

**Aretakis v First Citizens Bank, Inc.**

2025 NY Slip Op 32357(U)

June 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 162/2024

Judge: Ingrid Joseph

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At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20<sup>th</sup> day of June, 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF  
NEW YORK COUNTY OF KINGS

-----X  
JOHN ARETAKIS,

Plaintiff,

-against-

DECISION AND ORDER  
Index No.: 162/2024  
Motion Seq. 3

FIRST CITIZENS BANK, INC.,  
FIRST CITIZENS BANKSHARES, INC.  
and TRANS UNION, LLC,

Defendants.

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The following papers numbered 1 to 8 read herein:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Affidavits/Affirmations in Reply \_\_\_\_\_

Papers Numbered:

1-5 \_\_\_\_\_  
6 \_\_\_\_\_  
7-8 \_\_\_\_\_

Upon the foregoing papers, defendant First-Citizens Bank & Trust Company s/h/i/a First Citizens Bank, Inc. and First Citizens BankShares, Inc. (Citizens Bank) moves for an order, pursuant to CPLR 3211 (a) (7), dismissing the complaint for failure to state a cause of action as against it (motion sequence number 3).

In this action rooted in identity theft, amalgamating breach of contract and tort claims, plaintiff interposes causes of action against Citizens Bank predicated on: (1) breach of contract; (2) negligence; (3) “knowledge liability and fault in failing to protect the financial and confidential information” of plaintiff’s family (*see* complaint, ¶ 60); and (4) “identity theft, cyber security breach and a breach of confidentiality” (*see id.* at ¶ 40), as well as “hacking” (*see id.* at ¶ 44).

Woven into the fabric of plaintiff’s causes of action is the notion that Citizens Bank, a banking institution, failed to safeguard plaintiff’s private information, as well as that of his mother and uncle,<sup>1</sup> in contravention of its duties as a financial institution, ostensibly causing damages to such individuals in the form of identity theft and hacking (*see id.* at ¶¶ 10-21 and 28-38).

<sup>1</sup> Neither plaintiff’s mother nor his uncle is a plaintiff in the present proceeding.

Plaintiff, a Citizen's Bank Client, asserts in the complaint that his social security number was "used by the hackers" (*see id.* at ¶ 10), and that the hacking of his social security number is attributable to defendants' purported negligent failure to "protect and secure what the Defendants were charged with protecting" (*see id.* at ¶ 12).

Plaintiff likewise posits that defendants were negligent as follows in failing to shield his financial information:

"Defendants took or allowed the Plaintiff's private, confidential and financial information to be accessed or hacked, with [sic] identity theft and did improper, careless, illegitimate and/or illegal reasons [sic] and did not safekeep this important financial and/or other confidential information of the Plaintiff."

(*id.* at ¶ 19).

Plaintiff alleges in the complaint that because of his status as a client of the defendants, it was incumbent on them to secure his financial information, which duty defendants are purported to have breached. In the complaint plaintiff asserts that:

"The Defendants had a duty to act with respect to the Plaintiff's confidences and privacy toward [sic] and treat the Plaintiff reasonably, legally and appropriately and breached that duty proximately causing damages.

\* \* \*

"The Defendants, and their agents either had a case of stolen or mistaken identity, or carelessly held or failed to properly secure the Plaintiff's identity, confidential and financial information causing multiple hacks, disclosures and damages."

(*see id.* at ¶¶ 31 and 36).

In considering a motion to dismiss pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, "the pleadings must be liberally construed" and "[t]he sole criterion is whether from [the complaint's] four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*see Morone v Morone*, 50 NY2d 481, 484 [1980]; *see also Dinerman v Jewish Bd. of Family & Children's Servs., Inc.*, 55 AD3d 530, 531 [2d Dept 2008]; *Gershon v Goldberg*, 30 AD3d 372, 373 [2d Dept 2006]).

A court considering a motion to dismiss must both accept as true the allegations in the complaint and afford plaintiff the benefit of every possible favorable inference (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Great Eagle Intl. Trade, Ltd. v Corporate Funding Partners, LLC*, 104 AD3d 731, 732 [2d Dept 2013]). After accepting the factual allegations as true, the court must determine whether these alleged facts fit within any cognizable legal theory (*see Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 493 [2008]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]; *Tenuto v Lederle Labs., Div. of Am. Cyanamid Co.*, 90 NY2d 606, 609-610 [1997]). However, allegations consisting of bare legal conclusions are not entitled to such deference (*Mayer v Sanders*, 264 AD2d 827 [2d Dept 1999])

To assert a viable breach of contract cause of action, a plaintiff must allege “the existence of a contract, the plaintiff’s performance pursuant to the contract, the defendant’s breach of its contractual obligations, and damages resulting from the breach” (*see Ben Ciccone, Inc. v Naber Elec. Corp.*, 214 AD3d 936, 938 [2d Dept 2023]; *Dean Bldrs. Group, P.C. v M.B. Din Constr., Inc.*, 186 AD3d 1612, 1614 [2d Dept 2020]; *Legum v Russo*, 133 AD3d 638, 639 [2d Dept 2015]).

Plaintiff fails to allege that he entered into a contract with Citizens Bank, much less that the subject entity breached the parties’ putative contract. To the contrary, in his breach of contract cause of action in purporting to describe the terms of the parties’ alleged contract, plaintiff cryptically asserts:

“The Defendants exchange [sic] for being credit card [sic] of the Plaintiff’s son, and the Plaintiff, and the bank of his mother, agreed to safeguard the Plaintiff and his mother and their confidences and secure their private confidential and financial information.”

(complaint, ¶ 49).

Plaintiff’s breach of contract claim, predicated on an inchoate contract formation is unavailing. As held by the New York Court of Appeals in *Mandarin Trading Ltd. v Wildenstein* (16 NY3d 173, 181-182 [2011]) in dismissing a plaintiff’s breach of contract claim under CPLR 3211 (a) (7):

“Generally, a party alleging a breach of contract must ‘demonstrate the existence of a . . . contract reflecting the terms and conditions of their . . . purported agreement’

\* \* \*

“The complaint only offers conclusory allegations without pleading the pertinent terms of the purported agreement. We are left to speculate as to the parties involved and the conditions under which this alleged appraisal contract was formed. Consequently, by failing to plead the salient terms of a valid and binding contract, [plaintiff] cannot show that the contract was intended for its immediate benefit.”

(*see also Steinblatt v Imagine Media*, 304 AD2d 648 [2d Dept 2003] [defendant’s motion to dismiss plaintiffs’ breach of contract cause of action granted on the basis that plaintiffs failed to state a legally cognizable claim since they did not plead the existence of an agreement between the parties]).

Additionally, the court notes that plaintiff merely alleges that he “satisfied his end of the transaction and contract, whereupon the Defendant breached same” (*see* complaint, ¶ 50). Such allegations do not adequately give notice to Citizens Bank of the nature of its purported breach of contract. Rather than describing the substance of Citizens Bank’s alleged breach of contract, plaintiff, in a cursory fashion, asserts that “Defendant Citizens Bank . . . breached [its] contract with the Plaintiff” (*see id.* at ¶ 52).

Plaintiff’s skeletal allegation that Citizens Bank breached an unidentified contract stretches the concept of notice pleading to its outer limits. As an appellate court held in dismissing a breach of contract cause of action due to the vague and conclusory allegations underpinning such cause of action in a case involving, as here, the alleged disclosure of confidential information by defendant:

“The amended complaint alleges in boilerplate fashion that defendant disclosed confidential information to Coca-Cola and that as a consequence plaintiffs were damaged in the sum of \$35 million. These vague and conclusory allegations are insufficient to sustain a breach of contract cause of action . . . .”

(*Gordon v Dino De Laurentiis Corp.*, 141 AD2d 435, 436 [1st Dept 1988]).

In light of the foregoing, that branch of the motion interposed by Citizens Bank for an order dismissing the breach of contract cause of action under CPLR 3211 (a) (7) is granted.

Plaintiff alleges in his negligence cause of action that “Defendants and/or the Defendants jointly and severally charge [sic] themselves with securing and protecting the private and

sensitive information and cybersecurity of consumers including the Plaintiff” (*see* complaint, ¶ 30). Plaintiff further avers that “Defendants had a duty to act with respect to the Plaintiff’s confidences and privacy toward [sic] and treat the Plaintiff reasonably, legally and appropriately and breached that duty proximately causing damages” (*see id.* at ¶ 31).

Plaintiff asserts that his confidential information was to be protected by defendants, which information was “confiscated or secreted by hackers or criminals, due to the carelessness and fault of the Defendants and the Plaintiff’s identity was hacked” (*see id.* at ¶ 32).

To establish a claim of negligence, a plaintiff must show a duty owed to him/her by a defendant, a breach of such duty and injury proximately resulting from the breach (*see Moore Charitable Found. v PJT Partners, Inc.*, 40 NY3d 150, 157 [2023]; *Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016]). The duty must be independent of a duty existing pursuant to a contract (*see Kallman v Pinecrest Modular Homes, Inc.*, 81 AD3d 692, 693-694 [2d Dept 2011] [the Supreme Court properly dismissed the negligence causes of action interposed against the individual defendants in that plaintiffs failed to allege the violation of a legal duty independent of the parties’ contract]; *East Meadow Driving School v Bell Atl. Yellow Pages Co.*, 273 AD2d 270, 271 [2d Dept 2000] [since no duty was found to exist independent of the parties’ alleged contract, plaintiff’s gross negligence cause of action was held to be unavailing]).

The allegations in plaintiff’s negligence cause of action echo plaintiff’s breach of contract cause of action. In the complaint, plaintiff alleges that:

“The Plaintiff and Defendant had an oral contract for good and valid consideration and the Defendants breached same.

“The Defendants exchange [sic] for being credit card [sic] of the Plaintiff’s son, and the Plaintiff, and the bank of his mother, agreed to safeguard the Plaintiff and his mother and their confidences and secure their private confidential and financial information.

\* \* \*

“The Defendant Citizens Bank breached their contract with the Plaintiff, and proximately caused the Plaintiff damages.”

(complaint, ¶¶ 48-49 and 52).

In *Heffez v L & G Gen. Constr., Inc.* (56 AD3d 526, 527 [2d Dept 2008]), the Appellate Division, Second Department, in granting defendants' motion to dismiss plaintiff's negligence and fraud causes of action under CPLR 3211 (a) (7) held:

“It is a well-established principle that a simple breach of contract is not to be considered a tort unless a legal duty independent of the contract itself has been violated” (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 389 [1987]). The ‘legal duty must spring from circumstances extraneous to, and not constituting elements of, the contract, although it may be dependent upon the contract’ (*id.* at 389).

\* \* \*

“Here the plaintiffs, who entered into a contract for home reconstruction with the defendant L & G General Construction, Inc. (hereinafter L & G), did not allege or demonstrate that the defendants owed them a legal duty independent of the contractual duty (*see Sargent v New York Daily News, L.P.*, 42 AD3d 491 [2007]). The allegations of negligence and fraud are the same as those underpinning the breach of contract cause of action, and “allege[] nothing more than a breach of contract and [a breach of] any covenants implied” (*New York Univ. v Continental Ins. Co.*, 87 NY2d 308, 318 [1995]).”

(*see also Board of Mgrs. of Beacon Tower Condominium v 85 Adams St., LLC*, 136 AD3d 680, 684 [2d Dept 2016]; *Yenrab, Inc. v 794 Linden Realty, LLC*, 68 AD3d 755, 758 [2d Dept 2009]).

In this case, the plaintiff does no more than recast his breach of contract claim using negligence-related nomenclature, warranting the dismissal of the negligence cause of action (*see Dormitory Auth. of the State of N.Y. v Samson Constr. Co.*, 30 NY3d 704, 711-712 [2018] [plaintiff's negligence cause of action dismissed on the basis that such cause of action was determined to be duplicative of the breach of contract cause of action]). As a result, the branch of the motion interposed by Citizens Bank for an order dismissing the negligence cause of action under CPLR 3211 (a) (7) is granted.

Plaintiff has interposed a cause of action stemming from Citizens Bank's “knowledge liability and fault in failing to protect the financial and confidential information” of plaintiff's family (*see* complaint, ¶ 60). In this cause of action, plaintiff alleges that his eighty-nine-year-old mother, Angela Aretakis, as well as his uncle, John Vendikos, sustained damages due to Citizens

Bank's negligent failure to safeguard their confidential financial information from hackers and identity thieves (*see id.* at ¶¶ 55-59).

Plaintiff asserts that, due to Citizens Bank's negligence, his mother, a non-party and a client of the moving defendant, was "called, contacted, solicited and scammed out of \$50,000, along with other hacks of the Plaintiff's mother" (*see id.* at ¶ 56). Plaintiff alleges that \$25,000 was "stolen" from his mother's savings account at SEFCU, which funds SEFCU subsequently refunded to plaintiff's mother (*see id.* at ¶¶ 32-34). Moreover, plaintiff contends that \$25,000 was "stolen" from his mother's savings account at Citizens Bank, which monies Citizens Bank failed to refund to her (*id.*)

Further integrating claims on behalf of a non-party in this cause of action, plaintiff asserts that, on account of defendants' actions, his uncle, John Vendikos, was "hacked as well" (*see id.* at ¶ 56).

Plaintiff's endeavor to assert negligence claims on behalf of non-party relatives is unavailing. It is axiomatic that a plaintiff generally lacks standing to interpose claims at the behest of others, a concept the Appellate Division, Second Department has articulated as follows:

"A plaintiff generally has standing only to assert claims on behalf of himself or herself. Although there are situations in which representative or organizational standing is permitted (*see* CPLR 1004; *Rudder v Pataki*, 93 NY2d 273, 278 [1999]; *Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 9 [1975]) one does not, as a general rule, have standing to assert claims on behalf of another . . ."

(*Caprer v Nussbaum*, 36 AD3d 176, 182 [2d Dept 2006]; *see also Cardo v Board of Mgrs., Jefferson Vil. Condo 3*, 67 AD3d 945, 946 [2d Dept 2009]).<sup>2</sup>

Plaintiff's attempt to assert claims on behalf of non-party family members in the context of his cause of action stemming from defendants' negligence in failing to protect his family members' financial information is at odds with applicable case law in the standing context. Therefore, that branch of the motion interposed by Citizens Bank for an order dismissing this cause of action pursuant to CPLR 3211 (a) (7) is granted.

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<sup>2</sup> Plaintiff's attempt to circumvent the standing quandary by underscoring his status as a "fiduciary" of his mother and uncle (*see* complaint, ¶ 25) is unavailing as no New York State precedent has been found conferring standing to a plaintiff asserting claims on behalf of family members based on plaintiff's self-appointed fiduciary status.

Plaintiff has asserted a cause of action that he characterizes as one rooted in “identity theft, cyber security breach and a breach of confidentiality” (*see* complaint, ¶ 40), as well as “hacking” (*see id.* at ¶ 44).

This cause of action, plaintiff represents that Citizens Bank’s actions in failing to protect his confidential information led him to be “surveilled,” “followed” and “monitored” (*see id.* at ¶ 42). Plaintiff further alleges that the “hacking, identity theft, invasion of privacy and breach of confidential information” that befell him was caused by defendants (*see id.* at ¶ 44).

Plaintiff makes sweeping and vague allegations pertaining to “identity theft,” “cyber security breach,” “breach of confidentiality” and “hacking” in this cause of action (*see id.* at ¶¶ 40 and 44). However, the complaint is devoid of any assertions that plaintiff’s personal information was hacked from an account at Citizens Bank, that someone impermissibly accessed or misappropriated his personal information from Citizens Bank, that Citizens Bank suffered a cyber security breach leading to someone purloining his personal information or that his account at Citizens Bank was the subject of identity theft or a breach of confidentiality (*see id.* at ¶¶ 40-45).

While avoiding any specific allegations against Citizens Bank, plaintiff makes nebulous allegations concerning the defendant financial institutions, all but characterizing them as a cohesive unit and postulating that they are jointly and severally liable for failing to safeguard his personal information. In his complaint, plaintiff alleges that:

“The Defendants’ actions jointly and severally caused an identity theft, cyber security breach and a breach of confidentiality.

\* \* \*

“The hacking, identity theft, invasion of privacy and breach of confidential information proximately caused the Plaintiff damages and was caused by the Defendants.”

(*id.* at ¶¶ 40 and 44).

As earlier addressed, New York courts, in reviewing motions brought under CPLR 3211 (a) (7), have adopted a forbearing approach to the sufficiency of a plaintiff’s complaint, affording such pleading a liberal construction and according the plaintiff the benefit of every favorable inference (*see Nonnon v City of New York*, 9 NY3d 825, 827 [2007]; *EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]; *Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]).

The foregoing notwithstanding, the favorable treatment accorded to a plaintiff's complaint is not unbounded, and, as held by the New York Court of Appeals, "conclusory allegations - claims consisting of bare legal conclusions with no factual specificity - are insufficient to survive a motion to dismiss" (*see Eccles v Shamrock Capital Advisors, LLC*, 42 NY3d 321, 342 [2024] [internal quotations marks omitted]; *Godfrey v Spano*, 13 NY3d 358, 373 [2000]; *Young v 101 Old Mamaroneck Rd. Owners Corp.*, 211 AD3d 771, 774 [2d Dept 2022]).

That plaintiff's instant cause of action does not satisfy the pleading standard enunciated by the New York Court of Appeals in *Eccles* and *Godfrey* since it is bereft of factual specificity and rife with formulaic legal conclusions.

Absent from said cause of action is any information as to: (i) the date, year - or decade - when the purported identity theft, cybersecurity breach, breach of confidentiality or hacking occurred (collectively, the Information Breach) (*see* complaint, ¶¶ 1-60); (ii) which, if any, of plaintiff's accounts were affected by the Information Breach (*see id.* at ¶¶ 40-45); (iii) what type of account, if any, was the subject of the Information Breach, namely, a savings, checking or credit card account (*see id.* at ¶ 42); (iv) which of the institutional defendants had control over the account(s) involved in the Information Breach (*see id.* at ¶ 44); (v) who owned the account, if any, which was affected by the Information Breach (to wit, plaintiff, his uncle, or someone else); and (vi) what, if anything, of value was misappropriated attendant to the Information Breach (that is, monies, stocks, bonds or data) (*see id.* at ¶ 44).

In light of the dearth of factual specificity characterizing the instant cause of action, such cause of action does not adhere to the notice pleading standard embodied in CPLR 3013, which provides as follows:

"Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense."

Since plaintiff has failed to provide Citizens Bank with any facts to afford it notice as to the occurrences underlying the instant cause of action, it must be dismissed pursuant to CPLR 3211 (a) (7) Hence, the branch of the motion interposed by Citizens Bank for an order dismissing the instant cause of action under CPLR 3211 (a) (7) is granted.

Accordingly, it is hereby,

ORDERED, that Citizens Bank’s motion for an order dismissing the complaint against it is granted pursuant to CPLR 3211 (a) (7), the complaint is dismissed as against Citizens Bank, and the action is severed accordingly (motion sequence number 3). The Clerk is directed to enter judgment accordingly. The caption is thus amended to read as follows:

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JOHN ARETAKIS,

Plaintiff,

-against-

Index No.: 162/2024

TRANS UNION, LLC,

Defendant.

-----X

Any arguments not expressly addressed herein were considered and deemed to be without merit.

This constitutes the decision, order and judgment of the court.

  
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HON. INGRID JOSEPH J.S.C.

**Hon. Ingrid Joseph  
Supreme Court Justice**