

Siringo v Casertano

2026 NY Slip Op 30019(U)

January 5, 2026

Supreme Court, Kings County

Docket Number: Index No. 520903/2024

Judge: Katherine A. Levine

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P R E S E N T: HON. KATHERINE A. LEVINE, J.S.C.

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PAULINE SIRINGO,

Plaintiff,

Index No.: 520903/2024

Mot. Seq. #2

-against-

PATRICIA CASERTANO, a/k/a PATRICIA POLEMENI,
JOSEPH CASERTANO, and RITA POLEMENI,

Respondents.

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This order supplements the court’s order dated September 17, 2025 which stated that it would take three issues under advisement: 1) that portion of defendants’ motion seeking to dismiss plaintiff’s fourth cause of action for Fraudulent Concealment; 2) that portion of defendants’ motion to dismiss plaintiff’s affirmative defenses to defendants’ counterclaim for contribution, and 3) that portion of defendants’ motion seeking to amend its answer and add affirmative defenses to plaintiff’s fifth cause of action for a demand for a partition and sale and sixth cause of action for equitable accounting.

The court denies that portion of defendants’ motion seeking to dismiss the cause of action for fraudulent concealment. Plaintiff has sufficiently pled a cause of action for fraudulent concealment, which has five elements: 1) omission of material fact(s), 2) intention to defraud, 3) duty to disclose, 4) reasonable reliance on the omission of the material fact(s), and 5) damages. *R. Vig Props., LLC v. Rahimzada*, 213 A.D.3d 871, 872 (2d Dept, 2023).

“Where a cause of action... is based upon misrepresentation [or] fraud, the circumstances constituting the wrong shall be stated in detail.” CPLR 3016(b). Courts have interpreted CPLR 3016(b) to pose a rather low bar, noting that, “the purpose underlying the statute is to inform a defendant of the complained-of incidents.” *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12

N.Y.3d 553, 559 (2009). It “should not be confused with unassailable proof of fraud” and is met “when the facts are sufficient to permit a reasonable inference of the alleged conduct.” *Pludeman v. Northern Leasing Sys., Inc.*, 10 N.Y.3d 486, 492 (2008). “[CPLR 3016(b)] requires only that the misconduct complained of be set forth in sufficient detail to clearly inform a defendant with respect to the incidents complained of.” *Lanzi v. Brooks*, 43 N.Y.2d 778, 780 (1977). Plaintiff met this criterion for her cause of action for fraudulent concealment by alleging that two named defendants fraudulently obtained a mortgage by forging plaintiff’s signature, that they never disclosed this conduct to plaintiff while having duties to do so as borrowers on the agreement, and that plaintiff relied on the belief that her property was unencumbered while making personal financial decisions and suffered damages as a result.

The court also denies that portion of defendants’ motion seeking to dismiss plaintiff’s affirmative defenses to defendants’ counterclaim for contribution. Defendants claim that plaintiff executed the mortgage agreement with defendants and that plaintiff has failed to contribute her fifty percent obligation towards the payment despite defendants’ request to do so. Plaintiff raises the following affirmative defenses to the counterclaim: 1) failure to state a cause of action; 2) waiver, estoppel, and unclean hands; 3) laches; 4) tolling of the applicable statute of limitations; 5) damages alleged were caused by defendants’ own improper conduct; 6) any injury suffered by defendants was the result of their own culpable conduct.

CPLR 3211(b) addresses the standard for dismissing affirmative defenses and provides that the party so moving must allege that a “defense is not stated or has no merit.” CPLR 3211(b). The moving party bears the burden of demonstrating that the challenged affirmative defenses are without merit. *Vita v. New York Waste Servs., LLC*, 34 A.D.3d 559 (2d Dept, 2006). “In reviewing a motion to dismiss an affirmative defense, the court must liberally construe the pleadings in favor

of the party asserting the defense and give that party the benefit of every reasonable inference.” *Fireman’s Fund Ins. Co. v. Farrell*, 57 A.D.3d 721, 723 (2d Dept, 2008). “Moreover, if there is any doubt as to the availability of [an affirmative] defense, it should not be dismissed.” *Id.*

“[N]o motion...lies under CPLR 3211(b) to strike the [affirmative defense of failure to state a cause of action], as this amounts to an endeavor by the plaintiff [or, as is here, defendant] to test the sufficiency of his or her own claim.” *Butler v. Catinella*, 58 A.D.3d 145, 150 (2d Dept, 2008). Defendants’ portion of the motion seeking to strike plaintiff’s first affirmative defense for failure to state a cause of action is therefore denied.

Defendants have also failed to meet the high burden required for dismissing plaintiff’s remaining affirmative defenses, as defendants have not rebutted the favorable inference accorded to plaintiff by the law. In fact, defendants’ reply affirmation contains the same conclusory assertions that it asserts are deficient in plaintiff’s affirmative defenses. As such, this court declines to dismiss them at this stage as well.

Finally, the court grants that portion of defendant’s motion seeking to add two new affirmative defenses to plaintiff’s cause of action for partition and sale and plaintiff’s demand for an accounting. “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.” CPLR 3025 (b). “Generally, in the absence of prejudice or surprise to the opposing party, leave to amend pleadings should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit.” *Yong Soon Oh v. Hua Jin*, 124 A.D.3d 639, 640 (2d Dept, 2015). There is no prejudice nor surprise to plaintiff in permitting the inclusion of these two affirmative defenses.

To the extent that plaintiff argues that defendants' proposed ninth affirmative defense was waived, the court notes that it was included in the original answer as its "Seventh Affirmative Defense." (NYSCEF Doc. #9).

Date: January 5, 2026

ENTER:



Hon. Katherine A. Levine, J.S.C.