

Sergeant v Demetrius

2025 NY Slip Op 30818(U)

March 12, 2025

Supreme Court, Queens County

Docket Number: Index No. 708812/2024

Judge: Joseph J. Esposito

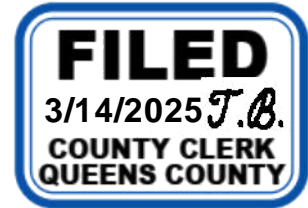
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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable Joseph J. Esposito PART 17
Justice



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DORRETT SERGEANT AND YVONNE HYACINTH
DARBY GILKES A/K/A HYACINTH DARBY,

Plaintiffs,

Index No. 708812/2024

Motion Date: 10/30/2024

-against-

Motion Seq. No.: 1

RICHARD DEMETRIUS AND MATTHEW
BRANDON DEMETRIUS,

Defendants.
-----X

The following numbered papers read on this pre-Answer motion by defendants for an Order: (1) pursuant to CPLR 3211(a)(7), dismissing the Verified Complaint as against defendants for failure to state a cause of action; (2) dismissing the Complaint under Section 3211(a)(1), based upon documentary evidence; (3) under section CPLR 3211(a)(3), dismissing the Complaint based upon the fact that the plaintiff lacks capacity to sue; (4) cancelling the lis pendens filed against the property; (5) awarding costs and disbursements to defendants; and (6) awarding such other and further relief as the Court deems just and proper.

Papers Numbered

Notice of Motion – Affirmation – Exhibits.....	EF 15-23
Affirmation in Opposition – Affirmation – Exhibits.....	EF 24-27
Reply Affirmation.....	EF 28-29

Plaintiff commenced the instant action pursuant to RPAPL Article 15, seeking declaration restoring plaintiffs’ interest in their home by setting aside as null and void the transaction allegedly perpetrated by defendant Richard Demetrius in 2022. Plaintiff alleges that defendant Demetrius purportedly transferred 100% title and ownership of the property held jointly by plaintiffs as tenants-in-common, to himself and his son, defendant Matthew Brandon Demetrius, thereby divesting plaintiffs of their joint ownership. The subject property is located at 232-04 Mentone Avenue, Laurelton, New York. Plaintiff alleges that the property was bought in 1972 by Dorrett Sergeant’s husband, Lester Sergeant as joint tenants with the right of survivorship. In 1977, title was transferred to plaintiffs, removing Lester Sergeant from title, as tenants-in-common. Plaintiffs allege that they neither knew nor consented or authorized the purported 2022 transfer that sought to divest them of their interest in the subject property.

"When reviewing a defendants' motion to dismiss the complaint for failure to state a cause of action, a court must give the complaint a liberal construction, accept the allegations as true and provide plaintiffs with the benefit of every favorable inference" (*Cortlandt St. Recovery Corp. v. Bonderman*, 31 NY3d 30, 38, 73 N.Y.S.3d 95, 96 N.E.3d 191 (2018)). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v. Goldman, Sachs & Co.*, 5 NY3d 11, 832 N.E.2d 26, 799 N.Y.S.2d 170 (2005)). "Unlike a motion for summary judgment where the court searches the record and assesses the sufficiency of the parties' evidence, on a motion to dismiss the court merely examines the adequacy of the pleadings" (*Davis v. Boenheim*, 24 NY3d 262, 998 N.Y.S.2d 131, 22 N.E.3d 999 (2014)). The "ultimate question is whether, accepting the allegations and affording these inferences, plaintiff can succeed upon any reasonable view of the facts stated" (*Perez v. Y & M Transportation Corp.*, 219 A.D.3d 1449, 196 N.Y.S.3d 145 (2d Dept. 2023; quoting *Doe v. Bloomberg L.P.*, 36 NY3d 450, 143 N.Y.S.3d 286, 167 N.E.3d 454 [2021])).

Upon careful review the documents submitted in support and in opposition to the subject motion, the Court finds that plaintiff must be accorded the benefit of every possible favorable inference and that plaintiff's allegations fit within the cognizable legal theories pled. Defendants failed to produce evidence in sufficient form to warrant dismissal pursuant to CPLR 3211(a)(7).

Moreover, a motion to dismiss a complaint pursuant to CPLR 3211(a)(1) will be granted only if the documentary evidence submitted by a defendant utterly refutes the factual allegations of the complaint and conclusively establishes a defense to the claims as a matter of law. Defendants' submission herein creates a question of fact rather than establishing a conclusive defense to the allegations pled. Defendants fail to provide the Court with the purported 2022 Will. Further, the Will dated June 8, 2023, submitted by plaintiffs in opposition refute any arguments warranting dismissal at this time.

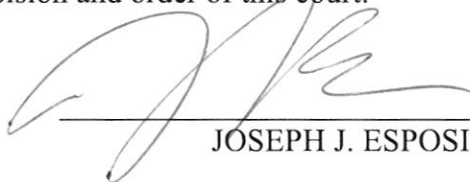
And lastly, the Court finds that defendants fail to provide any sufficient arguments in support of their motion to dismiss as plaintiff lacks capacity to sue. Accordingly, it is

ORDERED that defendants' motion is denied in its entirety; and it is further

ORDERED that defendants are to file an Answer within forty-five (45) days from the date herein.

The foregoing constitutes the decision and order of this court.

Dated: March 12, 2025



JOSEPH J. ESPOSITO, J.S.C.

