

**Kleppel v Maret**

2025 NY Slip Op 33912(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 157940/2024

Judge: Carol Sharpe

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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. CAROL SHARPE PART 52M**

*Justice*

-----X INDEX NO. 157940/2024

HARRIET KLEPPEL,

Plaintiff,

10/17/2024,  
01/02/2025,  
MOTION DATE 05/19/2025

- v -

MOTION SEQ. NO. 001 002 003

RAJIVE MARET, LYSETTE GALINDA, ANTONIO  
HERNANDEZ,

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 17, 18, 22, 23, 24, 26, 27, 28, 29

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 25, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 52, 53, 54,

were read on this motion to/for JUDGMENT - DEFAULT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 30, 31, 50, 51, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Defendant Antonio Hernandez filed a motion seeking dismissal of the complaint pursuant to CPLR 3211(a)(7) on the ground that plaintiff failed to state a cause of action (“Mtn. Seq. #1”). Plaintiff, appearing pro se, and The City of New York (“The City”), on behalf of defendant Lisette Galindo s/h/a Lysette Galinda (“Lysette Galinda”), filed opposition to Mtn. Seq. #1. Plaintiff moved for default judgment against Rajive Maret alleging that he failed to file an answer (“Mtn. Seq. 2”). Rajive Maret cross-moved to vacate his failure to appear, for leave to file a late answer, and to extend the time to answer. Plaintiff filed a motion seeking to amend the summons and complaint. (“Mtn. Seq. 3”). Defendant Hernandez cross-moved to dismiss the amended complaint pursuant to CPLR

3211(a)(7) or deny the motion as procedurally defective. Plaintiff filed a reply and opposition to Hernandez's cross-motion.

Plaintiff Harriet Kleppel, through her prior attorney, commenced this action by the filing of the summons and complaint on August 28, 2024, alleging in sum and substance that the defendants conspired to remove her from her apartment, where she has resided for over 40 years, after Rajive Maret purchased the unit as an investment. She alleged that on December 29, 2022, while she was at home in bed recovering from back surgery, Antonio Hernandez, the superintendent of the building, let Lysette Galinda, in her capacity as an employee of Adult Protective Services ("APS"), along with five workers, into Ms. Kleppel's apartment under the guise of cleaning the apartment. Ms. Kleppel, a client of APS at the time, alleges that defendant Galinda and the five workers ransacked her apartment in her presence, stole and destroyed jewelry, house furnishings, a signed Mickey Mantle baseball, and a signed James Cagney photograph. Plaintiff further alleged that the defendants intentionally injured her by menacing; conversion; conspiracy to commit conversion; conspiracy to commit menacing; trespass; conspiracy to commit trespass; trespass to chattel; illegal practices with relation to tenant; conspiracy to commit trespass to chattel; international infliction of emotional distress; fraud; and conspiracy to defraud.

The City submitted an answer on behalf of defendant Galinda which it alleged certain affirmative defenses and crossclaims against Rajive Maret a/k/a Richie Maret, and Antonio Hernandez. Defendant Hernandez did not file an answer but filed a motion to dismiss. Defendant Maret did not file an answer but has filed a cross-motion seeking to file an answer.

#### **Defendant Hernandez's Motion and Cross-Motion to Dismiss**

Defendant Hernandez moved to dismiss the action pursuant to CPLR 3211(a)(7) on the grounds that the complaint did not state the place and activity he engaged in constituting his liability. Defendant Hernandez also moved to dismiss the amended complaint on the same grounds, suggesting

two causes of actions that were insufficiently pled in the amended complaint: prima facie tort, and intentional infliction of emotional distress. A review of the facts, with or without using the original complaint as a guide, does not establish that plaintiff attempted to allege a cause of action of prima facie tort in the amended complaint.

Plaintiff filed opposition to defendant Hernandez's motion and to the "crossclaims" alleged by The City. In opposition to the motion, plaintiff submitted an unsigned document describing the incident; plaintiff's affidavit; an affidavit by Lisa Persaud, in which she states that she cleaned plaintiff's apartment in January 2023, and that plaintiff told her that her property had been stolen and the value of such property; and a signed but undated letter from Dr. Xi Freda Gu which stated that she is aware that Ms. Kleppel witnessed the theft of her personal possessions and that it has caused her to experience more pain and difficulty healing from her back surgery.

The City filed opposition to defendant Hernandez's motion to dismiss the original complaint on the ground that it is premature.

Plaintiff, now pro se, thereafter, moved to amend the summons and complaint, and submitted an amended summons and complaint in support of the motion. While plaintiff's filings are not in the form usually submitted by attorneys, the filings and the amended complaint, when combined and read in totality, are consistent with certain allegations in the original complaint, which are that defendant Hernandez opened the door to her apartment allowing defendant Galina and the others to enter her apartment and take her property.

This Court will deem plaintiff's motion as a motion to amend the complaint pursuant to CPLR 3024 (b) which provides that, "[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be

accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.” “It is well established that leave to amend a pleading [pursuant to CPLR 3025 (b)] is freely given ‘absent prejudice or surprise resulting directly from the delay’” (*Anoun v City of New York*, 85 AD3d 694, 694, 926 NYS2d 98 [1st Dept 2011], quoting *Fahey v County of Ontario*, 44 NY2d 934, 935, 380 NE2d 146, 408 NYS2d 314 [1978]). “A party opposing leave to amend ‘must overcome a heavy presumption of validity in favor of [permitting amendment] [internal citation omitted]’” (*O’Halloran v Metro. Transp. Auth.*, 154 AD3d 83, 86, 60 NYS3d 128 [1st Dept 2017]).

CPLR § 3013 provides that “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” “Under our well-established liberal pleading standards, we assume all facts asserted in the complaint to be true and draw all reasonable inferences from those assertions.” (*34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 51, 178 NYS3d 1, 198 NE3d 1282 [2022]).

Pleadings which are the subject of a CPLR 3211 motion to dismiss are liberally construed, the court is to accept the facts as alleged in the complaint to be true, accord plaintiff “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, 614 NYS2d 972, 638 NE2d 511 [1994]). “We may also consider affidavits submitted by plaintiffs to remedy any defects in the complaint, because the question is whether plaintiffs have a cause of action, not whether they have properly labeled or artfully stated one” (*Chanko v Am. Broad. Cos. Inc.*, 27 NY3d 46, 52, 29 NYS3d 879, 49 NE3d 1171 [2016]). “Under CPLR 3211 a trial court may use affidavits in its consideration of a pleading motion to dismiss...affidavits may be used freely to preserve inartfully pleaded, but potentially meritorious, claims.” (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 635, 389 NYS2d 314, 357 NE2d 970 [1976]).

"Whether a plaintiff can ultimately establish [his or her] allegations is not part of the calculus in determining a motion to dismiss" (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19, 832 NE2d 26, 799 NYS2d 170 [2005]; see *Brown v Riverside Church in the City of N.Y.*, 231 AD3d 104, 216 NYS3d 144 [1st Dept 2024]). "Moreover, a *pro se* complaint should be construed liberally in favor of the pleader." (*Rosen v Raum*, 164 AD2d 809, 811, 559 NYS2d 541 [1st Dept 1990]; see also *Pezhman v City of N.Y.*, 29 AD3d 164, 168, 812 NYS2d 14 [1st Dept 2006]; *Fawer v Shipkevich PLLC*, 213 AD3d 408, 180 NYS3d 907 [1st Dept 2023]).

Here, plaintiff's motion to amend the complaint is granted and the amended complaint (NYSCEF Doc. #56) is the pleading upon which plaintiff is proceeding as she clearly stated at oral argument. Both the original and the amended complaints gave defendant Hernandez notice of the occurrence, the transaction, and the elements plaintiff intends to prove. The next question is to determine the causes of actions alleged by plaintiff in the amended complaint.

Aiding and abetting conversion is a recognized claim in New York (see *Sheroff v Dreyfus Corp.*, 50 AD3d 877, 878, 855 NYS2d 902 [2nd Dept 2008]; *Dickinson v Igoni*, 76 AD3d 943, 945, 908 NYS2d 85 [2nd Dept 2010]). "Aiding and abetting conversion requires the existence of a conversion by the primary tortfeasor, actual knowledge, and substantial assistance (see *Dangerfield v Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2006 US Dist LEXIS 7761, \*17, 2006 WL 335357, \*5 [SD NY, Feb. 15, 2006, No. 02 Civ. 2561 (KMW) (GWG)]; see also *Weisman, Celler, Spett & Modlin v Chadbourne & Parke*, 271 AD2d 329, 330, 706 NYS2d 414 [1st Dept 2000], *lv denied* 95 NY2d 760, 737 NE2d 952, 714 NYS2d 710 [2000])" (*William Doyle Galleries, Inc. v Stettner*, 167 AD3d 501, 91 NYS3d 13 [1st Dept 2018]).

"A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession [internal citations omitted]. Two key elements of conversion are (1) plaintiff's

possessory right or interest in the property (*Pierpoint v Hoyt*, 260 NY 26, 182 NE 235 [1932]; *Seventh Regiment Fund*, 98 NY2d at 259) and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights [internal citation omitted]" (*Colavito v N.Y. Organ Donor Network, Inc.*, 8 NY3d 43, 49-50, 827 NYS2d 96, 860 NE2d 713 [2006]; *see also Pappas v Tzolis*, 20 NY3d 228, 958 NYS2d 656, 982 NE2d 576 [2012]). Here, the amended complaint sufficiently gave notice of a cause of action for conversion and aiding and abetting conversion as it alleged that defendant Hernandez opened the door to plaintiff's apartment, which was owned by defendant Maret, allowing defendant Galina and five workers to enter the apartment, without plaintiff's permission, and they stole her property under the guise of doing a deep cleaning, and that they were acting on behalf of defendant Rajit to have her evicted - which eventually happened - causing plaintiff to suffer emotional distress.

A cause of action for intentional infliction of emotion distress, which was raised in defendant Hernandez's motion, has four elements: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and injury; and (iv) severe emotional distress" (*Howell v New York Post Co.*, 81 NY2d 115, 121, 612 NE2d 699, 596 NYS2d 350 [1993]; *see Chanko*, 27 NY3d at 56). "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" (*Murphy v American Home Prods. Corp.*, 58 NY2d 293, 303, 448 NE2d 86, 461 NYS2d 232 [1983]; *Howell*, 81 NY2d at 122). Here, the complaint gives notice of the occurrence plaintiff intends to prove.

### **Motion for Default Judgment and Cross Motion to Extend Time File A Late Answer**

In support of her motion for default judgment, plaintiff submitted various affidavits of service by John Hudak dated October 3 and 4, 2024, including an affidavit certifying that on August 29, 2024,

he served the summons and complaint upon Rajive Maret by serving Hector Pacheco, a legal assistant, and mailed them on the same date. John Hudak submitted an affidavit of service upon defendant Hernandez by leaving it with the doorman upon the instructions of defendant Hernandez on September 12, 2024. In opposition to the default motion and in support of the cross-motion, defendant Maret moved to vacate his failure to appear and for an extension of time to file an answer on the grounds of law office failure, and that he has a meritorious defense. Plaintiff filed a reply.

The policy in New York is for actions to be decided on the merits (*Walton v Perez*, 231 AD3d 570, 218 NYS3d 341 [1st Dept 2024]). CPLR 2005 provides that “[u]pon an application satisfying the requirements of subdivision (d) of section 3012 or subdivision (a) of rule 5015, the court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure.” A motion for leave to file a late answer may be granted upon the defendant setting forth a reasonable excuse for the delay where the delay was not for a long period and there was no evidence that plaintiff suffered any prejudice by the delay (*see Marine v Montefiore Health Sys., Inc.*, 129 AD3d 428, 9 NYS3d 580 [1st Dept 2015]; *2001 Real Estate Space Catalyst, Inc. v Stone Land Capital, Inc.*, 194 AD3d 535, 143 NYS3d 882 [1st Dept 2021]). Law office failure is an excusable excuse as it constitutes good cause for the delay and defendant is not required to demonstrate a meritorious defense as a default order or a default judgment has not been entered (*Lamar v City of N.Y.*, 68 AD3d 449, 888 NYS2d 883 [1st Dept 2009]). Here, plaintiff’s motion for default is denied. This Court will exercise its discretion to grant defendant Maret’s cross-motion to serve a late answer as he offered a reasonable excuse for the delay and there is no evidence that plaintiff has been prejudiced by the delay. Accordingly, it is hereby

**ORDERED**, that defendant Antonio Hernandez’s motion to dismiss plaintiff’s complaint pursuant to CPLR 3211(a)(7) is denied; it is further

**ORDERED**, that plaintiff's motion for a default judgment against defendant Rajive Maret is denied; it is further

**ORDERED**, that defendant Rajive Maret's cross-motion vacating his failure to appear and extending the time to file an answer is granted; it is further

**ORDERED**, that plaintiff's motion to amend the complaint is granted; it is further

**ORDERED**, that defendant Rajive Maret's cross-motion seeking to dismiss plaintiff's complaint pursuant to CPLR 3211(a)(7) is denied; it is further

**ORDERED**, defendant Antonio Hernandez shall file and serve his answer within thirty (30) days of the date of this Decision and Order; it is further

**ORDERED**, that defendant Rajive Maret shall file and serve his answer within thirty (30) days of the date of this Decision and Order; and it is further

**ORDERED**, that the parties shall appear for a discovery conference in the DCM Part located at 80 Centre Street, New York, NY 10013, on **December 3, 2025, at 2:00pm.**

This constitutes the Decision and Order of the Court.

**ENTER:**

October 10, 2025  
DATE

  
HON. CAROL SHARPE, J.S.C.  
**HON. CAROL SHARPE**  
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT