

Atilgan v Azuz

2020 NY Slip Op 32734(U)

August 14, 2020

Supreme Court, Kings County

Docket Number: 521696/16

Judge: Lawrence S. Knipel

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part Comm 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 14th day of August 2020.

PRESENT:

HON. LAWRENCE KNIPEL,

JUSTICE

-----X

RANA ATILGAN AND TEM CLOTHING INC.,

PLAINTIFFS,

DECISION AND ORDER

-AGAINST-

Index No. 521696/16

AYDIN AZUZ, UMIT YAZICI, TEMPO CLOTHING COMPANY, BIL I LLC AND HAL FRIEDMAN,

DEFENDANTS.

-----X

The following papers e-filed papers read herein:

NYSCEF Doc. No.¹

Notice of Motion, Affirmations and Annexed Exhibits _____
Opposing Affirmations and Annexed Exhibits _____
Reply Affirmations _____

53-58, 68-70, 71-75
69, 76
76, 77, 78

Plaintiffs, Rana Atilgan and Tem Clothing, Inc. (plaintiffs) move, in motion sequence (mot. seq.) three for an order extending the date to file a note of issue and certificate of readiness. Defendants Azuz, Yazici and Tempo Clothing Company (defendants), cross-move, in mot. seq. four, for an order compelling plaintiffs to provide them with certain discovery. Defendants, Hal Friedman and Bill-1 LLC (Hall/Bill-1 defendants), have joined the cross-moving defendants in opposing plaintiffs' motion while noting that they are otherwise not united in interest with those codefendants (see NYSCEF Doc. No. 78, at 1-2, ¶¶ 2-3).

¹ New York State Courts Electronic Filing Document Numbers

The underlying complaint essentially alleges that the Azuz/Yazici defendants were plaintiffs' employees, breached their employee duties, converted plaintiffs' property and that all cross-moving defendants improperly prevented plaintiffs from executing an option under a lease with Hall/Bill-1.

An August 5, 2020 letter from counsel for the cross-moving defendants notified the court that codefendant Yazici has passed away and seeks a stay under CPLR 1015 (a) (*see* NYSCEF Doc. No. 79). However, an August 6, 2020 responsive letter from plaintiffs' counsel notes the absence of a death certificate, mentions that no next of kin has provided notice or confirmation and thus insists on more concrete proof of Mr. Yazici's death before a stay is granted. That letter also seeks to proceed against the remaining defendants by severing codefendant Yazici from the action if his death is confirmed (*see* NYSCEF Doc. No. 80). A reply letter, also dated August 6, 2020, from counsel for the cross-moving defendants asserts his ineligibility to obtain a death certificate, his lack of knowledge whether Mr. Yazici has any next of kin or beneficiaries or sufficient assets to set up an estate. Finally, the reply letter asserts that severance is no longer viable (NYSCEF Doc. No. 81).

Discussion

"The death of a party divests the court of jurisdiction and stays the proceedings until a proper substitution has been made pursuant to CPLR 1015 (a) . . . "Moreover, any determination rendered without such substitution will generally be deemed a nullity" (*Matter of Foreclosure of Tax Liens*, 165 AD3d 1112, 1116 [2d Dept 2018] [internal

citations omitted], *appeal dismissed, lv denied* 35 NY3d 1998 [2020]). Hence, where a proper substitution had not been made, “Supreme Court should not have determined the merits of the plaintiff’s motion, even to the extent that the plaintiff sought relief against the other defendants” (*U & Me Homes, LLC v County of Suffolk*, 169 AD3d 853, 855 [2d Dept 2019]).

However, these well-settled principles first require proof of death. The unsworn correspondence from counsel for the cross-moving defendants, based on equally unsworn information from a codefendant, without the record presently containing a death certificate requires supplementing information. Accordingly, it is

ORDERED that counsel for cross-moving defendants shall, within 30 days after service of this order with notice of entry, submit an affirmation setting forth basic information as to Umit Yazici’s death such as where and when it occurred, what jurisdiction will provide a death certificate and such a death certificate, itself, if available; and it is further

ORDERED that counsel for cross-moving defendants shall also, within 30 days after service of this order with notice of entry, also submit an affidavit (or affirmation, if necessary) from codefendant Azuz, or a relative of Mr. Yazici or any other knowledgeable person providing the same information required above, and it is further

ORDERED that both mot. seqs. three and four are held in abeyance pending receipt of these supplementary documents and ensuing order(s) herein; and it is further

ORDERED that all proceedings herein are stayed to receive the needed information and until a decision whether CPLR 1015 (a) and related provisions are applicable.

This constitutes the decision and order of the court.

ENTER



J.S.C.

Justice Lawrence Knipel