

**Stuart v Star Jets Intl., Inc.**

2024 NY Slip Op 34224(U)

November 19, 2024

Supreme Court, New York County

Docket Number: Index No. 656737/2019

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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BRETT STUART,

Plaintiff,

- v -

STAR JETS INTERNATIONAL, INC., RICKY SITOMER,

Defendant.

DECISION + ORDER ON MOTION

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 010) 202, 203, 204, 206, 207, 208, 209

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 011) 210, 211, 212, 213, 214

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

APPEARANCES:

Meister, Seelig & Fein PLLC, New York, New York (Kevin Fritz, Esq., of counsel) for plaintiff.

HON. EMILY MORALES-MINERVA:

Plaintiff, BRETT STUART, moves, by order to show cause (sequence number 010) for a default judgment against defendant STAR JETS INTERNATIONAL, INC. Pending that motion, Susan Stuart, a Personal Representative of the Estate of plaintiff BRETT STUART, moved (seq. no. 011), pursuant to CPLR §§ 1015 (a) and 1021, to be substituted as the party plaintiff due to BRETT STUART's untimely passing.

Defendants STAR JETS INTERNATIONAL, INC. and RICKY SITOMER do not appear, nor do they submit opposition. For the reasons set forth below, Susan Stuart's motion (seq. no. 011) to be substituted as the party plaintiff is granted. However, deceased plaintiff BRETT STUART's order to show cause for a default judgment against defendant STAR JETS INTERNATIONAL, INC. is denied without prejudice.

#### BACKGROUND

This is a long-standing action to recover \$109,000.00, the purported credit balance on plaintiff BRETT STUART's ("Brett Stuart") account with Blue Star Jets LLC, a predecessor entity of private charter jet brokerage service defendant STAR JETS INTERNATIONAL, INC. ("Star Jet") and its principal, defendant RICKY SITOMER ("Sitomer") (collectively, "defendants").

On June 25, 2023, Brett Stuart passed away, and three months later, the Palm Beach County Circuit Court of Florida appointed Susan Stuart, Brett Stuart's wife, as the Personal Representative and Administrator of his estate (see NYSCEF Doc. No. 212, Letters of Administration). However, the court was not informed of his passing until counsel for non-party Susan Stuart, as Personal Representative and Administrator of Brett

Stuart's estate, filed the instant motion (seq. no. 011) on July 24, 2024 to be substituted as party plaintiff.

Prior to the filing of the instant motion (seq. no. 011), but subsequent to Brett Stuart's death, counsel for Brett Stuart moved, by Order to Show Cause (seq. no. 010), for a default judgment against defendant Star Jet alone. The court (A. Silvera, J.S.C.) signed the Order to Show Cause, and transferred the Order to Show Cause to the undersigned for determination.

#### DECISION

"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 pursuant to CPLR § 1015 (a) 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])).

Upon a party's death, the law firm representing the deceased no longer has any authority to act on the deceased's behalf, and all proceedings are automatically stayed (see

Gonzalez v Ford Motor Co., 295 AD2d 474, 475 [2d Dept 2002]; see also Hyman v Booth Mem. Hosp., 306 AD2d 438 [2d Dept 2003] [holding that under related principles of the law of agency, the death of a client automatically revokes her attorney's authority; thus, any action taken by counsel on behalf of a deceased party is of no force or effect]). If a motion is made before a party's death, however, it is proper for the motion court to entertain it (see Schnapp v Miller's Launch, Inc., 135 AD3d 655 [1st Dept 2016]).

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, Susan Stuart has demonstrated that Brett Stuart has passed away, and that she was duly appointed as administrator of Brett Stuart's estate (see NYSCEF Doc. No. 212, Certified Letters of Administration). Therefore, the motion (seq. no. 011) is granted, without opposition.

However, because counsel for Brett Stuart moved for a default judgment against Star Jets subsequent to Brett Stuart's death but prior to proper substitution, the motion (seq. no. 010) must be denied. Counsel for Brett Stuart did not have any authority to act on Brett Stuart's behalf, and the filing of

such motion was procedurally improper. This decision is without prejudice to renewal on proper papers now that Susan Stuart has been substituted as plaintiff in this action (see Erin Constr. & Dev. Co. v Hartford Servs., Ltd., 176 AD3d 633 [1st Dept 2019]).

Accordingly, it is hereby

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

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

SUSAN STUART, as Administrator of the Estate of BRETT  
STUART, Deceased,

Plaintiff,

v

STAR JETS INTERNATIONAL, INC. and RICKY SITOMER,

Defendants.

and it is further,

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

ORDERED that, within 15 days of the entry of this decision and order, plaintiff SUSAN STUART 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; and it is further

ORDERED that the Order to Show Cause (seq. no. 010) of deceased plaintiff BRETT STUART is denied without prejudice.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/19/2024  
DATE

  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: