

**Briggman v Binyard**

2025 NY Slip Op 33500(U)

September 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 9198/2015

Judge: Wayne Saitta

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At an IAS Part 29 of the Supreme Court of the State of New York, County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York 11021 on the 16th day of September 2025

P R E S E N T:

HON. WAYNE SAITTA, Justice

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TIFFANY BRIGGMAN and ANDREA BRIGGMAN,  
*Plaintiffs,*

- and -

DECISION & ORDER

ELEANORA BRIGGMAN and ANTHONY BRIGGMAN,  
as Co-Administrators of the Estate of Lena Briggman,

Index No. 9198/2015

*Intervenor-Plaintiffs,*

Motion Sequence: 6

- AGAINST -

TAMIKA BINYARD,

*Defendant.*

-----X

The following papers read on this motion:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
Petition/Affidavits (Affirmations) and  
Exhibits

33-59

Cross-motions Affidavits (Affirmations)  
and Exhibits

65-67, 68

Answering Affidavit (Affirmation)

70-72

Reply Affidavit (Affirmation)

Supplemental Affidavit (Affirmation)

This action concerns ownership of 98 Adelphi Street in Brooklyn, (the Property) that has served as the Briggman family home for decades. Plaintiffs and Intervenor Plaintiffs seek imposition of a constructive trust over the Property.

Movant ONE LEVEL GROUP LLC seeks to intervene in this action as a contract vendee of Defendant TAMIKA BINYARD pursuant to CPLR 1012 and 1013, as well as consolidation pursuant to CPLR 602(a).

The Property was purchased in 1975 by Bennie and Lena Briggman as husband and wife. Lena Briggman became the sole owner after Bennie Briggman's death.

In 2004, Lena Briggman transferred title to the Property to her granddaughter, TIFFANY BRIGGMAN to allow TIFFANY to obtain financing to pay off the existing mortgage and fund renovations. Plaintiffs and Intervenor Plaintiffs allege that conveyance of title to the Property by Lena Briggman was always intended and understood to be solely to facilitate a financing transaction, and not to convey ownership.

Plaintiffs and Intervenor Plaintiffs allege that Lena continued to be regarded as the true owner and that TIFFANY held title in name only, subject to Lena's direction.

In 2008, TIFFANY BRIGGMAN deeded the property to her cousin, TAMIKA BINYARD. Plaintiffs allege this transfer was made with the understanding that BINYARD would help secure financing for the property, and that she would reconvey the property to Lena, or to ANDREA BRIGGMAN, at Lena's instruction, once new financing was in place. They further allege that Lena and ANDREA BRIGGMAN paid the mortgage, taxes, and other carrying charges, while BINYARD never lived on the property or paid any of the expenses of the Property.

In July of 2015, BINYARD entered into a contract to sell the Property to ONE LEVEL GROUP LLC (“ONE LEVEL”), a real estate investment and development firm. ONE LEVEL paid a \$25,000 deposit, including \$20,000 directly to BINYARD.

On July 23, 2015, Lena Briggman, TIFFANY BRIGGMAN, and ANDREA BRIGGMAN commenced this action against TAMIKA BINYARD, seeking to impose a constructive trust and to bar BINYARD from transferring the property. The complaint alleged fraud, unjust enrichment, conversion, and requested declaratory and injunctive relief to prevent transfer of the property.

On March 7, 2017, Justice Lara Genovesi, issued a preliminary injunction in this action barring any sale or transfer of the Property, which has remained in effect throughout the case.

In 2023, BINYARD created a revocable trust and transferred the property to herself as trustee. She then filed a separate lawsuit against ONE LEVEL seeking to rescind the 2015 contract. By order dated December 20, 2023, Justice Katherine Levine dismissed BINYARD’s case without prejudice to filing a new action after resolution of the preliminary injunction in this action.

In March 2025, following Lena Briggman’s death, the Court granted an order permitting ELEANORA BRIGGMAN and ANTHONY BRIGGMAN, who were appointed as co-administrators of the Estate of Lena Briggman, to intervene as Plaintiffs.

The present motion by ONE LEVEL seeks leave to intervene in this action and to consolidate this action with *Binyard v One Level Group LLC* (Index No. 520485/2023).

ONE LEVEL argues that it is entitled to intervene as of right because its rights may be adversely affected by the outcome of this case and its interest will not adequately be

represented by Defendant BINYARD. ONE LEVEL also argues that permissive intervention should be granted because there are common questions of law and fact.

Plaintiffs oppose the motion and argue that there are no common questions of law and fact. Plaintiffs assert that ONE LEVEL's claims relate to its contract with BINYARD, which is separate and independent from Lena Briggman's transfers to TIFFANY BRIGGMAN and TIFFANY BRIGGMAN's transfer to BINYARD.

Plaintiffs argue that ONE LEVEL could commence its own action against BINYARD for damages.

Plaintiffs also argue that intervention is inappropriate as ONE LEVEL has not asserted a claim for specific performance of the contract for over ten years despite having knowledge of this action from the date of its commencement.

Intervenor Plaintiffs also oppose the motion arguing that there are no common questions of law and fact as the transactions involved are distinct and unrelated. They point out that the transfers to TIFFANY BRIGGMAN and to BINYARD predate ONE LEVEL's contract with BINYARD by several years.

Intervenor Plaintiffs further argue that intervention is inappropriate because ONE LEVEL never brought an action to enforce its contract and never moved to intervene in this action until now.

CPLR § 1012(a)(2) provides that intervention as of right shall be permitted "when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." The Court of Appeals has explained that the phrase "bound by the judgment" refers to the doctrines of res judicata and collateral estoppel, such that a proposed intervenor's rights may be precluded if not joined. *Vantage Petroleum v Bd of Assessment Review of Town of Babylon*, 61 NY2d 695, at 698 (1984).

CPLR § 1012(a)(3) further provides for intervention “when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment”.

CPLR § 1013 authorizes permissive intervention “when the person’s claim or defense and the main action have a common question of law or fact.”

CPLR § 602(a) authorizes consolidation of actions “involving a common question of law or fact.” Consolidation is generally favored to promote judicial economy and avoid inconsistent verdicts unless substantial prejudice would result (*Lecorps v Bromberg*, 127 AD3d 931, at 932 (2d Dept 2015)).

As a preliminary matter, that portion of the motion seeking consolidation must be denied as the action which movant seeks to consolidate this action with has been dismissed.

Further, that part of the motion that seeks to intervene must also be denied as the cases do not involve common questions of law and fact and ONE LEVEL’s interest is adequately represented by Defendant BINYARD.

The claims in this action are based on a set of transactions independent of the transaction that is the basis of ONE LEVEL’s claim.

While the contract between BINYARD and ONE LEVEL was the impetus for Plaintiffs’ commencing this proceeding, it is not the basis for Plaintiffs’ claims.

The Plaintiffs’ and Intervenor Plaintiffs’ claims are based on two agreements alleged in the complaint. First an agreement in 2004, between the Plaintiffs, that legal title would be transferred to TIFFANY BRIGGMAN on the condition that she would transfer title back to Lena or her assigns once financing was obtained. Second, an agreement in 2008 between Plaintiffs, TIFFANY BRIGGMAN and Defendant BINYARD,

that TIFFANY BRIGGMAN would transfer legal title to BINYARD on the condition that BINYARD would transfer the title back to Lena or her assigns after financing was secured.

These transfers occurred years before ONE LEVEL's contract with BINYARD. ONE LEVEL's contract has no bearing one whether Plaintiffs or Intervenor Plaintiffs are entitled to a constructive trust.

As the title has not been transferred to ONE LEVEL, nor has it taken possession of the property, its contract would not be a bar to granting Plaintiffs or Intervenor Plaintiffs the equitable remedy of constructive trust if they prevail.

Mandatory intervention pursuant to CPLR 1012 is not required as ONE LEVEL's interests are adequately represented in this case by BINYARD, and ONE LEVEL will not be bound by the decision in this case.

ONE LEVEL has not moved to intervene in this action for ten years, and at oral argument its attorney argued that it had not moved to intervene before now because it relied on BINYARD to oppose Plaintiffs' claims.

Further, a rider to the contract of sale provided "Purchaser herein agrees to advance funds for and hire any litigator to defend Seller from any potential claims that may ensue from the tenants challenging anything relating to the above Property". The tenants referred to in the rider are the Plaintiffs herein.

The fact that ONE LEVEL was financing BINYARD's defense in this action corroborates that ONE LEVEL has relied on BINYARD to represent its interests.

Counsel for ONE LEVEL has argued that it is moving to intervene now because it could no longer rely on BINYARD to protect its interest after BINYARD commenced an action to rescind the contract of sale.

However, BINYARD filed her action over two years ago and ONE LEVEL did not move to intervene until now.

BINYARD still has the same interest in opposing Plaintiff's claims, that is to avoid losing her title to the property. This interest is aligned with ONE LEVEL's interest in having Plaintiffs' and Intervenor Plaintiffs' claims in this case be denied. The fact that BINYARD could commence another action to rescind the contract does not change the fact they both have the same interest in the outcome in this action.

Additionally, ONE LEVEL will not be bound by the judgment in this case. Whatever the outcome in this case, ONE LEVEL could commence an action against BINYARD for breach of contract.

The only impact of a favorable judgment in this case could have on ONE LEVEL's claims is that the remedy of specific performance could be rendered moot. However, specific performance is an equitable remedy, and ONE LEVEL cannot show that it does not have an adequate remedy at law for the alleged breach of contract by BINYARD.

Money damages are generally an adequate remedy for breach of contract.

The remedy of specific performance is available in claims for breach of a real estate contract. However, there is no automatic contractual right to specific performance; it is an equitable remedy for a breach of contract (*Cho v 401-403 57th St. Realty Corp.*, 300 AD2d 174, at 174 [1st Dept 2002]).

To be entitled to specific performance a contract vendee must show they do not have an adequate remedy at law (*Treasure Island of Asbury Park Self-Storage LLC v MBAR Realty LLC*, 216 AD3d 1200 [2d Dept 2023]; *Finkelstein v Lynda*, 166 AD3d 948 [2d Dept 2018]).

Where the real property at issue is not unique and is an investment property, then monetary damages are an adequate remedy (*Straisa Realty Corp. v Woodbury Assoc.*, 154 AD2d 453 [2d Dept 1989]).

Uniqueness lies not in the physical character of the property but in the inability to value it (*301 East 60<sup>th</sup> St LLC v Competitive Solutions LLC*, 217 AD3d 79 [1st Dept 2023]).

The Court of Appeals explained in *Van Wagner Advertising Corp., v S & M Enterprises et al*, 67 NY2d 186 [1986], “The point at which breach of a contract will be redressable by specific performance thus must lie not in any inherent physical uniqueness of the property but instead in the uncertainty of valuing it: ‘What matters, in measuring money damages, is the volume, refinement, and reliability of the available information about substitutes for the subject matter of the breached contract,’” (*Id* at 193).

ONE LEVEL is an investment and development company, and its proposed answer does not allege that the property is unique or incapable of being valued. The deeds to the property indicate that it is a regular 25’ by 100’ interior lot. There is no difficulty in ascertaining the value of such a property in the City of New York. Monetary damages would be adequate to make ONE LEVEL whole for any breach of its contract with BINYARD.

Additionally, permissive intervention pursuant to CPLR 1013 is not appropriate because there are no common questions of law or fact.

The facts of this case involve the nature of the transfers by Lena Briggman to TIFFANY BRIGGMAN and by TIFFANY BRIGGMAN to BINYARD and what promises and agreements Plaintiffs relied on in making the transfers. ONE LEVEL was not a party to any of these transactions and did not enter into its contract until years later.

ONE LEVEL's claims are based on its contract with BINYARD and its assertion that as the formal title holder of the property BINYARD had actual or apparent authority to transfer title.

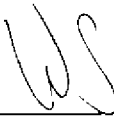
These two sets of transactions, though involving the same property, are separate matters involving different factual allegations and legal questions.

By reason of the foregoing the Court declines to allow movant to intervene in this action after not doing so ten years.

WHEREFORE it is hereby ORDERED that ONE LEVEL's motion to intervene is denied.

This constitutes the decision and order of the Court.

ENTER:

  
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JSC

**HON. WAYNE SAITTA  
J.S.C.**