

Mack v Guillem

2022 NY Slip Op 33173(U)

September 20, 2022

Supreme Court, New York County

Docket Number: Index No. 805250/2016

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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MAUREEN MACK,

Plaintiff,

- v -

JOSE GASTON GUILLEM, M.D., NANCY MCENTEE, R.N.,
MEMORIAL SLOAN-KETTERING CANCER CENTER,
MEMORIAL HOSPITAL FOR CANCER AND ALLIED
DISEASES, JANICE FLOWERS-TYRREL, R.N., DARINKA
STANTCHEVA KANTCHEVA, R.N., MELISSA
GOLDSMITH, R.N., VISITING NURSE SERVICE OF NEW
YORK, VISITING NURSE SERVICE OF NEW YORK HOME
CARE, and VISITING NURSE SERVICE OF NEW YORK
HOME CARE II

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 64, 65, 66, 67, 68, 69

were read on this motion to/for SUBSITUTE REPRESENTATIVE/AMEND CAPTION.

In this medical malpractice action, Jordan Mack, as the duly appointed representative of the estate of the deceased plaintiff Maureen Mack, moves pursuant to CPLR 1015 and 1021 to be substituted as a party plaintiff in her place and stead, to vacate the automatic stay of proceedings imposed by operation of law upon the decedent's death, and pursuant to CPLR 305(c) for leave to amend the caption accordingly. The motion is granted, without opposition.

On June 16, 2016, Maureen Mack commenced this action against the defendants to recover damages for medical malpractice. On July 7, 2016, the defendants Visiting Nurse Service of New York, Visiting Nurse Service of New York Home Care, Visiting Nurse Service of New York of New York Home Care II, Janice Flowers-Tyrell, R.N., Darinka Stantcheva Kantcheva, R.N., and Melissa Goldsmith, R.N., served an answer to the complaint, along with numerous demands for discovery and inspection. On September 16, 2016, the defendants

Jose Gaston Guillem, M.D., Nancy McEntee, R.N., Memorial Sloan-Kettering Cancer Center, and Memorial Hospital for Cancer and Allied Diseases served answers to the complaint, along with numerous demands for discovery and inspection.

On August 30, 2018, the court (Madden, J.) issued a preliminary conference order setting forth a schedule for the completion of discovery, including deadlines for responding to written discovery requests and submitting to depositions. On March 5, 2019 and May 23, 2019, respectively, the same court issued compliance orders. Between July 17, 2019 and March 5, 2020, the same court issued seven status conference orders, the last of which set a schedule for discovery, including a deadline for the plaintiff's designation of a deposition witness on behalf of the Sloan Kettering defendants and a date for the deposition of that witness, as well as provisions for the deposition of a Dr. Carl Weber. The order fixed May 29, 2020 as the deadline for the filing of a note of issue, but also scheduled a further status conference for May 28, 2020. By then, the courts were closed between March 17, 2020 and June 10, 2020 due to the COVID-19 pandemic, and the status conference was adjourned without date. In addition, pursuant to a series of 13 executive orders issued by the Governor, all service and filing deadlines in pending actions were tolled between March 20, 2020 and November 3, 2020 (see L 2020, ch 23 [eff Mar, 3, 2020]; Executive Law § 29-a; see e.g. Executive Order [EO] 202.8, EO 202.67)

Maureen Mack died on February 15, 2021, and all proceedings in this action thus were automatically stayed by operation of law on that date, pending substitution of a representative of the decedent's estate (see *Perez v City of New York*, 95 AD3d 675, 677 [1st Dept 2012]). The action was reassigned to this court on or about March 9, 2021. On August 12, 2021, the Surrogate's Court, Westchester County, appointed Jordan Mack as the administrator of the estate of the deceased plaintiff, Maureen Mack, and issued letters of administration to Jordan Mack. On August 31, 2021, the decedent's attorneys informed the court of the decedent's death. By order dated September 1, 2021, this court memorialized the automatic stay that had gone into effect on February 15, 2021.

The Surrogate’s Court’s issuance of letters of administration to Jordan Mack authorized Jordan Mack to prosecute this action. Jordan Mack now moves to be substituted in this action for the decedent as a party plaintiff, to vacate the automatic stay, and for leave to amend the caption accordingly.

It is well settled that, where an administrator or executor is appointed as representative of the estate of a decedent who was the party to a pending action, substitution and amendment of the caption is appropriate (*see Tag 380, LLC v Estate of Howard P. Ronson*, 69 AD3d 471, 473-474 [1st Dept 2010]). Jordan Mack has submitted sufficient proof of due appointment as administrator of the estate of Maureen Mack. Hence, the motion must be granted.

Accordingly, it is,

ORDERED that the motion of Jordan Mack, as administrator of the estate of Maureen Mack, deceased, to be substituted as party plaintiff in this action, dissolve the stay imposed upon the decedent’s death, and amend the caption accordingly is granted, without opposition; and it is further,

ORDERED that Jordan Mack, as administrator of the estate of Maureen Mack, deceased, is substituted as party plaintiff in this action in her place and stead; and it is further,

ORDERED that the automatic stay of proceedings imposed by operation of law upon the decedent’s death is dissolved; and it is further,

ORDERED that the caption is amended to read as follows:

JORDAN MACK, as administrator of the estate MAUREEN MACK,
deceased,

Plaintiff,

Index No. 805250/2016

v

JOSE GASTON GUILLEM, M.D., NANCY MCENTEE, R.N.,
MEMORIAL SLOAN-KETTERING CANCER CENTER, MEMORIAL
HOSPITAL FOR CANCER AND ALLIED DISEASES, JANICE
FLOWERS-TYRREL, R.N., DARINKA STANTCHEVA KANTCHEVA,
R.N., MELISSA GOLDSMITH, R.N., VISITING NURSE SERVICE
OF NEW YORK, VISITING NURSE SERVICE OF NEW YORK
HOME CARE, and VISITING NURSE SERVICE OF NEW YORK

HOME CARE II,

Defendants.

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and it is further,

ORDERED that, on the court's own motion, the plaintiff is directed to serve a copy of this order with notice of entry upon the Trial Support Office (60 Centre Street, Room 148, New York, NY 10007), and shall file the notice required by CPLR 8019(c) on a completed Form EF-22 with the County Clerk, and the Trial Support Office shall thereupon amend the court records accordingly; and it is further,

ORDERED that, on or before November 1, 2022, the parties shall submit a proposed status conference order to the Part 56 Part Clerk at SFC-Part56-Clerk@nycourts.gov.

9/20/2022

DATE

JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: