

<b>Zamplakos v Jacob's First, LLC</b>
2026 NY Slip Op 31659(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 158876/2019
Judge: Brendan T. Lantry
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. BRENDAN T. LANTRY PART 46M**

*Justice*

-----X

LEONIDAS ZAMPLAKOS,  
  
Plaintiff,

-against-

JACOB'S FIRST, LLC, BLDG MANAGEMENT CO., INC.  
and CREATIVE TEAM INTERIORS INC.,  
  
Defendants.

-----X

JACOB'S FIRST, LLC, BLDG MANAGEMENT CO., INC.  
and CREATIVE TEAM INTERIORS INC.,  
  
Third-Party Plaintiffs,

-against-

PARASKEVAS KOURIS PAINTING, INC.,  
  
Third-Party Defendant.

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INDEX NO. 158876/2019  
MOTION DATE 08/05/2025  
MOTION SEQ. NO. 005

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595531/2020

The following e-filed documents, listed by NYSCEF document number (Motion 005) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 113, 114, 115, 116, 117, 118 were read on this motion to/for DISMISS.

In this action to recover damages for personal injuries, defendants/third-party plaintiffs Jacob’s First LLC, Bldg Management Co., Inc., and Creative Team Interiors Inc. (“defendants”) move to dismiss the amended complaint pursuant to CPLR 1021 for failure to timely substitute a representative for Leonidas Zamplakos (“plaintiff”). For the reasons set forth herein, the motion is denied with leave to renew.

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff commenced this action in September 2019, alleging that he was injured when a scaffold fell on top of him while he was working as a painter for third-party defendant Paraskevas

Kouris Painting Inc. (“Paraskevas”). The amended complaint alleges that defendants were the owners and/or general contractors for the project and sets forth causes of action for common-law negligence and violations of Labor Law §§ 200, 240 (1), and 241 (6) (*see* NYSCEF Doc. No. 104).

In July 2020, defendants filed a third-party action against Paraskevas for contribution and indemnification (*see* NYSCEF Doc. No. 106). By decision and order, dated May 5, 2021, the Honorable Richard G. Latin granted defendant’s unopposed motion for leave to enter a default judgment against Paraskevas and directed that an inquest on the issue of damages with respect to Paraskevas shall be held in abeyance pending completion of the trial of this action (*see* NYSCEF Doc. No. 65).

On January 24, 2022, plaintiff filed a note of issue and certificate of readiness for trial (*see* NYSCEF Doc. No. 7). Defendants then moved for summary judgment dismissing the amended complaint. By decision and order, dated October 6, 2022, Justice Latin granted the motion only to the extent of dismissing plaintiff’s Labor Law § 241 (6) claims predicated on certain sections of the Industrial Code, and otherwise denied the motion (*see* NYSCEF Doc. No. 97).

According to defendants’ attorney, he was thereafter advised at a pre-trial conference on November 21, 2024 that Zamplakos “had passed away some time prior to the Conference” (*see* NYSCEF Doc. No. 101). Defendants now move, by Notice of Motion dated August 5, 2025, to dismiss the amended complaint against them pursuant to CPLR 1021 for failure to seek a timely substitution for Zamplakos (*see* NYSCEF Doc. No. 100).

### DISCUSSION

“[T]he 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), and any order rendered after the death of a party and before the substitution of a legal representative is void” (*Griffin v Manning*,

36 AD3d 530, 532 [1st Dept 2007] [internal citations omitted]; see *Dugger v Conrad*, 189 AD3d 478, 479 [1st Dept 2020]). “A motion for substitution pursuant to CPLR 1021 is the method by which the court acquires jurisdiction over a deceased party’s personal representative or successor” (*Pepino v Dooley*, 239 AD3d 1008, 1009 [2d Dept 2025] [internal quotation marks and citations omitted]). Such a motion “may be made by the successors or representatives of a party or by any party’ and is to be made within a reasonable time after the death of the party” (*Dugger v Conrad*, 189 AD3d at 479, quoting CPLR 1021).

Where substitution is not made within a reasonable time, “the action may be dismissed as to the party for whom substitution should have been made” (CPLR 1021). “[T]he determination of whether the timing is reasonable requires consideration of several factors, including the diligence of the party seeking substitution, the prejudice to the other parties, and whether the party to be substituted has shown that the action or the defense has potential merit” (*Watson v New York City Tr. Auth.*, 242 AD3d 1043, 1044 [2d Dept 2025] [quotation marks and citations omitted]). “In order to prevail on a CPLR 1021 motion to dismiss, a defendant must show that the plaintiff’s failure to secure substitution in a timely fashion resulted in undue prejudice” (*Public Adm’r v Levine*, 142 AD3d 467, 468 [1st Dept 2016]).

Here, defendants assert that “[s]ince being advised of Mr. Zamplakos’ death [on November 21, 2024], there has not been a single letter or communication from plaintiff’s counsel indicating there is any intention to move forward with the substitution and Letters of Administration” (NYSCEF Doc. No. 101 at ¶ 29). They argue that “the lapse of time . . . has prejudiced [them in their] defense of the case” (*id.* at ¶ 19). The defendants further contend that they “are prejudiced by having to keep a case open indefinitely, without any indication of when or what time frame the

substitution will be made and the case will resume and end” (*id.* at ¶ 30). Defendants maintain, therefore, that the amended complaint should be dismissed for failure to timely seek substitution. In considering prejudice to the defendants, the court finds that the defendants have failed to make a showing of same. The defendants argue that, as “witnesses become more difficult to find over time [and] memories fade, it is unfair and prejudicial to [the] defendants to have to defend a case years and years after plaintiff’s death...” (NYSCEF Doc. No. 101). The court notes that, contrary to defendants’ assertion, it has been approximately 16 months since defendants were informed of plaintiff’s death, rather than “years and years.” While defendants argue that the memories of witnesses in this action will fade, plaintiff has represented that depositions have been conducted and that medical records have been exchanged (*see* NYSCEF Doc. No. 113). Therefore, as the outcome of this case will “likely turn on medical records and an extant deposition transcript,” the record reflects that defendants will suffer little to no prejudice (*Hemmings v Rolling Frito-Lay Sales, LP*, 220 AD3d 754 [2nd Dept 2023] [citations omitted]). Further, the passage of time “is not, in itself, a sufficient basis for finding prejudice” (*Public Adm’r v Levine*, 142 AD3d at 470; *see Randall v Two Bridges Assoc. Ltd. Partnership*, 139 AD3d 435, 436 [1st Dept 2016] [finding that the passage of time, standing alone, is an insufficient basis for finding prejudice]). This factor therefore weighs against dismissal of this action.

In considering the diligence of the party seeking substitution, counsel for plaintiff has affirmed that their office has diligently attempted to “locate the place of [plaintiff’s] death, records located to his death, and any information related to his next of kin or any persons with an interest in the plaintiff decedent’s estate” (NYSCEF Doc. No. 114). Plaintiff’s counsel further affirms that their firm has hired a private investigator in furtherance of their efforts to search for, *inter alia*, plaintiff’s location of death and next of kin, and that while their efforts have been unsuccessful

thus far, they remain ongoing (*see id.*). Plaintiff's counsel further represents that their firm has "sent out multiple letters to possible next of kin," "submitted [proposed] so-ordered subpoenas," and "continues to search diligently for any information related to plaintiff decedent and plaintiff decedent's estate" (*see id.*). The court finds that plaintiff's counsel has demonstrated a showing of due diligence and that this factor weighs against dismissal of this action.

Even assuming, arguendo, that plaintiff had failed to demonstrate a showing of due diligence and that "the explanation for the delay [was] not satisfactory, the court may still grant the motion for substitution if there is no showing of prejudice and there is potential merit to the action, in light of the strong public policy in favor of disposing of matters on the merits" (*Hemmings*, 220 AD3d at 757 [citations omitted]). Here, plaintiff has demonstrated that there is potential merit to the action. This action arose, as discussed *supra*, from alleged injuries sustained by plaintiff when a scaffold fell and collapsed on top of him while working at a construction site. Plaintiff alleges that the accident was caused by defendants' negligence in maintaining dangerous workplace conditions. Plaintiff asserts that he underwent several medical procedures and treatments as a result of the incident and that he therefore is entitled to damages.

In a decision and order on defendants' motion for summary judgment dated October 6, 2022, Justice Latin held that "plaintiff has valid Labor Law § 200 and common-law negligence claims against defendants to the extent that it is determined that his accident resulted, at least in part, from the covered plywood" (NYSCEF Doc. No. 97). As evidenced by the partial denial of defendants' summary judgment motion and upon review of the record and plaintiff's Affirmation of Merit (NYSCEF Doc. No. 114), the court finds that there is potential merit to plaintiff's action. This factor further weighs against dismissal of this action. The court further notes that while the

parties represent that plaintiff is deceased, the record does not reflect any proof of same. The court has not been presented with a certificate of death or any other proof of plaintiff's death.

CONCLUSION

Accordingly, it is

ORDERED that defendants' motion to dismiss is denied with leave to renew; and it is further

ORDERED that the parties shall promptly inform the court ([sfc-part46-clerk@nycourts.gov](mailto:sfc-part46-clerk@nycourts.gov)) of any appointment or substitution of an individual on behalf of plaintiff; and it is further


ORDERED that all parties shall appear for a status conference on June 10, 2026 at 9:30 a.m. at 71 Thomas Street, Room 103, New York, New York; and it is further

ORDERED that plaintiff is directed to serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office within ten days from entry and the Clerk shall mark this matter stayed as herein provided; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office 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.

4/10/2026  
DATE

  
BRENDAN T. LANTRY, J.S.C.

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