

**187 St. Mazal LLC v Demurjian**

2025 NY Slip Op 34553(U)

November 24, 2025

Supreme Court, New York County

Docket Number: Index No. 152426/2016

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER

PART

08

Justice

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187 STREET MAZAL LLC, 284 WADSWORTH AVENUE
MAZAL LLC,

Plaintiff,

- v -

MALCOLM S. DEMURJIAN, LINDA C. CHERKEN, HARRY
S. CHERKEN, JOAN DEMURJIAN, RICHARD DEMURJIAN,
DAVID DEMURJIAN, MICHAEL DEMURJIAN, THE CITY
OF NEW YORK, CHURCH OF ST. ELIZABETH, HILDA
LOIS ADONAI, DEMURJIAN, LORNA G. CHERKEN,
ROBERT DEMURJIAN, RECEIVERS, LICENSORS AND
SUCCESSORS IN INTEREST, PURCHASE,
INHERITANCE, LIEN OR OTHERWISE, VINCENT
MURTHA, MARIAN FRANK, FREDERICK J. FREDERICKS,
GERARD MURTHA, RAYMOND MURTHA, BARBARA ANN
DUNN, JOHN MURTHA, HAROLD LEVINE,

Defendant.

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INDEX NO. 152426/2016
MOTION DATE 05/30/2025
MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 202, 203, 204, 205,
206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226,
227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 242

were read on this motion to/for DISCOVERY

Upon the foregoing documents, this motion is decided as follows. This is an Article 15
action to quiet title on six lots located on Wadsworth Avenue and West 187th street in New York,
New York. Defendants Harry S. Cherken, Jr. and Linda Carol Cherken (collectively, the
“Cherkins”), move by order to show cause for an order compelling plaintiffs 187 Street Mazal,
LLC and 284 WADSWORTH AVENUE (collectively, “Mazal”) to produce three documents
that were marked as privileged and to compel Mazal’s counsel Yariv Ben-Ari (“Ben-Ari”) of
Herrick Feinstein LLP (“Herrick”) to submit to a further deposition. Both Mazal and non-party
Herrick oppose the motion. The court’s decision is as follows.

The court heard oral argument on the instant motion on May 13, 2025. On that date, the Court granted the Cherkens' order to show cause to the extent that the documents, more specifically three emails, which Mazal claimed were protected under attorney-client privilege be produced for *in camera* review and held the balance of the motion in abeyance. On May 22, 2025, Mazal provided the Court with the three documents for *in camera* review, to wit: 1) HF016145; 2) HF015837; and 3) HF015648.

The purpose of attorney-client privilege is to ensure that one seeking legal advice can speak freely to their attorney without fear that their confidences will be divulged in the future (*Matter of Priest v. Hennessy*, 51 NY2d 62 [1980]). "The party asserting the privilege bears the burden of establishing its entitlement to protection by showing that the communication at issue was between an attorney and a client 'for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship,' that the communication is predominantly of a legal character, that the communication was confidential and that the privilege was not waived" (*Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 27 NY3d 616, 624 [2016] quoting *Rossi v Blue Cross & Blue Shield of Greater N.Y.*, 73 NY2d 588, 593 [1989]; see also *Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371, 377-78 [1991]).

After conducting an *in camera* review of the three documents, the Court finds that the communications do not contain legal advice. The emails are factual and instructive and are not of legal character. Because these documents do not contain legal advice, they are not protected by attorney-client privilege. As such, the motion to compel is granted to the extent that Mazal is ordered to produce the documents numbered HF 016145, HF 015837 and HF 015648 on or before December 15, 2025.

Next, the Cherkens argue that Attorney Ben-Ari should be compelled to testify further whether Mazal was aware of the defects in title at the time and Mazal's bona fide purchaser defense.

“An ‘at-issue waiver’ of the attorney-client privilege occurs where a party affirmatively places the subject matter of its own privileged communication at issue, such as by asserting a claim or defense that the party intends to prove by use of the privileged material” (2138747 *Ontario Inc. v Lehman Bros. Holdings, Inc.*, 210 AD3d 412, 413 [1st Dept 2022]). Thus, the privilege can only be waived by the client who is party to the action (*see Veras Inv. Partners, LLC v Akin Gump Strauss Hauer & Feld LLP*, 52 AD3d 370, 372 [1st Dept 2008]). The fact that a privileged communication contains relevant information does not place the privileged communications at issue and requires the party's intent to assert a claim or defense by use of the privileged information (*id.*).

The court disagrees with Mazal. In an order dated May 7, 2024, this Court found that “whether Mazal is a bona fide purchaser of the subject properties is a proper issue in this case and that the discovery the Cherkens seek from Herrick is material and relevant to this issue.”

On January 21, 2025, Ben-Ari was produced for a deposition in his capacity as Mazal's counsel by Herrick. During Ben-Ari's deposition, he was questioned about statements made in Mazal's complaint filed against Herrick related to their knowledge of any issues with the title of the properties. There is conflicting testimony by Ben-Ari and the allegations contained in Mazal's complaint surrounding title issues.

While Mazal argues that “the Cherkens cannot produce any evidence of fraud or wrongdoing by Mazal, and no evidence of Mazal's knowledge of Michael's alleged forgery and fraud.” The testimony of Ben-Ari makes it clear that Harrick independently investigated the

irregularities in title, and Ben-Ari personally communicated his findings and knowledge of the title issues to Mazal. While these communications are protected by privilege, that privilege is waived as Mazal's knowledge of any issues at the time of the transaction have been put at issue by their bona fide purchaser defense. Mazal argues that the inquiry is a fishing expedition is rejected. The record clearly indicates that Mazal had a level of knowledge regarding the title issues, and the communications they exchanged with Herrick and Ben-Ari are the only means to discover the extent of their knowledge.

Based on the foregoing, attorney-client privilege between Mazal and Harrick was waived as to Mazal's knowledge of the issues with title, and Herrick is to produce Ben-Ari for a further deposition limited to Mazal's knowledge of the title issues at the time it entered into the transaction.

The Cherkens request for an *in camera* review of the communications between Mazal and Herrick to determine if the crime fraud exception applies is rejected in light of the foregoing.

### **Conclusion**

Accordingly, it is hereby

**ORDERED** that Mazal is to produce the three documents provided to the court for *in camera* review, identified as numbered HF 016145, HF 015837 and HF 015648 on or before December 15, 2025; and it is further

**ORDERED** that Herrick Feinstein LLP is to produce Mazal's counsel, Ben-Ari for a limited deposition as set forth above on or before January 31, 2026.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

11/24/2025

DATE



LYNN R. KOTLER, 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