

Williams v Nooks

2025 NY Slip Op 32217(U)

June 2, 2025

Supreme Court, Kings County

Docket Number: Index No. 528922/2024

Judge: Anne J. Swern

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At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 2nd day of June 2025

PRESENT: HON. ANNE J. SWERN, J.S.C.

MARK WILLIAMS,

Plaintiff,

-against-

Carris Nooks, Kenyatta S. Blake, Kenneth Blake aka Ken Blake, Eliyas Property NY, LLC, Ely Sakhai and Bank of New York Mellon, as Collateral Agent and Custodian of NYCTL1998-2 Trust,

Defendant(s).

DECISION & ORDER

Index No.: 528922/2024

Calendar No.: 52 & 53

Motion Seq.: 001 & 002

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Order to Show Cause, Affirmation, Affidavits and Exhibits (NYSCEF 30, 14-37).....	1, 2
Affirmation and Exhibits in Opposition (NYSCEF 43-65, 74-75).....	3
Reply Affirmation and Exhibits (NYSCEF 71).....	4
Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 66-68).....	5, 6
Affirmation and Exhibits in Opposition (NYSCEF 69, 70, 72).....	7
Reply Affirmation and Exhibits (NYSCEF 73).....	8

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

Plaintiff, Mark Williams (Williams), commenced this action alleging that defendant Carris Nooks (Nooks) fraudulently conveyed title to 298 and 304 East 51st Street, Brooklyn, New York 11203, Block 4656, Lots 18 and 20 (the premises) to Kenyatta Blake (Blake) by a deed dated 8/8/2024 and recorded on 9/19/2024. It is alleged that Ely Sakhai is the owner of Eliyas Property NY, LLC (“Eliyas defendants”), and CV XXVIII, LLC, the entity that has been

substituted as the plaintiff in place of Bank of New York Mellon, the plaintiff in a tax foreclosure proceeding commenced against Williams bearing index #510073/2015 (*see* Complaint, ¶¶14-15 [NYSCEF 1]).¹ Plaintiff further alleges that Nooks, Kenyatta Blake and Sakhai acted in concert to prevent plaintiff from selling title to the premises to resolve open liens in a tax foreclosure proceeding (Index #503125/2020). The complaint alleges five causes of action, *i.e.*, discrimination under Color of Law, Fraud, Deceptive Business Practices, Unjust Enrichment and Conversion. The complaint also seeks a declaratory judgment vacating the 8/8/2024 deed.

Kenyatta Blake is in default. Blake has appeared by an attorney but has not served an answer or a pre-answer motion to dismiss per CPLR § 3211. Defendants Kenneth Blake and Carris Nooks have not appeared *pro se* or by an attorney in this action. The Bank of New York Mellon has appeared and answered but has not taken a position concerning the Order to Show Cause or the Motion to Dismiss.

Plaintiff has moved this Court by Order to Show for an order vacating the 8/8/2024 deed, restraining defendants Kenyatta and Kenneth Blake from removing Williams' property from the premises and directing the return of Williams' personal belongings that were previously removed from the premises. Defendants Ely Sakhai and Eliyas Property NY LLC have moved this Court for an order dismissing this action per CPLR § 3211 [7] and § 3016.

¹ This allegation is incorrect. In Index #510073/2015, CVXXVIII, LLC, is the plaintiff in a mortgage foreclosure proceeding, as the successor in interest to One Sutton Realty Corp. (*see also* Purchase Money Mortgage, 528922/2024, NYSCEF DOC. 61). In Index #503125/2020, CVXXVII, LLC and Mark Williams are defendants in a tax foreclosure proceeding commenced by NYCTL 1998-2 Trust and The Bank of New York Mellon, as Collateral Agent and Custodian. A Judgment of Foreclosure and Sale was granted in the tax foreclosure proceeding (503125/2020, NYSCEF 69 and 72). The most recent sale scheduled for 1/16/2025 is stayed pending a determination of Mark Williams' Order to Show Cause for a stay of the tax foreclosure sale (*id.* DOCS. 87-89).

Procedural Background

On 10/27/2024, this Court signed the Order to Show Cause setting this matter down for a hearing on 11/7/2024 and directing that plaintiff was to make personal service on the defendants by 10/31/2024. Plaintiff's attempt to serve the Kenyatta Blake at 900 Lenox Road, Apartment 5D, Brooklyn, New York 11203, the address listed on the 8/8/2024 deed and recording documents dated 9/19/2024 and Kenneth Blake at 299 East 51st Street, Brooklyn, New York 11203. Plaintiff appeared in Court on 11/7/2024 and requested this Court to extend the time for service. The Court signed a second Order to Show Cause setting the return date for 1/2/2025 and directing that plaintiff personally serve the Blake defendants on or before 11/21/2024. The Blake defendants were served with the Summons with Notice, Verified Complaint, and Order to Show Cause with Supporting Papers, the Notice of Pendency and RJJ by substituted service on a person of suitable age and discretion per CPLR § 308 [2] on 11/13/2024 (NYSCEF 37 and 38).

CPLR § 3211 [a] [7]

Plaintiffs may submit affidavits in opposition to a motion to dismiss pursuant to CPLR § 3211 [a] [7] but the statute does not obligate them to do so to avoid a dismissal (*See Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]). Therefore, plaintiff may stand on the pleadings alone, "confident that its allegations are sufficient to state all of the necessary elements of a cognizable cause of action" to survive a motion to dismiss under CPLR § 3211 [a] [7] (*id.*). When determining a CPLR § 3211 [a] [7] motion, the Court must accept the factual allegations in the complaint as true and "accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit into any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 88 [1994]). However, "bare legal conclusions as well as factual claims flatly contradicted by the record are not entitled to such consideration...nor are legal conclusions

or factual claims which are inherently incredible” (*Strunk v NY State Bd. of Elections*, 126 AD3d 777, 778 [2d Dept 2015]).

When the parties submit evidentiary material outside the pleadings for the Court’s consideration and the motion is not converted to one for summary judgment, “the question becomes whether the pleader has a cause of action, not whether the pleader has stated one and, unless it has been shown that a material fact as claimed by the pleader is not a fact at all, and unless it can be said that no significant dispute exists regarding it, [a] dismissal should not [be granted]” (*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 478, 480 [2d Dept 2017]).

Defendant’s Motion to Dismiss

a) Plaintiff’s First Cause of Action – Discrimination Under Color of Law

Under a liberal construction of plaintiff’s complaint and affidavits *Leon v Martinez*, 84 NY2d 86, CPLR § 3026), plaintiff’s allegations sound in a cause of action under 42 USC § 1983. Section 1983 dictates that,

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

However, such a cause of action may only be maintained when an official policy or custom is perpetrated by a municipality or local government (*see Monell v Department of Social Services of New York City*, 436 US 658, 694 [1976]; *Mann v Alvarez*, 242 AD2d 318, 319 [2d Dept 1997]). Therefore, accepting as true the allegations that the Eliyas defendants perpetrated a “nationwide asset-stripping scheme targeting members of minority groups,” these facts do not

state a viable and cognizable cause of action for discrimination under 42 USC § 1983 (*id.*; *Leon v Martinez*, 84 NY2d 88).

b) Plaintiff's Second Cause of Action - Fraud & Conspiracy to Commit Fraud

A plaintiff must establish the elements of fraud by detailing the misconduct that constitutes the wrong (CPLR § 3016; *Scifo v Taibi*, 126 AD3d 777, 778 [2d Dept 2015]). The elements of fraud are as follows: 1) a representation of material fact, 2) the falsity of that representation, 3) knowledge by the party who made the representation that it was false when made, 4) justifiable reliance by the plaintiff, and 5) a resulting injury (*id.*). Further, allegations of “a mere conspiracy to commit a tort is never of itself a cause of action” (*Alexander & Alexander, Inc. v Fritzen*, 68 NY2d 968, 969 [1986]). The conspiracy allegations merely provide the predicate basis for an otherwise actionable tort and do not constitute a “freestanding claim for conspiracy (*Carlson v American International Group, Inc.*, 30 NY3d 288, 310 [2017]).

Plaintiff's second cause of action for civil and criminal fraud are dismissed against the Eliyas defendants (*Carlson v American International Group, Inc.*, 30 NY3d 310 and *Alexander & Alexander, Inc. v Fritzen*, 68 NY2d 969). The complaint and plaintiff's affidavits do not allege that the Eliyas defendants made material misrepresentations that he detrimentally relied upon to sustain a cause of action for fraud (*Scifo v Taibi*, 126 AD3d 778 and *Alexander & Alexander, Inc. v Fritzen*, 68 NY2d 969; *Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC*, 152 AD3d 480). Likewise, plaintiff's allegations of a conspiracy to commit fraud do not constitute the predicate for any cognizable cause of action against the Eliyas defendants or a separate freestanding tort against them (*Layden v Boccio*, 253 AD2d 540).

Therefore, accepting the allegations as true, the facts do not state a viable and cognizable cause of actions for fraud or conspiracy to commit fraud (*Leon v Martinez*, 84 NY2d 88; CPLR § 3016).

c) Plaintiff's Third Cause of Action – Deceptive Business Practices

Section 349 [a] of the General Business Law states that “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.” The statute addresses consumer-oriented conduct, acts or practices that have a broader impact on consumers at large (*Oswego Laborers' Local 214 Pension Fund v Marine Midland Bank, N.A.*, 85 NY2d 20, 25 [1995]). Therefore, “private contract disputes, unique to the parties...do not fall within the ambit of the statute” (*id.*). If a plaintiff establishes that their contract dispute impacts consumers at large, they must then establish that plaintiff was a reasonable consumer misled by defendants' misleading or deceptive acts (*Goshen v Mutual Life Insurance Co. of N.Y.*, 98 NY2d 314, 322 [2002]). Here, plaintiff's allegations do not establish that he was misled by any act or omission in a consumer transaction or contract with the Eliyas defendants.

d) Plaintiff's Fourth and Fifth Causes of action - Unjust Enrichment and Conversion

A cause of action for unjust enrichment “lies as a quasi-contract claim” (*Goldman v Metro Life Ins. Co.*, 5 NY3d 561, 572 [2005]) and imposes an equitable obligation to prevent an injustice in the absence of an actual agreement between the parties, breach of duty or tort liability distinct from other duplicative causes of action and allegations (*id.*; *Layden v Boccio*, 253 AD2d 540, 541 [2d Dept 1998]; *Travelsavers Enters., Inc. v Analog Analytics, Inc.*, 149 AD3d 1003, 1006-1007 [2d Dept 2017]). However, “an unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim.” (*Scifo v Taibi*, 198 AD 3d

704, 706 [2d Dept 2021] [The Court affirmed the dismissal of plaintiff's unjust enrichment claim where plaintiff also included a cause of action for conversion.]).

To survive a motion to dismiss an unjust enrichment claim, plaintiff must have alleged facts to establish that the defendant was enriched at the plaintiff's expense, and it is against equity and good conscience to permit the defendant to retain what is sought to be recovered (*Travelsavers Enters., Inc. v. Analog Analytics, Inc.*, 149 AD3d 1006-1007).

A cause of action for conversion is established where plaintiff alleges "legal ownership or an immediate right of possession to specifically identifiable funds and that the defendant exercised unauthorized dominion over such funds to the exclusion of the plaintiff's rights: Money, if specifically identifiable, may be the subject of a conversion action." (*Scifo v. Taibi*, 198 AD 3d 706).

Plaintiff's complaint and affidavits likewise do not set forth facts to sustain either cause of action. These defendants have not taken title or possession the property as established by the deed from Nooks to Brook. Moreover, plaintiff does not allege facts to establish that the Eliyas defendants have exercised unauthorized dominion and control over the property or money derived therefrom to the exclusion of plaintiff. The allegations constitute nothing more than bare legal conclusions that are flatly contradicted by the record (*Strunk v NY State Bd. of Elections*, 126 AD3d 778).

Based on the foregoing, the motion to dismiss by Eliyas Property NY, LLC and Ely Sakhal is granted and plaintiff's Order to Show Cause against said defendants is denied.

Plaintiff's Order to Show Cause

The Notices of Pendency in the foreclosure action with the Eliyas defendants (Index #510073/2015, NYSCEF 3, 94, 112 and 114) provided actual and constructive notice that

plaintiff was the title holder to the property (*Del Pozo v Impressive Homes, Inc.*, 95 AD3d 1263, 1265 [2d Dept 2012]). The last Notice of Pendency filed on 8/30/2024 was still in effect on 8/8/2024 when Nooks executed the deed to Blake (*id.*, DOC. 114). The notices filed after the trial Court dismissed that action on 2/4/2019 were necessary due to the Notice of Appeal filed on 3/13/2019 (*id.* DOC. 98). The Appellate Division did not affirm the dismissal until 3/13/2025 (*id.*, DOC 116). Further, the complaint in the 2015 action lists Mark Williams as the Certified Owner (*id.*, DOC. 1, p.12). Nooks, having been previously divested of title, is not listed in that action as the owner of the property.² If Blake chose to rely on a title report obtained by Nooks (NYSCEF 74 and 75), Blake did so at his own peril. Therefore, regardless of the contents in Nooks' 2023 title report, Blake's remedy lies with an action against Nooks.

The Court finds that Blake was not a bona fide purchaser for value and knowingly accepting a deed without title search. The deed was executed on 8/8/2024, but Blake did not attempt to legally remove Williams from the property. Instead, Blake waited until October 2024 when Williams was in Florida to enter the home to remove his belongings from the premises without his knowledge (NYSCEF 29, ¶¶6-10; *see also* Complaint, DOC. 1). Finally, Blake did not serve an answer to the complaint or submit an affidavit in opposition to the Order to Show Cause denying plaintiff's allegations in this action.

Plaintiff's Order to Show Cause is granted in its entirety as against Carris Nooks, and Kenyatta S. Blake, and Kenneth Blake aka Ken Blake. Kenyatta Blake has appeared by an attorney. The attorney submitted a notarized letter from Nooks in opposition to plaintiff's Order to Show Cause. This letter was not considered in determining the Order to Show Cause or

² Nooks and her late husband lost title to the property in a foreclosure action under Index #9765/1990 (*see* Index #510073/2015, DOC. 25). Williams was later declared the owner of the property subject to the One Sutton Realty Corp. mortgage in the amount of \$265,500.00 by an order dated 9/11/2009 in Index #23199/2000 and recorded in ACRIS (*see* Complaint, 528922/2024, DOC. 1, p.58; DOC. 6; and *see* DOC. 19).

Motion to Dismiss (NYSCEF 58). The letter is not subscribed and affirmed in compliance CPLR § 2106. The Court also cannot permit Nooks to default in this action and defend it through Blake:

Also not considered in the Court's determination is Blake's attorney's factual statements, *inter alia*, that Kenyatta Blake was never served in this proceeding because Kenyatta has not submitted an affidavit "[swearing] to specific facts to rebut the statements in the process server's [affidavits of service]" dated 11/14/2025 (NYSCEF 37 and 38) (*City of New York v Miller*, 72 AD3d 726, 727 [2d Dept 2010]). The bare affirmation of an attorney having no personal knowledge of the facts is without evidentiary value (*see Zuckerman v City of New York*, 49 NY2d 557 [1980]).

The Court has considered the parties remaining contentions and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's Order to Show Cause for an injunction against defendants Carris Nooks, and Kenneth Blake aka Ken Blake, is granted on default (MS 001), and it is further

ORDERED that plaintiff's Order to Show Cause for an injunction against defendant Kenyatta Blake is granted (MS 001), and it is further

ORDERED that this Order shall be served with Notice of Entry within 15 days of entry in NYSCEF by Overnight Mail and file proof of service in NYSCEF, and it is further

ORDERED that defendants Carris Nooks, Kenyatta Blake and Kenneth Blake aka Ken Blake are permanently enjoined from removing plaintiff's personal and professional belongings from 298 and 304 East 51st Street, Brooklyn, New York 11203, and it is further

ORDERED, that defendants Carris Nooks, Kenyatta Blake and Kenneth Blake aka Ken Blake shall return and restore plaintiff's personal and professional belongings to plaintiff within 30 days of service of this Order with Notice of Entry by Overnight Mail, and it is further

ORDERED that the Warranty Deed dated 8/8/2024 executed by defendant Nooks and transferring the premises known as 298 and 304 East 51st Street, Brooklyn, New York 11203 Block 4656, Lots 18 and 20, and recorded on 9/19/2024, CRFN 2024000245921, Document ID #2024082200011001, is declared invalid and vacated, and it is further

ORDERED that any claim to title by Kenyatta Blake under Carris Nooks, is forever barred from asserting any such claim to title in 298 and 304 East 51st Street, Brooklyn, New York 11203 Block 4656, Lots 18 and 20, and it is further

ORDERED that plaintiff, Mark Williams, is the owner in fee simple of the premises known as 298 and 304 East 51st Street, Brooklyn, New York 11203 Block 4656, Lots 18 and 20, and it is further

ORDERED that plaintiff shall submit a Judgment with Notice of Settlement in conformity with RPAPL § 1521 within 30 days after service of this Order with Notice of Entry and filing proof of service in NYSCEF, and it is further

ORDERED that plaintiff's Order to Show Cause for an injunction against defendants Elyas Property NY, LLC and Ely Sakhai is denied (MS 001), and it is further

ORDERED that the motion by defendants Elyas Property NY, LLC and Ely Sakhai to dismiss this action against them in its entirety is granted (MS002).

This constitutes the decision and order of the Court.

ENTER:



Hon. Anne J. Swern, J.S.C.

Dated: 6/2/2025

KINGS COUNTY CLERK
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