

Gardellis v 101 Lafayette LLC

2025 NY Slip Op 30859(U)

February 26, 2025

Supreme Court, New York County

Docket Number: Index No. 651361/2022

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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GREGORY GARDELLIS,

Plaintiff,

- v -

100 LAFAYETTE LLC, CINDY LIU, LANA CHOY, LANA CHOY, DAVID YOUNG, YOUNG S. WOO, MARGARET LEE, CHAO MIN SU, HEDDY LI CHIN, ZU HUAN GONG, RUSSELL LEE, AH MOOI CHAN, WILDRED G. ROMANO

Defendants.

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INDEX NO. 651361/2022
MOTION DATE 01/13/2025
MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 105, 106, 107, 108, 109

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

APPEARANCES :

Mark L. Cortegiano Attorney At Law, Middle Village, New York (Mark L. Cortegiano, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action arising from a dispute between members of 100 Lafayette LLC, an entity which was created for the purpose of purchasing the real property located at 100 Lafayette Street, New York, New York, Jill Gardellis, a Personal Representative of the estate of plaintiff GREGORY GARDELLIS, moves, unopposed, by notice of motion (sequence number 008), pursuant to CPLR §§ 1015

(a)¹ and 1021,² to be substituted as the party plaintiff due to GREGORY GARDELLIS's untimely passing.

BACKGROUND

On April 17, 2023, Gregory Gardellis passed away, and on May 1, 2023, the court (N. Bannon, J.S.C.) stayed the proceedings pending the appointment of a representative of Gregory Gardellis's estate (see NYSCEF Doc. No. 96, Order Granting Stay, dated May 1, 2023). Four months later, the Surrogate's court of the State of New York, Westchester County, appointed Jill Gardellis, Gregory Gardellis's wife, as the Personal Representative and Administrator of his estate (see NYSCEF Doc. No. 109, Letters of Administration). Now, Jill

¹ CPLR § 1015 (a) provides, "If a party dies and the claim for or against him is not thereby extinguished, the court shall order substitution of the proper parties."

² CPLR § 1021 provides, "A motion for substitution may be made by the successors or representatives of a party or by any party. If a person who should be substituted does not appear voluntarily he may be made a party defendant. If the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made, however, such dismissal shall not be on the merits unless the court shall so indicate. If the event requiring substitution occurs after final judgment, substitution may be made in either the court from or to which an appeal could be or is taken, or the court of original instance, and if substitution is not made within four months after the event requiring substitution, the court to which the appeal is or could be taken may dismiss the appeal, impose conditions or prevent it from being taken. Whether or not it occurs before or after final judgment, if the event requiring substitution is the death of a party, and timely substitution has not been made, the court, before proceeding further, shall, on such notice as it may in its discretion direct, order the persons interested in the decedent's estate to show cause why the action or appeal should not be dismissed."

Gardellis, as Personal Representative and Administrator of Gregory Gardellis's estate, moves, by notice of motion (sequence no. 008), pursuant to CPLR §§ 1015 (a) and 1021, to be substituted as the party plaintiff.

Defendants 100 LAFAYETTE LLC, CINDY LIU, LANA CHOY, LANA CHOY, DAVID YOUNG, YOUNG S. WOO, MARGARET LEE, CHAO MIN SU, HEDDY LI CHIN, ZU HUAN GONG, RUSSELL LEE, AH MOOI CHAN, and WILDRED G. ROMANO, do not appear, nor do they submit opposition.

ANALYSIS

"A party's death divests a court of jurisdiction to conduct proceedings in an action until a proper substitution has been made pursuant to CPLR § 1015 (a)" (Noriega v Presbyterian Hosp. in City of New York, 305 AD2d 220, 221 [1st Dept 2003] citing Silvagnoli v Consol. Edison Emps. Mut. Aid Soc., 112 AD2d 819 [1st Dept 1985])). Generally, the only inquiry for purposes of a motion for substitution is whether the party sought to be substituted for a deceased party is duly appointed to handle the decedent's estate (see Tag 380, LLC v Estate of Ronson, 69 AD3d 471, 474 [1st Dept 2010])). Further, it is well settled that, where an administrator or executor is appointed as representative of the estate of a decedent who was a party to a pending action, substitution of the party and amendment of the

caption is appropriate (see Tag 380, LLC, 69 AD3d at 474; see also Squillante v Bryant, 71 Misc.3d 1206(A) [Civ Ct, Bronx Cnty 2021])).

Here, Jill Gardellis demonstrates that Gregory Gardellis passed away, and that she was duly appointed as administrator of his estate (see NYSCEF Doc. No. 109 Letters of Administration; see also NYSCEF Doc. No. 108, Affidavit of Jill Gardellis in Support of Motion). Therefore, the motion (seq. no. 008) is granted, without opposition, and the stay is vacated.

Accordingly, it is hereby

ORDERED that Jill Gardellis, the duly appointed Personal Representative and Administrator of the Estate of Gregory Gardellis, be and is hereby substituted as party plaintiff in place and stead of Gregory Gardellis, in the above captioned proceeding; it is further

ORDERED that the caption of the proceeding is amended to read as follows:

JILL GARDELLIS, as Administrator of the Estate of GREGORY GARDELLIS, Deceased,

Plaintiff,

V

100 LAFAYETTE LLC, CINDY LIU, LANA CHOY, LANA CHOY, DAVID YOUNG, YOUNG S. WOO, MARGARET LEE, CHAO MIN SU, HEDDY LI CHIN, ZU HUAN GONG, RUSSELL LEE, AH MOOI CHAN, WILDRED G. ROMANO,

Defendants.

and it is further,

ORDERED that, plaintiff JILL GARDELLIS shall serve a copy of this decision and order with notice of entry upon defendants; it is further

ORDERED that, within 15 days of the entry of this decision and order, plaintiff JILL GARDELLIS shall serve a copy of this decision and order upon the County Clerk and the Clerk of the General Clerk's office, and the County Clerk and all appropriate court support offices shall thereupon amend the court records to reflect this substitution; it is further

ORDERED that the stay of the proceedings, issued on May 1, 2023, is vacated.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

2/26/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE