

**441 Willoughby LLC v United Grand Ch. Order of E.  
Star**

2025 NY Slip Op 33414(U)

September 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 509348/2025

Judge: Richard J. Montelione

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KINGS COUNTY CLERK  
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2025 SEP 10 A 9:29

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 4th day of September 2025.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 99

**DECISION  
and  
ORDER**

-----X  
441 WILLOUGHBY LLC, as assignee of TOM ERLICH,

Plaintiff,

-against-

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UNITED GRAND CHAPTER ORDER OF EASTERN STAR,  
STATE OF NEW YORK, INC.,

Mot. Seq. Nos.: 1&2

Defendants.

-----X

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Defendant's Notice of Motion/Affidavits/Affirmations/Exhibits.....(MS#1)	6-15
Plaintiff's cross-motion and Answering Affirmation//Exhibit.....(MS#1&2)	18-24
Defendant's Opposition to plaintiff's cross-motion.....(MS#2)	28-32
Plaintiff's Reply Affirmation.....(MS#1)	33

MONTELIONE, RICHARD J., J.

This action was commenced by filing the summons and complaint on March 20, 2025, alleging breach of a real estate sales contract dated September 2021 (without a date of the month) and an addendum dated August 2021 (without a date of the month) and seeks specific performance by directing the sale of the real property to the plaintiff. The premises at issue is owned by a defendant non-profit and is located at 441 Willoughby Avenue, Brooklyn, NY (subject property). Simultaneous with the filing of the summons and complaint was the filing of a Notice of Pendency.

Defendants by a pre-answer motion seek dismissal pursuant to CPLR 3211(a)(1), (5) and (7) (failure to state a cause of action, documentary evidence, res judicata and collateral estoppel). Defendants also seek the cancelation of the Notice of Pendency. Plaintiff moves by cross-motion pursuant to CPLR 3025(b) to amend the Verified Complaint to seek, inter alia, the return of \$2,200,000.00 purported to be a deposit, breach of contract for the failure of the defendant to act in good faith, specific performance, reimbursement of \$839,686.12 on certain costs and expenses related to the demolition of the subject premises which occurred without the transfer of

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ownership to the plaintiff, and unjust enrichment.

At oral argument on the record on September 3, 2025, the court notified the parties that it intended to convert the motion to dismiss to a motion for summary judgment and afforded the parties the opportunity to supplement the papers which was declined and therefore the court will treat this motion as one for summary judgment pursuant to CPLR 3211(c) and CPLR 3212.

The contract indicates that \$100,000.00, paid at the contract's signing, and \$2,200,000.00 paid approximately three days later, was to be held as the downpayment in escrow. (NYSCEF #8, Schedule C). The contract of sale provided:

... Seller, as a Not-for-Profit Corporation, must obtain the approval of the New York Attorney General and/or the New York State Supreme Court in order to sell or otherwise transfer its interests in the Premises and Seller shall, in good faith, take all steps necessary to submit for such approval at its cost and expense.

... Seller agrees to promptly apply for such approval and to diligently pursue such approval. Accordingly, Seller and Purchaser acknowledge and agree that Seller's obligations under this Contract are contingent upon its ability to obtain approval of the transactions contemplated by this Contract from the New York Attorney General and/or the New York State Supreme Court. In the event Seller is unable to obtain such approval, this contract shall be deemed cancelled and, upon return of the entire Downpayment and the cost of title examination to the Purchaser the parties shall have no further obligations to one another hereunder.

(NYSCEF #8, Rider to Contract of Sale, paragraphs 2[f] and 5 respectively)

Defendant asserts that it petitioned the court for approval of the sale of the subject property but that its petition was denied (*Matter of the Application of United States [sic] Grand Chapter Order of Eastern Star, State of New York, Inc., Petitioner, for Approval to Sell Real Property Pursuant to Sections 510 and 511 -A of the New York Not-For-Profit Corporation Law*, Hon. Aaron D. Maslow, Kings Supreme Court Index No. 512440/2024). The court denied the petition on the basis that the consideration was inadequate (NYSCEF #12). Defendant argues that the contract was then voided which now precludes specific performance under theories of collateral estoppel and res judicata and must result in a cancelation of the notice of pendency.

It is undisputed that both plaintiff and defendant agreed to demolish the subject building because both believed that the area was soon to be designated a historic district. Both parties agreed that the demolition should occur before an application was made to the NYS Attorney General for approval of the sale because it was thought that the property would be worth more.

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See affidavit of Tomer Erlich (NYSCEF #20, paragraph 20), where he states that plaintiff would demolish the property “before it was designated as a landmark” (*Emphasis in original*). Further, the affirmation of Jay S. Markowitz, Esq., (NYSCEF #19, paragraphs 16 and 17), states:

16. The plaintiff and defendant acknowledged and agreed that the value of the Property would decrease by roughly half if the Property was designated as a Landmark, because of restrictions that would follow on the development of the Property.

17. It was further acknowledged and agreed by the plaintiff and defendant that the most prudent way to avoid this result *would be the demolition of the Property prior to the closing, and prior to Attorney General approval of this transaction. (Emphasis in original)*.

By failing to seek approval from the NYS Attorney General or from the NYS Supreme Court before the demolition of the only significant asset of the nonprofit defendant the parties violated N-PCL § 511. The agreement to not seek the approval for the demolition was purely to avoid the ethical and legal obligations of the of parties and was a violation of the fiduciary duties of the board of the non-profit defendant. The court will not allow the equitable remedy of unjust enrichment when the plaintiff and defendant sought its own unjust enrichment. Moreover, although there is a voided contract, the terms of that contract still apply regarding the funds held in trust by the seller’s attorney as a deposit which precludes any theory of unjust enrichment. *See Stephan B. Gleich & Assoc. v Gritsipis*, 87 AD3d 216, 223 [2d Dept 2011], “(q)uantum meruit and unjust enrichment theories are equitable in nature, and are appropriate only if there is no valid and enforceable contract between the parties covering the dispute at issue (*see AHA Sales, Inc. v. Creative Bath Prods., Inc.*, 58 A.D.3d at 20, 867 N.Y.S.2d 169; *Hochman v. LaRea*, 14 A.D.3d 653, 654–655, 789 N.Y.S.2d 300; *Zuccarini v. Ziff–Davis Media*, 306 A.D.2d 404, 405, 762 N.Y.S.2d 621; *Old Salem Dev. Group v. Town of Fishkill*, 301 A.D.2d 639, 754 N.Y.S.2d 333).”

The demolition agreement between the parties (NYSCEF #22) reflects that, “(f)or the avoidance of doubt, a demolition permit will be applied for on the Seller’s name and the Purchaser will cover all costs and take all steps necessary to obtain same” (paragraph 1) and “(p)urchaser shall be solely responsible for all costs of demolition of the premises.” (Paragraph 2). Inasmuch and the plaintiff took on the expenses of the demolition, it is not entitled to reimbursement of the \$839,686.12 it now seeks.

The plaintiff argues that both parties negotiated with the NYS Attorney General’s Office and that plaintiff agreed to increase the purchase price but instead the defendant entered into a separate contract with a third party while the contract between the parties was not yet properly cancelled and the second contract should be deemed voided. The court disagrees. Once the court denied the petition to approve the contract of sale, and the defendant notified the plaintiff’s counsel that it wished to return the contract deposit, the contract, except as to the provisions

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involving the deposit, was cancelled as a matter of law.

It is unclear to the court, because no party has specifically indicated whether the disbursements from the escrow account, to be credited to the purchaser at the closing, were 1) related to the demolition and 2) approved by the plaintiff. The only assertion made by the defendant's counsel is that counsel "provided a detailed accounting of the funds that were held in and disbursed from escrow," not whether any of these expenses were related to demolition or disbursed with the approval of the plaintiff (except for payments made to Pryor Cashman). The court declines to calculate the sum after deducting Pryor Cashman disbursements.

Based on the foregoing, it is

**ORDERED** that defendant's motion (MS# 1) is **GRANTED** to the following extent: 1) any causes of action based on specific performance or unjust enrichment are **DISMISSED**, 2) the Notice of Pendency of this action and the subject property situated within the County of Kings, and designated pursuant to Section 6511 of the CPLR as Block 1758, Lot 1, on the Land Map of the County of KINGS, as being the block which is affected by the Notice of Pendency of this action and this property, is bounded and described as 441 Willoughby Avenue, Brooklyn, New York, and set forth as follows:

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the Easterly side of Nostrand Avenue and the Northerly side of Willoughby Avenue;

RUNNING THENCE Northerly along the Easterly side of Nostrand Avenue 100 feet;

RUNNING THENCE Easterly parallel with Willoughby Avenue 100 feet;

RUNNING THENCE Southerly parallel with Nostrand Avenue 100 feet to the Northerly side of Willoughby Avenue;

RUNNING THENCE Westerly along the Northerly side of Willoughby Avenue 100 feet to the point or place of BEGINNING.

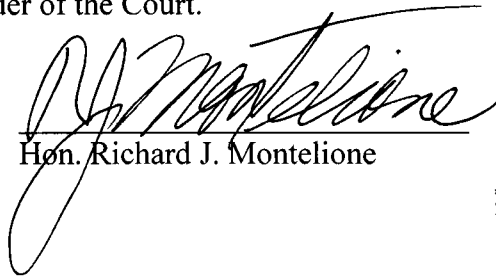
is **DISCHARGED AND CANCELLED**, and a copy of this decision and order may be filed with the Clerk to indicate such; and it is further

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**ORDERED** that plaintiff's motion (MS# 2) is **GRANTED** only to the following extent:  
A) The complaint may be amended to only state a cause of action for breach of contract for the return of any unreimbursed contract deposit, B) the defendant is directed and shall forthwith return to the plaintiff any escrow funds now held in its possession including but not limited to \$102,315.07, with any accrued interest; and it is further

**ORDERED** that any other relief requested has been considered and **DENIED**.

This constitutes the decision and order of the Court.



Hon. Richard J. Montelione

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