

Manhattan Club Timeshare Assn. Inc. v Madeo

2025 NY Slip Op 33539(U)

September 19, 2025

Supreme Court, New York County

Docket Number: Index No. 161762/2024

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 161762/2024

THE MANHATTAN CLUB TIMESHARE ASSOCIATION INC.,

MOTION DATE 12/30/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

DEBRA A MADEO, ARMAND MADEO, ATTORNEYS TITLE INSURANCE AGENCY, INC, and PERRY D FREEDMAN, ESQ.

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for DISMISS

Upon the foregoing documents, and after a final submission date of June 24, 2025, Defendants Debra A. Madeo ("Debra"), Armand Madeo ("Armand") Attorneys Title Insurance Agency, Inc. ("Title Insurance") and Perry D. Freedman, Esq.'s ("Freedman") (collectively "Defendants") motion to dismiss Plaintiff The Manhattan Club Timeshare Association Inc.'s ("Plaintiff") Complaint pursuant to CPLR 3211(a)(5) and (a)(7) is denied. Plaintiff's cross motion seeking leave to amend and for summary judgment is granted in part and denied in part.

I. Background

Plaintiff owns the building at 200 West 56th Street, New York, New York (the "Building"). Since October 28, 2006, Debra and Armand have owned a timeshare in Unit 1415 of the Building (the "Share"). Allegedly, on September 3rd or September 5th of 2024, Debra and Armand executed a deed transferring ownership of their Share to Plaintiff and filed the deed and transfer documents in the New York County Clerk's office. However, Plaintiff claims it never signed any contract of sale, nor did it sign any transfer documents, and that the documents filed with the New York

County Clerk's office are fraudulent. Plaintiff sued Defendants for conspiracy to commit fraud, prima facie tort, declaratory judgment, and seeking injunctive relief directing the County Clerk to remove the purportedly fraudulent deed. Defendants now move to dismiss while Plaintiff cross moves for leave to amend and for summary judgment.

II. Discussion

A. Plaintiff's Cross Motion

The Court begins its analysis with Plaintiff's cross motion, as if leave to amend is granted, Defendants' motion to dismiss, directed at the original Complaint, may become moot. Upon consideration of the parties' argument, Plaintiff's cross motion seeking leave to amend is granted, but the branch of its cross motion seeking summary judgment is denied, without prejudice, with leave to renew.

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. v National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). Here, Defendants fail to show any prejudice. Instead, they attack the merits of the proposed amended complaint. However, their arguments are unavailing.

As a preliminary matter, Plaintiff maintains a valid cause of action for declaratory judgment as the Plaintiff and Defendants dispute the validity of the deed and transfer documents filed with the County Clerk, and a dispute over the validity of legal documents or the ownership of property is justiciable (*see, e.g. Village of Woodbury v Brach.*, 99 AD3d 697 [2d Dept 2012] [dispute over whether conveyance of property was illegal, null, and void was sufficient to seek

declaratory judgment]). Because Plaintiff maintains a valid cause of action for declaratory judgment, the cause of action seeking a permanent injunction against Defendants is not “stand alone” as argued by Defendants. Moreover, Plaintiff has alleged irreparable harm. If legal documents allegedly transferring property to Plaintiff, which were filed without Plaintiff’s consent are allowed to stand, irreparable harm may flow from the myriad legal consequences associated with the allegedly fraudulent deed and transfer documents.

Likewise, the prima facie tort cause of action is not patently devoid of merit. To allege a prima facie tort, there must be (1) intentional infliction of harm; (2) resulting in special damages; (3) without excuse or justification, and (4) arising from an act that would otherwise be lawful (*see DeMico Bros., Inc. v Consolidated Edison Co. of New York*, 8 AD3d 99 [1st Dept 2004]). Here, while under normal circumstances the filing of a deed and transfer documents is lawful, here it is alleged it was done intentionally, without the consent of Plaintiff, and, without any excuse or justification as Defendants were informed pursuant to the offering plan, they had to join a waiting list to deed back their interest. Intentionally filing false documents with the County Clerk with the purpose of foisting ownership and property obligations on a party without their consent is sufficient to give rise to special damages for purposes of a motion to dismiss and/or a motion seeking leave to allege prima facie tort.

While Defendants are correct there is no cause of action for conspiracy to commit fraud, there is a cause of action for civil conspiracy. While Defendants are correct the tort of civil conspiracy is not an independent cause of action (*Abacus Federal Savings Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010]), where there is an underlying intentional tort for which a defendant may be liable, a claim of civil conspiracy may survive a pre-answer motion to dismiss (*Cohen Bros. Realty Corp. v Mapes*, 181 AD3d 401 [1st Dept 2020]). Here, there is an underlying intentional

tort – prima facie tort, which makes Plaintiff’s civil conspiracy claim viable. Finally, for purposes of seeking leave to amend, Plaintiff has adequately alleged breach of contract, as it is alleged Defendants did not follow the proper procedure to transfer their ownership interest according to the Offering Plan. Moreover, although attorneys’ fees is not a stand alone cause of action, as there are numerous other causes of action alleged, Plaintiff is granted leave to allege it is entitled to attorneys’ fees if it prevails.

However, the summary judgment motion is denied because it was made prior to issue being joined (*Adago v Sy*, 205 AD3d 602, 603 [1st Dept 2022]; *Leff v Leff*, 182 AD3d 401 [1st Dept 1992] [rule prohibiting summary judgment prior to joinder of issue is strictly adhered to]). Plaintiff is granted leave to renew after Defendants have filed their Answer and/or after there has been some exchange of discovery.¹

B. Defendants’ Motion to Dismiss

Defendants’ motion to dismiss Plaintiff’s Complaint is moot as Plaintiff’s cross motion seeking leave to amend was granted. Even if it was not moot, it would still be denied. As explained in the preceding section, Plaintiff has alleged numerous viable causes of action against Defendants. Defendant Freedman’s argument that it is “ok” to file documents conveying property to others with the County Clerk, without the consent of the party who is allegedly being conveyed the property simply because he advised Plaintiff that is what he would do is, without some prior agreement between the parties agreeing to this option, is meritless. Therefore, Defendants’ motion to dismiss, to the extent it is not moot, is denied in its entirety.

¹ No party has provided the offering plan on this motion, even though it is repeatedly referenced.

Accordingly, it is hereby,

ORDERED that Plaintiff's cross motion seeking leave to amend is granted, and the Amended Complaint in the proposed form annexed to the moving papers (NYSCEF Doc. 18) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Plaintiff's cross motion seeking summary judgment is denied, without prejudice, with leave to renew; and it is further

ORDERED that Defendants' motion to dismiss is denied in its entirety, to the extent it is not moot by virtue of Plaintiff being granted leave to file an Amended Complaint; and it is further

ORDERED that within twenty days of entry of this Decision and Order, Defendants shall serve an Answer to Plaintiff's Amended Complaint; and it is further

ORDERED that the parties shall meet and confer and submit a proposed preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov no later than December 10, 2025. If a discovery issue arises they shall notify the Court to be scheduled for a conference to address said discovery issues; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/18/2025
DATE

Mary V Rosado Jsc
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE