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FILED

February 27, 2023

HON. BRUCE J. KAPLAN, J.S.C.

*Attorneys for Defendants Merck & Co., Inc.
and Merck Sharp & Dohme LLC*

MARY THOMPSON and CALVIN THOMPSON,

Plaintiffs,

v.

MERCK & CO., INC., MERCK SHARP & DOHME CORP., and MCKESSON CORP.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

DOCKET NO.: MID-L-005379-20

ORDER

THIS MATTER having been brought before the Court upon motion by Fox Rothschild LLP, attorney for Defendants, Merck & Co., Inc., and Merck Sharp & Dohme Corp., for an Order to Dismiss the Plaintiff's complaint with prejudice pursuant to R. 4:23-5(a)(2), for failure to effectuate the probate process to appoint a formal estate representative and substitute the estate as this case was dismissed without prejudice on September 29, 2022, and the Court having read and considered the papers submitted in this matter, opposition filed and reply thereto, considered the arguments of Counsel at oral argument on January 10, 2023, and for the reasons set forth in the attached Statement of Reasons, and for good cause having been shown;

IT IS on this 27th day of February, 2023;

ORDERED that Defendants' Motion to Dismiss with prejudice is **hereby DENIED**; and it is further

ORDERED that if Plaintiff's next of kin is not appointed as personal representative of Plaintiff's estate within sixty (60) days of the upload of this Order, then Plaintiff's Counsel shall contact the vital statistics office and thereafter upload a certification on eCourts as to the status of the pending appointment; and it is further

ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this order.

/s/ Bruce J. Kaplan
HONORABLE BRUCE J. KAPLAN, J.S.C.

OPPOSED

Statement of Reasons

This matter having been brought before the Court upon motion by Fox Rothschild LLP, attorney for Defendants, Merck & Co., Inc., and Merck Sharp & Dohme Corp., for an Order to dismiss Plaintiff's complaint with prejudice pursuant to R. 4:23-5(a)(2), for failure to effectuate the probate process to appoint a formal estate representative and substitute the estate. The Court has read and reviewed the papers submitted in this matter, opposition filed and reply thereto, considered the arguments of Counsel at oral argument on January 10, 2023.

By way of relevant procedural history, the Court filed Case Management Order #26 on August 15, 2022. Section 1(f) and Exhibit D of CMO #26 provided plaintiffs with notice that their cases will be dismissed without prejudice on September 12, 2022, if no affirmative steps were taken to appoint a formal estate representative and substitute the estate. Plaintiff did not comply with the Court's September 12, 2022 deadline. On September 29, 2022, the Court entered an Order dismissing Plaintiff's case without prejudice for failing to effectuate the probate process and appoint a formal estate representative and substitute the estate as the plaintiff. In addition to dismissing Plaintiff's complaint without prejudice, the Court's September 29, 2022 Order provided Plaintiff with 60 days to come into compliance and appoint a formal estate representative or Defendants may move to dismiss Plaintiff's complaint with prejudice. Defendants bring the instant motion to dismiss Plaintiff's complaint with prejudice because more than 60 days has passed since this case was dismissed without prejudice and plaintiff's next of kin has failed to appoint a formal estate representative and substitute the estate as the plaintiff in this matter.

In opposition, Plaintiff's Counsel represents that Calvin Thompson is in the process of obtaining authority to serve and be designated as the authorized representative of Plaintiff's estate. However,

Plaintiff's Counsel states that Mr. Thompson has been sick and under the care of a Martha Thompson. Additionally, Plaintiff's Counsel asserts their office became aware of a new address and telephone number for Mr. Thompson on December 5, 2022. Plaintiff's Counsel requests an additional thirty (30) days to allow Mr. Thompson to obtain estate documentation.

In reply, Defense Counsel argues that Plaintiff's opposition does not contain any details on what efforts have been made since June 2022. Furthermore, Defense Counsel argues that Plaintiff's opposition does not include any information regarding how long Mr. Thompson has been sick; whether Mr. Thompson's illness has prevented him from opening Plaintiff's estate; or how an additional thirty (30) days will permit Mr. Thompson to obtain estate documentation. Due to no progress occurring within the last six months, Defense Counsels asks this Court to dismiss Plaintiff's complaint with prejudice.

On January 10, 2023, the Court heard oral argument on Defendants' Motion to Dismiss Plaintiff's Complain with prejudice. During oral argument, Plaintiff's Counsel conceded that it has been difficult for their office to get in contact with Mr. Thompson and that Plaintiff's office was recently informed that they had the wrong phone number. Plaintiff's Counsel requested additional time to hire a private investigator to get in touch with Plaintiff's next of kin. This Court provided Plaintiff's Counsel an additional ten (10) days to contact Plaintiff's next of kin. Additionally, this Court directed Plaintiff's Counsel to provide the Court with a certification identifying Plaintiff's next of kin and the amount of time required to obtain estate documentation.

On January 19, 2023, Plaintiff's Counsel provided the Court with an update on their attempts to locate Plaintiff's next of kin. Plaintiff's Counsel represented that Mr. Thompson applied for appointment for the estate of Mary Thompson, on January 17, 2023, at the Mercer County Surrogate's Court. However, the Surrogate's Court found Plaintiff's death certificate deficient because it lacked a street address. Plaintiff's Counsel represents that Mr. Thompson then went to the vital statistics office, on January 18, 2023, in Hamilton, New Jersey to obtain a corrected death certificate. As a result, Plaintiff's Counsel requested an adjournment in order for Mr. Thompson to receive a corrected death certification. Defense Counsel consented to, and this Court granted, a twenty-nine (29) day adjournment.

On February 24, 2023, Plaintiff's Counsel uploaded a certification on eCourts. Said certification stated that Plaintiff's Counsel called the New Jersey Department of Vital Statistics to inquire about the status of Mr. Thompson's request for a correct death certificate. The Department of Vital Statistics informed Plaintiff's Counsel that the State Registrar's office handles and reviews records from 564 municipalities. As a result, the Vital Statistics Agent stated that the typical wait time is approximately 8-12 weeks. The Agent also informed Plaintiff's Counsel that because a month had elapsed since Mr. Thompson's request, the Agent estimates that the process will not take much longer. However, the Agent stated that nothing can be done to expedite the process.

In light of Plaintiff's certification, the Court will not enter an order dismissing this case with prejudice. The Court finds that Plaintiff's next of kin is engaged and actively pursuing an appointment as personal representative of Plaintiff's estate. If Plaintiff is not appointed within sixty (60) days of the upload of this Order, then Plaintiff's Counsel shall contact the vital statistics office and thereafter upload a certification on eCourts as to the status of the pending appointment.