

**Baker v Beckford**

2026 NY Slip Op 31819(U)

April 24, 2026

Supreme Court, Kings County

Docket Number: Index No. 501985/19

Judge: Kerry J. Ward

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At an IAS Term, Part 3, 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 24<sup>th</sup> day of April, 2026.

P R E S E N T:

HON. KERRY J. WARD,

Justice.

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MICHAEL BAKER, INDIVIDUALLY; and MICHAEL BAKER AS ANCILLARY EXECUTOR OF THE LAST WILL AND TESTAMENT OF GEORGE WILSON a/k/a GEORGE WILSON BAKER,

Plaintiff,

-against-

Index No. 501985/19

DWAYNE BECKFORD, INDIVIDUALLY; DWAYNE BECKFORD, AS AN AGENT OF BECKFORD 435 LIMITED; BECKFORD 435 LIMITED; GOLDEN BRIDGE LLC D/B/A GOLDEN BRIDGE FUNDING LLC; MAKA COMMUNICATIONS, LLC; ONIEL ALEXANDER; BELINDA BRANDIMARTI, INDIVIDUALLY; BELINDA BRANDIMARTI, AS MANAGING AGENT OF MAKA COMMUNICATIONS LLC; PROGRESSIVE HOMES AND DEVELOPMENT, INC.; GINA DICKS, AS AN AGENT OF PROGRESSIVE HOMES AND DEVELOPMENT, INC.; GINA DICKS, INDIVIDUALLY; SERVICE ADVISORS, INC.; MAURICE DICKS, INDIVIDUALLY; MAURICE DICKS, AS AN AGENT OF PROGRESSIVE HOMES AND DEVELOPMENT; TOORAK CAPITAL PARTNERS LLC; TOORAK REAL ESTATE HOLDINGS V LLC; ICE LENDER HOLDINGS, LLC; MARK CRAWFORD; HEIDI GLIBOFF; AUDREY THOMAS; MAJOR DOE said name being fictitious and represents the name of the brother of Dwayne Beckford whose name is not known to Plaintiffs at this time; JANE AND JOHN DOE 1-20, said names being fictitious and are intended to represent the names of other defendants whose names aren't known to Plaintiffs at this time.

Defendants.

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The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and

Affidavits (Affirmations) Annexed \_\_\_\_\_ 276, 282, 284-286, 309-311  
Opposing Affidavits (Affirmations) \_\_\_\_\_ 322

Upon the foregoing papers, defendant Ice Lender Holdings, LLC (ILH) moves (in Motion Sequence [MS] # 10) for an order, pursuant to CPLR 3211 (a) (5) & (7), dismissing the third amended complaint (TAC) of plaintiff Michael Baker, individually, and as Ancillary Executor of the Last Will and Testament of George Wilson a/k/a George Wilson Baker as against it. Defendant Audrey Thomas (Thomas) moves (in MS # 12) for an order dismissing the TAC as against her. Plaintiff moves (in MS # 13) for an order enjoining and restraining defendant Toorak Real Estate Holdings V LLC (Toorak) from selling the subject property pending the resolution of this action.

Plaintiff commenced this action to quiet title to the subject property at 435 Herzl Street in Brooklyn and recover damages and other relief stemming from a transaction whereby plaintiff conveyed the subject property to defendant Beckford 435 Limited (435 Ltd) by deed dated June 14, 2018 and recorded August 7, 2018. The action was commenced by the filing of a summons with notice on January 28, 2019. The complaint and a notice of pendency were thereafter filed on February 3, 2019. The essential gravamen of plaintiff's claim is that defendant Dwayne Beckford (Beckford) fraudulently induced plaintiff to convey the property to 435 Ltd, a company formed by Beckford, as part of a foreclosure rescue or "deed theft" scheme, whereby plaintiff was led to believe that the transaction would result in payment of delinquent tax liens through 435 Ltd's

procurement of a mortgage loan and that plaintiff would thereafter regain title to the property pursuant to a “reconveyance agreement.” In conjunction with the conveyance, the property was encumbered with a \$400,000 mortgage in favor of defendant Golden Bridge LLC d/b/a Golden Bridge Funding LLC (Golden). By deed dated December 31, 2018 and recorded January 30, 2019 (prior to the filing of the notice of pendency in this action), 435 Ltd conveyed the property to defendant Maka Communications LLC (Maka). As part of the transaction, the \$400,000 Golden mortgage was assigned to ILH, which consolidated the mortgage with an additional \$345,500 mortgage loan extended by ILH. The consolidated mortgage in favor of ILH was executed on December 31, 2018 and recorded on February 27, 2019. The consolidated mortgage and note were thereafter assigned by ILH to Toorak on April 2, 2019. Toorak commenced a foreclosure action on February 4, 2020 which resulted in the entry of a judgment of foreclosure on May 3, 2022. The property was sold to Toorak at the ensuing foreclosure sale and a referee’s deed was issued to Toorak on July 31, 2023. The referee’s deed was recorded on August 18, 2023.

In the original complaint, plaintiff alleges that “[d]efendants have all engaged in a common plan or scheme aimed at defrauding [plaintiff]” (Complaint, NYSCEF Doc No. 3 at ¶ 81) and asserts the following 14 causes of action: (1) declaratory judgment declaring “the rights, responsibilities and entitlements each party has and/or enjoys with reference” to the property (*id.* at ¶¶ 83-90); (2) judgment quieting title to the property (*id.* at ¶¶ 92-100); (3) fraud (*id.* at ¶¶ 102-115); (4) unjust enrichment (*id.* at ¶¶ 117-120); (5) conversion (*id.* at ¶¶ 120-131); (6) fraudulent misrepresentation (*id.* at ¶¶ 133-135); (7) an

award of attorneys' fees (*id.* at ¶¶ 137-142); (8) trespass to chattel (*id.* at ¶¶ 144-151); (9) intentional infliction of emotional distress (*id.* at ¶¶ 153-160); (10) negligent infliction of emotional distress (*id.* at ¶¶ 162-167); (11) constructive trust (*id.* at ¶¶ 169-184); (12) theft by deception (*id.* at ¶¶ 186-188); (13) specific performance (*id.* at ¶¶ 190-199); and (14) breach of contract (*id.* at ¶¶ 201-210).

On January 30, 2025, plaintiff filed (upon an order granting leave) a second amended complaint (SAC) which, among other things, added ILH and Thomas as party defendants and interposed causes of action for legal malpractice and breach of fiduciary duty against Thomas, plaintiff's former attorney in this action and in a related eviction action brought by Maka in Housing Court. With respect to Thomas, plaintiff alleges that she "failed to exercise the care, skill, and diligence commonly possessed and exercised by a member of the legal profession in [her representation of plaintiff]" (SAC, NYSCEF Doc No. 201 at ¶ 220) in that:

"a. Ms. Thomas filed the notice of pendency in this action without a complaint, causing it to be rejected by the county clerk. Because of her error and her delay in filing a new notice of pendency, Maka Communications LLC was able to record the deed transferring the premises to itself from Beckford 435 Limited. This caused [plaintiff] irreparable harm.

"b. Ms. Thomas added numerous factual inaccuracies to the original complaint in this action, which harmed and sabotaged [plaintiff's] case, and resulted in the dismissal of this action.

"c. Ms. Thomas filed a notice of appeal of the Court's order of dismissal on April 18, 2021, but did not perfect the appeal. Instead, Ms. Thomas moved to be relieved as [plaintiff's] counsel, which the Court signed on June 17, 2022.

“d. Ms. Thomas also represented [plaintiff] in an eviction proceeding filed by Maka Communications LLC. In that action, Ms. Thomas failed to appear at an inquest on the property's contested ownership, and Maka Communications LLC was awarded a judgment of possession on default, which resulted in [plaintiff's] eviction from the property on July 6, 2022” (*id.*.)”

Plaintiff alleges that a “fiduciary duty existed between [plaintiff] and Audrey Thomas because Audrey Thomas was supposed to be [plaintiff's] attorney” and that Thomas breached this duty by failing to inform plaintiff that she was being represented by defendant Mark Crawford (plaintiff's purported attorney at the closing of the alleged fraudulent sale to 435 Ltd) in a separate malpractice action and by “sabotag[ing] [plaintiff's] case” (*id.* at ¶ 224).

On July 31, 2025, plaintiff filed a third amended complaint (TAC) which amended the caption to include the new defendants, which were inadvertently omitted from the caption of the SAC.

### **ILH's Motion to Dismiss**

ILH moves to dismiss the TAC as against it on grounds of statute of limitations and failure to state a cause of action. ILH maintains that to the extent it is included among the defendants plaintiff is charging with fraudulent conduct, such claim is untimely since ILH was added more than two years following the time the alleged fraudulent conduct was or could have been discovered. ILH also contends that the allegations in the TAC are not sufficiently particular to state a fraud cause of action and that plaintiff is barred by the doctrine of laches. In opposition, plaintiff clarifies that he is “not pursuing a fraud claim against ILH,” but rather “his claims against [ILH] include

causes of action for (1) declaratory judgment; (2) quiet title; and (3) unjust enrichment” (Memorandum of Law in Opposition, NYSCEF Doc No. 307 at 5).

In determining whether a complaint is sufficient to withstand a motion pursuant to CPLR 3211 (a) (7), “the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). The court must accept the facts alleged in the complaint to be true and determine only whether the facts alleged fit within any cognizable legal theory (*see Dye v Catholic Med. Ctr. of Brooklyn & Queens*, 273 AD2d 193, 193-194 [2d Dept 2000]). However, bare legal conclusions are not entitled to the benefit of the presumption of truth and are not accorded every favorable inference (*see Doria v Masucci*, 230 AD2d 764, 765 [2d Dept 1996]). “Dismissal of the [cause of action] is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]; *see Pinnacle Capital, LLC v O’Bleanis*, 214 AD3d 913, 915 [2d Dept 2023]). CPLR 3013 provides that “[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.” Thus, conclusory allegations will not suffice (*see DiMauro v Metropolitan Suburban Bus Auth.*, 105 AD2d 236, 239 [2d Dept 1984]; *Fowler v American Lawyer Media*, 306 AD2d 113, 113 [1st Dept 2003]; *Shariff v Murray*, 33

AD3d 688, 690 [2nd Dept 2006]). When the allegations in a complaint are vague or conclusory, dismissal for failure to state a cause of action is warranted (*Schuckman Realty v Marine Midland Bank*, 244 AD2d 400, 401 [2d Dept 1997]; *O'Riordan v Suffolk Ch., Local No. 852, Civ. Serv. Empls. Assn.*, 95 AD2d 800, 800 [2d Dept 1983]).

In the TAC, ILH is specifically mentioned in only three instances:

“25. At all times pertinent hereto, Defendant Ice Lender Holdings was and is a domestic corporation under the laws of the State of New York.

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“61. Mr. Baker later learned that the Golden Bridge loan was not rescinded but, instead, in late December 2018, the Defendants fraudulently transferred the property to Maka Communications LLC for \$700,000. As part of that transaction, Maka received financing in the amount of \$342,500 secured by a commercial mortgage loan from Ice Lender Holdings LLC, which it consolidated with Golden Bridge's mortgage loan of \$400,000, into a single mortgage loan with Ice Lender Holdings LLC in the amount of \$742,500. As part of that transaction, a putative assignment of mortgage from Golden Bridge to Ice Lender was recorded on ACRIS on February 27, 2019 under CRFN 2019000065417. Also attached to that assignment of mortgage was an additional assignment of mortgage from Ice Lender Holdings LLC to Toorak Capital Partners, LLC, dated January 24, 2019.

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“125. Golden Bridge LLC, Ice Lender Holdings, LLC, Toorak Capital Partners, LLC and Toorak Real Estate Holdings V LLC are also imputed with constructive notice of the potential fraud” (TAC, NYSCEF Doc No. 250, ¶¶ 25, 61, 125).

There is no clear allegation in the TAC that ILH has retained any interest in the property, either by deed or mortgage, following its assignment of the consolidated

mortgage to Toorak. As to plaintiff's quiet title claim, Real Property Actions and Proceedings Law (RPAPL) § 1501 (1) authorizes a person claiming an estate or interest in real property to maintain an action "against any other person. . . to compel the determination of any claim adverse to that of the plaintiff. . ." It is well-settled that "[p]redecessors in title who claim no interest in the property are neither necessary nor proper parties to an action to quiet title" (*McGahey v Topping*, 255 AD2d 562, 563 [2d Dept 1998]; see also *Berman v Golden*, 131 AD2d 416, 418 [2d Dept 1987]; *Brothers v Wall*, 84 AD2d 923, 925 [4th Dept 1981]). A plaintiff is not even entitled to a default judgment on a quiet title claim where the defaulting defendant did not have an interest in the subject property (see *Elam v Altered Ego Realty Holding Corp.*, 114 AD3d 901, 904 [2d Dept 2014]). Here, because the TAC does not allege that ILH holds any present interest in the property, it is not a proper party and is entitled to dismissal of the quiet title claim as against it.

Similarly, plaintiff has no claim for a declaratory judgment against ILH. In its declaratory judgment cause of action, plaintiff seeks "a declaration from this Court outlining the rights, responsibilities and entitlements each party has and/or enjoys with reference to the premises." There are no "rights, responsibilities and entitlements to be declared" as between plaintiff and ILH "with reference to the premises" as ILH holds no interest in the property. A declaratory judgment under CPLR 3001 requires an "actual controversy" concerning the rights of the parties. A declaratory judgment may not be issued where it would amount to no more than an advisory opinion; rather, there must

exist a “genuine legal dispute” warranting judicial resolution (*Combustion Eng’g v Travelers Indem. Co.*, 75 AD2d 777, 778 [1st Dept 1980], *affd* 53 NY2d 875 [1981]).

“To establish an unjust enrichment cause of action, a plaintiff must allege that (1) the other party was enriched, (2) at that party’s expense, and (3) it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (*Dee v Rakower*, 112 AD3d 204, 213 [2d Dept 2013]). “To prevail, the proponent of the cause of action must establish that it conferred a benefit on the other party and that the other party will retain that benefit without adequately compensating the first party therefor” (*Maple Med., LLP v Scott*, 191 AD3d 81, 103 [2d Dept 2020]; *see Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]; *Nasca v Greene*, 216 AD3d 648, 650 [2d Dept 2023]). In its unjust enrichment cause of action, plaintiff alleges:

“Defendants have actually received a property worth at least \$1,500,000.00 for no consideration, in that, although Dwayne Beckford secured the hard money loan of \$400,000.00 by acting as personal guarantor for the loan to secure the purchase of [the subject property] by Beckford 435 Limited, the Plaintiffs paid all fees, costs and disbursements associated with that transaction, has not received the \$300,000.00 downpayment and Defendants promptly sold the premises for \$950,000.00 to Maka at a profit of \$500,000.00” (TAC, ¶ 128).

While plaintiff uses the collective term “Defendants” in this cause of action, nowhere in the TAC’s recitation of facts does plaintiff allege that ILH received title to the property or received any money or any benefit at the expense of plaintiff. Further, because the unjust enrichment claim seeks monetary damages, it is subject to the three-year statute of limitations, measured from the occurrence of the wrongful act giving rise

to the duty of restitution (*see Ingrami v Rovner*, 45 AD3d 806, 808 [2d Dept 2007]). Thus any unjust enrichment claim against ILH based on the December 2018 transaction is also untimely.

As a result, ILH's motion to dismiss is granted in all respects.

### **Thomas' Motion For Dismissal**

Thomas moves for an order dismissing the legal malpractice and breach of fiduciary duty claims on grounds which include statute of limitations.

"On a motion to dismiss a complaint pursuant to CPLR 3211 (a) (5) on the ground that the statute of limitations has expired, the moving defendant must establish, prima facie, that the time in which to commence the action has expired" (*HSBC Bank USA v Lem*, 236 AD3d 762, 763 [2d Dept 2025] [internal quotation marks omitted]). "If the defendant satisfies this burden, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period" (*id.* at 763-764 [internal quotation marks omitted]). "The statute of limitations for a cause of action to recover damages for legal malpractice is three years, which accrues at the time the malpractice is committed" (*Tulino v Hiller, P.C.*, 202 AD3d 1132, 1135 [2d Dept 2022] [citations omitted]; *see* CPLR 214 [6]). Where, as here, the relief sought is monetary, the statute of limitations for a breach of fiduciary duty cause of action is likewise three years (*see Jadidian v Goldstein*, 210 AD3d 969, 970 [2d Dept 2022]).

Thomas was joined in this action by the filing of the SAC on January 30, 2025. The events giving rise to the alleged malpractice and breach of fiduciary duty claims

occurred, at the latest, on January 28, 2019 (rejected filing of the notice of pendency); February 3, 2019 (filing complaint with factual inaccuracies); August 25, 2021 (Appellate Division decision granting motion of Thomas to withdraw as counsel and extending time to perfect appeal) and February 28, 2020 (judgment of possession awarded in Housing Court upon the default of Thomas in appearing). With respect to the alleged failure of Thomas to apprise plaintiff of Crawford's representation of her in a separate malpractice action, such occurred, at the latest, upon plaintiff's retention of Thomas to prosecute this action, which occurred on or prior to January 28, 2019. Each of these claims accrued more than three years prior to the filing of the SAC, and Thomas has therefore established prima facie that plaintiff's claims against her are barred by the statute of limitations. The burden thus shifts to plaintiff to raise an issue of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period.

In opposition, plaintiff argues that the statute of limitations was tolled by the continuous representation doctrine until July 27, 2022, when plaintiff executed a consent to change attorneys from Thomas to himself, pro se. "The continuous representation doctrine serves to toll the statute of limitations and render timely an otherwise time-barred cause of action [alleging either] legal malpractice" or breach of fiduciary duty (*King Tower Realty Corp. v G & G Funding Corp.*, 163 AD3d 541, 543 [2d Dept 2018]; see *Transport Workers Union of Am. Local 100 AFL-CIO v Schwartz*, 32 AD3d 710, 715-716 [1st Dept 2006]). "For the continuous representation doctrine to apply, 'there must be clear indicia of an ongoing, continuous, developing, and dependant relationship

between the client and the attorney” (*Stein Indus., Inc. v Certilman Balin Adler & Hyman, LLP*, 149 AD3d 788, 789 [2d Dept 2017], quoting *Luk Lamellen U. Kupplungbau GmbH v Lerner*, 166 AD2d 505, 506 [2d Dept 1990]). One of the predicates for the application of the doctrine is continuing trust and confidence in the relationship between the parties (*see Coyne v Bersani*, 61 NY2d 939 [1984]).

In her affidavit in support of the motion to dismiss (NYSCEF Doc No. 286), Thomas avers that when she notified plaintiff of the fees associated with pursuing an appeal of a prior order dismissing the action against Maka (which has since been vacated upon renewal), it “led to a breakdown in the attorney client relationship as the Plaintiff refused to pay his legal fees and accused me of several actions, and or omissions that lack merit but such accusations served to destroy the attorney client relationship irreparably.” Thomas continues that “to make matters worse, Mr. Arthur Burkle of Brooklyn Legal Services, Inc. served me with notice that he was helping the Plaintiff with his legal matters and asked to see the files on the matter” which only served “to frustrate [her] relationship with [plaintiff] even further.” Thomas asserts that plaintiff called her and notified her that he no longer wished to have her as his attorney and, thereafter, she scanned plaintiff’s files in their entirety and delivered them to plaintiff with a closing letter on June 11, 2021.

Along with her affidavit, Thomas submitted, among other exhibits, copies of an email to plaintiff, dated July 11, 2021, wherein she writes “I am hand delivering the file to you today along with a hard copy of [attached document files]” (Exhibit Y, NYSCEF Doc No. 289 at 54), an email from Arthur Burkle, dated August 11, 2021, wherein he

states “[o]ur office is assisting [plaintiff] with the action involving [the subject property]” and that [he has] “been going through the court file and was hoping to speak with you to better understand the action and advise [plaintiff] on next steps” (Exhibit Z, NYSCEF Doc No. 289 at 56) and an August 11, 2021 response from Thomas stating “I gave him the file and a copy of the motion [before the Appellate Division] to be relieved. Beyond that I have nothing else to provide” (*id.* at 57).

In his May 2, 2022 order relieving Thomas as counsel for plaintiff in the Housing Court action, Housing Court Judge Kenneth T. Barany stated:

“[Thomas] seeks formally to be relieved as counsel in each holdover notwithstanding her position that she had already been relieved by [plaintiff].

“The Order to Show Cause of [Thomas] is granted and The Law office of Audrey Thomas PLLC is hereby relieved as counsel for respondents in all five holdover proceedings. It is abundantly clear to the Court that any relationship between respondents and respondents’ counsel has been irretrievably broken. In fact, during one of the recent conferences, and prior to his referral to a legal services provider, [plaintiff] indicated that he no longer wanted representation by Counsel Thomas” (Exhibit U, NYSCEF Doc No. 289 at 38).

The record thus demonstrates that the relationship necessary to invoke the continuous representation doctrine ceased to exist in mid-2021, when Thomas delivered the file to plaintiff and plaintiff sought assistance from Brooklyn Legal Services, thereby indicating plaintiff’s lack of trust and confidence in his relationship with Thomas (*see Fraumeni v Law Firm of Jonathan D’Agostino, P.C.*, 215 AD3d 803, 805 [2d Dept 2023]; *Marzario v Snitow Kanfer Holzer & Millus, LLP*, 178 AD3d 527, 528 [1st Dept 2019]; *Aseel v Jonathan E Kroll & Assoc., PLLC*, 106 AD3d 1037, 1038 [2d Dept 2013])

The only papers submitted in opposition is a memorandum of law from plaintiff's attorney, which states in conclusory fashion that "the statute of limitations was tolled until the execution and filing of the consent to change attorney, which occurred on or around July 27, 2022 in this action, substituting Ms. Thomas for [plaintiff] acting pro se" (Memorandum of Law in Opposition, NYSCEF Doc No. 306 at 13) and that "[b]ecause Ms. Thomas did not cease representing [plaintiff] until the signing of the consent to change attorney on or around July 27, 2022, the statute of limitations did not begin to run until that date" (*id.* at 14). However, the date a consent to change attorneys is filed is not dispositive of the date the continuous relationship actually ended (*see Wells Fargo Bank, N.A. v Leopold & Assoc., PLLC*, 238 AD3d 1195, 1197-1198 [2d Dept 2025]; *Farage v Ehrenberg*, 124 AD3d 159, 168 [2d Dept 2014]). "What constitutes a loss of client confidence is fact specific, varying from case to case, but may be demonstrated by relevant documentary evidence involving the parties, or by the client's actions" (*Farage*, 124 AD3d at 168). Plaintiff's counsel does not address the contention that plaintiff's relationship with Thomas was effectively terminated on July 11, 2021, the date Thomas averred she delivered plaintiff's files to him, nor otherwise provide evidence demonstrating the requisite "clear indicia of an ongoing, continuous, developing, and dependant relationship between the client and the attorney" on or after January 30, 2022, the date three years prior to the filing of the SAC (*Luk Lamellen U. Kupplungbau GmbH*, 166 AD2d at 506-507). Notably, there is no submission of affirmation or affidavit from plaintiff attesting to his continued confidence and faith in Thomas within the limitations period.

Accordingly, Thomas' motion seeking dismissal of the TAC as against her is granted.

### **Plaintiff's Motion for a Preliminary Injunction**

“The purpose of a preliminary injunction is to maintain the status quo and prevent the dissipation of property that could render a judgment ineffectual” (*Ruiz v Meloney*, 26 AD3d 485, 486 [2d Dept 2006]). “The decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court” (*Arcamone-Makinano v Britton Prop., Inc.*, 83 AD3d 623, 625 [2d Dept 2011]). A preliminary injunction is a drastic remedy, which should not be granted unless the movant demonstrates “a clear right” to such relief (*City of New York v 330 Cont. LLC*, 60 AD3d 226, 234 [1st Dept 2009]; *Peterson v Corbin*, 275 AD2d 35 [2d Dept 2000], *lv dismissed* 95 NY2d 919 [2000]). “A party seeking the drastic remedy of a preliminary injunction has the burden of demonstrating, by clear and convincing evidence, (1) a likelihood of ultimate success on the merits, (2) the prospect of irreparable injury if the provisional relief is withheld, and (3) a balancing of the equities in the movant's favor” (*Berkoski v Board of Trustees of Inc. Vil. of Southampton*, 67 AD3d 840, 844 [2d Dept 2009]; *see Shasho v Pruco Life Ins. Co. of N.J.*, 67 AD3d 663, 665 [2d Dept 2009]; *Ying Fung Moy v Hohi Umeki*, 10 AD3d 604 [2d Dept 2004]). “The irreparable harm must be shown by the moving party to be imminent, not remote or speculative” (*Golden v Steam Heat, Inc.*, 216 AD2d 440, 442 [2d Dept 1995]; *see Village/Town of Mount Kisco v René Dubos Center for Human Environments, Inc.*, 12 AD3d 501 [2d Dept 2004]).

Here, the court finds plaintiff has not established serious and irreparable harm absent an injunction against the transfer of the property from Toorak, nor has he shown that a transfer of the property would render a judgment ineffectual. In his memorandum of law in support of the motion for an injunction, plaintiff contends that “[s]hould Toorak Real Estate be allowed to further alienate the property, [plaintiff] would be irreparably harmed because [plaintiff] would be precluded from recovering on his specific performance claim and would lose his long-time family property which he has worked so hard to preserve, including in this lawsuit, thus rendering a final judgment in his favor ineffectual” (Memorandum of Law in Support, NYSCEF Doc No. 317, at 9). However, it is unclear from the allegations in the TAC as to what agreement the specific performance claim relates, other than the “reconveyance agreement in which [Beckford] promised to make [plaintiff] a principal of [435 Ltd.]” (TAC, ¶ 119). There is no allegation of a contract of sale between Toorak and plaintiff, and it is not explained how specific performance of the “reconveyance agreement” by 435 Ltd, which no longer holds title to the property, would be affected by any further transfers of the property from Toorak. A notice of pendency remains active, thus negating any claim of good faith purchaser status by a potential transferee.

As a result, plaintiff’s motion for a preliminary injunction enjoining Toorak from selling the subject property is denied.

The court has considered all other arguments of plaintiff and finds them unavailing.

Accordingly, it is hereby

ORDERED that ILH's motion to dismiss (MS # 10) is granted; and it is further

ORDERED that Thomas' motion for summary judgment (MS # 12) is granted;

and it is further

ORDERED that plaintiff's motion for injunctive relief (MS # 13) is denied; and it is further

ORDERED that this action is dismissed as against ILH; and it is further

ORDERED that this action is dismissed as against Thomas; and it is further

ORDERED that this action is severed accordingly; and it is further

ORDERED that any relief not expressly granted herein has been considered, and is denied.

The foregoing constitutes the decision, order and judgment of the court.

ENTER,

So ordered:           KW            
Hon. Kerry J. Ward, A.J.S.C.