

Hasan v Sunharbor Acquisition I, LLC

2013 NY Slip Op 32815(U)

May 24, 2013

Sup Ct, Nassau County

Docket Number: 2011-12057

Judge: Norman Janowitz

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK – NASSAU COUNTY
P R E S E N T: HON. NORMAN JANOWITZ,
Justice.

ABDUL M. HASAN and KHALILAH HASAN

Plaintiff,

-against-

SUNHARBOR ACQUISITION I, LLC d/b/a
SUNHARBOR MANOR NURSING HOME,
WINTHROP UNIVERSITY HOSPITAL,
and NASSAU HEALTH CARE CORPORATION d/b/a
A. HOLLY PATTERSON EXTENDED CARE
FACILITY and NASSAU UNIVERSITY MEDICAL
CENTER,

Defendant.

TRIAL/IAS PART 21
Index no.: 2011-12057
Motion Sequence Nos.: 001, 002
& 003

DECISION & ORDER

The following papers having been read on this Notice of Motion by defendant Sunharbor Acquisition I, LLC d/b/a Sunharbor Manor Nursing Home, Notice of Cross-Motion by plaintiffs Abdul M. Hasan and Khalilah Hasan, and Notice of Motion by defendant Winthrop University Hospital:

Notice of Motion, Affirmation & Exhibits.....1
Notice of Cross-Motion, Affirmation & Exhibits.....2
Reply Affirmation to Defendant’s Motion and in Opposition to
Plaintiff’s Cross-Motion.....3

Both defendant Sunharbor Acquisition I, LLC d/b/a Sunharbor Manor Nursing Home (“Sunharbor”) (Motion Seq. No. 1) and defendant Winthrop University Hospital (“Winthrop”)(Motion Seq. No. 3) , move for an Order dismissing the plaintiffs’ complaint on the grounds of laches, or, in the alternative for failure to timely substitute the necessary party. Defendant Winthrop states that its making its motion in conjunction with Sunharbor’s motion

and that it incorporates by reference Sunharbor's papers. Plaintiffs Abdul M. Hasan and Khalilah Hasan ("Hasan") cross-move for an Order permitting Khalila Hasan, as administrator of the estate of Abdul M. Hasan, to be substituted as a party plaintiff in place of Abdul M. Hassan, deceased, amending the caption, lifting the automatic stay imposed by virtue of the death of plaintiff Abdul M. Hassan, and setting this matter down for a Preliminary Conference.

Upon the foregoing papers, the instant motions are decided as follows:

BACKGROUND

Plaintiffs commenced this action for medical and nursing home negligence and malpractice by the filing of a Summons and Verified Complaint dated July 20, 2011. Issue was joined by defendant Sunharbor by a Verified Answer dated September 27, 2011. Along with the Verified Answer, defendant also served on plaintiff, a demand for a Verified Bill of Particulars and Notice to Take Depositions. On January 24, 2012, a Preliminary Conference was held. Defendant Sunharbor states that at the Preliminary Conference, they were informed that plaintiff Abdul M. Hassan, passed away on December 8, 2011. As a result of plaintiff's death, an automatic stay was issued pending substitution by his estate. A Status Conference was held on July 26, 2012. The Certificate of Appointment of Administrator attached by plaintiffs reflects the date of death as September 22, 2011. Neither party attached a copy of the death certificate.

In support of their respective motions defendants Sunharbor and Winthrop state as follows: that on July 20, 2012, counsel for Sunharbor wrote to plaintiffs' counsel asking to be advised of the status of a proposed substitution of the plaintiff; that at the July 26, 2012 Status Conference, plaintiffs' counsel advised the Court that he recently filed a petition to obtain Letters of Administration permitting Khalilah Hasan to proceed in place of her husband; that on December 5, 2012, he wrote plaintiffs' counsel again, asking to be advised of the status of the proposed substitution of the plaintiff; and that, to date, he has not received a response to his letter. Defendants argue that they have been severely prejudiced by the plaintiffs' delay; that due to the fact that the plaintiffs have been uncooperative with discovery and throughout the litigation process, defendants were not able to depose the deceased; that as of the date of the

motion, no Bill of Particulars have been provided, depositions have not been taken and document requests remain outstanding; and that the memory of the parties and recollection of any non-party witness has faded during the almost two-year stay. Defendants further argue that plaintiff should not be allowed to make a substitution for the deceased and that plaintiff's behavior constitutes willful conduct and an abandonment of the action.

In opposition to defendants' motions and in support of their motion plaintiffs' counsel state as follows: that upon being notified of the death of plaintiff, Abdul M. Hasan, their firm undertook to assist the family of the decedent in obtaining a representative appointed by the Surrogate's Court; that there were some delays encountered in obtaining all of the necessary documentation; that although plaintiff, Khalilah Hasan, was able to provide the Surrogate's Court with a copy of the death certificate, it was not a certified copy; that in order to get a certified copy of the death certificate, an application had to be filed in Albany; that there was a delay in obtaining a copy of the funeral bill marked "paid" as is required by the Surrogate's Court; that at the time of the Status Conference on July 26, 2012, counsel was under the impression that a petition and supporting papers were filed with the Surrogate's Court, however, he was mistaken and the papers were, at that time, incomplete; and that Khalilah Hasan was issued Letters of Limited Administration by the Hon. Edward W. McCarthy, III, of the Nassau County Surrogate's Court on March 14, 2013.

Plaintiffs' counsel argues that it is unreasonable for defense counsel to argue that their clients were prejudiced because they were not able to take the deposition of the deceased plaintiff before he died on December 8, 2011 (as stated above, the Certificate of Appointment of Administrator reflects the date of death as September 22, 2011); that defendants Answer was first served on or about September 27, 2011 and the Preliminary Conference was held after plaintiff's death on January 24, 2012. Plaintiff's counsel further argues that until such time as a representative was appointed on behalf of the deceased plaintiff, the firm was not in a position to provide Bills of Particulars, authorizations, or other discovery responses; that now that a representative has been appointed they are in a position to provide such documents and may appear before this Court for a Preliminary Conference so that dates can be set for the completion

of discovery; that defendants have not shown any prejudice that they have suffered; and that even assuming that there was an unwarranted delay, the defendants were on notice that the surviving plaintiff intended to continue to pursue this action.

DECISION AND ORDER

Generally, if a party dies but the cause of action as to that party is not thereby extinguished, the action is stayed pending substitution for the deceased party. *See* CPLR §1015. Any orders the court enters or proceedings the court holds after the party's death, but prior to substitution are null and void. *See Hicks v. Jeffrey*, 304 A.D.2d 618; *Giroux v. Dunlop Tire Corp.*, 16 A.D.2d 1068. Further, the deceased party's attorney has no authority to act until a proper party is substituted. *Wisdom v. Wisdom*, 111 A.D.2d 13.

Here, defendants have failed to show that they were prejudiced by the delay in this case, an essential element of laches. *Dwyer v. Mazzola*, 171 A.D.2d 726; *Egrini v. Brookhaven Memorial Hospital*, 133 A.D.2d 610. Defendants were not prevented from deposing decedent plaintiff since he died before an Answer was interposed and prior to the Preliminary Conference, and due to the stay of the proceedings plaintiffs' counsel could not take any action until substitution was completed. Mere delay alone, without actual prejudice, does not constitute laches. *Dwyer v. Mazzola, supra*. Further, plaintiffs' counsel's explanation with respect to the reason for delay establishes that it was not unreasonable.

Based on the foregoing defendants' Sunharbor and Winthrop's motion (Motion Seq. No. 1 &3) are **DENIED** in their entirety. Plaintiffs' motion permitting Khalila Hasan, as administrator of the estate of Abdul M. Hasan, to be substituted as a party plaintiff in place of Abdul M. Hassan, is hereby **GRANTED**. The caption is hereby amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

KHALILAH HASAN as Administratrix of the
Estate of ABDUL M. HASAN, Deceased,
and KHALILAH HASAN, individually,

Index No.: 12057/11

Plaintiffs,

-against-

SUNHARBOR ACQUISITION I, LLC d/b/a
SUNHARBOR MANOR NURSING HOME,
WINTHROP UNIVERSITY HOSPITAL,
and NASSAU HEALTH CARE CORPORATION d/b/a
A. HOLLY PATTERSON EXTENDED CARE
FACILITY and NASSAU UNIVERSITY MEDICAL
CENTER,

Defendants.

It is further ORDERED that the automatic stay imposed by virtue of the death of plaintiff Abdul M. Hassan is hereby lifted . The parties and their respective counsel are hereby directed to appear for a Preliminary Conference at IAS Part 21, June 26, 2013 at 9:30 a.m.

DATED: May 24, 2013
Mineola, NY

ENTER:



HON. NORMAN JANOWITZ
J.S.C.

ENTERED
MAY 31 2013
NASSAU COUNTY
COUNTY CLERK'S OFFICE