

**Pantoja v Gross**

2024 NY Slip Op 31912(U)

May 29, 2024

Supreme Court, Kings County

Docket Number: Index No. 536770/2023

Judge: Francois A. Rivera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 29<sup>th</sup> day of May 2024

HONORABLE FRANCOIS A. RIVERA

-----X  
RAFAEL M. PANTOJA,

Plaintiff,

- against -

BRADLEY S. GROSS, ESQ.,  
107 PATCHEN HOLDING CORP.,  
NEW PENN LLC D/B/A SHELLPOINT MORTGAGE SERVICING,  
672 DECATUR HOLDINGS LLC AND WE LEND LLC,

Defendants.  
-----X

**DECISION & ORDER**

Index No.: 536770/2023

Oral Argument: 5/2/2024

Ms. 1

Recitation in accordance with CPLR 2219 (a) of the papers considered on notice of motion filed on March 4, 2024, under motion sequence number one, by defendants 672 Decatur Holdings LLC and We Lend LLC (hereinafter the moving defendants) for an order pursuant to CPLR 3211 (a) (1) and (7) dismissing the instant action as asserted against them. The following NYSCEF documents numbered 9 through and including 25 were considered as follows.

- Notice of motion
- Affirmation in support  
Exhibits A-J
- Affidavit in opposition  
Exhibits A
- Memorandum of law in opposition
- Counter Statement of material facts
- Affirmation in reply

**BACKGROUND**

On December 16, 2023, the plaintiff, proceeding pro se, commenced the instant action by filing a summons with notice with the Kings County Clerk's Office (KCCO).

On January 25, 2024, defendant 672 Decatur Holdings LLC and We Lend LLC filed a demand for a complaint with the KCCO. On February 26, 2024, defendant 672 Decatur Holdings LLC and We Lend LLC filed a demand for an amended complaint with the KCCO.

On February 26, 2024, the plaintiff filed a verified complaint with the KCCO. The verified complaint alleges forty-one allegations of fact in support of four denominated causes of action. The first and second cause of action is asserted against Bradley S. Gross, Esq. and 107 Patchen Holding Corp. The third and fourth cause of action is asserted against the moving defendants. Plaintiff's third cause of action is for unlawful eviction and the fourth cause of action is to quiet title pursuant to RPAPL Article 15 as against the moving defendants. Plaintiff alleges that it is the individual owner in fee simple of premises located and known as 672 Decatur Street, Brooklyn, New York 11233 (hereinafter the subject property).

#### LAW AND APPLICATION

A motion to dismiss based on CPLR 3211(a)(1) may be granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of NY*, 98 NY2d 314, 326 [2002]). For evidence to be considered documentary, it must be unambiguous and of undisputed authenticity (*Fontanetta v John Doe 1*, 73 AD3d 78, 86 [2d Dept 2010]).

In assessing a motion pursuant to CPLR 3211(a)(7) to dismiss a complaint, a court must accept the facts as alleged in the complaint as true, accord the plaintiffs the benefit

of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87—88 [1994]).

Where evidentiary material is submitted and considered on a motion pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless it has been shown that a material fact claimed by the plaintiff to be one is not a fact at all, and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate (*Graphic Arts Mut. Ins. Co. v Pine Bush Cent. Sch. Dist.*, 159 AD3d 769, 771[2d Dept 2018]).

To be considered documentary, evidence must be unambiguous and of undisputed authenticity (*Fontanetta*, 73 AD3d at 86). Judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case (*Bedford-Carp Constr., Inc. v Brooklyn Union Gas Co.*, 215 AD3d 907, 908 [2d Dept 2023]).

Plaintiff's third cause of action alleges a wrongful eviction by the moving defendants. This cause of action must be dismissed because plaintiff has failed to plead that they were in actual possession and personally deprived of access to the premises.

Plaintiff's fourth cause of action is pursuant to Article 15 of the Real Estate Actions and Proceedings Law to quiet title to real property. The complaint also contains a claim for a declaratory judgment and a money judgment against the moving defendants

for punitive damages. Plaintiff allegedly acquired the Subject Property on or about May 5, 2022.

Plaintiff has not plead a cause of action for wrongful eviction. Plaintiff does not have a cause of action to quiet title because it is undisputed that plaintiff has no ownership interest in the subject property due to a judgment of foreclosure entered against the subject property which extinguished plaintiff's interest. Accordingly, after reviewing the parties' motion papers and hearing oral argument and due consideration of the merits therein, the order of the Court is as follows. The moving defendants' motion to dismiss the verified complaint as asserted against them is granted.

#### CONCLUSION

The motion by defendants 672 Decatur Holdings LLC and We Lend LLC for an order pursuant to CPLR 3211 (a) (1) and (7) dismissing the instant action as asserted against them is granted.

The foregoing constitutes the decision and order of the Court.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francis A. Rivera

J.S.C.