

**West 116 Acquisition LLC v Second Providence  
Baptist Church, Inc.**

2024 NY Slip Op 33151(U)

September 5, 2024

Supreme Court, New York County

Docket Number: Index No. 651350/2024

Judge: Lyle E. Frank

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.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. LYLE E. FRANK **PART** **11M**

*Justice*

-----X

WEST 116 ACQUISITION LLC  
Plaintiff,

- v -

SECOND PROVIDENCE BAPTIST CHURCH, INC.,  
Defendant.

**INDEX NO.** 651350/2024

**MOTION DATE** 06/25/2024

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 75

were read on this motion to/for DISMISS.

Plaintiff initiated the instant action seeking declaratory judgment referencing numerous provisions of a purchase and sale agreement, between defendant and non-party Azimuth Development Group LLC (“Azimuth”), as well as judgment in its favor against defendant, on its breach of contract claim.

Defendant now moves to dismiss the complaint in its entirety, on the grounds that the complaint fails to state a cause of action, plaintiff lacks standing and for failure to name a necessary party. Plaintiff opposes the motion and cross-moves pursuant to CPLR § 3025 to amend the caption and complaint to assert additional causes of action against defendant and to compel defendant to execute and accept delivery of the deed for the subject property.

Background

In essence this is a breach of contract action, relating to an agreement, between Azimuth and defendant Second Providence Baptist Church Inc., executed on November 14, 2014. The agreement provided that in exchange for the construction of an updated building, Second

Providence agreed to sell its property, located at West 116th Street, to Azimuth and allow Azimuth to develop condos above the proposed new church building.

Plaintiff, 11 W 116th Street LLC (“116 LLC”), filed a summons with notice. Upon defendant’s demand, a complaint was filed naming West 116 Acquisition LLC, as the plaintiff.

The complaint alleges that on or about March 31, 2016, defendant and Azimuth executed an assignment of the purchase and sale agreement whereby Azimuth assigned its rights under the Agreement to 116 LLC, whereby 116 LLC agreed to assume the obligations of Azimuth under the agreement. The complaint alleges that plaintiff, West 116 Acquisition LLC, is a successor-in-interest to 116 LLC.

The complaint further alleges, that despite being in physical possession of the premises as of in or about September 2023, defendant has refused to sign the required transfer tax forms and to accept the deed, so as to lawfully convey title of record to the Church Unit from plaintiff to defendant as required by the agreement.

### Discussion

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. “The complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory.” *Id.*

Here, the Court finds that the allegations in the complaint adequately state a cause of action. Although defendants contend that plaintiff has failed to submit evidence to establish standing in this action, that is not the standard in the instant motion. The complaint alleges that plaintiff was in fact the successor in interest to the contracting party and was assigned the rights and obligations pursuant to the underlying agreement. For the purposes of the instant motion, those allegations are deemed true, absent admissible documentary evidence to the contrary, which has not been submitted here.

Further, although defendant contends that the action must be dismissed for failure to name a necessary party, Azimuth, the Court finds that based on the pleadings and the deed establishing that plaintiff is in fact the owner of the premises, NYSCEF Doc. 6, dismissal is not appropriate at this time.

With respect to the cross motion, a motion to amend a complaint is to be granted if (a) the amended claims have merit and (b) the opposing party is not unfairly surprised or prejudiced by the filing of the amended claims. The applicable legal standard is CPLR § 3025(b) which authorizes a party to seek leave of the Court to amend or supplement a complaint. As stated therein, leave “shall be freely given upon such terms as may be just.”

The Court finds that the allegations in the amended complaint are not futile and adequately state a cause of action, thus plaintiff has established entitlement to the relief sought. Accordingly, it is hereby

ORDERED that defendant’s motion to dismiss is denied; and it is further

ORDERED that plaintiff’s cross-motion to amend the complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action; and it is further

ORDERED that defendant shall serve an answer to the amended verified complaint or otherwise respond thereto within 20 days from the date of service of this Order with Notice of Entry; and it is further

ORDERED that the Clerk is directed to amend the caption in the summons with notice to reflect the parties in the amended complaint.

9/5/2024

DATE

20240905144935LFRANK175527E729C1441EA02AB0AA09986878

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: