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Robert L. Nix Order Regarding Motion for Substitution of Party

John J. Goger

Fulton County Superior Court

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

ROBERT L. NIX,)	
)	
Plaintiff,)	CIVIL ACTION FILE NO.
)	2014CV253536
v.)	
)	
CARTER BROTHERS SECURITY)	Bus. Ct. Div. 4
SERVICES, LLC,)	
)	
Defendant.)	

ORDER REGARDING MOTION FOR SUBSTITUTION OF PARTY


The above styled matter is before the Court on The Estate of Plaintiff Robert L. Nix's (the "Estate") Notice of Change of Interest and Motion for Substitution of Party. Therein the Estate gives notice that, given the death of Plaintiff Robert L. Nix, the Estate is the successor in interest to the claims and rights of Mr. Nix that are at issue in this action. The Estate also moves to be substituted as Plaintiff pursuant to O.C.G.A. §9-11-25, which provides in relevant part:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representative of the deceased party and, together with the notice of the hearing, shall be served on the parties as provided in Code Section 9-11-5 and upon persons not parties in the manner provided in Code Section 9-11-4 for the service of a summons. Unless the motion for substitution is made not later than 180 days after the death is suggested upon the record by service of a statement of the fact of the death, the action shall be dismissed as to the deceased party.

O.C.G.A. §9-11-25(a)(1).

Here, the Court deems the Estate's motion to be substituted as the proper Plaintiff timely filed per §9-11-25.¹ However, insofar as this action is stayed by operation of law pursuant to 11 U.S.C. §362 *et seq.* due to Defendant Carter Brothers Security Services, LLC's currently pending Chapter 7 bankruptcy petition,² the Court lacks jurisdiction to consider the motion.³ Thus, the Court will reserve ruling on the matter pending resolution of the foregoing bankruptcy proceeding or pending further order of the Court lifting the stay in this action.

SO ORDERED this 27 day of November, 2018.



JUDGE JOHN J. GOGER
Metro Atlanta Business Case Division
Fulton County Superior Court
Atlanta Judicial Circuit

Served upon registered service contacts through eFileGA

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¹ Defendant served a Suggestion of Death of Plaintiff upon David L. Nix on May 14, 2018.

² See *In re: Carter Brothers Security Services, LLC*, United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, Case No. 18-61490-pwb.

³ Prior to the filing of Defendant's bankruptcy petition, this matter was also stayed pending arbitration proceedings previously ordered by this Court.