

<b>Lichtenstein v Cohen</b>
2026 NY Slip Op 30660(U)
February 20, 2026
Supreme Court, New York County
Docket Number: Index No. 153355/2025
Judge: James G. Clynes
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JAMES G. CLYNES PART 39M

Justice

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BRIAN LICHTENSTEIN

Plaintiff,

- v -

MARGERY COHEN,

Defendant.

INDEX NO. 153355/2025

MOTION DATE 05/14/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for DISMISSAL

Upon the foregoing documents, it is ordered that defendant's motion pursuant to CPLR 3211 for an Order dismissing the plaintiff's Complaint and awarding costs, attorneys' fees and other expenses to defendant and plaintiff's cross-motion pursuant to CPLR 3025 (b) for an Order granting plaintiff leave to amend to add as a party plaintiff Brian Lichtenstein in his individual capacity and to amend the pleadings consistent with the foregoing to add alternative relief in addition to the proper relief sought by plaintiff to amend the title and caption of the instant action in accordance with the foregoing relief in the form set forth in the affirmation herewith and deeming Plaintiff's amended complaint filed and served upon entry of the decision and order resolving this motion, or alternatively, for leave to serve said amended complaint upon Defendant is decided as follows.

Plaintiff seeks damages in the amount of \$1,516,400.76 plus statutory pre-judgment interest for unjust enrichment, breach of fiduciary duties, an accounting of all of Herb's moneys and assets, including the Converted Funds and Converted Items during the period of time that she was authorized to act on Herb's behalf or acted on his behalf without his authorization, and conversion plus the value of the converted items to be determined at trial.

Defendant contends that action should be dismissed on the grounds that Plaintiff Brian Lichtenstein as Executor of the Estate of Herbert Lichtenstein lacks standing to bring any claims concerning the Morgan Stanley Account, which is not part of the Estate; that plaintiff's

claims are barred by the statute of limitations, that the unjust enrichment claim is unsustainable because it is duplicative of the other claims; and that the accounting claim likewise fails to meet the requirements of such a claim.

In opposition to the motion, plaintiff contends that defendant failed to meet her initial burden of establishing that any of plaintiff's claims are time barred, and that even if defendant had established that the claims were time barred, the applicable statute of limitations on plaintiff's claims are tolled. Plaintiff also cross-moves to amend the caption, complaint and title adding Brian Lichtenstein as an individual.

### AMENDING CAPTION

Pursuant to CPLR 3025(b), "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." Leave to amend pleadings is generally freely granted, absent prejudice and surprise resulting from the delay. *See Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 (1983); *Antwerpse Diamantbank N.V. v Nissel*, 27 AD3d 207, 208 (1st Dept 2006). To find prejudice, there must be some indication that the defendant has been hindered in the preparation of his case or prevented from taking some measure in support of his position. *See Abdelnabi v NYC Transit Authority*, 273 AD2d 114, 115 (1st Dept 2000).

Here, plaintiff's motion to amend the caption, complaint and title by adding Brian Lichtenstein as an individual plaintiff will not result in prejudice or surprise resulting from the delay.

Therefore, plaintiff's motion to amend the caption, complaint and title adding Brian Lichtenstein as an individual plaintiff is granted.

### DEFENDANT'S MOTION TO DISMISS

On a motion to dismiss pursuant to CPLR § 3211(a)(5), the defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. *See Bank of New York Mellon v Bissessar*, 172 AD3d 983, 984 (2d Dept 2019); *Cataldo v Herrmann*, 154 AD3d 641, 642 (2d Dept 2017); *Baptiste v. Harding-Marin*, 88 A.D.3d 752, 753, 930 N.Y.S2d 670 (2d Dept 2011). The burden then shifts to the plaintiff to raise an issue of fact as to whether the statute of limitations was tolled or otherwise inapplicable. *See Wilson v Southampton Urgent Med. Care, P.C.*, 112 AD3d 499, 499-501 (1st Dept 2013); *Bennie v Hudson Val. Ctr.*, 115 AD3d 899, 900 (2d Dept 2014).

Here, defendant’s submission does not establish prima facie entitlement to dismiss the complaint pursuant to CPLR 3211. Defendant in her submission did not provide an accrual date for which plaintiff’s action is time barred. Moreover, the Court finds defendant’s contention that the unjust enrichment and accounting claim are duplicative and deficient is unavailing.

Defendant’s motion is denied. Defendant has failed to make a prima facie showing of entitlement to dismiss plaintiff’s complaint; accordingly, it is hereby

ORDERED that defendant’s motion to dismiss plaintiff’s complaint is denied; and it is further

ORDERED that the parties are instructed to appear for a preliminary conference on March 4, 2026; and it is further

ORDERED that the cross-motion by plaintiff for leave to amend is granted; and it is further

ORDERED that the amended caption, complaint and title, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon the defendant; and it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT STATE OF NEW YORK  
COUNTY OF NEW YORK

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BRIAN LICHTENSTEIN, individually and as the  
Executor of the Estate of Herbert Lichtenstein,

Index No.: 153355/2025

Plaintiff,

-v-

MARGERY COHEN,

Defendant.

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And it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk’s Office, who are directed to mark the court’s records to reflect the amended pleadings; and it is further

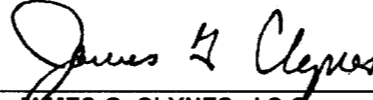
ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse*

*and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).

This constitutes the Decision and Order of the Court.

2/20/2026

DATE



JAMES G. CLYNES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE