

**Pancer v 4910 Equities LLC**

2024 NY Slip Op 32197(U)

June 28, 2024

Supreme Court, Kings County

Docket Number: Index No. 502569/2017

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28<sup>th</sup> day of June 2024

HONORABLE FRANCOIS A. RIVERA

-----X  
DAVID PANCER, as Administrator of the Estate of  
PATRICIA PANCER, Deceased,

Plaintiff,

- against -

4910 EQUITIES LLC and BIG APPLE ELEVATOR  
SERVICE AND CONSULTING LLC,  
Defendants.

-----X

**DECISION & ORDER**

Index No.: 502569/2017

Ms. 8

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on March 15, 2024, under motion sequence number eight, by David Pancer, as administrator of the estate of Patricia Pancer, deceased (hereinafter plaintiff) for an order granting approval of the settlement, approval of attorneys' fees and disbursements and directing defendants 4910 Equities LLC and Big Apple Elevator Service and Consulting LLC to pay plaintiff's attorneys fees and disbursements incurred in this matter. The motion is unopposed.

- Notice of motion
- Attorney affirmation in support
- Plaintiff's affirmation in support
- Proposed order
- Amended attorney affirmation in support
- Amended plaintiff affirmation in support
- Amended Proposed order

**BACKGROUND**

On February 9, 2017, Patricia Pancer commenced the instant action for damages for personal injuries by filing a summons and verified complaint with the Kings County

Clerk's office (hereinafter KCCO). The complaint alleges twenty-five allegations of fact in support of its cause of action for personal injury.

The commencement papers allege the following salient facts. On January 11, 2016 at approximately 9:00 a.m., Patricia Pancer was lawfully and properly on certain premises in Kings County and was caused to trip and fall while attempting to exit the elevator on the lobby floor as a result of it not being level with the floor of the building causing her sustain serious personal injuries. That on same date and prior thereto, the defendant, its agents, servants, and/or employees carelessly, negligently, and recklessly, suffered, and permitted the premises and elevator to be, become, and remain in a defective, dangerous, and hazardous condition. That defendants were negligent in violating their duty to the public and Patricia Pancer and were negligent in failing to take suitable precautions for the safety of those using the elevator. Further, that the defendants had actual notice of the defective and dangerous condition prior to the aforesaid accident and that Patricia Pancer sustained injuries.

On June 24, 2021, the action was stayed pursuant to CPLR 1015 after a death certificate was filed with the Court indicating that the date of death of Patricia Pancer was May 1, 2020. The death certificate also indicates that the date of birth of Patricia Pancer was July 25, 1944. On June 14, 2022, a decree granting administration and letters of administration, both dated June 13, 2022 were filed with the Court. On January 4, 2024, among other relief, the Court lifted the stay and substituted David Pancer as Administrator of the Estate of Patricia Pancer as plaintiff and amended the caption.

## LAW AND APPLICATION

Plaintiff seeks an order pursuant to EPTL § 5-4.6 granting approval of the settlement of this action in the amount of \$75,000.00, approval of the attorneys' fees and disbursements, and directing defendants, 4910 Equities LLC and Big Apple Elevator Service and Consulting LLC to pay plaintiff's attorney, Isaacson, Schiowitz & Korson, LLP, the attorneys' fees and disbursements incurred in this matter.

EPTL § 5-4.6 (a) provides, in pertinent part, that “[w]ithin sixty days of the application of an administrator appointment under 5-4.1...in which an action for wrongful act, neglect or default causing the death of a decedent is pending, the court shall, after inquiry into the merits of the action and the amount of damages proposed as a compromise either disapprove the application or approve in writing a compromise for such amount as it shall determine to be adequate including approval of attorneys fees and other payable expenses as set forth below, and shall order the defendant to pay all sums payable under the order of the compromise” (EPTL § 5-4.6 [a]).

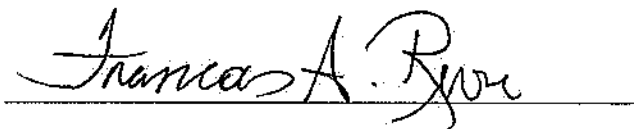
The attorney affirmation submitted in support of the motion affirms that the “[d]ecedent’s death was not related to the injuries she sustained on January 11, 2016.” Because the decedent’s death is not attributable to the negligence of the defendants, this is not a wrongful death case which statutorily requires this Court’s or the Surrogate’s approval of a compromise order.

At oral argument on June 28, 2024, the parties clarified that the Court’s approval is not sought pursuant to EPTL § 5-4.6, but rather based on limitations of the letters of administration. The letters of administration were issued on June 13, 2022 and impose the

following limitations on the administrator, in pertinent part: “The Administrator is restrained from collecting and administering more than \$10,000.00 in personal assets belonging to the decedent without further order from this court. And said Administrator is hereby restrained from compromising any cause of action until further court order pursuant to EPTL 5-4.6.” Furthermore, the parties indicated concern over an outstanding Medicare lien, for which interest would soon be accrued, notwithstanding any pending settlement agreement. Although EPTL § 5-4.6 does not apply here, as explained above, the Court nevertheless forwards the matter forthwith to the Surrogate’s Court for a prompt resolution of the proposed settlement terms agreed to by the parties.

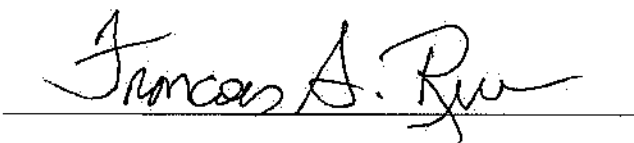
The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.  
HON. FRANCOISA. RIVERA

ENTER FORTHWITH:



J.S.C.  
HON. FRANCOISA. RIVERA