FILED: APPELLATE DIVISION - 1ST DEPT 09/03/2025 01:30 PM 2025-00400
NYSCEF DOC. NO. 12 RECEIVED NYSCEF: 09/03/2025

To be Argued by:
MICHAEL J. STANTON
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—First Department

In the Matter of

DAWN BODENCHAK, as Executor of the Estate of FRANK BODENCHAK,

Petitioner-Respondent,

– against –

5178 HOLDINGS LLC, ADAM RIGGS, SCALABLE LLC and KEITH GOGGIN,

Respondents-Appellants.

For a Judgment Pursuant to New York Limited Liability Company Law Section 702.

Appellate Case No.: 2025-00400

BRIEF FOR PETITIONER-RESPONDENT

KOSAKOFF & CATALDO LLP
Attorneys for Petitioner-Respondent
175 Pinelawn Road, Suite 100
Melville, New York 11747
(631) 650-1200
mstanton@kcllp.net
jguzzo@kcllp.net

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CP COUNSEL PRESS (800) 4-APPEAL • (383730)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

PRELIMINARY STATEMENT IN OPPOSITION

On this appeal, Appellants invent imaginary obstacles to attempt to block the most routine of procedural acts: substitution of an estate representative following the death of a party. The law, on the other hand, facilitates substitution, it does not impede it. To attempt to manufacture a cognizable argument, Appellants rely almost exclusively on wordplay, strained logic, and ignoring controlling authorities. Their appeal is meritless. It should be denied in its entirety, with costs.

The procedural setting below was unusual but hardly unprecedented. Frank Bodenchak, a member of Respondent 5178 Holdings LLC during his lifetime, died shortly after commencing suit. His widow, Dawn Bodenchak, was appointed Executor of his Estate and moved to substitute as petitioner. Appellants opposed that motion, contending the Estate could not maintain the dissolution portion of the proceeding and insisting Supreme Court should have gone further – not just denying substitution but *sua sponte* dismissing the case for lack of jurisdiction.

Supreme Court rejected those arguments, as did this Court when Appellants moved for a stay of all proceedings (*see* NYSCEF Docket No. 8). Appellants recycle the same arguments a third time, but nothing changes the outcome.

Mr. Bodenchak commenced the hybrid proceeding below seeking both direct monetary damages and dissolution. Appellants focus heavily on the notion that

Supreme Court lost jurisdiction upon Mr. Bodenchak's death and could only restore it if the Estate proved it became a member of 5178. That is not the law. Under L.L.C. Law § 608, the estate of a deceased member "may exercise all of the member's rights for the purpose of settling his or her estate or administering his or her property," regardless of whether it assumes "member" status. Here, Mr. Bodenchak commenced the underlying proceeding before his death, and his Estate may now maintain it for estate administration purposes. Numerous cases affirm this, including the out-of-state decision Appellants rely on most heavily.

Even then, whatever Appellants say about a court's jurisdiction to adjudicate dissolution, substitution was unquestionably required for the direct damages claims. To dodge this threshold point, Appellants concoct another non-existent hurdle: claiming that Mrs. Bodenchak had to annex Mr. Bodenchak's Last Will and Testament to prove her authority. Again, that is not the law. Estate representatives, not beneficiaries, prosecute a decedent's claims, and Letters Testamentary are the legal document establishing their capacity to do so.

In short, Appellants seek to transform a routine substitution into a *sua sponte* dismissal. Their arguments disregard statutes, distort holdings, and overlook basic estate administration principles. Substitution was not only proper, it was required. The Order Appealed From should be affirmed, with costs.

ARGUMENT

This appeal fails at the threshold. Whatever Appellants may argue about Supreme Court's jurisdiction over the dissolution portion of the proceeding, substitution was indisputably proper as to the direct damages claims. Their attempt to transform a routine substitution motion into an outright dismissal was procedurally improper, and Supreme Court rightfully refused to indulge it.

Even if this Court reaches whether substitution was properly granted with respect to dissolution, Appellants' arguments are simply wrong. Under L.L.C. Law § 608 and the cases construing it, an estate representative is expressly authorized to exercise a deceased member's rights to settle and administer the estate. Appellants' fallback argument that substitution should be denied absent the production of Mr. Bodenchak's Last Will and Testament is legally baseless.

POINT I

REGARDLESS OF APPELLANTS' ARGUMENTS ABOUT DISSOLUTION, SUBSTITUTION WAS WARRANTED WITH RESPECT TO THE DIRECT DAMAGES CLAIMS

The proceeding below seeks both direct monetary damages to the Estate as well as dissolution of 5178. As to the monetary damages claims, the law is unequivocal: under E.P.T.L. § 11-3.2(b), the personal representative of a decedent's estate may bring or continue an action "[f]or any injury," and "[n]o cause of action

for injury to person or property is lost because of the death of the person in whose favor the cause of action existed." Thus, the causes of action seeking monetary damages survived Mr. Bodenchak's death, and the proper party to maintain the proceeding is his estate representative, Mrs. Bodenchak. *Id.*

Respondents insist the opposite is true. They claim Mrs. Bodenchak may only continue Mr. Bodenchak's claims upon proof that she is, in fact, the beneficiary of his estate. That is simply not the law. To the contrary, it is black-letter that "individual beneficiaries . . . ha[ve] no independent right to maintain an independent cause of action for the recovery of estate property, as such a right belong[s] to the personal representative of the decedent's estate." *See Stallsworth v. Stallsworth*, 138 A.D.3d 1102, 1103, 30 N.Y.S.3d 661, 663 (2d Dep't 2016) (citations omitted). This has been recognized as the law for well over a century:

> It is elementary that the executors or administrators represent the legatees, creditors, and distributes in the administration of the estate; that their duty is to recover the property of the estate; and that the legatees and next of kin are concluded by their determination in respect to actions therefor, and have no independent cause of action, either in their own right or the right of the estate.
>
> *McQuaide v. Perot*, 223 N.Y.75, 79, 119 N.E. 230, 231-232 (1918).

Mrs. Bodenchak established her authority to continue this action by submitting the Preliminary Letters Testamentary duly issued to her. That sufficed, and Supreme Court properly held as much. *Id.*

Appellants now argue she was required to submit Mr. Bodenchak's Last Will and Testament to prove that his ownership in 5178 was a part of his Estate. This claim is also meritless. Mr. Bodenchak owned his interest in 5178 in an individual capacity; he did not assign or otherwise transfer it. He commenced the proceeding below on his own behalf, as an individual member of 5178. His interest transferred to his Estate upon his death as a matter of law. *See* L.L.C. Law § 601 (L.L.C membership interest is personal property); E.P.T.L. § 13-1.1 (every species of personal property passes to the estate representative upon death). Mrs. Bodenchak was not required to submit Mr. Bodenchak's Last Will and Testament; it is irrelevant to this application. *Id.*

In sum, substitution was required under E.P.T.L. § 11-3.2(b); Mrs. Bodenchak is the proper party to prosecute the Estate's claims; and Mr. Bodenchak's interest in 5178 necessarily passed to his estate by operation of law upon his death. Appellants' arguments to the contrary should be rejected.

POINT II

THE ESTATE NEED NOT BE A MEMBER IN THE L.L.C. TO MAINTAIN THE DISSOLUTION PORTION OF THE PROCEEDING

After mostly avoiding the undisputed legal reality that substitution was required for the Estate's direct damages claims, Appellants stake their appeal on the

theory that only L.L.C. members may initiate dissolution proceedings. From that premise they argue that a deceased member's estate does not automatically become an L.L.C. member and, therefore, Mr. Bodecnhak's Estate cannot pursue dissolution without first being admitted as a member.

This argument fails. Appellants cite no controlling statute or caselaw to support their proposition, relying instead on strained distinctions of the authorities Supreme Court found persuasive. Their argument is built on a false choice: either an estate must be a full-fledged member or be entirely barred from maintaining the dissolution claim. That framing represents either a misunderstanding or misrepresentation of controlling law. Courts repeatedly recognize that estate representatives may maintain proceedings related to a decedent's membership interest without requiring formal admission to membership.

A. L.L.C. Law § 608 Controls

L.L.C. Law § 608 is dispositive. It provides, upon the death of an L.L.C. member, that

> the executor, administrator or legal representative of such deceased member may exercise all of the member's rights for the purpose of settling his or her estate, including any power under the operating agreement of an assignee to become a member.

See L.L.C. Law § 608 (emphasis added).

The statute is conjunctive. It does not limit the estate representative's authority to the narrow powers of an assignee, but instead confers the ability to exercise all rights of the member, including but not limited to the power available to an assignee. It is a longstanding principle of statutory construction that when statutory "language is clear and unambiguous, it should be construed so as to give effect of the plain meaning of the words used." *See*, *e.g.*, *People v. Finnegan*, 85 N.Y.2d 53, 58, 623 N.Y.S.2d 546, 548 (1995) (quotations and citations omitted). Here, the statute is susceptible to just one interpretation: the estate representative has all membership powers plus those of an assignee to become a member.

Appellants' argument rests on a fundamental misreading of the statute. They claim, in the absence of an affirmative vote allowing an estate to succeed to L.L.C. membership, that the only powers an estate representative may exercise are those available to an assignee. That is not what § 608 says, and Courts have consistently rejected the narrow interpretation Appellants advance here.

In *Crabapple Corp. v. Elberg*, 153 A.D.3d 434, 60 N.Y.S.3d 124 (1st Dep't 2017), which Supreme Court properly relied upon in granting substitution, this Court recognized that L.L.C. Law § 608 specifically provides that "the executor of a deceased member 'may exercise *all* of the member's rights for the purpose of settling his or her estate.'" (emphasis in original). Appellants criticize Supreme Court's

reliance upon *Crabapple* because it involved membership powers other than the right to seek dissolution. But this Court expressly emphasized that the powers of an estate representative under § 608 are neither limited nor constrained. Estate representatives may exercise all of the member's rights, including the statutory right to seek[1] dissolution.

The Second Department has explicitly confirmed and adopted this reading. In *Matter of Andris v. 1387 Forest Realty, LLC*, 213 A.D.3d 923, 184 N.Y.S.3d 813 (2d Dep't 2023), it affirmed an order denying summary judgment seeking dismissal of a dissolution proceeding due to the purported absence of estate authority. *Id.*, 231 A.D.3d at 923, 184 N.Y.S.3d at 815. Citing § 608 and *Crabapple*, the Second Department in *Andris* held that "the petitioner, as executor of the decedent's estate, has the authority to exercise the decedent's rights in the LLC for purpose of settling the estate." *Id.*

Andris affirmed an estate representative's right to initiate dissolution proceedings, not merely see through dissolution proceedings already properly commenced by an L.L.C. member. *Id.* Trial-level courts routinely recognize the

[1] As detailed below, Mrs. Bodenchak is not commencing a new dissolution proceeding, she is maintaining the proceeding her husband commenced as a member of 5178 during his lifetime. While that distinction is not dispositive (*see Andris*, *supra*), it shows that the facts here are at least one step removed from any legitimate legal challenge.

same. In *Pachter v. Winiarski*, 2021 WL 1794565 (Sup. Ct. Kings County May 5, 2021), the representative of an estate initiated an L.L.C. dissolution proceeding nearly two years after the member's death. *Id.* at *1. Respondents moved to dismiss by claiming that the member's death terminated membership and stripped the estate of standing to pursue either derivative or dissolution claims. *Id.* The court rejected those arguments, holding that "the representative of an individual who has died can act with all rights the member enjoyed for the defined purposes enumerated in the statute. Thus, a representative does not have status as an assignee." *Id.*

The same outcome resulted in a related case, *Estate of Judith Lindenberg v. Winiarsky*, 2021 WL 1794560 (Sup. Ct. Kings County May 5, 2021), where the court recognized that "any wrongs allegedly committed while Ms. Lindenberg was alive may be pursued by the administrator since the administrator may assume all claims that could have been brought by Ms. Lindenberg herself." *Id.*

These cases are not novel, and their holdings are not new. In *In re Bookhamer v. Karten-Bermaha Textiles Co, L.L.C.*, 2004 WL 7329684 (Sup. Ct. New York County Dec. 14, 2004), the court held, "even if . . . membership ceased at death, that does not vitiate her right as a former member, or her estate's right in that regard, to seek recompense for possible causes of action accruing prior to the cessation of membership." *Id.* at *2.

§ 608 authorizes estate representatives to initiate dissolution proceedings to vindicate a deceased member's rights. Here, Supreme Court properly recognized Mrs. Bodenchak's authority to maintain the proceeding her husband commenced. That was the proper decision, fully aligned with the statute and the authorities interpreting it. Appellants' arguments to the contrary should be rejected.

B. Gurney-Goldman Eviscerates Appellants' Arguments

With no New York authority to cite, Appellants lean heavily on an out-of-state case interpreting Delaware law, *Gurney-Goldman v. Goldman*, 321 A.3d 559 (Del. Ch. 2024). But that decision provides no support for their position that dissolution may not be pursued by an estate representative absent full-fledged membership. To the contrary, *Gurney-Goldman* underscores why Appellants' reading of § 608 is wrong.

Gurney-Goldman involved an intra-family dispute over a sprawling real estate empire, conducted through a series of loosely managed L.L.C.s that grew out of the family patriarch's sole proprietorship. *Id.*, 321 A.3d at 566-571. Following the patriarch's death, his children managed the enterprise without issue for years but upon one child's death a succession dispute erupted. *Id.* The executor of the deceased child's estate sought to assert management authority within the real estate enterprise for purposes of administering the estate, a position that was contested in the broader

dispute. *Id.* The Chancery Court considered, among other issues, (1) whether the deceased child's estate became a member of the relevant L.L.C. and (2) if not, whether the deceased child's estate could exercise management authority anyway. *Id.*, 321 A.3d at 575-597.

The court ultimately concluded that the estate itself was not a member, but it could nonetheless exercise management authority. *Id.* In reaching that conclusion, the court examined 6 Del. C. § 18-705, the Delaware equivalent to L.L.C. Law § 608, and found that "[i]f a member who is an individual dies . . . the member's personal representative . . . may exercise all of the member's rights for the purpose of settling the estate." *Id.* at 575-76 & n. 86. As the court explained, the statute "expressly empowers the decedent's personal representative to step into the shoes of the member" to protect the estate's interest, and any narrower construction "would deprive estates of any meaningful way to realize the value of the deceased member's interest." *Id.* at 576, n. 87.

Far from assisting the Appellants, *Gurney-Goldman* fatally undermines their arguments. Delaware and New York have materially identical statutes conferring upon executors and administrators the power to exercise "all rights" of the decedent's membership. The Delaware court expressly noted that "New York courts have consistently construed the comparable New York statute to permit the executor

of a deceased member to exercise governance rights for the purpose of settling an estate." *Id.* at 587. And it cited to *Crabapple*, among others, for that proposition, even as Appellants now claim to deny its applicability. *Id.* at n. 84.

Gurney-Goldman also completely undermines Appellants' attempt to create tension between § 608 and the "pick your partner" principle. *Id.* at 590-596. The court held that, to the extent that tension exists, "the language of the statute controls." *Id.* at 596. "A personal representative can exercise governance rights that a member possessed, as long as the personal representative acts for a proper purpose." *Id.* The same is true of dissolution rights. *See Andris*, *supra*.

And finally, *Gurney-Goldman* disposes of Appellants' argument that pursuing dissolution of 5178 is unrelated to the administration of Mr. Bodenchak's Estate. Estate administration invariably includes "the orderly and speedy administration, liquidation, and settlement of the estate." *Id.* at 584 (citation omitted); *see also* E.P.T.L. § 11-1.1(b)(5)(A) (authorizing a fiduciary to "take possession of" and "manage" estate property).

Appellants acknowledge that 5178 owns valuable property of which, once sold, one-third will be distributed to the Estate. The proceeding below challenges whether Respondent Keith Goggin as 5178's *de facto* managing member is taking appropriate steps to ensure the Estate's distribution is commensurate to the parties'

expectations at the time of investment. That is surely a "proper purpose" for the settling and administration of the Estate, and like the Chancery Court observed, there is no basis to "second-guess" Mrs. Bodenchak's decision to continue to pursue dissolution. *See Gurney-Goldman*, 321 A.3d at 596-97.

POINT III

APPELLANTS DID NOT MOVE OR CROSS-MOVE BELOW FOR THE RELIEF THEY SEEK ON THIS APPEAL

The points above overwhelmingly demonstrate that substitution was not just proper, it was required, and that any objection Appellants have to Supreme Court's "jurisdiction" to hear the dissolution portion of the case is, at best, a strained and misguided interpretation of § 608. Even then, however, Supreme Court properly recognized that most if not all of Appellants' arguments strike to the merits of the case and the basis for the Petition (5). Appellants neither moved nor cross-moved for relief below. They simply opposed substitution, and the relief they request on appeal (outright dismissal of the Petition) was properly denied in the absence of an affirmative request for relief. *See* C.P.L.R. R. 2215 (establishing cross-motion as mechanism for awarding relief to someone other than the moving party).

Appellants attempt to handcuff themselves by claiming that they were prohibited from cross-moving for relief because the only motion Supreme Court

could entertain was for substitution. No authority holds this. Their argument should be rejected in its entirety.

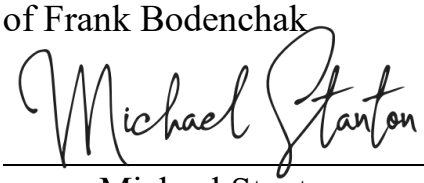
CONCLUSION

In sum, Appellants' position would require this Court to disregard the plain text of L.L.C. Law § 608, its own precedent in *Crabapple*, the Second Department's persuasive precedent in *Andris*, and the Delaware Chancery Court's thoughtful analysis in *Gurney-Goldman*, all to award relief to the Appellants they did not even request. Appellants present no rationale for such a radical departure from controlling statutes and authority. The Order Appealed From should be affirmed, with costs, and this Court should grant Respondent such other, further, and different relief as the Court deems just and proper under the circumstances.

Dated: Melville, New York
September 3, 2025

Respectfully yours,

KOSAKOFF & CATALDO LLP
Counsel for Petitioner-Appellant
DAWN BODENCHAK, as Executor of the Estate of Frank Bodenchak

By: 

Michael Stanton
Jessica Guzzo
175 Pinelawn Road
Melville, New York 11747
(631) 650-1203

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Word Count. The total number of words in this brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service and this Statement is 2,983.

Dated: Melville, New York
September 3, 2025

Respectfully yours,

KOSAKOFF & CATALDO LLP
Counsel for Petitioner-Appellant
DAWN BODENCHAK, as Executor of the Estate of Frank Bodenchak

By: Michael Stanton

Michael Stanton
175 Pinelawn Road
Melville, New York 11747
(631) 650-1203
mstanton@kcllp.net