

Lawrence v Dinnall

2017 NY Slip Op 33546(U)

November 27, 2017

Supreme Court, Queens County

Docket Number: Index No. 700896/2015

Judge: Denis J. Butler

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER IAS Part 12
Justice

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ANNELLA LESHANDA NESHA SHRISSA LAWRENCE, Index
Number: 700896/2015
Plaintiff(s),
Action No. 1
-against-

DONOVAN G. DINNALL, BLACK INK MANAGEMENT Motion Date:
INC., JERMAINE TYRONE WISDOM, October 31, 2017
Defendant(s).

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SUPREME COURT OF THE STATE OF NEW YORK Motion Seq. No.: 5
COUNTY OF QUEENS

-----x
NIKEISHA BILLINGS, Index
Plaintiff, Number: 8113/2015
-against- Action No.: 2

DONOVAN G. DINNALL, BLACK INK MANAGEMENT
INC., JERMAINE TRYONE WISDOM,
Defendant.

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FILED
DEC - 5 2017
COUNTY CLERK
QUEENS COUNTY

The following papers were read on this motion by plaintiff, Annela Leshanda Nesha Sherissa Lawrence for an order for leave to appoint the named partners of the defendant's attorneys, Mendolia & Stenz as temporary administrator and/or representative of the estate of JERMAINE TYRONE WISDOM, to substitute them for JERMAINE TYRONE WISDOM as defendant and lifting the stay resulting from the death of Jermaine Tryone Wisdom and amend the caption to reflect the appointment of the administrator.

Papers
Numbered

Notice of Motion, Affirmation, Affidavit, Exhibits..E54-65

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action to recover damages for personal injuries sustained by Plaintiff in a motor vehicle accident on October 11, 2013. The action was stayed by the death of Defendant Jermaine Tyrone Wisdom on October 31, 2015 (Exhibit G). Plaintiff's counsel affirms that no executor or administrator has been appointed to represent the interests of decedent. Plaintiff now seeks, inter alia, an order appointing Defendants' attorneys, Mendolia & Stenz, as temporary administrator for Jermaine Tyrone Wisdom. Defendants do not oppose the motion.


A motion seeking substitution "may be made by the successors or representatives of a party or by any party" (CPLR § 1021). The Supreme Court is a court of general jurisdiction with the power to appoint a temporary administrator and may do so to avoid delay and prejudice (see *Dieye v Royal Blue Services, Inc.*, 104 AD3d 724 [2d Dept 2013]; *Harding v Noble Taxi Corp*, 155 AD2d 265 [1st Dept 1989]). The determination of whether to exercise its authority to appoint a temporary administrator is committed to the sound discretion of the Court (see *Lambert v Estren*, 126 AD3d 942 [2d Dept. 2015]).

Here, as plaintiff has agreed to limit the amount of recovery sought to the limits of any insurance coverage available to the deceased defendant, deceased defendant's estate will not be adversely affected by the continuation of this action. Under these circumstances there is no need for plaintiff to proceed in Surrogate's Court (see *Dieye v Royal Blue Services, Inc.*, 104 AD3d 724 [2d Dept 2013]). Moreover, Jermaine Tyrone Wisdom died over two years ago and a personal representative has not yet been appointed.

Accordingly, for the reasons stated above, plaintiff's motion shall be granted to the extent that the stay is lifted and MENDOLIA & STENZ shall be substituted as temporary administrator for deceased defendant JERMAINE TYRONE WISDOM.

Settle Order.

Dated: November 27, 2017


FILED
Denise J. Butler, J.S. DEB - 5 2017
COUNTY CLERK
QUEENS COUNTY