

**Morini v Thurman**

2024 NY Slip Op 34078(U)

November 18, 2024

Supreme Court, New York County

Docket Number: Index No. 160856/2023

Judge: James E. d'Auguste

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. James E. d'Auguste

PART 55

Justice

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INDEX NO. 160856/2023

ALINA MORINI,

MOTION DATE 02/08/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

TAYA THURMAN, "JOHN and or JANE DOE 1", "JOHN and or JANE DOE 2", the names being fictitious and unknown to plaintiff at this time,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28

were read on this motion to/for

DISMISS

In this intentional tort action, defendant Taya Thurman (Thurman) moves, pursuant to CPLR § 3211 (a)(7), to dismiss the verified complaint of Alina Morini (plaintiff). Plaintiff opposes the motion. The motion is decided as follows.

BACKGROUND

Plaintiff was an alleged family friend of defendant Thurman's mother, Christophe De Menil (Christophe), and commenced this action in November 2023, alleging three causes of action including, conversion, replevin, and negligence. Plaintiff alleges that following plaintiff's alleged wrongful removal from Christophe's home, located at 18 East 81st Street,

1 This court notes that this is the second action commenced by plaintiff Morini against defendant Thurman. While the prior action, Index #159159/2021 alleged different causes of action, that action was dismissed without prejudice, and the Hon. David B. Cohen, J.S.C. noted, without deciding, that the statute of limitations had expired for all of plaintiff's claims alleged in that action except for the claim of negligent infliction of emotional distress (see Morini v Thurman, 2022 NY Slip Op 32897[U] fn 2 [Sup Ct, NY County 2022]).

Apartment 1B, in Manhattan, she has been kept from her personal possessions and property which remain at Christophe's apartment, and that Thurman was reckless, careless, and negligent in refusing to allow plaintiff access to Christophe's apartment to collect her belongings and to continue plaintiff's friendship with Christophe (*see* NYSCEF No. 2, Verified Complaint). Thurman now moves in a pre-answer motion, pursuant to CPLR 3211 (a)(7) to dismiss the complaint in its entirety for failure to state a cause of action.

Thurman posits that this suit stems from plaintiff's termination of services and removal from Christophe's life and apartment and contends much of plaintiff's pleading is irrelevant to the injuries she is alleged to have suffered, but rather, designed more to denigrate Thurman and her relationship with Christophe. Thurman argues that plaintiff's complaint must be dismissed in its entirety because it fails to state a cause of action upon which relief can be granted. Specifically, Thurman argues that plaintiff has failed to plead facts that sufficiently establish all of the required elements of each alleged cause of action, and further contends that plaintiff's claims occurred outside the statute of limitations period.<sup>2</sup>

Thurman argues that plaintiff's replevin claim is deficient and must be dismissed because plaintiff has failed to plead any facts identifying the property at issue, details regarding her superior possessory rights, or the circumstances in which Thurman has taken personal possession of plaintiff's property. Thurman further argues that plaintiff's conversion claim should fail for similar reasons to plaintiff's replevin claim, in that plaintiff failed to allege any facts establishing what specific identifiable property Thurman allegedly converted, and that plaintiff has yet to make any demand for the specific property that has been refused.

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<sup>2</sup> Thurman initially made a statute of limitations argument but voluntarily withdrew the same in reply.

Regarding plaintiff's negligence cause of action, Thurman argues that plaintiff has failed to plead any facts demonstrating that Thurman owed a duty to plaintiff, nor can plaintiff establish any of the required elements to support a negligence claim.

In opposition, plaintiff argues that she has sufficiently stated claims for replevin and conversion because plaintiff alleges that all of her personal property has been held at Christophe's apartment and plaintiff has been denied access to it. Plaintiff attaches an affidavit in support listing "some of the items that remain" at Christophe's apartment (NYSCEF No. 14). Plaintiff argues Thurman maintains control over Christophe and Christophe's apartment, and, therefore, Thurman exercises actual control over plaintiff's property, depriving plaintiff access to plaintiff's possessions and property by way of changing the locks at Christophe's apartment, installing new security cameras, and hiring new in-home aids who monitor Christophe's apartment and the phone lines. Plaintiff argues that Thurman's liability arises under both her own actions and those of her agents, and that whether Thurman owed her a duty is a legal issue for the courts to decide. Plaintiff further argues that Thurman's liability also arises under premises liability, as plaintiff alleges Thurman exercised control over the subject premises.<sup>3</sup>

In reply, Thurman reiterates her argument that plaintiff's allegations concerning all three causes of action in the complaint are fatally deficient. Despite the addition of plaintiff's affidavit, Thurman argues that the lack of specificity within the property list does not allow for Thurman to be put on notice as to what specific pieces of property were allegedly wrongfully withheld from plaintiff. Thurman further argues that the causes of action for

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<sup>3</sup> Confusingly, plaintiff not only alleges that Christophe is the *only* owner of the apartment, but that Thurman lives elsewhere and does not own or occupy the subject premises (*see* NYSCEF No. 2 ¶¶ 8, 43, 73).

replevin and conversion are not ripe for adjudication as Thurman was never provided an opportunity to refuse plaintiff's demand to return plaintiff's property as the property list provided by plaintiff was done so for the first time in opposition to this motion, only after this action was filed.

### DISCUSSION

Dismissal pursuant to CPLR 3211(a)(7) requires a reading of the pleadings to determine whether a legally recognizable cause of action can be identified, and it is properly pled. A cause of action must present facts so that it can be identified and establish a potentially meritorious claim (*see Leon v Martinez*, 84 N.Y.2d 83, 87-88 [1994]). The Court must also give the complaint a liberal construction, accept the allegations as true and provide plaintiffs with the benefit of every favorable inference, because whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss (*see Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 38 [2018] [internal quotation marks and citations omitted]). When evidentiary material is provided in support of a motion pursuant to CPLR 3211(a)(7), the Court must determine whether the plaintiff has a cause of action, not whether the plaintiff has stated one (*see Guggenheimer v Ginzburg*, 43 N.Y.2d 268, 275 [1977]). Further, the motion will be denied, if from the four corners of the complaint, factual allegations are discerned which taken together manifest any cause of action cognizable at law (*Id.*). However, dismissal is warranted where the allegations in the complaint are merely conclusory (*see Commerce Bank v Bank of NY Mellon*, 141 AD3d 413, 416 [1st Dept 2016]).

“To state a cause of action for replevin, a plaintiff must establish a superior possessory right to the property” that defendant possesses (*Reif v Nagy*, 175 A.D.3d 107, 120 [1st Dep’t 2019] [citation omitted]). A plaintiff must also clearly identify specific items of personal property that belonged to plaintiff, make a request of the defendant to return those items, and when defendant has unreasonably refused to do so, only then has the plaintiff pleaded a cognizable cause of action for replevin (*see Khoury v Khoury*, 78 A.D.3d 903, 904 [2d Dep’t 2010]). For a claim of conversion to be sufficiently pled, a plaintiff must allege that there exists (1) a possessory right or interest in the property and (2) defendant’s dominion over the property or interference with it, in derogation of plaintiff’s rights (*Id.* [internal quotations and citations omitted]).

Here, plaintiff’s complaint fails to identify specific items of personal property owned by plaintiff. While plaintiff attempts to supplement her pleadings with the submission of an affidavit,<sup>4</sup> the affidavit is incomplete, at best, as it fails to clearly identify all the items of personal property plaintiff seeks recovery of, as several items are simply listed in a general fashion with the last item listed on the affidavit as “Among other things.” Plaintiff not only fails to plead any facts demonstrating that her personal property is within Thurman’s possession, as the unspecified items are claimed to be at Christophe’s home and not Thurman’s, but plaintiff fails to plead any facts establishing a demand for the specific property being made and refused.<sup>5</sup> A cause of action for replevin or conversion requires a

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<sup>4</sup> The Court of Appeals has held that “a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint” (*see Leon v Martinez*, 84 NY2d 83, 88 [1994] [citation omitted]).

<sup>5</sup> Although plaintiff asserts that she has made “multiple requests for her belongings since...March 2, 2021, including through this action and the Prior Action” (NYSCEF No. 12, pg 14), both the complaint in this action and the summons in the prior action are silent as to any allegations regarding a demand and refusal (*see* NYSCEF Nos. 2 & 25).

demand for the property and refusal of the same, so that the allegations in the complaint clearly convey plaintiff's exclusive claim of ownership of the property and defendant's intent to interfere with plaintiff's possession or use of that property (*see Feld v Feld*, 279 A.D.2d 393, 394-395 [1st Dep't 2001]). Therefore, plaintiff's causes of action for replevin and conversion are dismissed as a matter of law.

For a plaintiff to maintain a cause of action for negligence, a plaintiff must demonstrate that the defendant owed plaintiff a duty, breached that duty and that the breach proximately caused the plaintiff's injury (*see Wayburn v Madison Land LP*, 282 A.D.2d 301, 302 [1st Dep't 2001]; *see also On v BKO Express LLC*, 148 A.D.3d 50, 53 [1st Dep't 2017]). Here, plaintiff's cause of action for negligence is fatally deficient because plaintiff's complaint is silent regarding the required elements for negligence. While plaintiff alleges that Thurman was reckless, careless, and negligent, plaintiff fails to plead any facts demonstrating that Thurman owed a duty to the plaintiff. "In the absence of duty, there is no breach and without a breach there is no liability" (*Pulka v Edelman*, 40 N.Y.2d 781, 782 [1976]) [internal citation omitted]. Further, "[w]ithout a duty running directly to the injured person there can be no liability in damages, however careless the conduct or foreseeable the harm" (*see Lauer v City of NY*, 95 N.Y.2d 95, 100 [2000] [citation omitted]). As "dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017] [internal citations omitted]), plaintiff's cause of action for negligence is dismissed as a matter of law.

Given the above, it is hereby ordered that defendant Taya Thurman’s motion, pursuant to CPLR 3211, seeking dismissal of the complaint is granted, and the Clerk is directed to enter judgment dismissing the complaint as asserted against Taya Thurman.

This constitutes the decision and order of the Court.

11/18/2024  
DATE

  
Hon. James d’Auguste, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input checked="" type="checkbox"/>	GRANTED				GRANTED IN PART		
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE