----X.

Any arguments not expressly addressed herein were considered and deemed to be without merit.

This constitutes the decision and order of the Court.

E N T E R



J.S.C.

HON. WAVNY TOUSSAINT
J. S. C.

2026 MAR 23 A 8:41
KINGS COUNTY CLERK
FILED