

Brickstone E. 52 Inc. v Smith
2026 NY Slip Op 31352(U)
March 24, 2026
Supreme Court, Kings County
Docket Number: Index No. 526036/2025
Judge: Peter P. Sweeney
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

BRICKSTONE EAST 52 INC.,,

Plaintiff,

-against-

Motion Seq 1

Index No.: 526036/2025

Decision and Order

KAREN SMITH, TREVOR SMITH, JAMILAH
SMITH "JOHN DOE", "JANE DOE",

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion/Order to Show Cause/

Petition/Cross Motion and

Affidavits (Affirmations) Annexed _____

Opposing Affidavits (Affirmations) _____

Affidavits/ Affirmations in Reply _____

Other Papers:

In an action, *inter alia*, for a judgment declaring that defendants have no right to continued occupancy of a one family house located at 551 East 52nd Street in Brooklyn (the subject premises), plaintiff moves for summary judgment granting it a judgment of possession, issuing a writ of assistance, and use and occupancy.

By quitclaim deed dated September 2, 2024, Henry Smith, the surviving spouse of Rosalee Smith who died in 2016, conveyed the subject premises to himself and nonparty Denise Thomas as joint tenants with rights of survivorship for no consideration. Henry Smith died on September 30, 2024. The deed was not recorded until October 2, 2024.

On May 22, 2025, Denise Thomas, as surviving joint tenant, conveyed the premises to plaintiff. The Smith Defendants, described in the complaint as "disgruntled presumptive heirs at law of Henry Smith," lived in the premises. On June 20, 2025, plaintiff served defendants with a notice to terminate their tenancy,

ool

described as a tenancy at will. When defendants did not vacate the premises, plaintiff commenced this action to remove them from possession and for use and occupancy.

Defendants' answer included 14 affirmative defenses and three counterclaims, alleging that the quitclaim deed, the mortgages and other documents were fraudulent.

In this motion, plaintiff contends that none of the affirmative defenses or counterclaims are a bar to summary judgment, as they offer no legitimate defense to this action for ejectment or use and occupancy. Plaintiff argues, *inter alia*, that allegations that Denise Thomas engaged in elder abuse or sought money from her siblings (defendants) "is irrelevant to Plaintiff's right to recover the premises."

The *pro se* defendants oppose the motion and, at oral argument, submitted a notice of cross motion seeking, *inter alia*, to dismiss the complaint and for a declaration that the deed was void, and opposition to plaintiff's motion. An affidavit of service was submitted indicating that service of the purported cross motion and opposition was made upon plaintiff's counsel by certified mail, but there is no evidence that defendants paid the requisite fee for a cross motion, and the court's UCMS does not list the cross motion as before the court. Accordingly, the documents submitted will be considered as opposition papers, but the cross motion's requests for relief will not be considered,

In her affidavit, defendant Karen Smith avers the subject property was purchased by Rosalee Smith and, upon her death in 2016, became the property of Henry Smith. Karen further avers that she has lived in the premises since it was purchased, and her son Trevor and daughter in law Jahmela Smith also reside there. Defendants contend that Henry Smith was institutionalized and did not have capacity to transfer the property to Denise Thomas, that plaintiff was not a bona fide purchaser for value, and that after Karen filed for Letters of Administration, Denise Thomas objected, and produced a will dated November 18, 2020. In her objections to Karen's application for letters testamentary, Denise Thomas also alleged that her father wanted to sell the premises but Karen frustrated those plans and that is why the premises were conveyed to Denise Thomas.

The will identifies Karen Smith and Denise Thomas as adult children of Henry Smith. It also provides that they, and a third child, should divide the estate in equal portions.

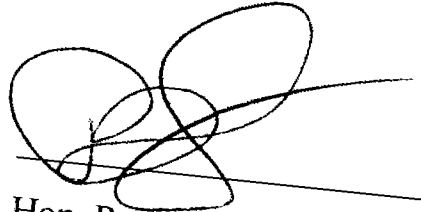
It is elementary that a movant for summary judgment must first establish his or her prima facie entitlement to judgment as a matter, and that such relief will only be granted if there are not material and triable issues of fact. Issue finding, as opposed to issue determination is the key (see, e.g., CPLR 3212[b]; *Paulin v Needham*, 28 AD3d 531 [2d Dept 2006]).

In this case, it cannot be said that there are no issues of fact preventing plaintiff from establishing its entitlement to judgment as a matter of law. The siblings have presented very different interests in the subject premises. The circumstances behind the conveyance to Denise of the premises for no consideration shortly before Henry's death are not explained. Further, plaintiff's unspoken and presumed role as a bonafide purchaser is dubious. In her objections to Karen's application for letters testamentary, Denise states she "had to sell the subject property at a discounted rate, because the purchaser took title and ownership, subject to the existing problematic occupants." In support of plaintiff's motion for summary judgment, an officer of plaintiff, Eddie Kazyev, affirms, *inter alia*, that at the time of purchase, he was aware that the Smith defendants resided in the premises, but, he asserts, their occupancy was gratuitous, a conclusion that may or may not be upheld at trial. In short, giving due consideration to the affidavits and exhibits submitted, indicating, among other things, the different interests of the siblings, the sale of the premises to Denise for no consideration, and the subsequent sale to plaintiff at a discount in light of the existence of problematic occupants, questions of fact have been adequately raised as to the circumstances of the alleged transfer to Denise Thomas and the subsequent sale to plaintiff.

Accordingly, plaintiff's motion for summary judgment is denied in its entirety.

The foregoing constitutes the decision and order of this court.

Dated: 3/24/2026



Hon. Peter P. Sweeney, JSC

KINGS COUNTY CLERK
FILED
2026 APR - 1 P 12: 04