

Sferrazza v Rose

2026 NY Slip Op 30394(U)

January 30, 2026

Supreme Court, Kings County

Docket Number: Index No. 536796/2022

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 536796/2022
Motion Date: 11-17-25
Mot. Seq. No.: 1 and 2

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KENNETH SFERRAZZA,

Plaintiff,

-against-

DECISION/ORDER

PETER W. ROSE,

Defendant.

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The following papers, which are e-filed with NYCEF as items 9-43, were read on this motion and cross-motion:

Defendant Peter W. Rose moves for an order pursuant to CPLR 3211(a)(1), (4), (5), and (7) dismissing the Complaint of Kenneth Sferrazza in its entirety (Mot. Seq. #1). Plaintiff Kenneth Sferrazza opposed the motion and cross-moved for a stay of the action pending the outcome of a related matrimonial action (*Sferrazza v. Rose*, Index No. 550474/2022) (Mot. Seq. #2). Since the matrimonial proceeding has now been decided, the cross-motion is denied as moot. In the matrimonial action, it was determined that the parties were never legally married.

Background

This action was commenced on December 16, 2022, with a summons and notice. The Complaint was filed on May 15, 2023. Plaintiff alleges that on October 29, 1998, he and Defendant purchased a home at 18 Grace Court Alley in Brooklyn, New York. He maintains that the two split the down payment and costs equally and that they agreed that each would hold an undivided one-half interest. He claims that the two lived in the residence together until 2020.

Plaintiff alleges that in December 2012, Defendant convinced him to transfer his half-interest in the home to the Defendant to protect the property from business creditors. Despite the transfer, he claims Defendant assured him the home would remain marital property, and they would remain a couple indefinitely. Plaintiff continued to live at the residence and alleges that while living there, he oversaw extensive renovations, including a roof replacement, terrace work, and interior restorations.

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According to Plaintiff, Defendant began having multiple extramarital affairs as early as 2010. He further alleges that in April 2020, citing concerns over the COVID-19 pandemic and health comorbidities, Defendant persuaded him to move out temporarily. When Plaintiff attempted to return in July 2020, he discovered Defendant had changed the locks, ended their relationship, and subsequently refused to return personal property—including silver, crystal, art, and furniture valued at approximately \$1,000,000—along with irreplaceable childhood items. In December 2020, Plaintiff discovered email correspondence from 2013 in which Defendant admitted to a partner that he had secured sole ownership of the home and intended to have that partner move in.

In the Complaint, Plaintiff alleges causes of action sounding in fraud, unjust enrichment, conversion, and wrongful retention pursuant to CPLR § 7101, and seeks the imposition of a constructive trust. Regarding the alleged fraud, Plaintiff claims in 2012, Defendant made material misrepresentations of fact, that he relied on, which induced him to transfer his share of the home to Defendant. Regarding unjust enrichment, Plaintiff alleges Defendant received the full value of the residence through fraud and seeks a constructive trust declaring a one-half interest for Plaintiff's benefit. Finally, Plaintiff alleges conversion and wrongful retention of personal property beginning in July 2020.

Discussion

The Court of Appeals established in *Morone v. Morone*, 50 N.Y.2d 481, that cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation. Because the parties were never legally married, the Court analyzes the claims alleged in the complaint under common law.

On a motion to dismiss pursuant to CPLR 3211, the complaint is to be afforded a liberal construction, the facts alleged are accepted as true, and the plaintiff is accorded the benefit of every possible favorable inference (see *Leon v. Martinez*, 84 N.Y.2d 83, 87–88; *Sokol v. Leader*, 74 A.D.3d 1180, 1181). Under CPLR 3211(a)(1), dismissal is warranted only if the documentary evidence utterly refutes the factual allegations, thereby conclusively establishing a defense as a matter of law (*Mendelovitz v. Cohen*, 37 A.D.3d 670, 670).

I. Fraud and Unjust Enrichment

A cause of action for fraud must be commenced within six years from the date of the fraud or two years from discovery (CPLR 213(8)). As set forth in CPLR 203(g), the time within which the action must be commenced shall be the longer of those two periods. On a motion to dismiss an action as untimely pursuant to CPLR 3211(a)(5), the party asserting the statute of limitations defense has the initial burden of establishing, prima facie, that the time in which to commence the action has expired (*see Pare v. Pare*, 222 A.D.3d 765; *Cannariato v. Cannariato*, 136 A.D.3d 627, 627; *Coleman v. Wells Fargo & Co.*, 125 A.D.3d at 716). Where this burden is met, and the opposing party seeks to rely on the two-year discovery exception, the burden shifts to that party to raise a question of fact as to whether the two-year discovery exception applies (*Cannariato v. Cannariato*, 136 A.D.3d at 627; *Hillman v. City of New York*, 263 A.D.2d 529). Summary dismissal is appropriate where it conclusively appears that the nonmoving party has knowledge of facts which should have caused him to inquire and discover the alleged fraud (*Cannariato v. Cannariato*, 136 A.D.3d at 627–628).

Here, the Defendant met his initial burden by establishing that the property transfer occurred in December 2012 and that the action, which was not commenced on December 16, 2022, was untimely. While Plaintiff contends that he did not discover the fraud until later, the complaint acknowledges he was physically barred from entering the home in July 2020. Plaintiff had knowledge of facts that should have caused him to inquire at that time (*see Pare v. Pare*, 222 A.D.3d at 769; *Aozora Bank, Ltd. v. Deutsche Bank Sec. Inc.*, 137 A.D.3d 685, 689). Having failed to commence the action within two years of July 2020, the fraud claim is dismissed.

Similarly, the cause of action for unjust enrichment is dismissed as time barred. A cause of action for unjust enrichment is governed by a six-year statute of limitations which accrues upon the occurrence of the wrongful act giving rise to a duty of restitution, not from discovery of fraud (*Weinberg Real Est. Affiliates, LLC v. Weinberg*, 231 A.D.3d 775, 776–77; *Mahabir v. Snyder Realty Group, Inc.*, 217 A.D.3d 850; CPLR 213[1]). As the alleged wrongful acts that allegedly induced Plaintiff to transfer his interest to the home to the Defendant occurred in December 2012, the commencement of the action in December of 2022 was untimely.

II. Constructive Trust

In an action to impress a constructive trust upon real property, the Statute of Frauds is not a defense (*Vanasco v. Angiolelli*, 97 A.D.2d 462, 462). Such a trust does not require a writing (*Ozkahveci v. Ozkahveci*, 91 A.D.2d 656, 657). To allege a constructive trust, a plaintiff must generally plead: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment (*Sharp v. Kosmalski*, 40 N.Y.2d 119, 121; *Kaprov v. Stalinsky*, 145 A.D.3d 869, 870). The Complaint, liberally construed, alleges all these elements, including a confidential relationship and a transfer based on a promise that the residence would remain marital property. The documentary evidence submitted by Defendant did not utterly refute the factual allegations contained in the Complaint or conclusively establish a defense as a matter of law.

While the cause of action for the imposition of a constructive trust is governed by a six-year statute of limitations (CPLR 213(1)), the accrual date depends on whether Defendant acquired the property wrongfully or wrongfully withheld property that he acquired lawfully (*Sitkowski v. Petzing*, 175 A.D.2d 801). In the latter case, the property is held adversely from the date the Defendant breaches or repudiates the agreement (*Augustine v. Szwed*, 77 A.D.2d 298, 301). Accepting the allegations as true, Defendant acquired the property rightfully in 2012 but did not repudiate the agreement until July 2020, when he locked Plaintiff out of the property. Thus, the constructive trust claim accrued in 2020 and is not time-barred.

III. Conversion and Recovery of Property

Plaintiff's Third Cause of Action for conversion and Fourth Cause of Action for recovery of property also state legally cognizable claims. To establish conversion, a plaintiff must show legal ownership or a superior possessory right and the defendant's exercise of dominion to the exclusion of the plaintiff's rights (*Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d 43). A cause of action for conversion is subject to a three-year limitations period (CPLR 214[3]) and accrues when the taking occurred (*Sporn v. MCA Records, Inc.*, 58 N.Y.2d 482, 488). Here, the alleged conversion occurred in July 2020 when Defendant changed the locks. Commencement in December 2022 was therefore timely.

Regarding the recovery of chattel under CPLR 7101, the statute begins to run when an owner demands return of property and that demand is refused. Plaintiff's allegations regarding the July 2020 lockout and subsequent refusal to return property satisfy these elements.

Accordingly, it is hereby

ORDERED that Defendant's motion to dismiss is **GRANTED** as to the First Cause of Action (Fraud) and the Second Cause of Action only to the extent it sounds in Unjust Enrichment; and it is further

ORDERED that Defendant's motion to dismiss is **DENIED** as to the claim for the imposition of a Constructive Trust, the Third Cause of Action (Conversion), and the Fourth Cause of Action (Recovery of Property/CPLR 7101); and it is further

ORDERED that Plaintiff's cross-motion for a stay is **DENIED** as moot.

This constitutes the decision and order of the Court.

Dated: January 30, 2026



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020