

Chow v Hip Wah Hing Realty Corp.
2021 NY Slip Op 32355(U)
November 19, 2021
Supreme Court, New York County
Docket Number: Index No. 152210/2017
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

LINDA CHOW,

Plaintiff,

- v -

HIP WAH HING REALTY CORP., QINGHUA ZHOU,

Defendant.

-----X

INDEX NO. 152210/2017

MOTION DATE 10/06/2021

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120

were read on this motion to/for AMEND CAPTION/PLEADINGS.

By order dated October 1, 2021, the Court directed the parties to seek substitution by motion, advising the parties that substitution by stipulation was unavailable. Plaintiff timely filed a motion seeking same. However, thereafter, the Court issued a demand for resumption of prosecution under the misapprehension that a substitution motion had not been timely filed.

Generally, personal injury actions survive a party's death, that is, the claims do not abate upon death (*see generally* EPTL § 11-3.2). Where a plaintiff dies after bringing a personal injury suit, substitution of the plaintiff is appropriate (CPLR § 1015, *supra*), and the matter is automatically stayed pending substitution (*see Gonzales v. Ford Motor Co.*, 295 AD2d 474 [2d Dept 2002]).

Upon appointment of a representative for the decedent, the Court shall order substitution of proper parties pursuant to CPLR §§ 1015 and 1021.

Here, the proposed-substituted-plaintiff has been named as the fiduciary of plaintiff's estate and there is no prejudice to defendants in granting such substitution. Furthermore, defendants consented to such relief via a stipulation. Finally, plaintiff has properly provided an amended caption naming the proposed-substituted-plaintiff.

Accordingly, it is

ORDERED that the Court's demand for resumption of prosecution (NYSCEF Doc. No. 121) is recalled and vacated; and it is further

ORDERED that motion sequence 005, seeking substitution, is granted in its entirety without opposition; and it is further

ORDERED that Margaret Chow-Menzer, as executor of the estate of Linda Chow, deceased, be substituted as plaintiff in the above-entitled action in the place and stead of the plaintiff, Linda Chow, without prejudice to any proceedings heretofore had herein; and it is further

ORDERED that the caption shall be amended to reflect the substitution and shall read as follows:

MARGARET CHOW-MENZER, as Fiduciary
of the Estate of LINDA CHOW, Deceased,
Plaintiff

-against-

HIP WAH HING REALTY CORP. and
QINCHUA ZHOU d/b/a GIFT SHOP,
Defendants

; and it is further

ORDERED that all papers, pleadings, and proceedings in the above-entitled action be amended by substituting the name of Margaret Chow-Menzer, as executor of the estate of Linda Chow, deceased, as plaintiff in the place and stead of said decedent, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court 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 at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that all parties shall serve courtesy copies of any outstanding demands within 14 days and all parties shall respond thereto within 20 days of receipt of courtesy copy. Failure to timely serve a courtesy copy may constitute waiver, in the Court's discretion. Failure to timely respond to a timely courtesy copy may result in sanctions, in the Court's discretion; and it is further

ORDERED that all party depositions shall be completed by April 15, 2022; and it is further

ORDERED that all non-party depositions shall be completed by May 27, 2022; and it is further

ORDERED that all depositions shall be noticed at least 20 days prior to deposition date; and it is further

ORDERED that all depositions may be held either in-person or via electronic means; and it is further

ORDERED that all post-deposition demands shall be served within 20 days of completion of deposition giving rise to demand and all responses thereto shall be served within 20 days of receipt of demand. To the extent that any post-deposition demands from completed depositions remain outstanding, all parties shall serve same within 20 days and respond thereto within 20 days of receipt. Failure to timely serve post-deposition demands, as above, shall constitute waiver. Failure to timely serve responses, as above, shall result in sanctions, including but not limited to striking of pleadings or preclusion of evidence; and it is further

ORDERED that all impleader shall be completed within 30 days of completion of depositions; and it is further

ORDERED that all parties shall serve expert exchanges, if any, by July 29, 2022. Failure to timely serve expert exchanges as above shall result in


sanctions, including but not limited to the preclusion of same and striking of pleadings; and it is further

ORDERED that the end date for all disclosure shall be August 12, 2022; and it is further

ORDERED that plaintiff shall file a note of issue by August 26, 2022; and it is further

ORDERED that all dispositive motions shall be filed within 60 days of filing of the note of issue; and it is further

ORDERED that the parties are reminded of the Part Rules, available on the Court's website, including those requiring the extension of the note of issue deadline by motion prior to the deadline date and those prohibiting post-note discovery.

<u>11/19/2021</u> DATE		 FRANK NERVO, 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"/> DENIED	<input type="checkbox"/> GRANTED IN PART <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