

Doyle v New York City Tr. Auth.

2023 NY Slip Op 31856(U)

May 31, 2023

Supreme Court, New York County

Docket Number: Index No. 161037/2017

Judge: Denise M. Dominguez

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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. DENISE M DOMINGUEZ PART 21

Justice

INDEX NO. 161037/2017

NICOLE DOYLE,

MOTION SEQ. NO. 004

Plaintiff,

- v -

NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN
TRANSPORTATION AUTHORITY, THE CITY OF NEW
YORK

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 82, 83, 84, 85, 86, 87, 88, 89,
90, 91, 92, 93, 94

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon reading the above listed documents, the motion by Economou & Economou, P.C.,
counsel for Plaintiff NICOLE DOYLE, deceased, is granted.

As per the complaint, this personal injury matter arises out of an unspecified March 15,
2017 incident that occurred at the Lenox Avenue and 111th Street Central Park North Station in
Manhattan due to an alleged "dangerous, defective and unsafe condition" (NYSCEF Doc. #1).

This action was commenced on December 13, 2017 by the filing of the summons and
complaint. As per August 15, 2019 Order of Judge Lisa Ann Sokoloff, the Plaintiff's complaint
and all cross claims were dismissed as against Defendant THE CITY OF NEW YORK (NYSCEF
Doc. #48). Discovery continued in this matter with the most recent discovery conference having
been held on June 10, 2021. As per the June 10, 2021 Order, (NYSCEF Doc. #79), the Note of
Issue was to be filed on September 14, 2021. However, the Note of Issue was not filed, and this
matter was stayed by Order of Judge Suzanne Adams, dated October 19, 2021 (NYSCEF Doc.
#81), due to the death of the Plaintiff on October 8, 2021 (NYSCEF Doc. #86). D'Asia Greathouse,
the Plaintiff's daughter, was appointed Administrator of Plaintiff NICOLE DOYLE's Estate by
the New York County Surrogate's Court on April 4, 2023 (NYSCEF Doc. #85, 86).

Economou & Economou, P.C., counsel for Plaintiff, now moves for an order to: 1) substitute "D'ASIA GREATHOUSE as Administratrix of the Estate of Nicole Doyle", in place of Plaintiff NICOLE DOYLE, pursuant to CPLR §1021; 2) amend the caption to reflect the substitution; 3) amend the complaint to remove the claims previously asserted against Defendant THE CITY OF NEW YORK; and 4) lift the stay put in place on October 19, 2021 due to the death of the Plaintiff. No opposition to the motion has been submitted. Upon review, the motion is granted.

Pursuant to CPLR §1021, a motion for substitution due to the death of a party shall be made within a reasonable time. (CPLR §1021; *Strum v. Bressler*, 214 A.D.3d 465, 466, 183 N.Y.S.3d 737 [1st Dept 2023]; *Riedel v. Kapoor*, 123 A.D.3d 996, 996, 999 N.Y.S.2d 475, 475-76 [2d Dept 2014]). Upon review, Economou & Economou, P.C. have shown that diligent efforts were made to identify an individual to be appointed as the Administrator of the Plaintiff's estate and that the within motion for substitution was pursued shortly after the appointment of D'Asia Greathouse as Administrator (NYSCEF Doc. #84, 85).

In light of the appointment of D'Asia Greathouse as Administrator of the estate of Nicole Doyle by the New York County Surrogate's Court (NYSCEF Doc. #85), pursuant to CPLR §1021, that portion of the motion which seeks to substitute D'ASIA GREATHOUSE as Administratrix of the Estate of Nicole Doyle, deceased, in place of NICOLE DOYLE, is granted. Additionally, in light of the substitution, the caption shall be amended and the October 19, 2021 stay shall be lifted.

In addition to amending the caption to reflect the substitution by the Administratrix, Economou & Economou, P.C., also seeks to serve an amended complaint, whereby the previously asserted allegations against Defendant THE CITY OF NEW YORK are removed, in light of the Court's August 15, 2019 Order (J. Sokoloff) dismissing the claims against it in this matter. CPLR §3025 (b), freely permits the amendment of a pleading and "[t]he decision to allow or disallow the amendment is committed to the court's discretion." (*Edenwald Contracting Co. v. City of New York*, 60 N.Y.2d 957, 959, 459 N.E.2d 164, 165 [1983]). Accordingly, that branch of the motion to amend the complaint as proposed (NYSCEF Doc. #93), is also granted.

Finally, in order to address any outstanding discovery that could not be completed during the stay, the parties are directed to submit a join proposed Status Conference Order, at which time a new Note of Issue filing date will be set by the Court.

Accordingly, it is hereby

ORDERED that the motion to amend the caption is granted, and that D'Asia Greathouse, as Administratrix of the Estate of NICOLE DOYLE, deceased, be substituted as Plaintiff in the above-entitled action in the place and stead of the Plaintiff, NICOLE DOYLE, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that the October 19, 2021 stay is hereby lifted; and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the name of D'ASIA GREATHOUSE, as Administratrix of the Estate of Nicole Doyle, deceased, as Plaintiff in the place and stead of said decedent, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that the caption be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
D'ASIA GREATHOUSE as Administratrix of the Estate
of NICOLE DOYLE,

Plaintiff,

Index No. 161037/2017

- against -

NEW YORK CITY TRANSIT AUTHORITY and
METROPOLITAN TRANSPORTATION
AUTHORITY,

Defendants.

-----X

and it is further,

ORDERED that the Plaintiff's motion for leave to amend the complaint pursuant to CPLR §3025 (b), is granted; and it is further

ORDERED that Plaintiff file the supplemental summons and amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. #93) within 30 days of service of a copy of this order with notice of entry; and it is further

ORDERED that the amended complaint in the proposed form annexed to the moving papers (NYSCEF Doc. #93) shall be deemed served upon Defendants NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY by service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Defendants NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of service of this order with notice of entry; and it is further

ORDERED that the parties submit a joint proposed Status Conference Order on consent as per Part 21 rules on June 30, 2023 at which time a new Note of Issue date will be provided by the Court.

ORDERED that Economou & Economou, P.C. shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk's Office, who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website).

5/31/2023
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

HON. DENISE M. DOMINGUEZ
J.S.C.