

Greene v Kevin D. Greene, LLC
2026 NY Slip Op 31460(U)
February 11, 2026
Supreme Court, Kings County
Docket Number: Index No. 510212/2014
Judge: Francois A. Rivera
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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of February 2026

HONORABLE FRANCOIS A. RIVERA

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KEITH B. GREENE, IN HIS CAPACITY OF TRUSTEE
EXECUTOR OF THE ESTATE AND TRUST OF CORA
SAMPLE A/K/A CORA LEE SAMPLE,

Plaintiffs,

- against -

KEVIN D. GREENE, LLC, KEVIN D. GREENE,
NEW YORK COMMUNITY BANCORP, INC., D/B/A
ROOSEVELT SAVINGS BANK, A/K/A NEW YORK
COMMUNITY BANK, LAWRENCE L. GREENE and
THE KINGS COUNTY PUBLIC ADMINISTRATOR

Defendants.
-----X

DECISION & ORDER

Index No.: 510212/2014

Oral Argument: 12/19/2025

Cal. No.: 30

Ms. Seq. No.: 15

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on August 29, 2025, under motion sequence number fifteen by Keith B. Greene, in his capacity as trustee and executor of the estate and trust of Cora Sample a/k/a Cora Lee Sample (hereinafter the plaintiff) for an order: (a) striking the joint answer of Kevin D. Greene LLC and Kevin D. Greene (hereinafter collectively the Kevin defendants), granting leave to enter default judgment against them pursuant to CPLR 3126 for contumacious violations of the Court’s discovery order and in the Court’s inherent discretion because of a fraud committed on the Court; (b) granting summary judgment pursuant to CPLR 3212 against them; and (c) extending discovery and plaintiff’s time to file the note of issue in this action. The motion is unopposed.

- Notice of motion
- Affirmation in support
 - Exhibits A-I
- Affirmation in support by Keith B. Greene
 - Exhibits A-J
- Supplemental Affirmation in support
 - Exhibits A-C
- Affirmation of no position by defendants

BACKGROUND

On October 30, 2014, the plaintiff commenced the instant action by filing a summons and complaint with the Kings County Clerk's office (KCCO).

On May 21, 2015, the Kevin defendants interposed and filed a joint verified answer with the KCCO.

The complaint alleges eighty-two allegations of fact in support of seven denominated causes of action. The first cause of action is for breach of contract asserted against the defendant Bank. The second cause of action is for breach of fiduciary duty asserted against the defendant Bank. The third cause of action is denominated as New York GBL section 349. The fourth cause of action sounds in breach of fiduciary duty asserted against defendant Lawrence Green. The fifth cause of action was incorrectly numbered as the sixth cause of action and was asserted against Lawrence Green for undue influence. The next numbered cause of action was also numbered as the sixth cause of action and was asserted against all named defendants for alleged fraudulent conveyance. The seventh cause of action is asserted against the Kevin defendants for conversion.

On October 30, 2025, at oral argument of the instant motion, the Court adjourned the motion to December 18, 2025, and granted the plaintiff leave to submit a supplemental affirmation by November 13, 2025. The affirmation should clarify the causes of action for which the plaintiff was seeking summary judgment and the basis for same.

On November 13, 2025, plaintiff's counsel filed a document denominated as a "supplemental affirmation in in support of motion to strike answer; for summary judgment; and to extend note of issue."

MOTION PAPERS

The plaintiff's motion papers filed on August 29, 2025 consist of a notice of motion and a document denominated as an "affirmation in support of motion to strike/summary judgment and extend note of issue." The document was "affirm[ed], under penalty of perjury" by Kristian K. Larsen, the plaintiff's counsel (hereinafter Larsen). The affirmation in support refers to nine annexed exhibits labeled A through I. The submission also includes plaintiff's affirmation with ten annexed exhibits labeled A through J.

On November 13, 2025, Larsen filed another document denominated as a "supplemental affirmation in support of motion to strike answer; for summary judgment; and to extend note of issue" and three annexed exhibits labeled A through C.

LAW AND APPLICATION

The plaintiff seeks an order: (a) striking the joint answer of the Kevin defendants and granting leave to enter default judgment pursuant to CPLR 3126, (b) granting summary judgment pursuant to CPLR 3212, and (c) extending discovery and plaintiff's time to file the note of issue in this action.

On October 30, 2025, at oral argument of the instant motion, the Court granted the plaintiff leave to submit a supplemental affirmation by November 13, 2025 clarifying which causes of action the plaintiff was seeking summary judgment on and the basis for granting same.

Plaintiff's Motion to Strike the Kevin Defendants' Answer

Plaintiff was seeking, among other things, to strike the answer of the Kevin defendants pursuant to CPLR 3126 for failure to appear for depositions on or before July 10, 2025. For the reasons set forth below, the affirmations of Larsen were not in admissible form. If they had been

in admissible form, this branch of the motion would still be denied for failure to comply with 22 NYCRR 202.7 (a), 22 NYCRR 202.7 (c), and 22 NYCRR 202.20-f (b).

“To the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice” (*Hawkins v City of New York*, 237 AD3d 1069, 1069 [2d Dept 2025], citing 22 NYCRR 202.20-f [a], and citing *Bayview Loan Servicing, LLC v Evanson*, 230 AD3d 1091, 1092 [2d Dept 2024]). “All discovery motions must include ‘an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion’” (*Bayview Loan Servicing, LLC v Evanson*, 230 AD3d 1091, 1092 [2d Dept 2024], quoting 22 NYCRR § 202.7 [a], and citing *Muchnik v Mendez Trucking, Inc.*, 212 AD3d 640, 641 [2d Dept 2023]). “The affirmation of the good faith effort to resolve the issues raised by the motion shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions or shall indicate good cause why no such conferral with counsel for opposing parties was held” (22 NYCRR 202.7 [c]; *Behar v Wiblishauser*, 219 AD3d 793, 794 [2d Dept 2023]).

“Failure to provide an affirmation of good faith which substantively complies with 22 NYCRR 202.7(c) warrants denial of the motion” (*Behar v Wiblishauser*, 219 AD3d 793, 794 [2d Dept 2023], citing *Winter v ESRT Empire State Bldg., LLC*, 201 AD3d 842, 844 [2d Dept 2022]). “Further, in the absence of exigent circumstances, ‘prior to contacting the court regarding a disclosure dispute, counsel must first consult with one another,’ by an in-person or telephonic conference, in a good faith effort to resolve all discovery disputes (*Bayview Loan Servicing, LLC v Evanson*, 230 AD3d 1091, 1092 [2d Dept 2024], citing 22 NYCRR 202.20-f [b]). “In the event that a discovery dispute cannot be resolved other than through motion practice, each . . . discovery motion shall be supported by an affidavit or affirmation from counsel attesting to counsel having

conducted an in-person or telephonic conference, setting forth the date and time of such conference, persons participating, and the length of time of the conference” (*id.*, citing 22 NYCRR 202.20-f [b]).

The affirmations of Larsen did not attest to conducting an in-person or telephonic conference with the Kevin defendants’ counsel.

Plaintiff’s Motion for Summary Judgment

The plaintiff seeks an order granting summary judgment in its favor on the sixth cause of action for alleged fraudulent conveyance and the seventh cause of action for conversion as asserted against the Kevin defendants.

It is well established that summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating “the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]).

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]). “Pursuant to CPLR 3212 (b) a court will grant a motion for summary judgment upon a determination that the movant’s papers justify holding, as a matter of law, ‘that there is no defense to the cause of action or that the cause of action or defense has no merit.’ Further, all the evidence must be viewed in the light most favorable to the opponent of the

motion” (*People v Grasso*, 50 AD3d 535, 544 [1st Dept. 2008], citing *Marine Midland Bank v Dino & Artie's Automatic Transmission Co.*, 168 AD2d 610, 610 [2d Dept 1990]).

The Noncompliant Affirmations of Plaintiff's Counsel

The plaintiff submitted two purported affirmations by Larsen, its counsel, in support of the motion. Neither affirmation of Larsen, Esq., complied with CPLR 2106 as amended (*see* CPLR 2106; *see* Patrick M. Connors, *The Blockbuster Amendment to CPLR 2196 Permitting Any Person to Submit an Affirmation in Lieu of an Affidavit*, 98 St. John's L. Rev. 375, 381 [2024] [analyzing the amended CPLR 2106]). It lacks the language prescribed in the statute, or language that is in substantially the following form:

“I affirm this ___ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.”

The affirmation by counsel Larsen was insufficient and did not encompass the requisite language or language substantially reflective of that required in the statute. Here, “[t]here is no acknowledgement of the laws of New York or the possible penalties of fine or imprisonment if the statements made therein [were] not true” (*R.F. v L.K.*, 82 Misc 3d 1221[A], 2024 NY Slip Op 50358[U], [Sup Ct, Westchester County 2024]). Therefore, the “[a]ffirmation [wa]s not in admissible form and c[ould] not be relied upon as proof of facts set forth therein” (*id.*, citing *Graham Ct. Owners Corp. v Memminger*, 81 Misc 3d 1248[A], *2 n 5 [Civ Ct, NY County 2024]; *see also Matter of Grandsard v Hutchison*, 2024 WL 1957086, *1 [Sup Ct, NY County 2024], *affd* 227 AD3d 491, 491 [1st Dept 2024]). Consequently, any reference in the defective affirmations to documents filed with other motion papers or under the NYSCEF system were not considered in assessing the plaintiff's motion.

The plaintiff also submitted an affirmation which did comply with CPLR 2106. The plaintiff's affirmation in support referred to ten exhibits labeled A through J. However, the ten exhibits referred to by the plaintiff were different from the exhibits labeled A through J by the plaintiff's counsel. By not considering the allegations of fact and referenced exhibits by plaintiff's counsel, the plaintiff could not meet their prima facie burden establishing entitlement to summary judgment, notwithstanding the admissibility of plaintiff's affirmation.

Plaintiff's Motion for an Extension to File the Note of Issue

Due to the defective affirmations of plaintiff's counsel Larsen, there are no sworn allegations of fact in support of the request to extend the plaintiff's time to file a note of issue. This branch of the motion is also denied without prejudice.

CONCLUSION

The branch of the motion by plaintiff Keith B. Greene, in his capacity as trustee and executor of the estate and trust of Cora Sample A/K/A Cora Lee Sample (hereinafter the plaintiff) for an order striking the joint answer of Kevin D. Greene LLC and Kevin D. Greene is denied without prejudice.

The branch of the motion by plaintiff Keith B. Greene, in his capacity as trustee and executor of the estate and trust of Cora Sample A/K/A Cora Lee Sample (hereinafter the plaintiff) for an order granting leave to enter default judgment against Kevin D. Greene LLC and Kevin D. Greene pursuant to CPLR 3126 for contumacious violations of the Court's discovery is denied without prejudice.

The branch of the motion by plaintiff Keith B. Greene, in his capacity as trustee and executor of the estate and trust of Cora Sample A/K/A Cora Lee Sample (hereinafter the plaintiff)

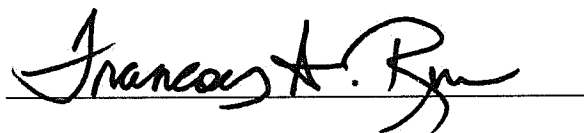
for an order summary judgment pursuant to CPLR 3212 against defendants Kevin D. Greene LLC and Kevin D. Greene is denied without prejudice.

The branch of the motion by plaintiff Keith B. Greene, in his capacity as trustee and executor of the estate and trust of Cora Sample A/K/A Cora Lee Sample (hereinafter the plaintiff) for an order granting an extension of time to file a note of issue is denied without prejudice.

The plaintiff may move for the same relief again within thirty days of notice of entry of the instant decision and order and by complying with CPLR 2106 as amended and 22 NYCRR 202.7 [a], [c] and 202.20 f (b)

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA