

**Laura v Curley**

2024 NY Slip Op 35044(U)

March 26, 2024

Supreme Court, Saratoga County

Docket Number: Index No. EF20222428

Judge: Dianne N. Freestone

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF SARATOGA

ANTHONY LAURA,

Plaintiff,

-against-

**DECISION & ORDER**

Index No.: EF20222428

Motion #: 6

KENNETH R. CURLEY & RAYMOND ASSOCIATES, LLC,  
Defendants.

**APPEARANCES:**

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**DIANNE N. FREESTONE, J.**

**Motion by Defendant seeking dismissal of Plaintiff’s fourth cause of action due to failure to state a cause of action upon which relief can be granted pursuant to CPLR §3211(a)(7), dismissal of the relief in the Wherefore clause that pertains to the fourth cause of action, and a strike of all factual allegations that pertain to the fourth cause of action.**

This case arises from an action brought by Plaintiff on October 28, 2022, alleging a claim for breach of contract and promissory note(s), a second claim for breach of quasi-contract, unjust enrichment and promissory estoppel, a third claim for breach of personal guarantees, and a fourth claim for declaration and foreclosure of equitable liens on personal assets, receivables, judgments/debts/collection, insurance claims and real property against Defendants. These claims are relative to Plaintiff’s financial interest and investment in business ventures of the Defendant, Kenneth R. Curley, in both Defendant’s individual capacity and his corporate identity, Raymond

Associates, LLC. At the time of filing, Plaintiff filed Notices of Pendency seeking enforcement of an equitable lien upon three parcels of property owned by Defendant Curley pursuant to the Plaintiff's fourth and final cause of action. In response, the Defendant filed a Motion to Cancel the Plaintiff's Notices of Pendency upon Defendant's properties on January 31, 2023. The Defendant also filed separate motions to quash Plaintiff's subpoenas related to the properties listed in the Notices of Pendency, and for leave to amend their pleadings. On August 11, 2023, this Court rendered a decision on all three motions in favor of the Defendant. The Court found that the subpoenas were premature, unnecessary, and improper and should be quashed. The Court also found that the Plaintiff had not met the standard for imposition of an equitable lien upon the properties in the Notices of Pendency as the facts alleged in the complaint were insufficient in law to establish any of the said properties were collateralized, nor did the Plaintiff establish that steps were taken to prove an express or implied contract existed for a lien on the real property.

Thereafter, by Notice of Motion to Dismiss/Strike filed on November 24, 2023, the Defendant moved to dismiss Plaintiff's fourth cause of action and any related relief for failure to state a cause of action upon which relief can be granted, for dismissal of the relief in the Plaintiff's Wherefore clause that pertains to the fourth cause of action, and to strike all of the factual allegations contained in Plaintiff's Complaint that pertains to the fourth cause of action. By letter dated November 27, 2023, the Court asked Plaintiff to provide its position on Defendant's motion. On December 20, 2023, Plaintiff filed their opposition to Defendant's Motion to Dismiss. Lastly, by Reply Memorandum of Law on December 29, 2023, the Defendant submitted further arguments in support of their Motion to Dismiss and in reply to Plaintiff's opposition papers.

The Court has reviewed and considered all the filings both in support of and in opposition to the pending Motion to Dismiss the fourth cause of action, and the matter now comes to the Court for a decision relative to same.

The general standard when a party files a motion to dismiss for failure to state a cause of action is not whether the plaintiffs can prove their case-in-fact, rather, it is whether the plaintiffs have sufficiently pleaded a cause of action and whether the alleged facts fit within any cognizable legal theory (CPLR 3211(a)(7)). “On a motion to dismiss for failure to state a claim, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint, as the dispositive inquiry is whether the proponent of the pleading has a cause of action, not whether he or she has stated one.” (*New York State Workers’ Comp. Bd. v. Any-Time Home Care Inc.*, 156 A.D.3d 1043 [3<sup>rd</sup> Dept. 2017]; *see also* CPLR § 3211(a)(7); *Duffy v. Baldwin*, 183 A.D.3d 1053 [3<sup>rd</sup> Dept. 2020]). Dismissal of a complaint or cause of action is warranted when the plaintiff fails to assert facts in support of an element of their claim or when the allegations from such claim “do not allow for an enforceable right of recovery.” (*Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 [2017]; *see also* John R. Higgitt, Practice Commentaries, McKinney’s Cons Laws of NY, CPLR C3211:22, “the (CPLR 3211 [a] [7]) motion is useful in disposing of actions . . . in which the plaintiff has identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action.”). A plaintiff cannot protect its pleadings with vague, boilerplate assertions of future discovery in reply (*See Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d at 144; *Mandarin Trading Ltd. V. Wildenstein*, 65 AD3d 448, 451 [1<sup>st</sup> Dept. 2009] (“the mere hope that discovery might provide some factual support for a cause of action is insufficient to avoid dismissal of a patently defective cause of action (internal citations omitted).”).

New York law permits the imposition of an equitable lien where there has been an express or implied agreement “that there shall be a lien on specific property[,]” which evinces a sufficiently clear intent that the property is “held, given or transferred as security for the obligation.” (*Teichman v. Community Hosp. of W. Suffolk*, 87 N.Y.2d 514, 520 [1996]). The Court’s August 11, 2023 decision stated that plaintiff must establish a “(1) express or implied contract, (2) which concerns specific property and, (3) there is a clear intent by the parties that the property be either held, given or transferred as the security for an obligation.” (*Datloff v. Turetsky*, 111 A.D.2d 364 [2<sup>nd</sup> Dept. 1985]; *see also Snipes v. City of New York*, 43 Misc. 3d 1203(A) [Sup. Ct. New York Co. Mar. 19, 2014]). Moreover, “a mere alleged and undocumented promise by the Defendants to pay the balance they owed the Plaintiff from the proceeds of the sale of the subject premises is insufficient to show a clear agreement that there shall be a lien and that the property would be used as security.” (*Imperial Bldg. & Restoration Inc. v. Lin-Abcede*, 78 Misc. 3d 1230(A) [Sup. Ct. Richmond Co. Apr. 27, 2023]). The Court in *Imperial Bldg. & Restoration Inc. v. Lin-Abcede* found that “Plaintiff’s mere expectation that it might someday be paid from a potential transfer of [the real property], which is all that has been pled here, is insufficient to establish an equitable lien[,]” and it granted the defendant’s motion to dismiss that claim. (*Id.* at \*5).

The Plaintiff contends that not only will discovery further vet and prove their claim under the fourth cause of action that an equitable lien was established between the parties, but they also contend that an April 2014 correspondence made by Defendant Curley was a collateralization statement which further induced Plaintiff to continue to lend monies to Defendant. Plaintiff asserts in their opposition papers that by loaning the additional requested monies, the Defendant expressly and implicitly transferred the equitable liens of personal and real property to Plaintiff with an intent to make the Plaintiff whole. Much like the Court’s August 11, 2023 decision that found Plaintiff

had failed to establish an express or implied contract for an equitable lien existed related to the *lis pendens*, the current assertion is not supported by the record. The only evidence Plaintiff asserts in their filings is the April 2014 communication by Plaintiff for which Defendant Curley was copied referencing a “Lake House,” and to “[e]ither work it out with the Bank or simply place the property up for sale. If we cannot rent it to cover the costs as we have discussed, place it on the private or open market and sell it to clean up any personal debt to Tony.” Similarly to caselaw, this correspondence not directed to Plaintiff appears to evince a proposed plan by Defendant Curley to pay off Plaintiff with the proceeds of a possible sale, which is insufficient to show a clear agreement between Plaintiff and Defendant that the property was to be used as security for a lien established by Defendant. These mere contentions, absent evidence of an actual express or implied agreement between the two or absent evidence of any affirmative steps taken by Defendant to fully collateralize a lien or designate any of Defendant’s property as collateral are just that, mere contentions. Mere contentions do not rise to sufficiently establish an equitable lien (*Scivoletti v. Marsala*, 61 N.Y.2d 806, 809 [1984], a party’s “mere expectation, however sincere, is insufficient to establish an equitable lien.”). Additionally, Defendant has failed to assert any other specific evidence exists that would prove an equitable lien was created and agreed to between the parties against Defendant’s real property, therefore the Court finds the Plaintiff’s discovery arguments vague and unconvincing.

The fourth cause of action not sufficiently plead as the Plaintiff’s contentions fail to allow an enforceable right of recovery. In view of the same, it is hereby

**SO ORDERED** that the Defendant’s Motion to Dismiss the Plaintiff’s fourth cause of action for Declaration and Foreclosure of Equitable Liens on Defendants’ Personal Assets,

Receivables, Judgments/Debts/Collections, Insurance Claims, and Real Property, with prejudice, is granted; and it is

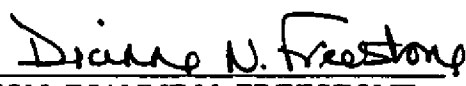
**FURTHER ORDERED** that the Defendant's Motion to Dismiss the Plaintiff's relief in the Wherefore Clause related to the fourth cause of action, specifically subsections (c) and (d), is granted with prejudice; and it is

**FURTHER ORDERED** that the Defendant's Motion to Strike all of the factual allegations that pertain to the fourth cause of action, is granted; and it is

**SO ORDERED.**

The foregoing constitutes the Decision and Order of the Court. Any relief not specifically identified is deemed to be denied and the Court imposes no costs, fees or sanctions upon any party. The Court is hereby uploading the original Decision and Order to NYSCEF for filing. Counsel for Defendants are not relieved from the applicable provisions of CPLR 2220 relating to filing and service of notice of entry of this Decision and Order.

Signed this 26<sup>th</sup> day of March, 2024, at Saratoga Springs, NY.

  
HON. DIANNE N. FREESTONE  
Justice of the Supreme Court

ENTER:

  
Entered Saratoga County Clerk

03/27/2024