

Williams v Williams
2015 NY Slip Op 30786(U)
April 6, 2015
Supreme Court, Queens County
Docket Number: 704783/2013
Judge: Valerie Brathwaite Nelson
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE VALERIE BRATHWAITE NELSON
Justice

IA Part 7

FILED
APR - 7 2015
COUNTY CLERK
QUEENS COUNTY

GRACE HAYE WILLIAMS, x

Plaintiff,

-against-

RUBY WILLIAMS, AMAN BINDRA, ET AL.,

Defendants. x

Index

Number: 704783/13

Motion

Date: November 18, 2014

Motion Cal. No.: 245

Motion Seq. No.: 3

The following numbered papers read on this motion by defendant Ruby Williams to dismiss the complaint insofar as asserted against her pursuant to CPLR 3211(a) (5) and (7), and the doctrine of laches.

Papers
Numbered

Notice of Motion-Affidavits-Exhibits-Memorandum of Law.....EF Nos. 75-86

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff Grace Haye Williams commenced this action to quiet title on October 27, 2013 by electronically filing the summons and complaint. In her amended complaint, plaintiff claims that she is the true owner of the real property known as 187-15 Keesville Avenue, St. Albans, New York. Plaintiff alleges that she purchased the property from her mother-in-law, defendant Ruby Williams, for the sales price of \$240,000.00, and that Ruby Williams conveyed the property to her by deed dated December 5, 2002. Plaintiff alleges she has been deprived of her ownership interest in the property through a deed dated March 28, 2006, and recorded on April 10, 2006, purportedly conveying the property back to defendant Ruby Williams. Plaintiff alleges the deed is fraudulent, having been procured by defendant Ruby Williams, acting with the other defendants, through trickery, deception and fraud and

that plaintiff's purported signature on the March 28, 2006 deed is a forgery. Plaintiff also alleges that the March 28, 2006 deed purportedly conveying the property from her to defendant Ruby Williams is void, as are the subsequent deeds dated January 5, 2007 and October 16, 2008, and the mortgage dated October 16, 2008, appearing in the chain of title. Plaintiff seeks to set aside the March 28, 2006, January 5, 2007 and October 16, 2008 deeds and the October 16, 2008 mortgage held by Wells Fargo. Plaintiff also seeks an injunction against defendant Ruby Williams, and an award of money damages from her.

Plaintiff seeks a declaration setting aside as null and void transactions purportedly transferring title and ownership to the premises because they were obtained through a fraudulent scheme that tricked, deceived and defrauded her into purportedly conveying ownership of her home without her knowledge. Plaintiff also seeks damages based on state and common law claims of fraud, aiding and abetting fraud, civil conspiracy to commit fraud, conversion and deceptive business practices against various parties.

Defendant Ruby Williams moves to dismiss the amended complaint insofar as asserted against her based upon CPLR 3211(a) (5) and (7), and the doctrine of laches. Defendant Ruby Williams argues, among other things, that all of the claims asserted against her in the amended complaint are time-barred, except for the first cause of action, which she contends should be dismissed based on the doctrine of laches. The motion is unopposed.

A defendant who seeks dismissal of a complaint pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations has the initial burden of proving, *prima facie*, that the time in which to sue has expired (*see Kennedy v Fischer*, 78 AD3d 1016 [2d Dept 2010; *Gravel v Cicola*, 297 AD2d 620 [2d Dept 2002]). "In classifying a cause of action for statute of limitations purposes, the controlling consideration is not the form in which the cause of action is stated, but its substance" (*Faiella v Tysens Park Apartments, LLC.*, 110 AD3d 1028 [2013]).

The statute of limitations for a fraud claim applies to a cause of action alleging forgery (*see Faison v Lewis*, 106 AD3d 1047 [2d Dept 2013]; *Vilsack v Meyer*, 96 AD3d 827 [2d Dept 2012]; *JP Morgan Chase Bank, N.A. v Kalpakis*, 91 AD3d 722 [2d Dept 2012]; *Coombs v Jervier*, 74 AD3d 724 [2d Dept 2010]). The statute of limitations for a fraud-based claim requires the action be commenced within six years after the allegedly fraudulent act or within two years after discovery, whichever is later (CPLR 213[8]; 203[g]; *Sargiss v Magarelli*, 12 NY3d 527 [2009]; *Vilsack v Meyer*, 96 AD3d at 828). Here, the second cause of action for fraudulent misrepresentation, the third cause of action for conspiracy to commit fraud, and the fourth cause of action for aiding and abetting fraud, each are fraud-based and thus subject to the six year statute of limitations for a fraud claim (*see Pike v. New York Life Ins. Co.*, 72 A.D.3d 1043 [2d Dept 2010]; *Rafter v. Manufacturers Trust Co.*,

18 A.D.2d 683 [2d Dept 1962]; *Solow v. Tanger*, 258 A.D.2d 323 [2d Dept 1999]). In support of the motion to dismiss the complaint pursuant to CPLR 3211(a)(5), defendant Ruby Williams has established, *prima facie*, that the fraud-based claims asserted against her are time-barred by showing the causes of action accrued on March 28, 2006, the date when the alleged forgery occurred, or on January 5, 2007, when the closing occurred, or within two years after the fraud could have been discovered with reasonable diligence inasmuch as plaintiff admitted in an affidavit and in deposition testimony submitted herein¹ that she was aware that the premises had been transferred to defendant Bindra as early as July 2007 (see CPLR 203[g]; *Coombs v Jervier*, 74 AD3d 724; *Matter of Schwartz*, 44 AD3d 779 [2d Dept 2007]; *Swift v New York Med. Coll.*, 25 AD3d 686, 687 [2d Dept 2006]).

With respect to the fifth through tenth causes of action, defendant Ruby Williams has established, *prima facie*, that:

The fifth cause of action, referred to in plaintiff's complaint as a violation of the "Deceptive trade Act" (i.e. New York State General Business Law § 349), is barred by the applicable three-year limitations period set forth in CPLR 214(2) (see *Pike v. New York Life Ins. Co.*, 72 A.D.3d 1043,1048, *supra*; *Beller v. William Penn Life Ins. Co.*, 8 A.D.3d 310 [2d Dept 2004]).

The sixth cause of action regarding plaintiff's claim for tortious interference with a contract is also barred by a three-year limitations period, which has also expired (CPLR 214[4]; see *Omega Indus. v. Chemical Bank*, 190 A.D.2d 843 [2d Dept 1993]).

Plaintiff's claim for conversion as alleged in her seventh cause of action is barred by the expiration of the three year statute of limitations period (CPLR 214(3); *Hinz v. Hinz*, 122 AD3d 574 [2d Dept 2014]).

The eighth cause of action for unjust enrichment is barred by a six-year limitations period, which has also expired (CPLR 213[2]; *Gleich v Haenel*, 2015 NY Slip Op 01607 [2d Dept 2015]).

Plaintiff's ninth cause of action for breach of an implied covenant of good faith is barred by a six-year limitations period, which has also expired (CPLR 213[2]; *Pike v. New York Life Ins. Co.*, 72 A.D.3d 1043,1048, *supra*).

¹Plaintiff admitted during her examination before trial in the action entitled *Williams v Mentore* (Supreme Court, Queens County, Index No. 13135/2011) that in July 2007, she became aware the property had been transferred out of her name without her knowledge, but decided not to pursue the issue at such time due to a concern for family peace.

The tenth cause of action, alleging a violation of Article 50 of the New York State Civil Rights Law, is barred by a one year statute of limitations, which has also expired (CPLR 215(3); see *Nussenzweig v. diCorcia*, 9 N.Y.3d 184 [2007]).


Thus, the Court finds, the aforementioned claims against defendant Ruby Williams are each outside of the applicable statute of limitations.

The burden shifts to plaintiff to present evidentiary facts establishing that the action was timely or to raise an issue of fact as to whether the action was timely (*see Gravel v Cicola*, 297 AD2d 620, 621 [2d Dept 2002]). Here, the motion is unopposed. Thus, there being no opposition, the plaintiff has failed to rebut the defendant's *prima facie* showing that the aforementioned claims are barred by the statute of limitations.

Lastly, plaintiff failed to assert the claim in her first cause of action, whereby she seeks a declaration setting aside defendant Ruby Williams' conveyance by deed to defendant Bindra as null and void, for more than six years since she admittedly became aware that the premises had been transferred. Plaintiff has failed to present any explanation for this extended delay, or indicate that Ruby Williams had obtained any notice that plaintiff would commence the above-captioned action against her. In light of defendant Ruby Williams' advanced age, in addition to her longstanding ownership of and residence in the premises to which plaintiff now seeks title, the first cause of action is barred by the doctrine of laches (*see Jean v. Joseph*, 117 A.D.3d 989 [2d Dept 2014]).

Accordingly, the motion by defendant Ruby Williams is granted and the amended complaint insofar as asserted against Ruby Williams is dismissed.

Dated: 4/6/15



VALERIE BRATHWAITE NELSON, J.S.C.

FILED
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COUNTY CLERK
QUEENS COUNTY