

Mastriano v 167 Carrol St. Hous. Corp.

2025 NY Slip Op 33471(U)

July 7, 2025

Supreme Court, Kings County

Docket Number: Index No. 524577/2020

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of July 2025

HONORABLE FRANCOIS A. RIVERA

-----X
DEBRA MASTRIANO,

Plaintiff,

- against -

167 CARROL STREET HOUSING CORPORATION,

Defendant(s).
-----X

DECISION & ORDER

Index No.: 524577/2020

Oral Argument: 5/15/2025

Cal. No.: 37 & 38

Ms. Seq. No.: 3 & 5

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on December 5, 2024, under motion sequence number three, by Debra Mastriano (hereinafter plaintiff) for an order dismissing defendant 167 Carrol Street Housing Corporation (hereinafter defendant)'s first, second, third, fourth, and fifth counterclaims as time barred. The motion is opposed.

- Notice of motion
- Memorandum of law in support
 - Exhibit A-C
- Affirmation in support
- Affirmation in reply to cross motion and in support of motion
 - Exhibits 1-2
- Affirmation in opposition to cross motion and in support of motion
- Affirmation of Melvin Lee
 - Exhibits A-D
- Affirmation in reply

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of cross-motion filed on February 21, 2025, under motion sequence number five, by defendant 167 Carrol Street Housing Corporation for an order pursuant to CPLR 3211 dismissing the plaintiff's complaint. The cross motion is opposed.

- Notice of cross-motion

- Affirmation in opposition to motion and in support of cross-motion
Exhibits A-D
- Affirmation in reply and in opposition to cross-motion
Exhibits 1-2
- Affirmation in reply and in opposition to cross-motion
Exhibits 1
- Reply affirmation in further support of cross-motion

BACKGROUND

On December 8, 2020, the plaintiff commenced the instant action by filing a summons and verified complaint with the Kings County Clerk's office (KCCO).

On February 5, 2021, the defendant interposed a verified answer with counterclaims. The first counterclaim seeks a declaratory judgment that the forecourt is a common element. The second counterclaim seeks a declaratory judgment that the backyard is a common element. The third counterclaim seeks a declaratory judgment that the common cellar is a common element. The fourth counterclaim seeks a declaratory judgment that the plaintiff's use of common elements is pursuant to a revocable license. The fifth counterclaim seeks a permanent injunction.

The verified complaint alleges one hundred and eleven allegations of fact in support of thirteen denominated causes of action. The first cause of action seeks a declaratory judgment as to the parking space. The second cause of action seeks a declaratory judgment for adverse possession of the parking space. The third cause of action is for breach of contract as to the parking space. The fourth cause of action seeks a declaratory judgment as to the backyard. The fifth cause of action seeks a declaratory judgment of adverse possession of the backyard. The sixth cause of action is for breach of contract as to the

backyard. The seventh cause of action seeks a declaratory judgment as to the cellar space. The eighth cause of action seeks a declaratory judgment of adverse possession of the cellar space. The ninth cause of action is for breach of contract as to the cellar space. The tenth cause of action is for breach of contract. The eleventh cause of action is for unjust enrichment. The twelfth cause of action is for money had and received. The thirteenth cause of action seeks attorneys' fees.

LAW AND APPLICATION

Plaintiff's motion to dismiss the defendant's counterclaims

The plaintiff seeks to dismiss the defendant's first, second, third, fourth, and fifth counterclaims as time-barred pursuant to CPLR 213 and CPLR 3211. In support of the motion, the plaintiff has submitted the plaintiff's affidavit, a memorandum of law, and three annexed exhibits labeled A through C. Exhibit A is described as an opinion letter authored by Mr. Skolnick, the attorney for the defendant. Exhibit B is described as the cooperative board offering plan. Exhibit C is described as the contract of sale for the current tenants.

“On a motion to dismiss a cause of action under CPLR 3211 (a) (5) . . . a defendant must establish, prima facie, that the time within which to sue has expired” (*Flintlock Constr. Servs., LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020]). Once that showing has been made, the burden shifts to plaintiffs to offer evidentiary facts establishing that the action was timely commenced (*see MTGLQ Invs., LP v Wozencraft*, 172 AD3d 644, 664-645 [1st Dept 2019]). “An action for a declaratory

judgment is generally governed by a six-year statute of limitations” (*Morton v New York City Bd. Of Educ. Retirement Sys.*, 229 AD3d 619, 620 [2d Dept 2019], quoting *Kogut v Village of Chestnut Ridge*, 214 AD3d 777, 779 [2d Dept 2023]).

The plaintiff contends that all the residential apartments in the building were offered for sale by the sponsor pursuant to an offering plan, dated June 19, 1984. The plaintiff further contends that the offering plan became effective in 1984 and that the plaintiff became a tenant shareholder in 1984. The plaintiff also alleges that the offering plan made clear that the spaces in question, including the parking space, the backyard, and the cellar, are private spaces belonging to the unit 1 duplex shareholder, namely, the plaintiff.

The plaintiff cited CPLR 3211 (a) (1), contending that her annexed documents established a complete defense by demonstrating that the defendant’s counterclaims were time-barred. The plaintiff’s evidentiary submission does not establish when the defendant’s counterclaims accrued. Neither the letter of the board’s counsel nor the contract of sale for current tenants constitutes documentary evidence within the intendment of CPLR 3211 (a) (1) as they are not of undisputed authenticity. Nor does the cooperative board offering plan establish a complete defense as a matter of law that the defendant’s counterclaims are time-barred. The plaintiff’s conclusory allegation that the defendant’s counterclaims are time-barred is not established by the plaintiff’s evidentiary submission. Therefore, the motion to dismiss the defendant’s counterclaims as time-barred pursuant to CPLR 3211 is denied.

Defendant's motion to dismiss the complaint

The defendant's notice of motion states that it seeks an order pursuant to CPLR 3211 against the plaintiff dismissing the complaint. "CPLR 2214 (a) provides that a notice of motion shall 'specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor'" (*Abizadeh v Abizadeh*, 159 AD3d 856, 857 [2d Dept 2018], citing *Shields v Carbone*, 99 AD3d 1100, 1102 [3d Dept 2012]). The plaintiff's verified complaint asserts thirteen causes of action. Contrary to the requirements of CPLR 2214 (a), the defendant provided no law or argument in support of the branch of the defendant's motion seeking to dismiss the third, fourth, sixth, seventh, ninth, tenth, eleventh, twelfth, and thirteenth cause of action. The motion to dismiss the plaintiff's verified complaint is therefore denied.

The defendant contended that the first and second causes of action do not present a justiciable controversy. CPLR 3001 allows "a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed" (*Watson v Aetna Cas. & Sur. Co.*, 246 AD2d 57, 62 [2d Dept 1998]). The defendant does not dispute that the subject parking space is part of the plaintiff's unit. It is unclear whether the defendant's concession leaves no justiciable controversy regarding the plaintiff's claim to the subject parking space. The defendant further contends that the plaintiff does not have a meritorious adverse possession claim to any of the contested spaces, and therefore, her second, fifth, and eighth causes of action must be dismissed pursuant to CPLR 3211 (7).

In assessing a motion pursuant to CPLR 3211 (a) (7) to dismiss a complaint, a court must accept “the facts as alleged in the complaint as true, accord the plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Where “evidentiary material is submitted and considered on a motion pursuant to CPLR 3211 (a) (7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless it has been shown that a material fact claimed by the plaintiff to be one is not a fact at all, and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate” (*Graphic Arts Mut. Ins. Co. v Pine Bush Cent. Sch. Dist.*, 159 AD3d 769, 771 [2d Dept 2018]).

Here, the plaintiff’s complaint, however, does plead a cognizable claim for adverse possession of the contested spaces. The defendant’s evidentiary submission does not conclusively establish that the plaintiff does not have a claim for adverse possession. Therefore, the motion to dismiss the verified complaint is denied.

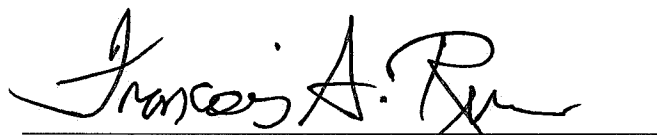
CONCLUSION

The motion by plaintiff Debra Mastriano for an order dismissing defendant 167 Carrol Street Housing Corporation’s first, second, third, fourth, and fifth counterclaims as time-barred is denied.

The cross motion by defendant 167 Carrol Street Housing Corporation for an order pursuant to pursuant to CPLR 3211 dismissing the complaint of plaintiff Debra Mastriano is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOISA. RIVERA