

Schleissner v Dawes

2025 NY Slip Op 32749(U)

July 25, 2025

Supreme Court, New York County

Docket Number: Index No. 151709/2017

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

PETER SCHLEISSNER,

Plaintiff,

- v -

HUGH DAWES, REX DEVELOPMENT INC, HOLLIS
CHRISTOPHER, 325 W. 45TH OWNERS CORP

Defendant.

-----X

INDEX NO. 151709/2017

MOTION DATE 07/15/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 105, 106, 107, 108, 109

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

APPEARANCES:

Grimble & LoGuidice, LLP, New York, New York (Robert Grimble Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

In this action, non-party Margaret Montgomery, Executor of the estate of plaintiff PETER SCHLEISSNER, moves, unopposed, by notice of motion (sequence number 002), pursuant to CPLR §§ 1015 (a)¹ and 1021,² to be substituted as the party plaintiff due to PETER SCHLEISSNER's untimely passing.

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

BACKGROUND

On January 02, 2025, plaintiff PETER SCHLEISSNER passed away (see NYSCEF Doc. No. 108, Death Certificate). Five months later, the Surrogate's Court of the State of New York, New York County, appointed Margaret Montgomery as the Executor and Administrator of PETER SCHLEISSNER's estate (see NYSCEF Doc. No. 109, Letters of Administration, dated June 09, 2025). Now non-party Margaret Montgomery, as Executor and Administrator of PETER SCHLEISSNER's estate, moves, by notice of motion (sequence no. 002), pursuant to CPLR §§ 1015 (a) and 1021, to be substituted as the party plaintiff.

Defendants HUGH DAWES, REX DEVELOPMENT INC., HOLLIS CHRISTOPHER, and 325 W. 45TH OWNERS CORP., do not appear, nor do they submit opposition.

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."

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 Misc3d 1206(A) [Civ Ct, Bronx Cnty 2021]).

Here, Margaret Montgomery demonstrates that plaintiff PETER SCHLEISSNER passed away, and that she was duly appointed as executor and administrator of his estate (see NYSCEF Doc. No. 109 Letters of Administration; see also NYSCEF Doc. No. 107, Affirmation of Margaret Montgomery in Support of Motion).

Therefore, the motion (seq. no. 002) is granted, without opposition.

Accordingly, it is hereby

ORDERED that Margaret Montgomery, the duly appointed Executor and Administrator of PETER SCHLEISSNER's estate, be and is hereby substituted as party plaintiff in place and stead of PETER SCHLEISSNER, in the above captioned proceeding; it is further

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

MARGARET MONTGOMERY, as Executor of the Estate of PETER SCHLEISSNER, Deceased,

Plaintiff,

v

HUGH DAWES, REX DEVELOPMENT INC., HOLLIS CHRISTOPHER, and 325 W. 45TH OWNERS CORP.,

Defendants.

and it is further,

ORDERED that, plaintiff MARGARET MONTGOMERY 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 MARGARET MONTGOMERY shall serve a copy of this decision and order upon the County Clerk and the Clerk of the General Clerk's office, who are directed to, in accordance

with this decision and order, amend the caption accordingly; 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 County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); it is further

ORDERED that the parties shall appear for a virtual status conference on October 6, 2025 at 12:30 P.M. in Part 42M; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/25/2025
DATE


EMILY MORALES-MINERVA, 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