

<b>Snyder 24 Corp. v Pro-Trait Tit. Servs., LLC</b>
2020 NY Slip Op 33055(U)
September 15, 2020
Supreme Court, New York County
Docket Number: 650629/2020
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE L. LOVE PART IAS MOTION 62**

*Justice*

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**INDEX NO. 650629/2020**

SNYDER 24 CORP,

**MOTION DATE 09/11/2020**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

PRO-TRAIT TITLE SERVICES, LLC, JASON EDWARDS,  
TERELL COOPER-EDWARDS, MARIA COOPER

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11 were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted without opposition.

The instant action arises out of a May 3, 2018 residential contract of sale (“Contract”) entered into between Plaintiff and Defendants, Jason Edwards and Terell Cooper-Edwards (“Edwards”), for the purchase by Purchasers of a lot located at 2422 Snyder Avenue, Brooklyn, New York. Plaintiff commenced the instant action by filing a Summons and Verified Complaint on January 28, 2020, alleging that on June 24, 2019, Edwards tendered a check in the amount of \$6,000.00 which was dishonored and placed \$21,600.00 in escrow with defendant, Pro-Trait Title Services, LLC. Plaintiff alleges seven causes of action against Edwards, 1. Breach of Contract, 2. Negligence, 3. Breach of Implied Covenant of Good Faith and Fair Dealing, 4. Breach of Fiduciary Duty, 5. Unjust Enrichment, 6. Promissory Estoppel, and 7. Injurious Falsehood (incorrectly labeled as cause of action nine). Edwards now moves to dismiss all of the causes of action asserted against Maria Cooper, based upon documentary evidence and moves to dismiss the portion of the first cause of action seeking punitive damages, and plaintiff’s second, third, fifth, sixth and seventh (ninth) as inappropriate on a contract claim.

When documentary evidence is submitted upon a motion to dismiss pursuant to CPLR § 3211, and disproves an essential element allegation of the complaint, dismissal is warranted even if the allegations, standing alone, could otherwise withstand a motion to dismiss pursuant to CPLR § 3211 (a)(7). See Mill Fin. LLC v. Gillett, 122 A.D.3d 98, 103 (1st Dept 2014). In support of their motion, defendants submit the Contract which identifies Jason Edwards and Terell Edwards as the purchasers. As the Contract does not identify Maria Cooper as a purchaser, same utterly refutes the allegations in plaintiff's complaint and this action must be dismissed against her.

Defendants seek dismissal of the portion of plaintiff's first cause of action seeking exemplary damages. Plaintiff's complaint alleges merely that defendants breached a contract. Specifically, "Punitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights" See, *Soviero v. Carroll Group Intern., Inc.*, 27 A.D.3d 276, 77 (1st Dept., 2006); *Fulton v. Allstate Ins. Co.*, 14 A.D.3d 380, 381 (1st Dept., 2005). As such, the portion of plaintiff's first cause of action must be dismissed.

Plaintiff's second cause of action alleging negligence essentially alleges that defendants were negligent in breaching the Contract. As discussed in *Dormitory Auth. v. Samson Constr. Co.*, 30 N.Y.3d 704, 711 (2018) "It is a well-established principle that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated" (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 389 [1987]). Put another way, where the damages alleged "were clearly within the contemplation of the written agreement . . . [m]erely charging a breach of a 'duty of due care,' employing language familiar to tort law, does not, without more, transform a simple breach of contract into a tort claim" (70 NY2d at 390). As such, plaintiff's second cause of action must be dismissed.

The cause of action alleging a breach of good faith is duplicative of a cause of action alleging breach of contract, since every contract contains an implied covenant of good faith and fair dealing, *See, Apfel v. Prudential-Bache Sec., Inc.*, 183 A.D.2d 439 (1992), *aff'd as modified*, 81 N.Y.2d 470, 616 N.E.2d 1095 (1993). Although plaintiff's complaint alleges that the breach of the duty of good faith and fair dealing is separate from the contract, as the duty is implied, the cause of action must be dismissed.

Likewise, plaintiff's fifth and sixth causes of action must be dismissed because it is also impermissibly duplicative of Plaintiff's breach of contract claim. *See, Corsello v. Verizon New York, Inc.*, 18 N.Y.3d 777 (2012) ("An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim"). *See also, ID Beauty S.A.S. v. Coty Inc.*, 164 A.D.3d 1186 (1st Dept. 2018).

A claim for injurious falsehood lies when one publishes false and disparaging statements about another's property or business reputation "under circumstances which would lead a reasonable person to anticipate that damage might flow therefrom." *Cunningham v. Hagedorn*, 72 A.D.2d 702, 704 (1st Dep't 1979); *Pitcock v. Kasowitz, Benson, Torres & Friedman LLP*, 74 A.D.3d 613, 615, 903 N.Y.S.2d 43, 45 (1st Dep't 2010). Said cause of action is irrelevant to the circumstances of this case and must be dismissed.

ORDERED that the motion of defendant Maria Cooper to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that the motion to dismiss is granted and the portion of the first cause of action seeking exemplary damages and the second, third, fifth, sixth, and seventh (ninth) causes of action of the complaint are dismissed; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel for the moving party 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 mark the court's records to reflect the 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](http://www.nycourts.gov/supctmanh)).

9/15/2020  
DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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