

**Chong Byun v Lee**

2025 NY Slip Op 31925(U)

May 20, 2025

Supreme Court, New York County

Docket Number: Index No. 652990/2022

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*

-----X

CHONG BYUN, 100 BROAD STREET LLC,

Plaintiff,

- v -

STEVE LEE, SEAN S. KWAK, KIM, CHO, & LIM, LLC,  
JOHN DOES, JANE DOES, ABC LLC, XYZ  
CORPORATION

Defendant.

-----X

INDEX NO. 652990/2022

MOTION DATE 10/03/2022,  
10/03/2022  
04/04/2025

MOTION SEQ. NO. 002 003 005

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 53, 54, 55, 66, 72

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 003) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 59, 60, 61, 62, 63, 64, 65, 67, 70, 73

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 81, 82

were read on this motion to/for DISCONTINUE

**APPEARANCES:**

Song Law Firm, Fort Lee, New Jersey (Howard Zane Myerowitz, Esq., of counsel) for plaintiffs.

HON. EMILY MORALES-MINERVA:

In this breach of contract action, non-party John Byun, Administrator of the Estate of plaintiff CHONG BYUN, who was the sole owner and member of plaintiff 100 BROAD STREET LLC, moves, unopposed, by notice of motion (sequence number 005), for orders (1) substituting non-party John Byun as the party plaintiff,

pursuant to CPLR §§ 1015 (a)<sup>1</sup> and 1021<sup>2</sup> due to CHONG BYUN's untimely passing; (2) amending the caption to reflect the substitution; and (3) discontinuing the action, with prejudice.

On February 26, 2023, plaintiff CHONG BYUN (Chong Byun) passed away, and on March 28, 2023, the court (S. Adams, J.S.C.) stayed the proceedings pending the appointment of a representative of Chong Byun's estate (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 73, Staying Order, dated March 28, 2023). On July 15, 2023, John Byun, the son of Chong Byun, applied to the Bergen County Surrogate for summary administration of Chong Byun's estate pursuant to Section 3B:10-4 of the New Jersey Statutes Annotated (NJSA). NJSA § 3B:10-4 provides,

"where the total value of the real and personal assets of the estate of an intestate will not exceed \$20,000 [] and one of his heirs shall have obtained the consent in writing of the remaining heirs, if any, and shall have executed before the Surrogate of the county where the intestate resided at his death [] the affidavit herein provided for, shall be entitled to receive the assets of the intestate of the benefit of all the heirs and creditors without administration or entering into a bond. Upon executing the affidavit, and upon filing it and the consent, he shall have all the rights, powers and duties of an administrator duly appointed for the estate and may be sued and required to account as if he had been appointed administrator by the Surrogate or the Superior Court"

<sup>1</sup> 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."

<sup>2</sup> CPLR § 1021 provides, as pertinent here, "A motion for substitution may be made by the successors or representatives of a party or by any party."

(NJSA § 3B:10-4) (emphasis added). On July 17, 2023, the Bergen County Surrogate approved the filing (see NYSCEF Doc. No. 83, Certified Affidavit of Next-of-Kin John Byun, signed by Michael R. Dressler, Surrogate, and Maureen Quinn, Senior Probate Clerk, dated July 17, 2023).

Now, John Byun, whereby having all rights, powers, and duties of an administrator duly appointed for Chong Byun's estate, moves, unopposed, by notice of motion (sequence no. 005), for orders (1) substituting himself as the party plaintiff pursuant to CPLR §§ 1015 (a) and 1021; and (2) upon substitution, discontinuing the action, with prejudice.

"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).

Here, John Byun demonstrates that Chong Byun passed away, and that, pursuant to NJSA § 3B:10-4, he has all the rights, powers, and duties of an administrator duly appointed for Chong Byun's estate, including over plaintiff 100 BROAD STREET LLC, for which Chong Byun was the sole owner and member (see NYSCEF Doc. No. 83, and Doc. No. 81, Affidavit of John Byun). Further, John Byun has indicated that he does not wish to pursue the instant action on behalf of Chong Byun's estate, and requests that this Court dismiss the instant action, with prejudice, against all defendants (see NYSCEF Doc. No. 81, Affidavit of John Byun, dated March 13, 2025). Therefore, the motion (seq. no. 005) is granted in its entirety.

Accordingly, it is hereby

ORDERED that the stay of the proceedings, issued on March 28, 2023, is vacated; it is further

ORDERED that John Byun, Administrator of the Estate of CHONG BYUN, be and is hereby substituted as party plaintiff in place and stead of CHONG BYUN, in the above captioned proceeding; it is further

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

JOHN BYUN, as Administrator of the Estate of CHONG BYUN,  
Deceased, and 100 BROAD STREET LLC,

Plaintiffs,

-v-

STEVE LEE, SEAN S. KWAK, KIM, CHO, & LIM, LLC, JOHN DOES,  
JANE DOES, ABC LLC, XYZ CORPORATION,

Defendants;

it is further,

ORDERED that, plaintiff JOHN BYUN 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 JOHN BYUN 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 caption and the  
court records to reflect the aforementioned substitution; it is  
further

ORDERED that, upon the Clerks' amendment of the caption to  
reflect JOHN BYUN's substitution as party plaintiff, the Clerk  
of Court shall mark the instant action as discontinued, with  
prejudice; and it is further

ORDERED that motion sequence numbers 002 and 003 are  
dismissed, as moot.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

5/20/2025  
DATE

  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: