

Cammarato v 16 Admiral Perry Plaza LLC
2021 NY Slip Op 31545(U)
May 6, 2021
Supreme Court, Kings County
Docket Number: 514454/2020
Judge: Francois A. Rivera
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At IAS Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings at the courthouse thereof located at 360 Adams Street, Brooklyn, New York, on 6th day of May, 2021.

P R E S E N T : Honorable Francois A. Rivera
Justice

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Dorothy Cammarato, Individually and as a
Member of 16 Admiral Perry Plaza LLC,

Plaintiff,

-against-

16 Admiral Perry Plaza LLC, Francis Pachesa, Brunhilda Pachesa, Jaba Realty Holdings LLC, Lucy Pellegrino, Citi Abstract Inc., Universal Associates Inc., U.S. Bancorp Community Investment Corporation and U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2018-T,

Defendants.

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Index No.
514454/2020
ORDER
Motion Seq. No. 2
Cal. No. 10

Defendant U.S. Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2018-1 sued herein as U.S. Bank National

Association, as Trustee for Velocity Commercial Capital Loan Trust 2018-T (“U.S. Bank”) having moved by notice of motion dated March 3, 2021 for an order and judgment: (a) pursuant to CPLR 3212, CPLR 3016(b) and CPLR 3211(a)(1), (5) and (7) dismissing plaintiff’s complaint and granting summary judgment to U.S. Bank on U.S. Bank’s first counterclaim; and (b) cancelling plaintiff’s notice of pendency pursuant to CPLR 6514(a) and (b); and (c) granting such other and further relief to U.S. Bank as this court deems just and proper;

And upon the affirmation of Robert W. Frommer, Esq. dated March 3, 2021 in support of the motion, with exhibits; and upon the affidavit of A.J. Loll sworn to on March 2, 2021 in support of the motion, with exhibits; and upon the Statement of Material Facts dated March 3, 2021 in support of the motion; and upon the affirmation of Chaim Howard Berglas, Esq. dated April 22, 2021 in opposition to the motion, with exhibits; and upon the reply affirmation of Robert W. Frommer, Esq. dated April 28, 2021, in support of the motion; and the motion having regularly come on to be heard; and after due deliberation thereon;

NOW, on motion of Borchert & LaSpina, P.C., attorneys for U.S.

Bank, it is hereby

ORDERED, that the motion is granted in part and denied in part as set forth herein; and it is further

ORDERED, that the branches of the motion which are made pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(5) are denied as untimely under CPLR 3211(e) and that the court need not expressly determine the branch of the motion made under CPLR 3211(a)(7) in light of the court's determination of the branches of the motion made pursuant to CPLR 3212; and it is further

ORDERED, that the plaintiff's complaint is dismissed as against U.S. Bank pursuant to CPLR 3212 because the plaintiff's causes of action accrued on the date of the July 8, 2012 conveyance and this action was untimely commenced more than six years thereafter and the burden shifted to the plaintiff to demonstrate that plaintiff was entitled to a discovery toll of the statute of limitations and the court finds that plaintiff should have discovered the alleged fraud with reasonable diligence more than two years prior to the commencement of this action due to the recording of the July 8,

2012 conveyance in 2012; and it is further

ORDERED, that the branches of the motion seeking summary judgment on U.S. Bank's first counterclaim pursuant to CPLR 3212 and to cancel the plaintiff's notice of pendency pursuant to CPLR 6514 are premature and are denied without prejudice to renewal upon completion of discovery.

ENTER:

Francis A. Rivera

J.S.C.