

**Fleetwood Chateau Owners Corp. v Fleetwood  
Garage Corp.**

2015 NY Slip Op 32763(U)

April 7, 2015

Supreme Court, Westchester County

Docket Number: 52859/2013

Judge: Lester B. Adler

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This opinion is uncorrected and not selected for official publication.

To commence the 30-day statutory time period for appeals as of right under CPLR 5513(a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
FLEETWOOD CHATEAU OWNERS CORP.,

Plaintiff,

vs.

**DECISION AND ORDER**  
Index No.: 52859/2013

FLEETWOOD GARAGE CORP. and  
WILLIAM WEINBERG,

Defendants.

-----X  
ADLER, J.

In this action to enforce a restrictive covenant in a deed, defendants move under CPLR 3211(a)(1) and (7) for an order dismissing the complaint primarily on the ground that plaintiff lacks standing to enforce the covenant. In connection with this motion, this Court reviewed the following papers:

- Notice of Motion
- Affirmation in Support of Eric W. Berry with Exhibits
- Memorandum of Law in Support
- Affirmation in Opposition of Steven Kent with Exhibits
- Memorandum of Law in Opposition
- Memorandum of Law in Reply

*Allegations* – The verified complaint alleges the following: this action concerns two contiguous parcels of land in Mount Vernon, New York, located at 651 North

Terrace Avenue (the Terrace Ave. parcel) and 66 Fleetwood Avenue (the Fleetwood Ave. parcel). An apartment building (the Building) is located on the Terrace Ave. property; a parking garage (the Garage) is located on the Fleetwood Ave. parcel. The Building and Garage abut each other at their backs.

In 1924, seller Charles H. Farrington transferred the Terrace Ave. and Fleetwood Ave. parcels to buyer Ferdinand J. Thill. The deed, which was delivered to Thill and recorded, indicates that the parcels were part of a larger, undivided plot of real property that was later partitioned. After a number of intermediate transfers, both the Terrace Ave. and Fleetwood Ave. parcels were transferred to nonparty 651 Hudson Associates (651 Hudson).

The 1924 deed contains a number of restrictive covenants in connection with the realty. In relevant part, the deed provides among other things that (1) no "buildings whatsoever, excepting residential buildings erected for residential purposes solely" were to be built on the transferred realty and (2) "no garage shall be erected upon any plot except such which shall be constructed for the exclusive use of the occupant or occupants of the building or buildings erected thereon."

In or about 1929, a certificate of occupancy was issued for the Building on the Terrace Ave. parcel. In 1931, a certificate of occupancy was issued for the Garage located on the Fleetwood Ave. parcel. The 1931 certificate classified the structure as a "private garage" for the automobiles of the Building tenants and as an "accessory" structure to the Building.

On or about 1989, 651 Hudson converted the Building to cooperative ownership and transferred the Terrace Ave. parcel to the plaintiff owners' corporation. In 1991, 651

Hudson sold the Fleetwood Ave. parcel to defendant Fleetwood Garage Corp. (Fleetwood Garage), one of 651 Hudson's general partners.

Thereafter, Fleetwood Garage applied to Mount Vernon's planning board for a permit to operate the Garage as a public parking facility. As a result, plaintiff filed this action in March 2013 against Fleetwood Garage and its president, William Weinberg. Plaintiff seeks judgments (1) declaring that, in accordance with the restrictive covenant in the 1924 deed, the Garage is solely for the Building residents' use and (2) voiding the conveyance of title for the Fleetwood Ave. parcel from 651 Hudson to Fleetwood Garage.

Plaintiff claims that the restrictive covenant ran with the land and defendants knew or should have known about it. To show constructive notice, the complaint alleges that the Garage (1) has "historically provided" parking for Building residents, (2) lies directly behind the Building, and (3) extends onto the Building's property, and (part of the Garage's roof lies under the Building's back yard. Moreover, plaintiff alleges, the Garage's users and the Building residents share a common walkway joining North Terrace Avenue to Fleetwood Avenue.

Seeking dismissal, defendants contend that plaintiff lacks standing because it cannot enforce a restrictive covenant which burdens its own land. The Terrace Ave. and Fleetwood Ave. parcels were parts of the grantee's "servient estate," defendants argue. Only the "dominant estate," which includes any land that the grantor retained when he delivered the deed with restrictive covenants, has standing to enforce those covenants.

Defendants, however, misapprehend the relevant law and its application to

plaintiff's factual allegations. Restrictive covenants are divided into three general classes: (1) "building schemes" or plans, which are designed "to carry out a general scheme for the improvement or development of property;" (2) covenants that the grantor creates to benefit and protect adjoining property that the grantor has retained; and (3) mutual covenants between owners of adjoining lands (*see Korn v Campell*, 192 NY 490, 495-496 [1908]; *Haldeman v Teicholz*, 197 AD2d 223, 224-225 [3d Dept 1994]; *see also Graham v Beermunder*, 93 AD2d 254, 258-262 [2d Dept 1983]). Based on the papers before this Court, it appears that the restrictive covenant at issue is a building scheme and not, as defendants claim, a restriction meant to benefit the grantor's retained adjoining property. The undisputed fact that the 1924 seller conveyed the Terrace Ave. and Fleetwood Ave. parcels as part of a larger plot, and required the buyer to erect only residences and associated garages on the transferred realty, indicates that the seller imposed the restrictions to further a building scheme.

If the restrictive covenant is of the "building scheme" class, any grantee can enforce it against another grantee (*Haldeman v Teicholz*, 197 AD2d 223, 224 [4<sup>th</sup> Dept 1994] [citing cases]). Accordingly, plaintiff, which owns premises that was partitioned from land burdened by a restrictive covenant, has standing to enforce it against defendants, whose property was partitioned from the same land. Accordingly, that branch of defendants' motion seeking dismissal of the first cause of action is denied.

However, the motion to dismiss is granted with respect to the second cause of action, which seeks to undo the Fleetwood Ave. parcel's conveyance to Fleetwood Garage. In its opposition papers, plaintiff clarifies that its cause of action sounds in

constructive fraudulent conveyance. Plaintiff claims that 651 Hudson transferred the Fleetwood Ave. parcel to its general partner when 651 Hudson was facing insolvency; allegedly, the transfer provided Weinberg an unconscionable advantage over the rights of 651 Hudson's other creditors, including plaintiff. However, the claim is time-barred. Constructive fraud claims are governed by a six-year statute of limitations, and the claim accrues when the fraud occurs (CPLR 213[1]; *Bobash, Inc. v Festinger*, 57 AD3d 464, 467 [2d Dept 2008]). Plaintiff did not interpose its claim until about 22 years after the conveyance to Fleetwood Garage

For the reason set forth above, it is

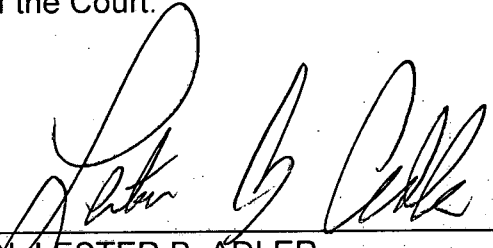
ORDERED that the motion by defendants for an order dismissing the complaint is granted to the extent that the second cause of action is severed and dismissed, and it is further

ORDERED that the motion is otherwise denied; and it is further

ORDERED that the parties shall appear with counsel in the Hon. Richard J. Daronco Westchester County Courthouse, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, New York, at the Settlement Conference Part, Courtroom 1600, on May 4, 2015, at 9:30 a.m. for a settlement conference.

The foregoing constitutes the Order of the Court.

Dated: White Plains, New York  
 April 7, 2015




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HON. LESTER B. ADLER  
 SUPREME COURT JUSTICE