

**IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

CHRISTIAN LUIS LOPEZ and MICHAEL)	
ANDRE SALINAS, as the surviving)	
children of JOHANNA LOPEZ and)	
CHRISTIAN LOPEZ, as the administrator)	CIVIL ACTION FILE NO.
of the estate of JOHANNA LOPEZ,)	
)	22-C-01779-S4
Plaintiffs,)	
)	
v.)	
)	
LAS TERRAZAS CUBAN BAKERY LLC,)	
)	
<u>Defendant.</u>	

LAS TERRAZAS CUBAN BAKERY LLC’S MOTION TO DISMISS

Las Terrazas Cuban Bakery LLC (“Defendant” or “Las Terrazas”), by and through its undersigned counsel, and without waiving any jurisdictional or venue defenses, respectfully requests that this Court dismiss any estate claims contained within Plaintiffs’ Complaint. In support of this Motion, Defendant shows this Court as follows:

INTRODUCTION

Plaintiffs, the surviving sons of Johanna Lopez, have asserted a wrongful death claim in connection with their mother’s death, as well as an estate claim for their mother’s alleged pain and suffering on behalf of their mother’s estate. Plaintiffs admit that neither of them is yet qualified or has been appointed as the administrator or personal representative of their mother’s estate. *See* Compl. at n.1. Georgia law is clear that only an estate administrator may bring a claim on the estate’s behalf. As such, this Court should dismiss the estate claim for lack of standing.

STATEMENT OF RELEVANT FACTS

Following the death of Johanna Lopez (“Johanna”), her two sons, Christian Luis Lopez (“Lopez”) and Michael Andre Salinas (“Salinas”) (collectively, “Plaintiffs”), filed a complaint

alleging both a wrongful death action and an estate action against Las Terrazas. *See* Compl. In their Complaint, Plaintiffs brought a dram shop action under O.C.G.A. § 51-1-40 alleging that Las Terrazas is liable for Johanna’s death. Notably, Lopez also sued on behalf of Johanna’s estate, claiming to be the “administrator of the estate of Johanna Lopez.” Compl., at p. 2. However, Plaintiffs note that “[a]t the time of this filing, Mr. Lopez has not yet been officially appointed as the Administrator of Johanna Lopez’s Estate.” *Id.* at n.1.

ARGUMENT AND CITATION OF AUTHORITY

Georgia law is clear that an individual’s claim for the wrongful death of their parent is “distinct” from the decedent’s “estate claim for the decedent’s pain and suffering.” *Grant v. Georgia Pac. Corp.*, 239 Ga. App. 748, 751 (1999). Georgia law also strictly provides that only the personal representative or estate administrator has standing to file the estate claim. *See id.* Further, “[t]he duties and powers of the personal representative commence upon qualification” by a probate court. O.C.G.A. § 53-7-1. Even as recently as earlier this month, the Georgia Court of Appeals upheld this premise. *See Somani v. Cannon*, No. A22A0536, 2022 WL 1024692, at *3 (Ga. Ct. App. Apr. 6, 2022) (“only the qualification of a permanent administrator constitutes representation upon the estate”).

In this case, it is undisputed that Lopez has not yet been qualified as the administrator of Johanna’s estate. In fact, Plaintiffs specifically aver that Lopez has “not yet been officially appointed as the Administrator of Johanna Lopez’s Estate.” While Lopez represents that there will not be any problems in his qualification, Georgia law is clear that the duties of the personal estate representative, including filing an estate claim, may only begin once that representative is qualified. As such, this Court should dismiss the estate claim from this case, if and until Lopez is actually qualified in probate court as the administrator of Johanna’s estate. Allowing this estate

claim to proceed with an unqualified individual would be directly contrary to black-letter law.

CONCLUSION

WHEREFORE, Las Terrazas requests that this Court dismiss Plaintiffs' estate claim for lack of standing.

Respectfully submitted this 27th day of April, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has, either by e-filing, electronic mail and/or depositing same in the United States Mail with sufficient postage attached thereto to assure delivery, been furnished to all counsel of record as follows:

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This 27th day of April, 2022.

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