

Sferrazza v Rose

2026 NY Slip Op 30461(U)

February 3, 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 9-34, 40-41, 44-45, were read on this motion and cross-motion:

In this action involving a property dispute between an unmarried couple, Defendant PETER W. ROSE moves for an order dismissing the Complaint pursuant to CPLR 3211(a)(1), (4), (5), and (7) (Mot. Seq. #1). Plaintiff KENNETH SFERRAZZA had cross-moved for an order pursuant to CPLR 3211(a)(4) and CPLR 2201 staying the proceedings pending the outcome of a related matrimonial action, which had already been denied.

Procedural History and the Cross-Motion

When Defendant filed the motion to dismiss, a matrimonial action was between the parties was already pending (*Sferrazza v. Rose*, Index No. 550474/2022). That action has since been resolved. The action was dismissed upon a determination that the parties were never legally married. As stated, the Court has already issued an Order denying Plaintiff's cross-motion as moot. The Court now turns to the Defendant's motion to dismiss the Complaint.

The Allegations of the Complaint

In the complaint, Plaintiff alleges that he and the Defendant began dating in 1989 and purchased a residence at 18 Grace Court Alley, Brooklyn, New York, on October 29, 1998. Plaintiff alleges they split the down payment and costs equally, each holding a one-half interest in the property, which is currently valued at approximately \$14,000,000. Plaintiff alleges that in December 2012, Defendant convinced him to transfer his interest in the residence to him to shield the asset from potential business creditors of Plaintiff's company, Eastern Athletic, Inc.

Plaintiff continued to reside in the home and oversaw renovations until April 2020, when Defendant allegedly used the COVID-19 pandemic as a pretext to convince Plaintiff to vacate the home temporarily. When Plaintiff attempted to return in July 2020, he found the locks changed and was barred from the residence and was not allowed possession of his personal property.

The Complaint asserts four causes of action: (1) Fraud, based on misrepresentations regarding the 2012 transfer and the status of the marriage; (2) Constructive Trust, alleging unjust enrichment; (3) Conversion of personal property; and (4) Wrongful retention of personal property pursuant to CPLR Article 71.

Legal Standard

On a motion to dismiss pursuant to CPLR 3211(a)(7), the Court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Sokoloff v. Harriman Estates Development Corp.*, 96 N.Y.2d 409; *Leon v. Martinez*, 84 N.Y.2d 83). A motion pursuant to CPLR 3211(a)(1) based on documentary evidence may be granted only where such evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Qureshi v. Vital Transp., Inc.*, 173 A.D.3d 1076).

The First Cause of Action: Fraud

The first cause of action for fraud is dismissed as both time-barred and unenforceable under the Statute of Frauds. Under CPLR 213(8), a fraud action must be commenced within six years of the accrual or within two years of when the plaintiff discovered, or with reasonable diligence could have discovered, the fraud.

The alleged fraudulent transfer occurred in December 2012. The action was not commenced until December 2022. The Court finds that Plaintiff failed to meet his burden under the discovery rule. As held in *Celestin v. Simpson*, 153 A.D.3d 656, 657 (2d Dep't 2017), "[t]he burden of establishing that the fraud could not have been discovered [within the limitations period] rests on the plaintiff." The July 2020 lockout of the Plaintiff constituted a definitive repudiation of prior promises, placing him on immediate inquiry notice of the alleged fraud.

Because this action was commenced more than two years after the lockout, the discovery rule cannot save the claim (*Oggioni v. Oggioni*, 46 A.D.3d 646).

Furthermore, the claim is barred by General Obligations Law § 5-703, as it relies on oral promises concerning an interest in real property which contradict the unambiguous 2012 deed. A cause of action for fraud cannot be used to bypass the Statute of Frauds where the fraud is predicated on an oral promise to perform a contract required to be in writing (*Wilson v. Le Van*, 22 N.Y.2d 131).

The Second Cause of Action: Constructive Trust

The motion to dismiss the second cause of action for the imposition of a constructive trust is denied. "The four factors to be considered in ascertaining whether the imposition of a constructive trust is warranted are the existence of a fiduciary or confidential relationship, a promise, a transfer in reliance thereon, and unjust enrichment" (*Chavez v. Morales*, 232 A.D.3d 757, 760, 222 N.Y.S.3d 576 [internal quotation marks omitted]; see *Estate of Uddin v. Miah*, 229 A.D.3d 764, 766, 216 N.Y.S.3d 207). These elements are not rigid, but are flexible considerations for the court to apply in determining whether to impose a constructive trust (*Lester v. Zimmer*, 147 A.D.2d 340, 542 N.Y.S.2d 855).

In the present complaint, the Plaintiff alleges a decades-long romantic and domestic partnership. These allegations sufficiently meet the pleading requirements for alleging a confidential relationship. The complaint further alleges that the plaintiff transferred his one-half interest in the subject property in 2012 based on the defendant's promise that the residence would remain a marital asset and that his interests would be protected. These allegations, taken as true for the purposes of this motion, satisfy the pleading standards for a constructive trust.

The 2012 deed and other documentary evidence submitted by Defendant does not conclusively refute this claim under CPLR 3211(a)(1) because the essence of a constructive trust is to provide a remedy where legal title, though valid on its face, is held under inequitable circumstances. "[A] constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him [or her] into a trustee"

(*Simonds v. Simonds*, 45 N.Y.2d 233, 241, 408 N.Y.S.2d 359, 380 N.E.2d 189 [internal quotation marks omitted]; see *Galasso, Langione & Botter, LLP v. Galasso*, 176 A.D.3d 1176, 1183–1184, 113 N.Y.S.3d 110). Moreover, the Statute of Frauds does not bar an action for a constructive trust (*Vanasco v. Angiolelli*, 97 A.D.2d 462, 467 N.Y.S.2d 434; *Spodek v. Riskin*, 150 A.D.2d 358, 361, 540 N.Y.S.2d 879, 882).

Regarding the statute of limitations, "[a] determination of when the wrongful act triggering the running of the Statute of Limitations occurs depends upon whether the constructive trustee acquired the property wrongfully, in which case the property would be held adversely from the date of acquisition, or whether the constructive trustee wrongfully withholds property acquired lawfully from the beneficiary, in which case the property would be held adversely from the date the trustee breaches or repudiates the agreement to transfer the property" (*Maric Piping v. Maric*, 271 A.D.2d 507, 508, 705 N.Y.S.2d 684 [internal quotation marks and citations omitted]; see *DeLaurentis v. DeLaurentis*, 47 A.D.3d at 751–752, 850 N.Y.S.2d 557). Accepting the allegations in the complaint as true, the applicable limitations period does not bar the cause of action, as this action was commenced within six years of July 2020, when the Defendant repudiated his promise. Consequently, the motion to dismiss the second cause of action is denied.

The Third and Fourth Causes of Action: Conversion and Replevin

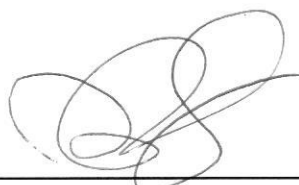
The motion to dismiss the third and fourth causes of action is denied. While Defendant argues these claims are barred by the three-year statute of limitations in CPLR 214(3), the law distinguishes between "wrongful taking" and "wrongful detention." Where original possession is lawful, the cause of action does not accrue until the defendant refuses a demand for the property's return (*State v. Seventh Regiment Fund, Inc.*, 98 N.Y.2d 249). Because Defendant's possession was permissive until the 2020 lockout, the claims are timely. Moreover, Plaintiff has sufficiently identified categories of property (art, furniture, etc.) and alleged a superior possessory right to survive a motion to dismiss (*Pappas v. Tzolis*, 20 N.Y.3d 228).

For the foregoing reasons, it is hereby

ORDERED that Defendant's motion to dismiss (Mot. Seq. #1) is **GRANTED** only as to the first cause of action for fraud, and is otherwise **DENIED**.

This constitutes the decision and order of the Court.

Dated: February 3, 2026



PETER P. SWEENEY, J.S.C