

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Gina Marsh v. Mandalay Leasing Limited Partnership

Marsh, 2026 NY Slip Op 00888 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2024-05441 · Decided February 18, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order dismissing a personal-injury action under CPLR 1021 because no timely substitution was made following the plaintiff's death. The court found a lack of diligence in seeking letters of administration and no showing of a potentially meritorious cause of action through an affidavit of merit.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Helen Voutsinas, J.; Janice A. Taylor, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	February 18, 2026
DOCKET	2024-05441
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Supreme Court, Queens County, granting AMCO Group, Inc.'s motion under CPLR 1021 to dismiss the complaint for failure to make a timely substitution after the plaintiff's death.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Supreme Court properly determined that substitution was not made within a reasonable time under CPLR 1021, considering diligence, prejudice, and potential merit.
PRECEDENTIAL VALUE	published
PARTIES	Gina Marsh v. AMCO Group, Inc.

TOPICS

civil procedure

personal injury

appellate procedure

probate procedure

PRACTICE AREAS

civil procedure

personal injury

estate and substitution procedure

QUESTIONS PRESENTED

1. Whether the complaint was properly dismissed under CPLR 1021 because no substitution for the deceased plaintiff was made within a reasonable time.
2. Whether the plaintiff demonstrated a potentially meritorious cause of action and reasonable diligence sufficient to avoid dismissal despite the absence of prejudice to the defendants.

HOLDINGS

1. A motion for substitution under CPLR 1021 is the means by which the court acquires jurisdiction over a deceased party's successors in interest, and an action may be dismissed when substitution is not made within a reasonable time. The more than five-year delay in seeking letters of administration, with no documented effort to substitute a representative before the dismissal motion, demonstrated a lack of diligence.
2. The plaintiff failed to demonstrate a potentially meritorious cause of action because the attorney affirmation, verified complaint, and bill of particulars did not constitute an affidavit of merit, and counsel lacked personal knowledge of the facts.
3. The absence of prejudice to the defendants did not preclude dismissal because the plaintiff failed both to provide an affidavit of merit and to offer a reasonable justification for the delay in seeking letters of administration.

KEY QUOTATIONS

*"A motion for substitution pursuant to CPLR 1021 is the method by which the court acquires jurisdiction over a deceased party's successors in interest, and such motion "is not a mere technicality"" (at *1)*

*"The determination of reasonableness requires consideration of several factors, including the diligence of the party seeking substitution, the prejudice to the other parties, and whether the party to be substituted has shown that the action or defense has potential merit" (at *1)*

FACTUAL BACKGROUND

In December 2014, Gina Marsh allegedly tripped and fell on a tarp in the hallway of her apartment building and later commenced a personal-injury action against Mandalay Leasing Limited Partnership and AMCO Group, Inc. Marsh died on November 2, 2017, but no representative was substituted before AMCO's motion in May 2023. After receiving the motion, Marsh's son petitioned for letters of administration, but the opposition to dismissal did not include an affidavit of merit based on personal knowledge.

PROCEDURAL HISTORY

Gina Marsh commenced a personal-injury action in December 2015. She died on November 2, 2017, and the court was notified of her death in March 2018. After AMCO moved in May 2023 to dismiss for failure to make a timely substitution, Marsh's son petitioned for letters of administration, but the Supreme Court granted AMCO's CPLR 1021 motion. The Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Bossert v. Ford Motor Co., 140 A.D.2d 480, 480
- Matter of Einstoss, 26 N.Y.2d 181, 189-190
- Green v. Maimonides Med. Ctr., 172 A.D.3d 824, 826
- Hemmings v. Rolling Frito-Lay Sales, LP, 220 A.D.3d 754, 757
- Mesnianskina v. 302 BBA, LLC, 219 A.D.3d 1516, 1518
- Navas v. New York Hosp. Med. Ctr. of Queens, 180 A.D.3d 796, 798
- Terpis v. Regal Hgts. Rehabilitation & Health Care Ctr., Inc., 108 A.D.3d 618, 619
- Byner v. Murray-Taylor, 208 A.D.3d 1214, 1216
- Juseinoski v. Board of Educ. of City of N.Y., 15 A.D.3d 353, 356
- Linyard v. Long Is. Coll. Hosp., 234 A.D.3d 677, 679
- Rose v. Frankel, 83 A.D.3d 607

OPINION

PER CURIAM.

Marsh v Mandalay Leasing Ltd. Partnership (2026 NY Slip Op 00888) Marsh v Mandalay Leasing Ltd. Partnership 2026 NY Slip Op 00888 Decided on February 18, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on February 18, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department ANGELA G. IANNACCI, J.P. HELEN VOUTSINAS JANICE A. TAYLOR LAURENCE L. LOVE, JJ. 2024-05441 (Index No. 726752/21) [*1]Gina Marsh, appellant, v Mandalay Leasing Limited Partnership, defendant, AMCO Group, Inc., respondent. Budin, Reisman, Kupferberg & Bernstein, LLP, New York, NY (Gregory C. McMahon of counsel), for appellant.

McElroy, Deutsch, Mulvaney & Carpenter, LLP, New York, NY (A. Augustus LaSala of counsel), for respondent. Gallo Vitucci Klar LLP, New York, NY (Christopher H. Sommer of counsel), for

defendant. DECISION & ORDER In an action to recover damages for personal injuries, the appeal is from an order of the Supreme Court, Queens County (Maurice E. Muir, J.), entered February 20, 2024.

The order, insofar as appealed from, granted that branch of the motion of the defendant AMCO Group, Inc., which was pursuant to CPLR 1021 to dismiss the complaint. ORDERED that the order is affirmed insofar as appealed from, with costs.

In December 2015, Gina Marsh (hereinafter the decedent) commenced this action against the defendants, Mandalay Leasing Limited Partnership and AMCO Group, Inc. (hereinafter AMCO), to recover damages for personal injuries she allegedly sustained in December 2014 when she tripped and fell on a tarp in the hallway of her apartment building.

The decedent died on November 2, 2017, and the decedent's attorney notified the Supreme Court of the decedent's death by letter dated March 29, 2018. In May 2023, AMCO moved, inter alia, pursuant to CPLR 1021 to dismiss the complaint for failure to seek a timely substitution for the decedent. Following receipt of AMCO's motion, the decedent's son filed a petition for letters of administration, dated June 2, 2023, and thereafter, the decedent's attorney filed papers in opposition to AMCO's motion.

In an order entered February 20, 2024, the court, among other things, granted that branch of AMCO's motion which was pursuant to CPLR 1021 to dismiss the complaint. This appeal ensued. "A motion for substitution pursuant to CPLR 1021 is the method by which the court acquires jurisdiction" over a deceased party's successors in interest, and such motion "is not a mere technicality" (*Bossert v Ford Motor Co.*, 140 AD2d 480, 480; see *Matter of Einstoss*, 26 NY2d 181, 189-190; *Green v Maimonides Med.*

Ctr., 172 AD3d 824). CPLR 1021 provides, in relevant part, that "[i]f the event requiring substitution occurs before final judgment and substitution is not made [*2]within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made." "The determination of reasonableness requires consideration of several factors, including the diligence of the party seeking substitution, the prejudice to the other parties, and whether the party to be substituted has shown that the action or defense has potential merit" (*Green v Maimonides Med.*

Ctr., 172 AD3d at 826 [internal quotation marks omitted]; see *Hemmings v Rolling Frito-Lay Sales, LP*, 220 AD3d 754, 757). Here, there is no documentation that the decedent's counsel took any steps to substitute a representative for the decedent prior to receipt of AMCO's motion.

The more than five-year delay in seeking letters of administration shows a lack of diligence (see *Mesnianskina v 302 BBA, LLC*, 219 AD3d 1516, 1518; *Navas v New York Hosp. Med. Ctr. of*

Queens, 180 AD3d 796, 798; *Terpis v Regal Hgts. Rehabilitation & Health Care Ctr., Inc.*, 108 AD3d 618, 619).

Moreover, the decedent failed to demonstrate a potentially meritorious cause of action. Neither the attorney affirmation, verified complaint, nor bill of particulars constituted an affidavit of merit, as counsel had no personal knowledge of the facts of this case (see *Mesnianskina v 302 BBA, LLC*, 219 AD3d at 1518; *Byner v Murray-Taylor*, 208 AD3d 1214, 1216; *Juseinoski v Board of Educ. of City of N.Y.*, 15 AD3d 353, 356).

Since an affidavit of merit was not submitted and no reasonable justification for the delay in petitioning for letters of administration was provided, the Supreme Court properly granted that branch of AMCO's motion which was pursuant to CPLR 1021 to dismiss the complaint, even where the defendants were not prejudiced by the delay in moving for substitution (see *Linyard v Long Is.*

Coll. Hosp., 234 AD3d 677, 679; *Byner v Murray-Taylor*, 208 AD3d at 1216; *Rose v Frankel*, 83 AD3d 607). IANNACCI, J.P., VOUTSINAS, TAYLOR and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court