

CUP Purchase Equities LLC v Pollock

2025 NY Slip Op 32179(U)

June 16, 2025

Supreme Court, Suffolk County

Docket Number: Index No. 627464/2024

Judge: Maureen T. Liccione

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This opinion is uncorrected and not selected for official publication.

Short Form Order

Index No. 627464/2024

SUPREME COURT – STATE OF NEW YORK
PART 78 – SUFFOLK COUNTY

P R E S E N T:

Hon. Maureen T. Liccione
Justice Supreme Court

-----x
CUP PURCHASE EQUITIES LLC,

Plaintiff,

-against-

PAMELA POLLOCK, Executrix of the Estate of
Arthur Pollock,

Defendants.
-----x

DECISION AND ORDER

Mot. Seq. No. 001-MotD
Orig. Return Date: 04/30/2025
Mot. Submit Date: 04/30/2025

PLAINTIFF’S ATTORNEY
RICHLAND & FALKOWSKI, PLLC
28-07 Jackson Avenue, 5th Fl
Long Island City, NY 11101

DEFENDANT PRO SE
PAMELA POLLOCK
Executrix of the Estate of
Arthur Pollock
8883 Big Blue Lane
Orlando, FL 32836

INTERVENOR
JUSTIN F. PANE, PC
80 Orville Drive, Suite 100
Bohemia, NY 11716

Upon the reading and consideration of NYSCEF documents numbered 8 to 38, it is:

ORDERED that that the branch of the motion by MNB 318 Third St LLC for leave to intervene is granted and MNB 318 Third St LLC is permitted to intervene in this action as a party defendant; and it is further

ORDERED that the summons and complaint in this action be amended by adding MNB 318 Third St LLC thereto as a party defendant so that the caption shall read as follows:

CUP Purchase Equities v Pollock

Index No. 627464/2024

-----X

CUP PURCHASE EQUITIES LLC,

Plaintiff,

-against-

PAMELA POLLOCK, Executrix of the Estate of
Arthur Pollock, and MNB 318 THIRD ST LLC

Defendants.

-----X

; and it is further

ORDERED that the proposed intervention pleading setting forth the defenses of the movant that accompanied the motion and was filed as NYSCEF document number 15 shall be deemed to have been served on the parties upon service of a copy of this order with a notice of entry; and it is further

ORDERED that movant shall serve a copy of this order with notice of entry upon the Suffolk County Clerk who is directed to amend their records to reflect such change in the caption herein; and it is further

ORDERED that that the branch of the motion by MNB 318 Third St LLC to cancel the notice of pendency filed by plaintiff against the property known as 318 3rd Street, Greenport, New York 11944 is granted; and it is further

ORDERED that the Suffolk County Clerk, upon service upon him of a copy of this order with a notice of entry, shall cancel the notice of pendency affecting such property; and it is further

ORDERED that the branch of the motion by MNB 318 Third St LLC pursuant to CPLR 3211 (a) to dismiss the specific performance cause of action set forth in plaintiff's complaint is denied; and it is further

ORDERED that the parties shall appear at a **preliminary conference on September 23, 2025, at 9:30 a.m. before the Honorable Maureen T. Liccione, J.S.C., at the Alan D. Oshrin Supreme Court Building, Court Annex Part 78, 1 Court Street, Riverhead, New York 11901** and that said date shall not be adjourned.

CUP Purchase Equities v Pollock

Index No. 627464/2024

Plaintiff CUP Purchase Equities LLC filed a summons and complaint on November 4, 2024 against the defendant Pamela Pollock, Executrix of the Estate of Arthur Pollock. Plaintiff alleged causes of action for specific performance and breach of contract regarding a failed real estate transaction involving the real property located at 318 3rd Street, Greenport, New York 11944 (Premises). Plaintiff also filed a notice of pendency in connection with this action. Defendant has not filed an answer.

MNB 318 Third St LLC (MNB) moves for an order: 1) pursuant to CPLR 1012 (a) (3) and 1013, granting MNB leave to intervene in this action as an indispensable party defendant; and, upon such leave, 2) pursuant to CPLR 6514 (a), cancelling the notice pendency filed by plaintiff on November 6, 2024, and recorded against the Premises; and 3) pursuant to CPLR 3211 (a) dismissing the specific performance cause of action set forth in plaintiff's complaint. Plaintiff opposes the motion.

Background

On March 25, 2024, plaintiff and defendant entered into a contract for the sale (CUP Contract) of the Premises for the sum of \$351,500.00. The transaction was structured as a short sale, as the deceased Arthur Pollock had a single mortgage in the original principal amount of \$544,185.00. Plaintiff tendered the downpayment of \$1,000.00, ordered a title search, and obtained a conditional short sale approval from PHH Mortgage, on behalf of Cascade Funding Mortgage Trust, on August 23, 2024 for \$335,000.00. Defendant failed to schedule a closing for the sale of the Premises to plaintiff. Plaintiff did not record the CUP Contract.

Allegedly unbeknownst to plaintiff, on August 8, 2024, MNB, as purchaser, and the defendant as seller, executed a contract of sale for the Premises (MNB Contract). Said purchase price was for \$225,000.00. Further allegedly unbeknownst to plaintiff, on August 30, 2024, PHH Mortgage reissued the August 23, 2024 short sale approval, on the exact same terms, including the same date of closing and same purchase price. On September 12, 2024, MNB closed on the purchase of the Premises with defendant. After taking delivery of the deed, MNB alleged to have invested time and resources in repairing and rehabilitating the condition of the Premises.

On November 4, 2024, plaintiff commenced this action against the defendant only and filed a notice of pendency against the Premises. At that time, the September 12, 2024 deed to MNB was not recorded. MNB alleges to have learned of the notice of pendency on or around March 7, 2025, upon running and clearing title to schedule a closing on the resale and transfer of the Premises to

CUP Purchase Equities v Pollock

Index No. 627464/2024

a new purchaser. On March 28, 2025, MNB recorded its deed. On April 8, 2025, MNB filed the instant motion to, inter alia, intervene, cancel the notice of pendency, and dismiss the specific performance cause of action.

MNB argues that it is entitled to intervene as a matter of right because it has: (1) presented the deed, which establishes MNB ownership interest in the Premises, (2) submitted evidence that it paid \$332,500.00 for the Premises and made significant renovations to it since accepting the deed; (3) demonstrated that its fee simple interest in the Premises may be adversely affected by the judgment sought by plaintiff herein; (4) timely sought intervention, (5) complied with CPLR 1014 by accompanying its intervention application with a proposed answer. MNB also argues that the notice of pendency should be cancelled because it neither names the owner, MNB, as a defendant, nor was it served upon the owner of the Premises, MNB, within 30 days of filing. Lastly, MNB contends that dismissal is appropriate as MNB is a bona fide purchaser for value, the deed was delivered to it on September 12, 2024 and recorded on March 28, 2025, and that the CUP Contract was never recorded with the Suffolk County Clerk pursuant to Real Property Law §§ 291 and 294.

In support of its motion, MNB included, inter alia, the affirmation of Charles Weinraub, the president of Handsome Renovations Inc., the deed to the Premises dated September 12, 2024, the MNB Contract dated August 8, 2024, the title policy and searches, the NYS Real Property Transfer Tax Forms showing MNB's \$332,500.00 payment for the purchase of the Premises, a short sale approval from the prior mortgagee, and a proposed answer.

Plaintiff does not oppose MNB's intervention as a party defendant but opposes the cancellation of the notice of pendency and MNB's application for a dismissal. Plaintiff argues that MNB has failed to establish that it was a good faith purchaser for value, as MNB had actual or constructive knowledge of facts sufficient to place it on inquiry notice of a pre-existing contract by virtue of the short sale.

Intervention

Upon a timely motion, a person is permitted to intervene as of right in an action involving the disposition of property where that person may be adversely affected by the judgment (*see* CPLR 1012 [a] [3]; *Atl. Ave. Capital, LLC v 980 Atl. Holdings, LLC*, 231 AD3d 692, 694 [2d Dept 2024]; *Wells Fargo Bank, Nat. Assn. v McLean*, 70 AD3d 676, 676-77 [2d Dept 2010]). In addition, a court, in its discretion, may permit a person to intervene, inter alia, when the person's

CUP Purchase Equities v Pollock

Index No. 627464/2024

claim or defense and the main action have a common question of law or fact (*see* CPLR 1013). “Whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings” (*Atl. Ave. Capital, LLC v 980 Atl. Holdings, LLC*, 231 AD3d at 694, quoting *Wells Fargo Bank, N.A. v. McLean*, 70 AD3d 677).

The branch of MNB’s motion pursuant to CPLR 1012 (a) (3) and 1013, granting MNB leave to intervene in this action as an indispensable party defendant is granted. MNB presented the deed to the Premises, submitted evidence that it paid consideration for the Premises, showed that its fee simple interest in the Premises may be adversely affected by the judgment sought by plaintiff herein, and timely intervened upon discovering that a notice of pendency had been filed against the Premises. Accordingly, MNB demonstrated an interest in the Premises, which entitled it to intervene as a matter of right (*Perelmuter v LRM Builders, LLC*, 127 AD3d 1154, 1155 [2d Dept 2015]).

Cancellation of the Notice of Pendency

“The purpose of the notice of pendency is to afford constructive notice from the time of the filing so that any person who records a conveyance or encumbrance after that time becomes bound by all of the proceedings taken in the action” (*Mallick v Farfan*, 66 AD3d 649, 649-650 [2d Dept 2009]). If properly filed pursuant to CPLR article 65, a notice of pendency is a powerful tool for a plaintiff (*5303 Realty Corp. v O & Y Equity Corp.*, 64 NY2d 313, 315 [1984]). A notice of pendency is an “extraordinary privilege” demanding “strict compliance” with the applicable statutory requirements (*see Slutsky v Blooming Grove Inn*, 147 AD2d 208, 212 [2d Dept 1989]). “To counterbalance the ease with which a party may hinder another’s right to transfer property [by filing a notice of pendency], th[e Court of Appeals] has required strict compliance with the statutory procedural requirements [of CPLR article 65]” (*BR Madison, LLC v Novas*, 234 AD3d 907, 912 [2d Dept 2025] [internal quotations omitted]).

If a notice of pendency is vacated or if its initial three-year life is not timely extended (*see* CPLR 6513, 6514), successive notices may not be filed for the purposes of CPLR article 65 and the plaintiff loses the special privilege afforded by that article (*Slutsky v Blooming Grove Inn, Inc.*, 147 AD2d 208, 212 [2d Dept 1989]).

CUP Purchase Equities v Pollock

Index No. 627464/2024

“A notice of pendency is effective only if, within thirty days after filing, a summons is served upon the defendant” (CPLR 6512). While CPLR 6512 provides that a notice of pendency is effective by serving a summons upon a “defendant” within 30 days of the filing of the notice of pendency, the Appellate Division, Second Department has made it clear that a summons must be served upon at least one of the actual or equitable owners of the real property for the notice of pendency to be effective (*Shouela v Pfeiffer*, 2019 NY Misc LEXIS 49243, at *4 [Sup Ct, Kings County July 16, 2019, No. 515697/18]; see *Merchants Bank of NY v Rosenberg*, 31 AD3d 507, 508 [2d Dept 2006]; *Weiner v Mkvii-Westchester*, 292 AD2d 597, 600 [2d Dept 2002]; *Slutsky v Blooming Grove Inn, Inc.*, 147 AD2d at 212; *Rabinowitz v Larkfield Bldg. Corp.*, 231 AD2d 703, 703-04 [2d Dept 1996]). The key is that the defendant must have an ownership interest in the real property that is the subject of the litigation (see *Weiner v Mkvii-Westchester*, 292 AD2d at 600).

CPLR 6514 (a) provides for the mandatory cancellation of a notice of pendency if service of a summons has not been completed within the time period set forth in CPLR 6512 (*Deans v Sorid*, 56 AD3d 417, 418 [2d Dept 2008]).

Here, as MNB correctly contends, plaintiff failed to comply with CPLR 6512 as the defendant did not have an ownership in the Premises at the time the defendant was served (*Deans v Sorid*, 56 AD3d at 418; *NYCTL 1999-1 Tr. v Chalom*, 47 AD3d 779, 780 [2d Dept 2008]). While plaintiff served the defendant on November 19, 2024, within 30 days of filing the notice of pendency, defendant had no ownership interest in the Premises at the time of the commencement of this action. Plaintiff did not serve the summons on MNB, the entity that was the actual owner of the Premises at the time of the commencement of this action. This action was commenced on November 4, 2024, but on September 12, 2024 defendant had deeded the Premises to MNB.

While plaintiff argues that it complied with CPLR 6512 since it served defendant as the record owner at the time of the commencement of the action and MNB only recorded its deed four months later, on March 28, 2025, it is undisputable that defendant had no ownership interest in the Premises when this action was commenced and strict compliance with CPLR article 65 is required (see *Slutsky v Blooming Grove Inn*, 147 AD2d at 212). Plaintiff provided no case law which would hold that a plaintiff complied with CPLR 6512 when it served an entity that was the last recorded owner but had no present ownership interest in the property.

Since plaintiff failed to comply with CPLR 6512, the branch of MNB’s motion to cancel the notice of pendency is granted in accordance with CPLR 6514 (a).

CUP Purchase Equities v Pollock

Index No. 627464/2024

Dismissal of the Complaint

A motion to dismiss pursuant to CPLR 3211 (a) (1) will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Cives Corp. v George A. Fuller Co.*, 97 AD3d 713, 714 [2d Dept 2012]; *Fontanetta v John Doe*, 73 AD3d 78, 83 [2d Dept 2010]). The evidence submitted in support of such motion must be "documentary" or the motion must be denied (*Fontanetta John Doe*, 73 AD3d at 84). To be considered "documentary," evidence must be unambiguous and of undisputed authenticity (*id.* at 86). "Judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case" (*Bath & Twenty, LLC v Fed. Sav. Bank*, 198 AD3d 855, 855 [2d Dept 2021] [internal quotations omitted]; *Fontanetta v John Doe 1*, 73 AD3d at 84-85). "Neither affidavits, deposition testimony, nor letters are considered documentary evidence within the intendment of CPLR 3211 (a) (1)" (*Davis v Henry*, 212 AD3d 597, 597-98 [2d Dept 2023], quoting *J.A. Lee Elec., Inc. v City of New York*, 119 AD3d 652, 653 [2d Dept 2014]).

"The New York Recording Act (Real Property Law § 290 et seq.), inter alia, protects a good faith purchaser for value from an unrecorded interest in a property, provided such a purchaser's interest is first to be duly recorded" (*Bello v Ouellette*, 211 AD3d 784, 785 [2d Dept 2022] [internal quotation omitted]). To establish that he/she was a bona fide purchaser for value, a purchaser has the burden of proving that he/she purchased the property for valuable consideration and that he/she did not purchase it with "knowledge of facts that would lead a reasonably prudent purchaser to make inquiry" (*139 Lefferts, LLC v Melendez*, 156 AD3d 666, 666 [2d Dept 2017], quoting *Berger v Polizzotto*, 148 AD2d 651 [2d Dept 1989]; *TCJS Corp. v Koff*, 74 AD3d 1188, 1189 [2d Dept 2010]). "[W]here a purchaser has knowledge of any fact, sufficient to put him on inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry, and ascertained the extent of such prior right, or to have been guilty of a degree of negligence equally fatal to his claim, to be considered as a bona fide purchaser" (*Stracham v Bresnick*, 76 AD3d 1009, 1010 [2d Dept 2010]; *Maiorano v Garson*, 65 AD3d 1300, 1303 [2d Dept 2009]).

"When two or more prospective buyers contract for a certain property, pursuant to Real Property Law §§ 291 and 294, priority is given to the buyer whose conveyance or contract is first

CUP Purchase Equities v Pollock

Index No. 627464/2024

duly recorded” (*139 Lefferts, LLC v Melendez*, 156 AD3d at 666, quoting *Avila v Arsada Corp.*, 34 AD3d 609, 610 [2d Dept 2006]).

Here, the affidavit submitted by MNB in support of its motion did not constitute documentary evidence within the intendment of CPLR 3211 (a) (1) (*Davis v Henry*, 212 AD3d at 598). MNB’s other evidentiary submissions attached to its motion papers were insufficient to utterly refute plaintiff’s factual allegation. For example, MNB’s submissions raise questions about the valuable consideration paid by MNB. The MNB Contract, which was not signed by MNB reflects a price of \$225,000.00, the September 12, 2024 deed shows a price of \$332,500.00, and the closing statement for the purchase of the Premises shows a purchase price of \$525,000.00. As such the evidence is ambiguous. Furthermore, while that MNB Contract is facially dated August 8, 2024, pursuant to MNB’s Article of Organizations, the corporation was not formed until August 28, 2024, raising questions about its legal authority to execute the MNB Contract on August 8, 2024. Therefore, the branch of MNB’s motion seeking a dismissal of the specific performance cause of action is denied.

The remainder of the parties’ arguments are either lacking in merit or have been rendered academic by reason of the conclusions reached hereinabove.
and Order of the Court.

The foregoing constitutes the decision and Order of the Court.

ENTER

DATE: June 16, 2025
Riverhead, NY



HON. MAUREEN T. LICCIONE, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION