

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ORLEANS

AB 511 DOE,

Plaintiff,

v.

Index No.: 20-46602

LYNDONVILLE CENTRAL SCHOOL DISTRICT;
LYNDONVILLE ELEMENTARY SCHOOL.

Defendants.

ORDER

WHEREAS, Defendants Lyndonville Central School District and Lyndonville Elementary School (collectively referred to as “the District”), by and through their attorneys, Webster Szanyi LLP, filed a motion *in limine* seeking to add Terry Houseman to the verdict sheet for purposes of apportioning potential liability pursuant to Article 16 of the CPLR (see Doc. 184-197); and

WHEREAS, in support of that motion, the District submitted a Notice of Motion dated February 9, 2024 (Doc. 184), Affirmation of Ryan G. Smith dated February 9, 2024, with Exhibits A-K (Doc. 185-196), and Memorandum of Law dated February 9, 2024 (Doc. 197); and

WHEREAS, in opposition to the motion, Plaintiff AB 511 Doe filed an Affirmation of Leah Costanzo dated February 19, 2024, with Exhibits A-J (Doc. 243-253); and

WHEREAS, in further support of that motion, the District submitted a Reply Affirmation of Ryan G Smith dated February 22, 2024, with Exhibit A (Doc. 280-281), and a Reply Memorandum of Law (Doc. 282); and

WHEREAS, the Court having heard oral argument on the motion on

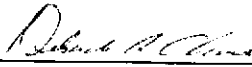
February 26, 2024, with Leah Costanzo appearing on behalf of Plaintiff, and Ryan G. Smith and Shannon B. Vandermeer appearing on behalf of the District; and

NOW, upon consideration of all the papers, pleadings, and materials submitted by the parties, and due deliberation having been had, and after such due deliberation, the Court having issued a written decision (Doc. 286) dated March 4, 2024, and entered on March 5, 2024, a copy of which is attached hereto as **Exhibit A**, it is hereby:

ORDERED, that the District's motion to add Houseman on the verdict sheet is **GRANTED** provided that evidence is presented at trial substantiating that Houseman is the alleged abuser.

Dated: March 13, 2024

GRANTED:



Hon. Deborah A. Chimes

ENTERED:

FILED: ORLEANS COUNTY CLERK 03/13/2024 10:33 AM

INDEX NO. 20-46602

FILED: ORLEANS COUNTY CLERK 03/11/2024 02:32 PM

RECEIVED INDEX NO. 20-46602

NYSCEF DOC. NO. 288

RECEIVED NYSCEF: 03/11/2024

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ORLEANS

AB 511 DOE,

Plaintiff,

v.

DECISION
Index No. 20-46602

LYNDONVILLE CENTRAL SCHOOL DISTRICT,
LYNDONVILLE ELEMENTARY SCHOOL,

Defendants.

Defendant, in a motion in limine, seeks to add the alleged deceased perpetrator (Houseman) to the verdict sheet pursuant to Article 16 of the CPLR. (NYSCEF 008, Point VIII). Defendant argues pursuant to the Estate Powers and Trust Law (EPTL) §11-3.2, the cause of action against Houseman survived his death. Therefore, defendant argues Houseman should be on the verdict sheet unless plaintiff establishes that after due diligence, he was unable to obtain jurisdiction over the decedent.

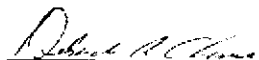
The plaintiff argues he cannot obtain jurisdiction because the decedent died over a decade before the commencement of this action, the decedent had no property or assets in New York at the time the action was commenced, his wife and son do not reside in New York and there was never an estate created. Plaintiff counters defendant's position that an administrator could have been appointed with the argument that pursuant to the definition of an "estate" under the EPTL and the Surrogates Court Procedure Act (SCPA), there is a requirement that for an estate to exist, there must be property to administer. Plaintiff also argues he engaged in due diligence in determining there is no property for the Surrogate Court to administer and to seek an

appointment of an administrator under the circumstances of this case runs afoul of the definition of “estate”.

Though the plaintiff is correct that an “estate” refers to the property a decedent had interest in or owned, (EPTL 1-2.6; SCPA 103), and that Surrogate’s Court has jurisdiction over the property of the decedent, that does not define the entire jurisdiction of the Surrogate Court. The Surrogate Court has “full and complete general jurisdiction in law and in equity to administer justice in *all matters relating to estates and the affairs of decedents*, (SCPA §201 (3), emphasis added). Hence, plaintiff could have petitioned Surrogate’s Court seeking an administrator be appointed to accept service and represent decedent in the action pending before this Court. Had such application been rejected by Surrogate’s Court, then arguably jurisdiction could not have been obtained. No such proof was submitted to the court and the motion to add Houseman on the verdict sheet is granted in so far as evidence is presented at trial to substantiate such a determination.

Counsel for defendant is to prepare an Order and submit it to the Court upon approval of plaintiff’s counsel. The Order shall be submitted within 30 days and shall reference and attach the Court’s Decision to the Order.

DATED: March 4, 2024
Buffalo, New York


Hon. Deborah A. Chimes, J.S.C.