

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HORNBECK OFFSHORE
OPERATORS, LLC et al

*

CIVIL NO. 19-00270
c/w 19-12209

v.

*

SECTION: T

CARLOS KNOX

*

HON. GREG GUIDRY

ORDER

Before the Court is Plaintiffs, Hornbeck Offshore Operators, L.L.C., Hornbeck Offshore Services, L.L.C. (together “Hornbeck”), and Encore Food Services, LLC’s (“Encore”) *Motion to Dismiss* Defendant Carlos Knox’s claims in *Knox v. Hornbeck Offshore Services, LLC*, Civil Action No. 19-12209.¹ The Defendant filed a response.² For the following reasons, the motion is **GRANTED IN PART** and **DENIED IN PART**.

BACKGROUND

This is a consolidated matter involving Hornbeck Offshore Operators, L.L.C., Hornbeck Offshore Services, L.L.C. (together “Hornbeck”), Encore Food Services (“Encore”), and Carlos Knox, a former employee of Encore.³ In August of 2018, Mr. Knox allegedly “slipped on a set of outside stairs” while aboard the HOS BAYOU, a ship owned and operated by Hornbeck.⁴ Two months later, Mr. Knox filed a complaint against Hornbeck and Encore in Texas state court.⁵ In January of 2019, after receiving a demand for “payment of maintenance and cure” from Mr. Knox,

¹ R. Doc. 78.

² R. Doc. 85.

³ R. Doc. 2 at 2-3.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

Hornbeck and Encore filed the instant suit seeking a “Declaratory Judgment” against Mr. Knox.⁶ Five months later, Mr. Knox filed a complaint against Hornbeck and Encore in the Southern District of Texas, asserting negligence and unseaworthiness claims.⁷ Subsequently, the parties filed a Joint Motion to Consolidate the two cases and the Court granted it.⁸ Unfortunately, on August 29, 2021, the Court was notified that Mr. Knox had passed away.⁹

Consequently, Civil Action No. 19-12209 was left without a plaintiff. Now, Hornbeck and Encore have filed a motion to dismiss Mr. Knox’s claims on grounds that he “is deceased [and] no substitute exists” to prosecute his claims in his stead.¹⁰ Specifically, Hornbeck and Encore argue that no “party or representative” made a timely motion to substitute the deceased party within the 90-day period provided for in Federal Rule of Civil Procedure 25(a).¹¹ Hornbeck and Encore note that the Court granted the Defendant an additional 30 days to file a motion for substitution, but none was filed.¹² Instead, a motion for substitution was entered after 120 days had passed, but while a second extension request remained pending.¹³ In response, Knox’s former lawyer and the representative of his estate both assert that, because a second extension was “timely requested,” the motion for substitution that fell outside the 120-day window was still timely.¹⁴ Further, the two argue the second extension is warranted due to “the lingering effects of a devastating hurricane.”¹⁵

⁶ *Id.* 3-5.

⁷ *Knox v. Hornbeck Offshore Services, LLC* 2:19-cv-12209-GGG-DPC.

⁸ R. Docs. 31, 33.

⁹ R. Doc. 67.

¹⁰ R. Doc. 78-1 at 1.

¹¹ *Id.*

¹² *See Id.*

¹³ R. Doc. 75.

¹⁴ *See* R. Docs. 85 at 2 and 93.

¹⁵ R. Doc. 85 at 3. The Court notes that Hurricane Ida caused serious disruptions across southeast Louisiana for many weeks after its landfall in August of 2021. <https://www.rmets.org/metmatters/impacts-hurricane-ida>.

LAW & ANALYSIS

Federal Rule of Civil Procedure 25(a) states that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party” via a motion for substitution filed “by any party” or a “representative” of the decedent. However, “[i]f the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.”¹⁶ A party may request an “extension of time to comply with Rule 25,” but such matters are at the discretion of the district court.¹⁷

In the instant matter, it is uncontested that Mr. Knox’s proposed substitute, the mother of his child and “Provisional Adminatrix” of his estate, filed a motion for substitution outside of the first 30-day extension granted by the Court.¹⁸ The proposed party was served with a Notice of Death on June 30, 2021.¹⁹ On September 27, 2021, Knox’s former lawyer requested a 30-day extension.²⁰ Therefore, the time period to file a motion for substitution as required by Rule 25 ended on October 29, 2021. Knox’s former lawyer filed a second extension that same day and a motion to substitute seventeen days later.²¹ The second extension was not granted. Thus, the motion to substitute was untimely under Rule 25. Accordingly, *Knox v. Hornbeck Offshore Operators, LLC et al*, 2:19-cv-12209-GGG-DPC is **DISMISSED WITHOUT PREJUDICE**.

¹⁶ Fed. R. Civ. Pro. 25.

¹⁷ *Ray v. Koester*, 85 F. App’x 983, 985 (5th Cir. 2004).

¹⁸ R. Docs. 83 at 1-2, 90 at 1.

¹⁹ R. Doc. 70.

²⁰ R. Doc. 74.

²¹ R. Doc. 79, 83.

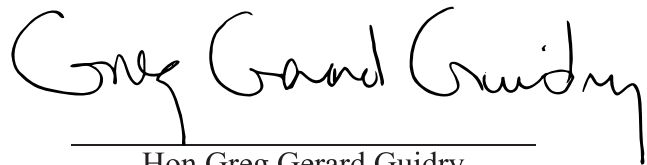
However, the impact of Mr. Knox's absence is not limited to Civil Action No. 19-12209. Rule 25's language is clear: if a timely motion for substitution is not made by any party, any "action by *or against* the decedent must be dismissed."²² As no timely motion of substitution was made in either case before the Court, both matters must be dismissed. Therefore, *Hornbeck Offshore Operators, LLC et al v. Knox*, 2:19-cv-00270-GGG-DPC is also **DISMISSED WITHOUT PREJUDICE**.

CONCLUSION

IT IS ORDERED that Civil Action No. 19-12209 is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Civil Action No. 19-00270 is also **DISMISSED WITHOUT PREJUDICE**.

New Orleans, Louisiana this 2nd day of February, 2022.

A handwritten signature in black ink that reads "Greg Gerard Guidry". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Hon. Greg Gerard Guidry
United States District Judge

²² Fed. R. Civ. Pro. 25 (emphasis added).