

Lockhart v Nation Devs. Assn. Trust
2026 NY Slip Op 30603(U)
February 17, 2026
Supreme Court, Kings County
Docket Number: Index No. 533670/2023
Judge: Anne J. Swern
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At an IAS Term, Part 75 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 17th day of February 2026.

PRESENT: HON. ANNE J. SWERN, J.S.C.

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ARTHUR LOCKHART,

Plaintiff,

- against -

NATION DEVELOPERS ASSOCIATION TRUST, NAFI RIVERS AS TRUSTEE, NAFI RIVERS INDIVIDUALLY, NEXT LEVEL SOLUTIONS TRUST, BURCHELL M. MARCUS AS TRUSTEE, BURCHELL M. MARCUS INDIVIDUALLY, MACGREGOR ABSTRACT CORP, JAMES DOMINIC EFFIWATT, and VADIS O MCKENZIE,

Defendants.

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DECISION & ORDER

Index No.: 533670/2023

Motion Seq.: 0003

Return Date: 1/22/2026

Recitation of the following papers as required by CPLR § 2219 (a):

Papers Numbered:

NYSCEF Doc No.:

Notice of Motion and Supporting Documents.....	15-18
Affirmation in Opposition and Supporting Documents.....	19-20
Reply Affirmation.....	21

Upon the foregoing papers, the decision and order of the Court is as follows:

Defendant MACGREGOR ABSTRACT CORP. has moved to dismiss this action per CPLR § 3211 (a) (7) as plaintiff's complaint fails to state a cause of action against it. The motion is granted.

Facts

By deed, dated February 25, 1999, and recorded on June 5, 1999, plaintiff Arthur Lockhart (plaintiff) acquired a residential real property located at 65 Barbey Street in Brooklyn, New York (Block 3921, Lot 18) (the property). Since that time, plaintiff has

remained the owner and resident of the property. By a quit-claim, no-consideration deed, dated April 8, 2021, and recorded on February 15, 2022, plaintiff and defendant Nation Developers Association Trust, by defendant Nafi Rivers as trustee, purported to convey the property to defendant Next Level Solutions Trust (CRFN 2022000070726) (the underlying deed). The purported grantor on the underlying deed was “Arthur Lockhart, Nation Developers Association Trust, Nafi Rivers, Trustee, Secured Party (UCC 9-607 [a] [3])”¹ and was signed on behalf of the purported grantor by defendant Nafi Rivers. Nafi Rivers’ signature on the underlying deed was notarized by defendant James Dominic Effiwatt.

In connection with the conveyance of the property per the underlying deed (and as is typically done in such transactions), defendant MacGregor Abstract Corp. (MacGregor), a title abstract company, issued (on the nonparty title company’s behalf) a policy of title insurance to the purported grantee. In addition, MacGregor presented the underlying deed for recording in the Office of the City Register of the City of New York, and the underlying deed was so recorded against the property.

Procedural History

On November 15, 2023, plaintiff commenced the instant action to quiet title to the property against (among others) MacGregor, asserting as against it causes of action sounding in forgery, negligence (under the guise of unjust enrichment), and conversion

¹ Reference to UCC 9-607 (a) (3) indicates that the underlying deed was purportedly issued in satisfaction of plaintiff’s alleged obligations to the trust (*see* UCC 9-607 [a] [3] [“If so agreed, and in any event after default, a secured party . . . may enforce the obligations of an account debtor . . . on collateral . . . and with respect to any property that secures the obligations of the account debtor . . . obligated on the collateral. . . .”]).

(likewise under the guise of unjust enrichment).² Irrespective of how they are denominated in the complaint, however, plaintiff's causes of action against MacGregor are essentially grounded in negligence; namely:

“[¶ 11, unnumbered page 5] On or about February 10, 2022 the [underlying deed] was recorded in ACRIS by . . . Macgregor. . . The recording was made approximately ten months after the fraudulent transfer and acknowledgement. . . . Macgregor had a duty based on professional standards of the industry to verify the authenticity and legality of the documents that it was recording. At worst [,] [MacGregor] knowingly participated in a deed theft or at minimum acted recklessly and negligently in furtherance of the theft of plaintiff's deed and equity of his home.

[¶ 12, unnumbered page 5] . . . MacGregor made no attempt to . . . verify the chain of title[,], which given the specific nature of [its] business[,], would have been simple and not [difficult]. . . [MacGregor] [had] . . . a deed that was not properly acknowledge[d] [recorded,] in that plaintiff's signature did not appear on the transfer documents. The level of negligence or inadvertence resulting in a deed and equity theft creates a basis for civil liability.

* * *

[¶ 48, unnumbered page 12³]. The defendants breached their standard of care for negligence . . . when they knew or should have known that the execution and filing of a deed requires the signatures of the current deed holders on a new deed. MacGregor is either a party to the fraud or breached [its] duty of care by recording a fraudulent instrument.

[¶ 49, unnumbered page 12] . . . MacGregor should have checked the current deed which is readily available to the public via [ACRIS which] is an online document filing system for NYC. Exercising reasonable care is at least checking the previous deed and checking that the new deed follows the chain of title; and [the] filing [of] a 'quit claim' deed without the transfer or exchange of money should trigger . . . at least a review of the documents and [a] check with the current owners.

[¶ 50, unnumbered page 12]. Due to the lack of reasonable care, MacGregor is either a party to the fraud or played a key role

² Verified Complaint, dated November 6, 2023, the first, sixth, and seventh causes of action, respectively (NYSCEF Doc No. 17).

³ After setting forth the factual allegations in ¶¶ 1-18, the complaint restarted the paragraph numbering for the causes of action at ¶¶ 1-61.

in [having the underlying] deed [recorded] with accompanying transfer documents. [MacGregor's] action[] of . . . [having the underlying] deed [recorded] was a direct cause for the defendants to . . . show 'ownership' . . . and . . . use [of] this property."

On December 1, 2025, MacGregor (in lieu of an answer) moved for an order, pursuant to CPLR 3211 (a) (7), dismissing all causes of action against it for failure to state a claim. Plaintiff (by counsel's affirmation) opposed.⁴

Law & Analysis

On a motion to dismiss a complaint for failure to state a cause of action under CPLR 3211 (a) (7), a court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "At the same time, however, allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration" (*Simkin v Blank*, 19 NY3d 46, 52 [2012] [internal quotation marks omitted]).

"[A] title company hired by one party is not, absent evidence of *fraud, collusion, or other special circumstances*, subject to suit for negligent performance by one other than the party who contracted for its services" (*Calamari v Grace*, 98 AD2d 74, 83

⁴ Plaintiff's inclusion (as part of his counsel's opposition) of a press release from the Brooklyn District Attorney's Office announcing an indictment of defendant James Dominic Effiwatt in connection with a different property in Brooklyn, New York, was not considered by the Court because plaintiff failed to allege that Effiwatt acted as MacGregor's agent in the underlying conveyance (*see generally Matter of Brandon's Estate*, 55 NY2d 206, 210 [1982]). Although the status of the criminal case against Effiwatt is not disclosed in the record, the Court takes judicial notice that his subsequently commenced, pro se civil-rights action against the Brooklyn District Attorney's Office and others under Case 1:23-cv-00145-HG-LB in the United States District Court for the Eastern District of New York was dismissed for failure to state a claim, by order, dated June 13, 2023 (available on Westlaw).

[2d Dept 1983] [emphasis added]).⁵ Here, plaintiff’s allegations against MacGregor fail to state a claim. Plaintiff does *not* allege that he had any relationship or contact with MacGregor (*see Matter of Lowbet Realty Corp.*, 38 Misc 3d 589, 599 [Sup Ct, Kings County 2012, Demarest, J.]). Although contractual “privity is not required to assert a claim based on fraud or intentional misconduct” (*Velazquez v Decaudin*, 49 AD3d 712, 716 [2d Dept 2008]), plaintiff here fails to allege any “evidence of fraud, collusion or other special circumstances” on MacGregor’s part (*see Sabo*, 25 AD3d at 421). Rather, plaintiff’s claims against MacGregor – which essentially sound in negligence – consist of bare, conclusory allegations (without any supporting detail) which do not meet the specificity requirements of CPLR 3016 (b) to sufficiently plead the existence of an underlying fraud, knowledge thereof on MacGregor’s part, or its *substantial assistance* in achievement of the fraud (*see Matter of Woodson*, 136 AD3d 691, 693 [2d Dept 2016]; *Goodman v Title Guar. & Tr. Co.*, 11 AD2d 1003 [1st Dept 1960]).⁶ “Substantial assistance requires an affirmative act on the defendant’s part; *mere inaction can constitute substantial assistance only if the defendant owes a fiduciary duty directly to the plaintiff*” (*Baron v Galasso*, 83 AD3d 626, 629 [2d Dept 2011] [internal quotation marks omitted; emphasis added]). “Allegations [as is the instance here] that the purported aider

⁵ Stated otherwise, “[w]here a title insurer or its agent contracts to prepare an abstract, its liability for damages resulting from negligent performance or errors in or omissions from the prepared abstract, in the absence of fraud or collusion, extends solely to the person who contracted for such services” (*Sabo v Alan B. Brill, P.C.*, 25 AD3d 420, 421 [1st Dept 2006]).

⁶ *See also Cruz v Commonwealth Land Tit. Ins. Co.*, 157 AD2d 333, 337 (1st Dept 1990) (“if a negligent search causes an insurer to represent that title is when it is not, *its liability is in contract, not tort*, since the effect of such negligence is not to create a risk of a defect in title *but simply to leave undiscovered a risk that already exists*”) (emphasis added).

and abettor merely performed ordinary business functions are insufficient to establish substantial assistance” (*Karipaparambil v Polus*, 195 AD3d 515, 516 [1st Dept 2021]).

The Appellate Term’s decision in *Lebhar v National City Bank*, 25 Misc 3d 58 (2d Dept 2009), is on all fours with the facts of this case. In *Lebhar*, the plaintiff was a 50% owner of certain premises, whereas his daughter and defendant Charli Leibovich were each 25% owners. Using a *forged power of attorney* for the plaintiff and his daughter, defendant Leibovich obtained an almost \$200,000 equity line of credit secured by the premises. At the closing on that line of credit, a check was issued, payable solely to Leibovich. Ultimately, the lien associated with the line of credit was removed from the premises.

Thereafter, the *Lebhar* plaintiff brought an action against, inter alia, the title insurance company that was retained by the bank in connection with the issuance of the equity line of credit and loan to Leibovich, seeking monetary damages. Like the allegations in this case, the *Lebhar* plaintiff asserted that the underlying wrong was the title insurance company’s alleged “grossly negligent” *failure to detect the forgery* in the powers of attorney, despite suspicious circumstances. On the *Lebhar* plaintiff’s appeal from the Civil Court’s decision/order dismissing the complaint as against the title insurance company for failure to state a claim, the Appellate Term, Second Department, affirmed in a concise, well-reasoned ruling:

“Here, [the title insurance company] was aware that its report was to be used for a particular purpose, to wit, to provide the bank, the party that hired [the title insurance company], with information with regard to an application to procure an equity line of credit or loan, secured by the premises, for a minority owner of the premises; the bank relied on [the title insurance company’s] report in furtherance of the known purpose of the report. *However, there was no conduct linking [the title insurance*

company] directly to plaintiff, nor did plaintiff rely on [the title insurance company's] report. We conclude that in these circumstances, even if it were established that [the title insurance company] was grossly negligent, [its] gross negligence would not give rise to a cause of action in favor of the plaintiff herein."

(*Lebhar*, 25 Misc 3d at 61) (emphasis added).⁷

The parties' remaining contentions have been considered and found to be either without merit or academic in light of the Court's determination.

Accordingly, it is hereby

ORDERED that in Seq. No. 3, MacGregor's pre-answer motion for an order, pursuant to CPLR 3211 (a) (7), dismissing the verified complaint against it is GRANTED, and it is further

ORDERED that the entirety of plaintiff's verified complaint is *dismissed* against MacGregor without costs/disbursements, and the action is severed and continued against the remaining defendants; and it is further

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

⁷ Likewise on point is *Lam v Xiao*, 2024 NY Slip Op 33248(U) (Sup Ct, Queens County 2024).

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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ARTHUR LOCKHART,

Plaintiff,

- against -

NATION DEVELOPERS ASSOCIATION TRUST,
NAFI RIVERS AS TRUSTEE, NAFI RIVERS
INDIVIDUALLY, NEXT LEVEL SOLUTIONS
TRUST, BURCHELL M. MARCUS AS TRUSTEE,
BURCHELL M. MARCUS INDIVIDUALLY,
JAMES DOMINIC EFFIWATT, and VADIS O MCKENZIE,

Defendants.

-----X
and it is further

ORDERED that MacGregor’s counsel is directed to electronically serve a copy of this decision and order with notice of entry on the other parties’ respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.
Dated: 2/17/2026