

Douglas v Webster

2025 NY Slip Op 33042(U)

July 28, 2025

Supreme Court, Kings County

Docket Number: Index No. 526045/2024

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

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 28th day of July 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

DENYSE DOUGLAS,

Plaintiff,

-against-

TOYE WEBSTER a/k/a TOYE WILLIAMS,

Defendant.

DECISION & ORDER

Index No.: 526045/2024

Calendar No.: 16 & 17

Motion Seq.: 001 & 002

Return Date: 5/15/2025

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

| | Papers Numbered |
|---|----------------------------|
| 001 Notice of Motion, Affirmation, and Exhibits (NYSCEF 14-23) | 1, 2 |
| Affirmations and Exhibits in Opposition (NYSCEF 25-30)..... | 3 |
| Reply Affirmation (NYSCEF 34)..... | 4 |
| 002 Notice of Cross-Motion, Affirmations, and Exhibits (NYSCEF 25-31) | 5, 6 |
| Affirmation in Opposition (NYSCEF 34)..... | 7 |

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

This is an action for damages based on defendant’s alleged interference with plaintiff’s easement relating to a shared driveway. Plaintiff owns the premises known as 891 Albany Avenue, Brooklyn, New York and defendant owns 889 Albany Avenue, the adjacent property.

The complaint sets forth four causes of action, *i.e., breach of easement, declaratory judgment, trespass and intentional infliction of emotional distress*. Plaintiff has now moved for an order pursuant to (a) CPLR § 3211 [b] dismissing defendant’s affirmative defenses, and (b) CPLR § 3211 [a] [1] and [7] dismissing defendant’s counter-claims (MS 001). Defendant has cross-moved to amend her answer (MS 002).

a) **CPLR § 3211 [a] [1]**

“A motion pursuant to CPLR § 3211 [a] [1] to dismiss the complaint on the ground that the action is barred by documentary evidence may be [appropriately] granted only where the documentary evidence utterly refutes the plaintiff’s factual allegations, thereby conclusively establishing a defense, as a matter of law” (*Karpovich v City of New York*, 162 AD3d 996, 997 [2d Dept 2018] citing *Mawere v Landau*, 130 AD3d 986, 987 [2d Dept 2015]; see also *Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007] [The construction of an unambiguous contract is a matter of law.] and *Goshen v Mutual Life Insurance Co. of N.Y.*, 98 NY2d 314, 326 [2002]). “To constitute ‘documentary’ evidence, the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and other papers, the contents of which are essentially undeniable” (*Karpovich v City of New York*, 162 AD3d at 997-998; see *Prott v Lewin & Baglio*, 150 AD3d 908, 909 [2d Dept 2017]). Affidavits submitted in support of such motion do not qualify as documentary evidence because their “contents can be controverted by other evidence, such as another affidavit” (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]; *Prott v Lewin & Baglio*, 150 AD3d at 909). However, emails can be documentary evidence that when considered as part of the totality of the documentary evidence, support a favorable inference in a plaintiff’s favor and a denial of defendant’s motion to dismiss (see *Kolchins v Evolution Markets, Inc.*, 31 NY3d 100, 105 [2018]).

b) **CPLR § 3211 [a] [7]**

Plaintiffs may submit affidavits in opposition to a motion to dismiss pursuant to CPLR § 3211 [a] [7] but it 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 motion to dismiss pursuant to CPLR § 3211 [a] [7], 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, if the Court considers evidentiary material outside the pleadings 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]).

Here, plaintiff has established by documentary evidence the recorded easement in the City Register dated 9/21/1920. Therefore, plaintiff’s motion is granted and defendant’s motion to amend her answer is denied.

The Court has considered the defendant’s remaining arguments and finds same to be without merit.

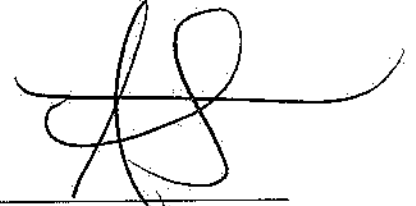
Accordingly, it is hereby

ORDERED that plaintiff’s motion for an order pursuant to CPLR § 3211 [b] dismissing defendant’s affirmative defenses, and CPLR § 3211 [a] [1] and [7] dismissing defendant’s counter-claims (MS 001) is granted, and it is further

ORDERED that defendant’s cross-moved to amend her answer (MS 002) is denied.

This constitutes the decision and order of the Court.

ENTER:



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

Dated: 7/28/2025

For Clerks use only:

MG _____

MD _____

Motion seq. # _____