

IN THE SUPREME COURT OF OHIO

SANDRA J. TAYLOR JARVIS, : Case No: 2013-0118
 :
 Plaintiff-Appellee, : On Appeal from the
 : Summit County Court of Appeals,
 v. : Ninth Appellate District
 :
 FIRST RESOLUTION INVESTMENT : Court of Appeals
 CORP., et al. : Case No. CA26042
 :
 Defendants-Appellants

Motion to Substitute Party

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Motion

The undersigned moves this Court to substitute Brian Taylor, Executor of the Estate of Sandra J. Taylor Jarvis, (“Brian”), as the Appellee in the case at bar for Appellee Sandra J. Taylor Jarvis (“Sandra”) for the reasons set forth in the Memorandum in Support of this Motion.

Respectfully submitted

s/James F. Burke, Jr.

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Memorandum in Support of the Motion

Facts

Appellee, Sandra Taylor Jarvis (“Sandra”) died on July 9, 2015. See the attached Certificate of Death, dated July 28, 2015.

On Sept. 25, 2015 the undersigned notified this Court that Sandra had passed.

Brian Taylor (“Brian”) was appointed as Sandra’s Executor on Oct. 26, 2015. See the attached Entry Appointing Fiduciary; Letters of Authority *In The Matter of the Estate of Sandra J. Taylor Jarvis, Deceased*, Summit Cty. Probate Court No. 2015 ES 02712.

Law and Argument

While the undersigned was unable to locate a Supreme Court rule addressing a motion to substitute parties, App. R. 29 states in pertinent part:

If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the court of appeals, the personal representative of the deceased party may be substituted as a party on motion filed by the representative, or by any party, with the clerk of the court of appeals.

Based on this rule, Brian, as Sandra’s personal representative and Executor should be substituted as a party to this action.

The Fair Debt Collection Practices Act (“FDCPA”) is a remedial statute. *Jensen v. Pressler & Pressler*, 791 F.3d 413, 418 (3rd Cir. 2015) (“As the FDCPA is an explicitly remedial statute, passed by Congress ‘to eliminate abusive debt collection practices by debt collectors,’ 15 U.S.C. §1692(e), ‘we construe its language broadly, so as to effect its purpose.’”); *Stratton v. Portfolio Recovery Assoc., LLC*, 770 F.3d 443, 448 (6th Cir. 2014) (“‘Because the FDCPA is a remedial statute, . . . we construe its language broadly, so as to effect its purpose.’”); *Vincent v. Money Store*, 736 F.3d 88, 98 (2nd Cir. 2013) (“‘Because the FDCPA is ‘remedial in nature, its terms must be construed in liberal fashion if the underlying Congressional purpose is to be effectuated.’”)

FDCPA claims survive the death of the claimant because those claims are remedial, not penal. *Finney v MIG Capital Mgmt.*, S.D. W.V. No. 2:13-02778, 2014 U.S. Dist. LEXIS 40685, *14 (Mar. 27, 2014) (“claims under the FDCPA are remedial rather than penal, and, accordingly, Count I survives [the claimant’s] death.”); *Jewett v. Bishop, White Marshall & Weibel, P.S.*, C.D. Cal. No. CV-12-10142 PSG (MRWx), 2013 U.S. Dist. LEXIS 181608, *8 (Feb. 25, 2013) (“because the Decedent’s FDCPA claim survives her death . . . the Court grants the motion for substitution.”). See also, *Cuoco v Palisades Collection, LLC*, D. N.J. No. 13-6592, 2014 U.S. Dist. LEXIS 31660, *11 (Mar. 11, 2014) (“claims under the FDCPA survive the death of a party.”); *Mason v. Asset Acceptance, LLC*, S.D. Ohio No. 1:06-CV-735, 2007 U.S. Dist. LEXIS 57162, *5 - *6 (July 9, 2007); *Bracken v. Harris & Zide, L.L.P.*, 219 F.R.D. 481, 485 (N.D. Cal. 2004) (Because “§1692e of the FDCPA is not a penal statute, the court finds it to be primarily remedial in nature. As such, a cause of action under §1692e survives the death of the wrongdoer.”)

Conclusion

Brian should be substituted as a party for Sandra because he’s the Executor of Sandra’s Estate and Sandra’s FDCPA claims survive her death.

Respectfully submitted,

s/James F. Burke, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this 30th day of October 2015, via regular U.S. mail to the following:

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Primary Reg. Dist. No. 7703

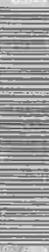
Ohio Department of Health
VITAL STATISTICS

State File No. 2015064334

Registrar's No. **17002015003542**

CERTIFICATE OF DEATH

1. Decedent's Legal Name (Include AKA's if any) First Middle LAST		2. Sex	3. Date of Death (Month/Day/Year)
SANDRA JANE JARVIS		FEMALE	JULY 09, 2015
4. Social Security Number	5a. Age (Years)	5b. Under 1 Year Months	5c. Under 1 day Hours
283-48-0137	66		
6. Date of Birth (Month/Day/Year)		7. Birthplace (City and State or Foreign Country)	
FEBRUARY 10, 1949		AKRON, OHIO	
8a. Residence State	8b. County	8c. City or Town	
OHIO	SUMMIT	CUYAHOGA FALLS	
8d. Street and Number		8e. Apt. No.	8f. Zipcode
1020 ROOSEVELT AVE.			44221
9. Ever in US Armed Forces?		10. Inside City Limits?	
NO		YES	
11. Marital Status at Time of Death		17. Surviving Spouse's Name (if wife, give name prior to first marriage)	
DIVORCED (AND NOT REMARRIED)			
12. Decedent's Education		13. Decedent's Hispanic Origin	14. Decedent's Race
HIGH SCHOOL GRADUATE OR GED		NO	WHITE
15. Father's Name		16. Mother's Name (prior to last marriage)	
DONALD TAYLOR		M JANE TSCHIEGG	
17a. Informant's Name		17b. Relationship to Decedent	17c. Mailing Address (Street and Number, City, State, Zip Code)
BRIAN TAYLOR		BROTHER	2263 CHIPPEWA ROAD
18a. Place of Death		18b. City or Town, State and Zip Code	
HOSPITAL - INPATIENT		ORRVILLE, OHIO 44667	
19a. Facility Name (if not institution, give street and number)		19b. City or Town, State and Zip Code	19c. County of Death
SUMMA WESTERN RESERVE HOSPITAL		CUYAHOGA FALLS, OH 44223	SUMMIT
20. License Number (if licensed)		21. Name and Complete Address of Funeral Facility	
008308		MCINTIRE, BRADHAM & SLEEK FUNERAL HOME	
22a. Manner of Disposition		22b. Date of Disposition	22c. Location (City/Town and State)
BURIAL		JULY 14, 2015	APPLE CREEK, OH
22d. Place of Disposition (Name of Cemetery, Crematory, or other place)		22e. Location (City/Town and State)	
APPLE CREEK CEMETERY		WOOSTER, OH 44691	
23. Registrar's Signature		24. Date Filed	
<i>Lawanda M. Williams</i>		July 28, 2015	
25a. Name of Person Issuing Disposition Permit		25b. District No.	25c. Date Disposition Permit Issued
BRADHAM CHRISTOPHER		8500	JULY 13, 2015
26a. Certifier (Check only one)		26b. License Number	
<input checked="" type="checkbox"/> Certifying Physician		34 008109	
<input type="checkbox"/> Coroner or Medical Examiner			
27a. Time of Death		27b. Date Pronounced Dead	27c. Was the Medical Examiner or Coroner Contacted?
20:50		July 09, 2015	YES
28a. Signature and Title of Certifier		28b. Date Signed	
<i>[Signature]</i>		July 22, 2015	
29. Name (Last, First, Middle) and Address of Person who Completed Cause of Death			
POLLOCK, BRIAN ALAN, 1900 23RD STREET CUYAHOGA FALLS, OH 44223			
30. Part 1. Enter the disease, injury, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or head trauma. List only one cause on each line. Type or print in permanent blue or black ink.			Approximate Interval Between Onset and Death
Immediate Cause (If an external cause, specify in Part 2)			Days
Acute Respiratory Failure			Days
Intermediate Cause (If an external cause, specify in Part 2)			Days
Pneumonia			Days
Error Underlying Cause (Disease or injury that initiated events resulting in death)			
CHF, DMII			
31. Part 2. Other significant conditions contributing to death, but not resulting in the underlying cause (List on separate lines)			
32a. Was An Autopsy Performed?		32b. Were Autopsy Findings Available Prior To Completion Of Cause of Death?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> Not Applicable	
33. Manner of Death		34. Cause of Death	
<input checked="" type="checkbox"/> Natural		<input type="checkbox"/> Homicide	
<input type="checkbox"/> Accidental		<input type="checkbox"/> Pending Investigation	
<input type="checkbox"/> Suicide		<input type="checkbox"/> Could not be determined	
35a. Date of Injury (Month/Day/Year)		35b. Time of Injury	
35c. Place of Injury (e.g., Decedent's home, construction site, restaurant, wooded area)		35d. Injury at Work?	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
36. Location of Injury (Street and Number or Rural Route Number, City or Town, State)			
37. Describe How Injury Occurred		38. If Transportation Injury, Specify	
		<input type="checkbox"/> Driver/Operator <input type="checkbox"/> Pedestrian <input type="checkbox"/> Passenger <input type="checkbox"/> Other	



I HEREBY CERTIFY THIS DOCUMENT IS AN EXACT COPY OF THE RECORD ON FILE WITH THE OHIO DEPARTMENT OF HEALTH.

JL 28 15 012508

Lawanda M. Williams
TAVIA M. WILSON, REGISTRAR
OFFICE OF VITAL STATISTICS
WITNESS MY SIGNATURE & SEAL

IN THE MATTER OF
THE ESTATE OF

CASE NUMBER 2015 ES 02712

Sandra J. Taylor Jarvis
Deceased

ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY
(For Executors and all Administrators)

Name and Title of Fiduciary: **Brian Taylor, Executor**

On hearing the Application of the above fiduciary for authority to administer decedent's estate, in open Court, the Court finds that:

1. Decedent died on: **07/09/2015;**

Domiciled in: **1020 Roosevelt Avenue, Cuyahoga Falls, OH 44221**

Choose One: **Testate** **Intestate**

2. Choose One: **Bond is dispensed with by the Will.**

Bond is dispensed with by Law.

Applicant has executed and filed an appropriate bond, which is approved by the Court.

3. **Applicant is a suitable and competent person to execute the trust.**

The Court, therefore, appoints applicant as such fiduciary, with the power conferred by law, to fully administer decedent's estate. This entry of appointment constitutes the fiduciary's Letters of Authority.

PROBATE COURT
COUNTY OF SUMMIT, OH.
FILED

OCT 26 2015

IT IS SO ORDERED.



Date: **10/26/2015**

JUDGE ELINORE MARSH STORMER

JUDGE ELINORE MARSH STORMER

CERTIFICATION OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the Appointment and Letters of Authority of the named fiduciary who is qualified and acting in such capacity.

Elinore Marsh Stormer, Probate Judge and Ex-Officio Clerk

(Seal)

Deputy Clerk

Date