

Rivera-Melendez v Bronxworks, Inc.

2021 NY Slip Op 33687(U)

June 15, 2021

Supreme Court, Bronx County

Docket Number: Index No. 29309/2018E

Judge: Adrian Armstrong

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This opinion is uncorrected and not selected for official publication.

001

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 21

-----X

OSCAR RIVERA-MELENDZ,

Index No. 29309/2018E

Plaintiff,

-against-

BRONXWORKS, INC., et al.,

Defendants.

Hon. ADRIAN ARMSTRONG

-----X

AND A THIRD-PARTY ACTION

The following papers numbered were read on this motion (Seq. No. 001)
for **DISMISSAL** noticed on

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No (s). 26-32 34
Answering Affidavit and Exhibits	No (s). 35
Replying Affidavit and Exhibits	No (s).

Defendants/Third-Party Plaintiff's motion for summary judgment is decided in accordance with the attached Decision and Order.

Dated: 6/15/2021

Hon.



ADRIAN ARMSTRONG, A.J.S.C.

HON. ADRIAN N. ARMSTRONG, J.C.C.

Motion is Respectfully Referred to Justice
Dated: _____

1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT REFEREE APPOINTMENT

Copy

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
OSCAR RIVERA-MELENDEZ,

Plaintiff,

DECISION and ORDER
Index No. 29309/2018E

- against -

BRONXWORKS, INC. d/b/a THE PYRAMID SAFE
HAVEN and 470 EAST 161 LLC,

Defendants.

-----X
AND A THIRD-PARTY ACTION

Adrian Armstrong, J.

Upon the foregoing papers, the motion by defendants/third-party plaintiffs Bronxworks, Inc. d/b/a The Pyramid Safe Haven and 470 East 161 LLC, (“Bronxworks”) is decided as follows.

This is an action in which plaintiff seeks monetary damages for personal injuries he allegedly sustained when he fell down a stairwell at a drug rehabilitation/interim housing center operated by defendant Bronxworks on May 12, 2018.

The plaintiff died on July 25, 2020 and the plaintiff’s counsel advised the other parties of the plaintiff’s death on or about July 30, 2020, the date that the plaintiff was scheduled to have been deposed. After plaintiff’s death, the court scheduled several conferences that served as control dates to ascertain whether the plaintiff’s counsel had taken action to have a representative appointed for the plaintiff’s estate. No depositions have been held and written discovery is not completed. To date, the representative(s) of plaintiff’s estate have not taken any action to substitute a proper party in plaintiff’s stead.

Bronxworks now seek to have this action dismissed pursuant to CPLR §1021. Movants’ argue that there is no reasonable and justifiable excuse for the delay in this matter, and no

explanation was ever provided by plaintiff's counsel why no action has been taken in the months since the plaintiff's death. Movant's argue that given the passage of time since the period of the alleged negligence and the commencement of this suit, they will be prejudiced if forced to defend this action which arises from an alleged incident that took place in May 2018.

In opposition, counsel for plaintiff argues that the death of the plaintiff stayed all further proceedings and while a defendant may seek dismissal under CPLR §1021 for failure to timely substitute an administrator, it cannot do so by motion on notice.

Upon the death of Oscar Rivera-Melendez, the proceedings were automatically stayed, and this court was divested of jurisdiction to act until a representative is appointed for the decedents estate. CPLR 1021 provides an exception to the principle that the Supreme Court is divested of jurisdiction to act during an automatic stay (*see Washington v Min Chung Hwan*, 20 AD3d 303, 305 [1st Dept 2005]). However, a motion to dismiss pursuant to CPLR 1021 requires notice to parties interested in the estate of Rivera-Melendez, and such notice was not provided herein. Notice to the attorney for the original plaintiff does not suffice (*see Gonzalez v Ford Motor Co.*, 295 AD2d 474, 475 [2nd Dept 2002]).

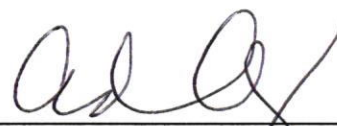
In any event, in New York there is a strong public policy favoring the disposition of cases on the merits (*Peters v City of N.Y. Health & Hosps. Corp.*, 48 AD3d 329 [1st Dept 2008]). Here, there was a delay of only approximately 9 months between the date plaintiff Rivera-Melendez died and the date defendants/third party plaintiffs moved to dismiss.

Accordingly, it is

ORDERED that the defendants/third party plaintiffs' motion to dismiss is denied with leave to renew.

This is the Decision and Order of the Court.

Dated: June 15, 2021



Adrian Armstrong, A.J.S.C.

HON. ADRIAN N. ARMSTRONG, J.C.C.