

**Torain v 964 Park Place LLC**

2026 NY Slip Op 30129(U)

January 6, 2026

Supreme Court, Kings County

Docket Number: Index No. 529438/22

Judge: Heela D. Capell

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 19 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of January, 2026.

PRESENT:

HON. HEELA D. CAPELL,

Justice.

-----X

SHEREASE TORAIN, as Administrator of the Estate of HELEN ROBINSON,

Plaintiff,

-against-

Index No. 529438/22  
Motion Sequence No. 5

964 PARK PLACE LLC, HEZI TORATI, YARIV KATZ, MENACHEM GUREVITCH, GANTZ BROOKLYN 964 LLC, THE FEDERAL SAVINGS BANK, Acting by and through MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion, Affirmations, and Exhibits Annexed . . . . .	<u>88-92</u>
Affirmations in Opposition and Exhibits Annexed . . . . .	<u>99-100</u>
Reply Affirmations and Exhibits Annexed . . . . .	<u>105-106</u>

Upon the foregoing papers, the decision of this court on the motion of defendant The Federal Savings Bank, acting by and through Mortgage Electronic Registration Systems, Inc. (“FSB”), for leave, pursuant to CPLR 2221 (d), to reargue its prior motion (in Motion Sequence No. 1) for an order, pursuant to CPLR 3211 (a) (5), dismissing as against it the verified complaint, dated September 30, 2022, of plaintiff Sherease Torain, as the administrator of the estate of Helen Robinson (“Plaintiff”), as barred by *res judicata*, and, upon reargument, granting the prior motion, vacating the Court’s prior decision/order, dated March 10, 2025 (the “Prior Order”),<sup>1</sup> to the extent it denied the prior motion, and dismissing the complaint against FSB, is as follows:

<sup>1</sup> See *Torain v 964 Park Place LLC*, 2025 NY Slip Op 31176(U) (Sup Ct, Kings County 2025).

In the Prior Order, the court addressed the issue of whether Plaintiff's claim of deed forgery was barred by (among other theories) the doctrine of *res judicata*. In that regard, the court initially relied on the seminal decision in *Faison v Lewis* (25 NY3d 220 [2015], *reargued* 26 NY3d 946 [2015]), which held that any deed based on a forgery was void "ab initio" and thus could not be time-barred. The court then extended *Faison's* "ab initio" holding (which, as noted, narrowly applied in the statute of limitations context) to encompass the doctrine of *res judicata* on public policy grounds. In particular, the court held in the prior order that:

"Although . . . *res judicata* generally precludes the litigation of claims that were or could have been raised in prior actions . . . , *Faison* highlights a critical exception to procedural doctrines like *res judicata* when fundamental public policies are at stake. The Court of Appeals noted that the assurance given to a party by the statute of limitations is outweighed by the public policy of ensuring that transfers of titles are not fraudulent. The court maintained that if a forged deed was not voided, it could erode the reliability of all property records. Since a forged deed is a nullity that has no legal effect from the outset, it cannot be legitimized by the expiration of the statute of limitations. *This public policy applies equally here to the doctrine of res judicata.*"

(Prior Order, page 4 [internal quotation marks and citations omitted; emphasis added]).

In the instant motion, FSB relies upon *Tracey v Deutsche Bank Natl. Tr. Co.* (187 AD3d 815 [2020]), which the court recognizes is binding precedent from the Second Department. FSB did not cite *Tracey* in its initial motion papers, but did cite *Tracey* in its reply memorandum of law in further support of its prior motion (NYSCEF Doc No. 66). Plaintiff did not cite *Tracey* in her opposition papers to FSB's prior motion.

In *Tracey*, Deutsche Bank (as mortgagee) commenced an action against one of the joint tenants ("Tracey") to foreclose on a mortgage. Tracey failed to answer the complaint and Deutsche Bank was granted a default judgment and order of reference. Deutsche Bank was subsequently granted a judgment of foreclosure and sale against Tracey and the other joint

tenant. Thereafter, Tracey commenced an action against Deutsche Bank and the other joint tenant, alleging that he (Tracey) never signed the underlying deed and mortgage, and that his signatures were forgeries. Tracey moved to direct the partition of the property and to enjoin Deutsche Bank and the other joint tenant from transferring/encumbering the underlying property. After Deutsche Bank cross-moved to dismiss Tracey's complaint, Tracey failed to appear on the return date of the motion and cross-motion and, upon Tracey's default, his motion was denied, and Deutsche Bank's cross motion to dismiss was granted. Tracey then attempted to convey the underlying property to plaintiff Lincoln Holdings, LLC ("Lincoln"). Tracey again commenced an action against Deutsche Bank, asserting that his signatures on the underlying deed and mortgage were forgeries. Deutsche Bank moved for an order, pursuant to CPLR 3211 (a) (5), to dismiss the complaint. The motion court denied Deutsche Bank's motion, but on appeal, the Second Judicial Department reversed. In reversing the motion court's decision, the Second Judicial Department held in relevant part that:

"The Supreme Court should have granted Deutsche Bank's motion pursuant to CPLR 3211 (a) (5) to dismiss the complaint based on the doctrine of *res judicata*. It is undisputed that a judgment of foreclosure and sale was entered in the foreclosure action. . . . Tracey and Deutsche Bank were both parties to the foreclosure action and the [prior] action, and Lincoln is in privity with Tracey as the successor to Tracey's alleged property interest. Tracey's contention that his signatures on the [underlying] deed and . . . mortgage were forged could have been litigated in the foreclosure action. *Contrary to the Supreme Court's determination and Tracey's contention, the Court of Appeals' decision in Faison v Lewis (25 NY3d 220 [2015]) does not preclude the application of res judicata in actions where a plaintiff alleges that a deed was forged. Accordingly, res judicata bars Tracey and Lincoln's claims here.*"

*Tracey*, 187 AD3d at 817-818 (internal citations omitted; emphasis added).

On reargument, FSB contends that "this Court overlooked and/or misapprehended the Second Department's holding in *Tracey* . . . when it found that *Faison* barred the application of

res judicata to the present allegations of forgery” (FSB’s Opening Memorandum of Law on Reargument, page 6) (NYSCEF Doc No. 92). In opposition, plaintiff contends that “forgery was never raised in the [2016 action] on which FSB relies, no[r] could it have been, because [plaintiff’s decedent Ida Robinson] . . . did not appear, nor was provided with notice of, nor otherwise participated, nor was even aware of that action” (Plaintiff’s Memorandum of Law in Opposition to Reargument, page 2-3) (NYSCEF Doc No. 99). In reply, FSB points out that the Decision/Order, dated July 21, 2017, of the Honorable Dawn Jimenez-Salta in the 2016 action, titled *Ida Robinson, Helen Robinson & Ali Torain v Menachem Gurevitch, Gantz Brooklyn 964 LLC, 964 Park Place, LLC & The Federal Savings Bank*, index No. 521175/16, Sup Ct, Kings County, expressly held that Ida Robinson’s claims against FSB (among others) were precluded by the parties’ prior stipulation of settlement and release (Decision/Order, page 8) (NYSCEF Doc No. 36). Relying on the foregoing Decision/Order, FSB maintains that plaintiff’s claims (as the representative of Ida Robinson’s estate) herein are likewise barred on the basis of res judicata (FSB’s Reply Memorandum of Law in Further Support of Its Motion for Leave to Reargue, pages 6-7, 11-14) (NYSCEF Doc No. 106).

As *Tracey* is binding precedent in this department, and as the holding is equally applicable here, FSB was entitled to rely on the July 21, 2017 decision enforcing the parties prior stipulation. As res judicata applies even when forgery is alleged, Plaintiff’s contention that, because forgery was not raised in the prior action, *Tracey* is inapplicable, is inapposite here (*Tracey*, 187 AD3d at 817-818). Moreover, this court cannot disturb Justice Jimenez’s holding that the parties’ prior stipulations explicitly encompass “all claims that were raised or could have been raised” (*see Brown v Felsen*, 442 US 127, 131 [1979]). Nor can this court consider Plaintiff’s assertion that Ida Robinson never appeared by then-admitted counsel Andre

Ramon Soleil in the 2016 action as those claims directly challenge Justice Jimenez’s decision that Ms. Robinson was bound by the previous stipulations. Further, any issues raised by Plaintiff regarding Mr. Soleil’s alleged malpractice must be maintained in a separate action.

Leave to reargue may be granted, in the court’s discretion, where (as here) the movant “established that the court had previously misapprehended the law” (*Deutsche Bank Natl. Tr. Co. v Russo*, 170 AD3d 952, 953 [2d Dept 2019]). Based on the Second Judicial Department’s holding in *Tracey*, that the doctrine of res judicata applies to forgery causes of action, the court grants leave to reargue and, upon reargument, to vacate the portion of the prior order which denied FSB’s prior motion.

Accordingly, it is:

ORDERED that leave to reargue the prior motion is granted in the court’s discretion and, upon reargument, FSB’s prior motion (in Motion Sequence No. 1) is granted in its entirety, FSB is dismissed from this action with prejudice and without costs or disbursements, and the action is severed and continued against the remaining defendants; and it is further

ORDERED that the court’s prior order is vacated to the extent it denied FSB’s prior motion; and it is further

ORDERED that to reflect dismissal of FSB from this action, the caption is amended to read in its entirety as follows:

-----X

SHEREASE TORAIN, as Administrator of the Estate  
of IDA ROBINSON,

Plaintiff,

-against-

964 PARK PLACE LLC, HEZI TORATI, YARIV KATZ,  
MENACHEM GUREVITCH, and  
GANTZ BROOKLYN 964 LLC,

Defendants.

-----X

-----X

This constitutes the decision and order of the court.

Dated: Brooklyn, New York

E N T E R



---

HON. HEELA D. CAPELL  
J.S.C.