

Karras v Margaret Tietz Ctr. for Nursing Care, Inc.

2018 NY Slip Op 32972(U)

April 9, 2018

Supreme Court, Queens County

Docket Number: 712543/2017

Judge: Salvatore J. Modica

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This opinion is uncorrected and not selected for official publication.

[*1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: PART 37

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MARINA KARRAS, as Proposed Administratrix of the **DECISION AND ORDER**
Estate of GEORGINA GOYANES, deceased, Index No. 712543/2017

Plaintiff, **HON. SALVATORE J. MODICA**
-- against --

MARGARET TIETZ CENTER FOR NURSING CARE,
INC., et al., Motion Sequence Number 1

Defendants.
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Papers Numbered.....NYSCEF Doc. Nos. 14-22

SALVATORE J. MODICA, J.:

The defendants move to dismiss the complaint for lack of capacity or standing and/or to dismiss the claim for punitive damages.

First, as to capacity, although the action started with Ms. Karras claiming the title of “Proposed Administratrix”, as shown in the caption, she has since cured the defect. The Surrogate’s Court of Nassau County has since issued to her limited letters of administration. Since the original defect is now cured, and defendants cannot show any prejudice, the motion to dismiss is denied. *See, McBride v. State*, 50 Misc. 2d 192 (Ct. Cl. 1966) (Surrogate by signing and filing, on April 15, 1966, decree nunc pro tunc to January 22, 1963, cured what was only an irregularity subject to correction, and no prejudice resulted to state in trial commenced on April 11, 1966, on claim filed on December 5, 1963, wherein claimant administratrix submitted limited letters of administration, signed and filed April 19, 1966, nunc pro tunc, as of January 22, 1963). The branch of the motion to dismiss for lack of capacity, therefore, is denied.

The Court, sua sponte, amends the name of the plaintiff in the caption to read: “MARINA KARRAS, as Administratrix of the Estate of GEORGINA GOYANES, deceased.” The Clerk is directed to make such change to all records of this Court. In addition, the Court makes the change effective, nunc pro tunc, to September 12, 2017, when the summons and complaint [ECF doc. Numbers 1 &2] were electronically filed with the Court.


[*2]

Next, turning to the claim for punitive damages, concerning the alleged failure to deliver proper care to the deceased, the Court denies the branch of the motion without prejudice following discovery. See Ms. Louis's opposing affirmation.

The Court requires all parties to engage in thorough discovery. The Court discerns that this litigation will be vigorously waged. The Court, however, warns all sides that swift sanctions will result, including the striking of pleadings, if discovery obligations are not fulfilled.

The foregoing constitutes the decision, order, and opinion of the Court.

Dated: Jamaica, New York
April 9, 2018



Honorable Salvatore J. Modica
J.S.C.

