Mansouri v Mansouri
2024 NY Slip Op 35713(U)
April 8, 2024
Supreme Court, Nassau County
Docket Number: Index No. 615346/2023
Judge: Conrad D. Singer
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
COUNTY OF NASSAU

PRESENT: HON. CONRAD D. SINGER,
Justice

TRIAL PART: 20

---X

MARGARET MANSOURI AND MICHEL MANSOURI,

Plaintiff,

-against-

MAURICE MANSOURI,

Defendants.

---X

Index No.: 615346/2023
Motion Seq. Nos.: 001 and 002
Motions Submitted: 02/07/2024

DECISION AND ORDER ON MOTIONS

XXX

The following papers were read on these motions:

ORDER TO SHOW CAUSE AND FOR TRO [Seq. 001]
Order to Show Cause and Supporting Papers [Seq. 001]....X

NOTICE OF CROSS-MOTION [Seq. 002]
Notice of Cross-Motion for Motion to Dismiss and
to Cancel Notice of Pendency [Seq. 002]....X
Affirmation in Opposition and Supporting Papers [Seq. 002]....X
Reply Affirmation in Further Support of Cross-Motion [Seq. 002]....X

Upon the foregoing e-filed papers, the motion filed by the Plaintiffs, MARGARET MANSOURI ["Margaret"] AND MICHEL MANSOURI ["Michel"] [collectively, "Plaintiffs"], for an Order which:

a. Restrains and enjoins Defendant Maurice Mansouri, his agents, servants, employees and any and all others acting on behalf of, or in concert with Defendant Maurice Mansouri from maintaining and prosecuting the summary proceedings pending in District Court of the County of Nassau, First District Hempstead, Landlord/Tenant Part and captioned *Maurice Mansouri v. Michel Mansouri, et al.*, Index No. LT 002454-23 and currently returnable on September 22, 2023, and stays all proceedings in connection therewith pending a determination of this action; or in the alternative;

b. Directs that the summary proceeding brought by Defendant Maurice Mansouri in District Court of the County of Nassau, First District; Hempstead Landtord/Tenant Part and captioned *Maurice Mansouri v. Michel Mansouri et al.*, Index No. LT 002454-23 and returnable on September 22, 2023, be removed from the District Court and consolidated with Plaintiffs' within action presently before this Court; and

c. Enjoins and restrains the Defendant, Maurice Mansouri and his servants, agents, employees, attorneys and all other persons acting on his behalf from taking any action to thwart, frustrate, or interfere with Plaintiffs' rights to use and possess the Premises known as and by 11 Syosset Circle Syosset, New York; and

d. Enjoins and restrains Maurice Mansouri and his servants, agents, employees, attorneys and all other persons acting on his behalf from selling, transferring, conveying or encumbering the Premises known as and by 11 Syosset Circle Syosset. New York; and

e. Enjoins and restrains Maurice Mansouri and his servants, agents. employees, attorneys and all other persons acting on his behalf from interfering with Plaintiffs' quiet enjoyment of the Premises known as and by 11 Syosset Circle Syosset, New York; and

f. Declares the relative rights and obligations of the parties [Seq. 001]; and

The Cross-Motion by the Defendant, Maurice Mansouri ["Defendant'], which seeks an Order denying the Plaintiffs' motion in its entirety and, pursuant to CPLR 3211[a][1] and [a][7] dismisses the Plaintiffs' Complaint and pursuant to CPLR 6514[b] cancels the Notice of Pendency filed by the Plaintiffs in this action, and pursuant to CPLR 6514[c] directs the Plaintiffs to pay any costs and expenses occasioned by the filing and cancellation of the Notice of Pendency, in addition to the costs incurred in the defense to this action [Seq. 002]; are consolidated for the purposes of disposition and are determined as follows:

The within action results from an unfortunate inter-familial dispute, the judicial resolution of which is sure to result in dire and long-lasting consequences to some if not all parties and may also irretrievably destroy multiple relationships. The Plaintiff Michel Mansouri is the Defendant Maurice Mansouri's brother. Michel is married to Co-Plaintiff Margaret Mansouri, such that Margaret Mansouri is the Defendant's sister-in-law.

Unfortunately, the parties have been unable to resolve their disagreement amicably and with the assistance of their counsel, causing their disagreement to be litigated in two judicial forums- the District Court of the County of Nassau, First District: Hempstead, Landlord/Tenant Part, where the Defendant in this action has commenced a summary holdover proceeding which is currently stayed pursuant to this Court's Order dated and entered on October 10, 2024; and the present action, which the Plaintiffs commenced in the Supreme Court, Nassau County.

On September 7, 1999, Plaintiff Margaret Mansouri purchased the premises that is known as and by 11 Syosset Circle in Syosset, New York [the "Premises"], and that is where Margaret, her husband and Co-Plaintiff Michel, and their children have since resided. It is undisputed that in 2019, Federal National Mortgage Association commenced an action against the Plaintiff to foreclose on the mortgage secured by the Premises, due to the Plaintiffs' default in making their mortgage payments [the "2019 Foreclosure Action"]. The Plaintiffs allege that the Defendant offered to assist his brother and sister-in-law by loaning them the money to pay off their lender and stop the foreclosure action. Based on the Court's review of the parties' respective motion papers and the Verified Complaint, the Defendant had previously loaned, advanced, and otherwise provided the Plaintiffs with sums of money before the 2019 Foreclosure Action, due to Plaintiff Michel being unemployed and the Plaintiffs surviving exclusively on Plaintiff Margaret's salary as a bank teller.

The Plaintiffs allege that Margaret accepted the Defendant's offer, and the parties agreed that the Premises would be held in trust by the Defendant for the Plaintiffs, as security to pay back Defendant for the sums he advanced to them. It is further alleged that the parties agreed that the Defendant would be paid back the sums paid to the Plaintiff's lender and the closing costs and any sums expended on the Plaintiffs' behalf concerning the Premises. The parties allegedly agreed that the Plaintiffs would continue to reside in the Premises and would pay the carrying charges and maintenance of the Premises.

A closing was held on October 30, 2019, wherein the Defendant paid off the Plaintiff's lender [the "2019 Closing"]. The Plaintiffs allege that, in conjunction with the pay-off of the lender, and as security for the repayment of the loan, Margaret deeded the Premises to the Defendant "to be held in trust". At the 2019 Closing the Defendant paid the Plaintiff's lender the sum of $232,962.76 to pay off the Plaintiff's loan, and also paid title costs, transfer taxes and attorney's fees in conjunction with the closing in the sum of $14,712.25. The Defendant did not pay the Plaintiffs any other sums for the acquisition of the Premises, and the Plaintiffs did not receive any other direct consideration from the Defendant in connection with the acquisition of the Premises. The Plaintiffs allege that the Defendant was represented by counsel, Lloyd Friedland, Esq., at the 2019 Closing, that the documents executed at the 2019 Closing were prepared by Lloyd Friedland, Esq., and that the transfer tax forms executed at the closing reference a purchase price of $650,000.00.

The Plaintiffs allege that they have paid carrying charges and maintenance of the Premises, including the real estate taxes as directed by the Defendant, homeowner's insurance, utilities, repairs, and maintenance, and that they have expended funds to preserve, renovate, and improve the Premises in anticipation of the sale thereof. They allege that they are ready, willing, and able to sell the Premises and pay the Defendant back the sums he advanced on their behalf, but that the Defendant has engaged in bad faith by refusing to proceed with the sale of the Premises as agreed between the parties.

On July 19, 2023, the Defendant commenced a summary eviction action against the Plaintiffs, in the First District Court of the County of Nassau, Hempstead, Landlord/Tenant Part and captioned, *Maurice Mansouri v. Michel Mansouri, et al.*, Index No. LT 002454-23 ["Summary Proceeding"], alleging that the Plaintiffs are the Defendant's licensees.

On September 20, 2023, the Plaintiffs commenced the instant action by filing a Summons and Verified Complaint. That day, they also filed a Notice of Pendency with respect to the Premises. The Plaintiffs allege, *inter alia*, that the Defendant's commencement of the Summary Proceeding together with his claims that he is the rightful owner of the Premises constitute a direct violation and breach of the parties' agreement. The Plaintiffs' first cause of action alleges breach of contract; their second cause of action is for a judgment declaring a constructive trust; their third cause of action alleges unjust enrichment; their fourth cause of action alleges promissory estoppel, their fifth cause of action is for an equitable lien, their sixth cause of action alleges conversion, their seventh cause of action is for quiet title, their eighth cause of action is for declaratory judgment, their ninth cause of action is for fraud, their tenth cause of action seeks preliminary and permanent injunction, and their eleventh cause of action is for breach of a fiduciary duty.

In lieu of answering the Defendant has cross-moved in opposition to the Plaintiffs' motion for preliminary injunction and seeks an Order pursuant to CPLR 3211[a][1] and [a][7] dismissing the Plaintiffs' Complaint and canceling the Notice of Pendency with respect to the Premises.

The Court will address the Defendant's motion to dismiss before the Plaintiffs' motion for preliminary injunction, as the determination of the motion to dismiss may render some or all of the Plaintiffs' motion moot. On a motion to dismiss pursuant to CPLR § 3211, the Court must afford the complaint a liberal construction, "accept the facts as alleged in the complaint as true, accord 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][citations omitted]). "Under CPLR § 3211(a)(1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law". (*Id.*; citations omitted). "[T]o be considered 'documentary,' evidence must be unambiguous and of undisputed authenticity". (*Minchala v 829 Jefferson, LLC*, 177 AD3d 866, 867 [2d Dept 2019] [citations omitted]). Therefore, the Defendant's affidavit does not constitute "documentary evidence" for the purpose of dismissal pursuant to CPLR § 3211[a][1]. (*Id.* at 867-868 ["affidavits, deposition testimony, and letters are not considered documentary evidence within the intent of CPLR 3211[a][1]"). On the other hand, the Defendant's motion papers include a copy of the recorded deed, the executed contract of sale, and title documents, "the contents of which are 'essentially undeniable'", and which qualify as documentary evidence. (*Id.* at 867; citations omitted).

While not considered "documentary evidence" for the purposes of the Defendant's CPLR 3211 motion to dismiss, the Court may also consider the Defendant's affidavit and other evidentiary material in determining the motion to dismiss pursuant to CPLR 3211[a][7]. However, in such case the "criterion becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless the movant shows that a material fact as claimed by the plaintiff is not a fact at all and no significant dispute exists regarding the alleged fact, the complaint shall not be dismissed". (*Bodden v Kean*, 86 AD3d 524, 526 [2d Dept 2011] [citations omitted]). "Dismissal is warranted only if an affidavit of a party, whether the plaintiff or defendant, establishes 'conclusively' that the plaintiff has no cause of action". (*Id.*; citations omitted).

The Defendant's motion to dismiss includes an affidavit from the Defendant, as well as from Lloyd M. Friedland, Esq., the attorney who represented the Defendant in connection with the parties' disputed real estate transaction. The Defendant avers, *inter alia*, that over the years he has loaned the Plaintiffs sums of money, that he gave Michel $200,000.00 for financial support, and that he and the brothers' mother have covered the Plaintiffs' living expenses since Michel stopped working in 2009 and the Plaintiffs were living exclusively on Margaret's bank teller salary. He states that in or about 2014 he loaned the Plaintiffs six [6] months of mortgage payments in arrears, and that he has never been repaid for past loans. While the Plaintiffs allege otherwise, the Defendant attests that he did not offer to assist the Plaintiffs with their most recent default on their mortgage. To the contrary, the Defendant attests that the Plaintiffs asked him for help when they defaulted on their mortgage again in 2018, and that the Defendant initially refused to lend them money, but that after the brothers' uncle contacted him and asked him to help he stated that the only way he would help would be if he bought the subject Premises and it would be deeded in his name.

He states that the Plaintiffs advised him in or about September of 2019 that they were ready to imminently move and vacate the Premises within a few months and that they would sell him the home in order to prevent losing the house in foreclosure. He avers that his attorney, Lloyd Friedland, Esq., counseled him not to engage in "the situation" with his brother, but that they then structured a transaction where the Defendant would pay off the existing mortgage in exchange for Defendant owning the house. The Defendant asserts that he received a Bargain and Sale Deed as Grantee at a formal closing which took place on October 30, 2019. A copy of the Deed is attached as Exhibit B to the Defendant's motion opposition papers. The Deed does not contain any language indicating that the Premises is to be held by the Defendant as trustee for the Plaintiffs.

The Defendant further states that the Plaintiffs failed to advise the Court that the parties entered into a formal contract of sale for his purchase of the Premises. A copy of the Contract of Sale is attached as Exhibit C to the Defendant's motion opposition papers. Defendant states that Margaret was advised to obtain her own attorney for the transaction, but she did not have any money to retain counsel and she proceeded on her own. The Defendant's motion opposition papers cite to a letter dated September 27, 2019, which Defendant states is signed by Margaret, confirming that she was proceeding without consulting counsel despite Mr. Friedland recommending that she first retain and consult an attorney. (Exhibit D to Defendant's motion opposition papers). Defendant agues that the transaction was a "straight Purchase transaction and there was never any agreement to hold the property in trust as Plaintiffs allege". Defendant asserts that it was "contemplated that Margaret and Michel would move out of the premises immediately", and cites to paragraph 16(d) of the Contract which states that a condition to closing was: "[d] The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of leases or tenancies, together with keys to the Premises".

Mr. Friedland's affidavit mirrors the facts leading up to and encompassing the transaction as set forth in the Defendant's affidavit.

The Defendant also cites to paragraphs 20, 21, and 22 of the Rider to the Contract of Sale, which address how the balance of the Purchase price over and above the payoff of the first mortgage was to be paid to Plaintiff Margaret. Paragraph 21, for example, states: "At the time of the closing to a third party and upon the Seller [Margaret] and her family vacating the premises, the Purchaser [Defendant] will pay to the Seller [Margaret] the net proceeds received by him after reimbursement to him for the following expenses...". Additionally, Defendant cites to Paragraph 22 of the rider, which states: "[a]ny monies remaining after the reimbursement to the Purchaser [Defendant] for the sale of the premises to a third party after payment of the above to the Purchaser [Defendant] shall be paid to the Seller [Plaintiff] as full and final payment with regard to this Contract". The Defendant argues that under the terms of the Contract, the payment of the balance of the purchase price is not due until the subject Premises is sold to a third-party, and that the issue is that the Plaintiffs breached the Contract by never moving out of the Premises after the closing in October of 2019. The Defendant claims that he has continued to pay all carrying charges on the house including but not limited to taxes and insurance, totaling $50,000.00 in carrying charges since the closing.

In opposition to the Defendant's motion to dismiss, Margaret states in a sworn affidavit that she "thoroughly" does not remember seeing or signing the Contract of Sale, but she acknowledges that her signature appears on the document. She states that she "signed whatever documents were put before [her] at closing". She also states that she believed that anything she was asked to sign "properly encompassed [Plaintiffs'] agreement with [Defendant]" but that she has "come to learn now that [Plaintiffs] were deceived in many ways and [Defendant] is attempting to go against [their] agreement".

Margaret disputes many of the Defendant's sworn statements from his affidavit. However, the Court is concerned by the accusations lodged by the Plaintiff against Mr. Friedland, who is an attorney and an officer of the court. Specifically, Mr. Friedland, like the Defendant, averred that Margaret was advised to obtain her own attorney for the transaction, that against such recommendation she proceeded with the sale/purchase transaction on her own, and that she signed a letter dated September 27, 2019 in which she confirmed that she was proceeding with the transaction despite Mr. Friedland's recommendation that she consult with counsel. The Plaintiff calls Mr. Friedland's statement "a totally manipulated, self-serving and deceptive statement", states that she never got the letter or the Contract of Sale by mail or any other way on or about September 27, 2019, and that the only time she ever signed any document was at the closing on October 30, 2019. She then states:

> "[y]et somehow, when examining the Contract of Sale, the signatures of both myself and Maurice are notarized by Mr. Freidland [*sic*] himself and dated 'September 27, 2019'. Hence, Mr. Freidland's [*sic*] proposition that this Contract of Sale was provided and agreed to by me well before closing is completely false- this Contract of Sale could only have been executed at the closing on October 30, 2019, and *backdated* and *back notarized* by Mr. Freidland [*sic*]". (Affidavit of Margaret Mansouri, dated January 8, 2024; emphasis in original).

Then, for the first time, and in contrast to the allegations from the Plaintiffs' Verified Complaint, Margaret states that it was always the Plaintiffs' understanding that Mr. Friedland represented both the Defendant and the Plaintiffs' interests in the transaction, and that they were never told otherwise. She then references the letter dated September 27, 2019, and states that the letter does not "explicitly" say that Mr. Friedland is not representing the Plaintiffs or their best interests, just that he recommended that the Plaintiffs retain or consult an attorney.

The Defendant's reply papers on his Cross-Motion include a further affirmation from Mr. Friedland, who calls the Plaintiff's questioning of his professional integrity "audacious" and states that his Outlook calendar for September 2019, reflects an appointment for Ms. Mansouri at 9:00 AM, on Friday, September 27, 2019. He further states that the recitation of the facts in the Plaintiff's opposing affidavit does not correspond to the actual facts in this matter, and states that he ordered a title report from East Coast Abstract, Inc., on September 23, 2019, in anticipation of the Closing that was to be held before the end of October in 2019. He further states that when Margaret came to his office on September 27, 2019, before executing the Contract of Sale, Mr. Friedland reviewed the letter agreement that she signed, and she subsequently signed the Contract, "as she was grateful that the Defendant was willing to arrange to pay off her mortgage with Nationstar Mortgage LLC PBA Mr. Cooper, as the parties were facing a foreclosure proceeding with no prospects of being able to satisfy their outstanding indebtedness". Mr. Friedland also reiterates that he never alluded to or actually indicated to either of the Plaintiffs that he was representing all parties involved in the transaction, and that the Court should disregard all of the assertions by the Plaintiff as self-serving and misstatements of fact aimed only at protecting herself.

Based on the facts as stated in Mr. Friedland's sworn affirmations, which are consistent with the real estate transaction documents submitted by the Defendant in support of his cross-motion to dismiss, and the fact that the Plaintiffs' own Verified Complaint specifically alleges that Mr. Friedland represented the Defendant in connection with the real estate purchase transaction, and that the Plaintiffs only now swear that they understood Mr. Friedland to represent their interests in addition to the Defendant's interests, that the Plaintiffs' subsequent statements concerning Mr. Friedland are self-serving misstatements and are designed to avoid the consequences of the Plaintiffs' earlier allegations. (*See Conti v Polizzotto*, 243 AD2d 672, 673 [2d Dept 1997]).

The Plaintiff's counsel argues that "if Maurice is successful on this application, [he] will have absconded with all of the equity in Plaintiff's home", such that the Plaintiffs have a cause of action for the imposition of a constructive trust. However, accepting all of the Plaintiffs' allegations as true, the Plaintiffs were always supposed to move out of the home, the home was to be sold, and then with the proceeds of such sale the Plaintiffs would be paid the balance of the purchase price, after the Defendant had been reimbursed for funds that he advanced. The Defendant agrees that the Plaintiffs are to be reimbursed following the sale of the property to a third party, although the Court predicts there will be a disagreement as to the amounts that the Defendant is to be repaid before the Plaintiffs receive the balance of the sale proceeds.

It is illogical to argue that the Defendant would "abscond" anywhere, as he acknowledges that he is required to pay the Plaintiffs money following the sale of the Premises to a third party. The Plaintiffs represent to the Court that they are "ready, willing, and able" to sell the property and the Defendant has not given any indication that he is not also "ready, willing and able" to sell the property.

The Plaintiffs' first cause of action for breach of contract is grounded on the allegations that the parties entered into an oral agreement concerning the Premises such that the Premises was deeded to the Defendant "to be held in trust for Plaintiffs" until the sale of the Premises "sometime in the future". However, the Court finds that such an agreement is barred by the Statute of Frauds. (Gen Oblig § 5-703[1] ["1. An estate or interest in real property…or any trust or power, over or concerning real property, or in any manner relating thereto, cannot be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent, thereunto authorized by writing…"]). Under General Obligations Law § 5-703[3], "A contract to devise real property or establish a trust of real property, or any interest therein or right with reference thereto, is void unless the contract or some note or memorandum thereof is in writing and subscribed by the party to be charged therewith, or by his lawfully authorized agent".

In contrast, the Defendant has submitted written documents, consisting of the Contract of Sale and the deed, neither of which support the allegation that the Premises was transferred to the Defendant "to be held in trust" for the Plaintiffs until some unknown time in the future when the house would be sold.

Furthermore, while the Plaintiff argues that the parties had an oral agreement for the Defendant to hold the Premises "in trust" for the Plaintiffs, the Defendant has submitted the parties' executed Contract of Sale, which contains a merger clause, and therefore the Plaintiffs are precluded from presenting evidence of an alleged prior oral agreement between the parties regarding the same subject matter as the parties' written agreement. (*Connolly v Certilman Balin Adler Hyman, LLP*, 122 AD3d 790, 791 [2d Dept 2014]).

Based on the documentary evidence submitted by the Defendant, and as the Plaintiffs' allegations concerning an oral agreement are precluded pursuant to the Statute of Frauds, the Court finds that the Plaintiff's Verified Complaint fails to state a cause of action for breach of contract and the first cause of action for breach of contract shall be **DISMISSED**.

The Plaintiffs' second cause of action is for imposition of a constructive trust. "Generally, four factors are considered in ascertaining whether a constructive trust should be imposed upon a property interest: (1) the existence of a fiduciary or confidential relationship, (2) a promise, express or implied, (3) a transfer in reliance on the promise, and (4) unjust enrichment". (*Coco v Coco*, 107 AD2d 21, 24, 485 NYS2d 286 [2d Dept 1985]). In this case, accepting all of the facts as alleged by the Plaintiffs as true, the Court finds that there is no "unjust enrichment" element present. The parties agree that the underlying real estate transaction arose from the Defendant *helping* the Plaintiffs by paying off their mortgage, when otherwise their home would have been foreclosed upon. It is further agreed that the Plaintiffs would be paid some amount upon the Premises being sold to a third-party. While they disagree over the amount that the Plaintiffs should be paid after a sale- the fact is that no sale has occurred yet, and the Contract of Sale addresses the fact that the Defendant did not pay the Plaintiffs the full value of the home. At this juncture, the Court finds that there is no basis to allege that the Defendant has been unjustly enriched.

The Court further finds that the Plaintiffs have failed to establish the element of "confidential or fiduciary relationship" in view of the evidence submitted by the Defendant demonstrating that Defendant was represented by counsel in connection with the subject real estate transaction, and the Plaintiff was advised to retain counsel, but elected to proceed without counsel and then ultimately "signed whatever documents were put before [Margaret] at closing by the attorney". Again, for the reasons stated above, the Court rejects the Plaintiffs' self-serving statement that they believed Mr. Friedland represented everyone in connection with the transaction and that they were never advised that he only represented the Defendant. As the Court finds that the Plaintiffs' Verified Complaint fails to state a cause of action for constructive trust, the second cause of action shall be **DISMISSED**.

The Plaintiffs' third cause of action is for unjust enrichment. While the Plaintiffs allege that the Defendant did not pay the fair market value for the Premises, to the detriment of the Plaintiffs, and that equity and good conscience preclude the Defendant from retaining the proceeds of any sale of the Premises, such allegations are directly contradicted by the terms of the Contract of Sale, which state that, *inter alia*, "Any monies remaining after the reimbursement to the Purchaser [Defendant] from the sale of the premises to a third party after payment of the above to the Purchaser [Defendant] shall be paid to the Seller [Plaintiffs] as full and final payment with regard to this Contract". Thus, the Contract expressly acknowledges that the Defendant's initial payment does not constitute the full payment for Premises. Therefore, the Court finds that the Plaintiffs' Complaint fails to state a cause of action for unjust enrichment, and the third cause of action shall be **DISMISSED**.

The Plaintiffs' fourth cause of action is for promissory estoppel. The Plaintiffs allege that the Defendant "made a clear and unambiguous promise to Plaintiffs to sell the Premises in cooperation with the Plaintiffs, and after being paid the sums of money advanced in the 2019 Closing, as well as any other sums advanced, to allow the Plaintiffs to retain the proceeds of the sale", and that the Plaintiffs have been "damaged" in reliance on the promise by the Defendant. However, the Court finds that the Plaintiffs' allegation that the Defendant promised to "cooperate" with the Plaintiffs to sell the Premises, is insufficient to demonstrate the existence of a "clear and unambiguous" promise, the reliance upon which has caused the Plaintiffs to sustain damages. (*See Schwartz v Miltz*, 77 AD3d 723, 724-25 [2d Dept 2010]). Furthermore, while the Plaintiffs argue that they have been "damaged" by their alleged reliance on the Defendant's "promise", the failure to sell the subject Premises has actually afforded the Plaintiffs several additional years of continuing to reside in their family home after the closing in October of 2019. Thus, they have failed to demonstrate entitlement to the equitable doctrine of promissory estoppel. (*Schwartz v Miltz*, 77 AD3d 723, 725 [2d Dept 2010]). Therefore, the fourth cause of action for promissory estoppel shall be **DISMISSED**.

The Plaintiffs' fifth cause of action is for an equitable lien, which is grounded upon allegations that the Plaintiffs have expended sums of money to maintain, preserve, and improve the Premises in reliance upon the Defendant's promise to hold the Premises as security for the repayment of sums that he advanced.

"An equitable lien may be granted in favor of a person who, due to the nature of his or her relationship with a property owner, has relied upon that owner's unfulfilled promise to convey the property, and as a result has expended funds to preserve or improve it in anticipation of the conveyance.". (*Rock v. Rock*, 100 AD3d 614, 617 [2d Dept 2012; citations omitted]). The Plaintiffs' complaint fails to state a cause of action for an equitable lien, in view of the written Sales Contract providing that upon sale of the Premises to a third-party, the Plaintiffs would receive the balance of the sale proceeds after Defendant was reimbursed for certain funds that he advanced. Based on the parties' respective motion submissions, the Court finds that the Plaintiffs fail to state a basis upon which they are entitled to the equitable remedy of an equitable lien. Therefore, the Plaintiffs' Fifth Cause of Action for an equitable lien shall be **DISMISSED**.

The Plaintiffs abandoned their sixth cause of action for conversion by failing to oppose that portion of the Defendant's cross-motion which sought dismissal of that cause of action. (*See Blackman v. Metro. Transit Auth.*, 206 AD3d 602, 605 [2d Dept. 2022]). Therefore, the Plaintiffs' sixth cause of action for conversion shall be **DISMISSED**.

The Plaintiffs' seventh cause of action for quiet title seeks a determination of a quiet title claim to the Premises pursuant to Article 15 of the Real Property Actions and Proceedings Law. "To maintain an equitable quiet title claim, a plaintiff must allege actual or constructive possession of the property and the existence of a removable 'cloud' on the property, which is an apparent title, such as in a deed or other instrument, that is actually invalid or inoperative" (*Acocella v Bank of New York Mellon*, 127 AD3d 891, 892-93 [2d Dept 2015][citations omitted]). In this case, as discussed above, while the Plaintiffs allege that the Premises was to be deeded to the Defendant "in trust" for the Plaintiffs, the documentary evidence submitted by the Defendant, combined with Defendant's affidavit and that of Lloyd Friedland, Esq., establishes that those allegations are not true, that the Premises was deeded to the Defendant through a Bargain and Sale Deed, that the parties entered into a Contract of Sale addressing the parties' rights and obligations with respect to the Premises, and which fully addresses how the Plaintiffs will be paid after the

Premises is sold to a third-party. The Court finds that the Plaintiffs have failed to state a cause of action for Quiet Title, and the seventh cause of action shall be **DISMISSED**.

The Plaintiffs' eighth cause of action seeks declaratory judgment declaring that they have fully performed all of their obligations under the parties' agreement and that the Defendant has breached the parties' agreement by claiming ownership of the Premises and commencing the Summary Proceeding. However, the Plaintiff acknowledges her signature on the Contract of Sale which required the Plaintiffs to leave the Premises and transfer same to the Defendant upon closing. Thus, it would seem that the Plaintiffs obtained a further benefit after the real estate purchase transaction, in that they were permitted to stay in the Premises for several additional years after they were supposed to be out. Under such circumstances, the Court finds that the Plaintiffs are not entitled to a declaration that they have complied with all of their obligations under the parties' agreement, nor are they entitled at this time to a determination that the Defendant breached their agreement and caused the Plaintiffs damages. Therefore, the Plaintiffs' eighth cause of action for declaratory judgment shall be **DISMISSED**.

The Plaintiffs' ninth cause of action is for fraud, the elements of which "require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages". (*City of Long Beach v Agostisi*, 221 AD3d 776, 778 [2d Dept 2023][citations omitted]). "The elements of a cause of action to recover for constructive fraud are the same as those to recover for actual fraud with the crucial exception that the element of scienter upon the part of the defendant, his [or her] knowledge of the falsity of his representation, is dropped ... and is replaced by a requirement that the plaintiff prove the existence of a fiduciary or confidential relationship warranting the trusting party to repose his [or her] confidence in the defendant and therefore to relax the care and vigilance he [or she] would ordinarily exercise in the circumstances". (*Id.*; citations omitted]. "A cause of action sounding in fraud must be pleaded with the requisite particularity under CPLR 3016(b)". (*Id.*; citation omitted). "'CPLR 3016(b) is satisfied when the facts suffice to permit a reasonable inference of the alleged misconduct'". (*Id.* at 779; citations omitted). Similar to the other causes of action, the documentary evidence submitted by the Defendant, including the Contract of Sale which the Plaintiff acknowledged she signed, directly refute the Plaintiffs' allegations that the Defendant falsely promised to hold the Premises in trust for them. In this case, the allegations in the Complaint, coupled with the surrounding circumstances, do not give rise to a reasonable inference that the Defendant engaged in actual or constructive fraud. Therefore, the Plaintiffs' ninth cause of action for fraud shall be **DISMISSED**.

The Plaintiffs' tenth cause of action is for preliminary and permanent injunction, based on allegations that, "subject to the Plaintiffs' continued payment of the carrying charges of the Premises and their compliance with the parties' agreements, Plaintiffs' possessory rights for the Premises should not be terminated". However, the written Contract of Sale provided that the Plaintiffs were to vacate the Premises upon closing. Instead, the Plaintiffs have enjoyed the benefit of continuing to reside in the Premises for several additional years after closing occurred. While they contend that the parties' agreement was that the Defendant would hold the Premises "in trust" until some "undetermined date" that the Premises was sold to a third party, such an oral agreement is unenforceable. The Plaintiffs are not entitled to the equitable remedy of a preliminary and permanent injunction, and the Plaintiffs' tenth cause of action for preliminary and permanent injunction shall be **DISMISSED**.

Finally, the Plaintiffs' eleventh cause of action is for breach of fiduciary duty, based on allegations that the Defendant breached his fiduciary obligation to the Plaintiffs by commencing the Summary Proceeding, and by claiming that he is the rightful owner of the Premises, and that he obtained title to the Premises through fraudulent and deceptive means. "To state a claim for breach of fiduciary duty, a plaintiff must allege the existence of a fiduciary relationship, misconduct by the other party, and damages directly caused by that party's misconduct. (*Castellotti v Free*, 138 AD3d 198, 209 [1st Dept 2016][citations omitted]). "A fiduciary relationship 'whether formal or informal, is one founded upon trust or confidence reposed by one person in the integrity and fidelity of another ... [and] might be found to exist, in appropriate circumstances, between close friends ... or even where confidence is based upon prior business dealings'". (*AHA Sales, Inc. v Creative Bath Products, Inc.*, 58 AD3d 6, 21, 867 NYS2d 169, 181 [2d Dept 2008] [internal quotations omitted, citations omitted]). The fact that parties are siblings does not, standing alone, create a fiduciary relationship. (*See Chasanoff v Perlberg*, 19 AD3d 635, 635-36 [2d Dept 2005]).

The Plaintiffs fail to allege the existence of a fiduciary relationship, as there are no allegations that the Plaintiffs placed particular trust or confidence in the Defendant's integrity or fidelity, nor are there allegations that the Plaintiffs relied on the Defendant's expertise or knowledge in the matter of real estate conveyance transactions. (*See Chasonoff*, 19 AD3d at 636). The Defendant was represented by counsel in the subject transaction, the Plaintiffs were advised to also retain counsel. The Plaintiffs allege, in conclusory fashion, that they maintained a relationship of confidence and trust with the Defendant, but such conclusory allegations, without more, are insufficient to allege a fiduciary relationship. As the Plaintiffs fail to state a cause of action for breach of fiduciary duty, that cause of action shall be **DISMISSED**.

The Defendant further seeks an order which cancels the notice of pendency pursuant to CPLR 6514[b] and orders the Plaintiff to pay all costs and expenses associated with same pursuant to CPLR 6514[c]. Under CPLR 6514[a], "The court, upon motion of any person aggrieved and upon such notice as it may require, shall direct any county clerk to cancel a notice of pendency, if…the action has been settled, discontinued or abated; or if the time to appeal from a final judgment against the Plaintiff has expired; or if enforcement of a final judgment against the plaintiff has not been stayed pursuant to section 5519". Pursuant thereto, as the Court's Decision and Order dismisses the Plaintiffs' Complaint, the Court is required to cancel the Notice of Pendency, and therefore, the portion of the Defendant's cross-motion which seeks an Order canceling the Notice of Pendency shall be **GRANTED.** (CPLR 6514[a]; *see also, Freedom Enterprises, Inc. v Hager Realty Corp.*, 52 Misc 2d 1043, 1044 [Sup Ct New York County 1967]). However, such Order vacating the notice of pendency shall be stayed for a period of 30 days from the date that this Decision and Order is entered. (CPLR 6514[a]). The portion of the Defendant's cross-motion which seeks an Order awarding Defendant the costs and expenses incurred in canceling the Notice of Pendency [CPLR 6514(c)] shall be **DENIED**.

In light of the Court's dismissal of the Plaintiff's Complaint, the Plaintiff's motion for a preliminary injunction shall be **DENIED**, in its entirety. Additionally, the portion of the Court's Order to Show Cause dated October 10, 2023, which granted a temporary restraining order is hereby **VACATED**.

Accordingly, it is hereby,

ORDERED, that the Defendants' cross-motion to dismiss the Plaintiffs' Complaint [Seq. 002] is **GRANTED**, the Plaintiff's Complaint is dismissed; and it is further,

ORDERED, that the Clerk of Nassau County is directed to cancel the Notice of Pendency which was e-filed on September 20, 2023, and recorded on October 20, 2023 [NYSCEF Doc. No. 20] , for the premises located at 11 Syosset Circle, Syosset, New York 11791, Section 15; Block 119; Lot 5; and it is further,

ORDERED, that the above directive to cancel the Notice of Pendency is **STAYED** for a period of thirty [30] days from the date that this Decision and Order is entered; and it is further,

ORDERED, that the Plaintiff's motion for an Order granting a preliminary injunction [Seq. 001] is hereby **DENIED**, as moot; and it is further,

ORDERED, that the temporary restraining order which was granted in the Order to Show Cause dated October 10, 2023, is hereby **VACATED**; and it is further,

ORDERED, that all other requests for relief not specifically addressed herein shall be deemed **DENIED**.

This constitutes the Decision and Order of this Court.

Dated: April 8, 2024
Mineola, New York

HON. CONRAD D. SINGER, J.S.C.

ENTERED
Apr 18 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE