

Vance Assoc. LLC v One Flatbush Ave. Prop., LLC

2026 NY Slip Op 31826(U)

April 27, 2026

Supreme Court, Kings County

Docket Number: Index No. 540478/2025

Judge: Reginald A. Boddie

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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 27th day of April 2026.

P R E S E N T:
Honorable Reginald A. Boddie
Justice, Supreme Court

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VANCE ASSOCIATES LLC,

Plaintiff,

Index No. 540478/2025

-against-

ONE FLATBUSH AVENUE PROPERTY, LLC,
DAVID SCHWARTZ, MARTIN NUSSBAUM,
ONE FLATBUSH A VENUE VENTURE LLC,
SPG FLATBUSH A VENUE LLC. ONE
FLATBUSH A VENUE MEMBER LLC, SJD
HOLDINGS LLC, NUSSBAUM REALTY
MANAGEMENT LLC, HDR HOLDINGS, LLC,
ADAM AMERICA EQUITIES, LLC, MEADOW
REAL ESTATE FUND III LP, SLATE EQUITY
INVESTORS LLC, 1 FLATBUSH AVENUE
PARTNERS LLC, EVERBANK FINANCIAL
CORP. f/k/a STERLING BANK AND TRUST
F.S.B. and ONE FLATBUSH AVENUE RETAIL
OWNER LLC,

Cal. No. 25 MS 1

Decision and Order

Defendants.

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The following e-filed papers read herein:
MS 1

NYSCEF Doc. Nos.
1; 24-66

Upon the foregoing papers, the motion by defendants, One Flatbush Avenue Property, LLC (referred to as the "Judgment Debtor"), One Flatbush Avenue Venture LLC ("OFAV"), SPG

Flatbush Avenue LLC (“SPG”), One Flatbush Avenue Member LLC (“OFAM”), SJD Holdings LLC (“SJD”), Nussbaum Realty Management LLC (“NRM”), HDR Holdings, LLC (“HDR”), ADAM America Equities, LLC (“AAE”), Meadow Real Estate Fund III LP (“Meadow”), Slate Equity Investors LLC (“Slate”), David Schwartz (“Schwartz”), Martin Nussbaum (“Nussbaum”), 1 Flatbush Avenue Partners LLC (“1 Flatbush”) and One Flatbush Avenue Retail Owner LLC (“One Flatbush Retail” and collectively with the aforementioned defendants, the “Moving Defendants”), seeking an order pursuant to CPLR 3211[a][1] and [a][7] dismissing plaintiff’s complaint in its entirety as against them, is decided as follows:

According to plaintiff Vance Associates LLC (“plaintiff” or “Vance”), this action arises out of the fraudulent and deceitful conduct of the Moving Defendants who, with full knowledge of the existence of the litigation that had been commenced on May 18, 2016 against the Judgment Debtor (referred to as the “Breach of Contract Action”),¹ failed to disclose to plaintiff or this court during such action, or at any time prior to the entry of judgment against the Judgment Debtor, that the Judgment Debtor had divested itself of all of its assets during the pendency of the Breach of Contract Action. Specifically, that on June 10, 2020, Judgment Debtor sold its residential condominium asset for a purchase price of \$101,350,000, and distributed the net proceeds of sale to the owner of the Judgment Debtor who further distributed the proceeds of the sale to the “owners of the owner.” Secondly, that Judgment Debtor sold its remaining commercial condominium asset for no consideration to a related entity, defendant One Flatbush Retail, and with the assistance of defendant Sterling Bank, One Flatbush Retail further encumbered the commercial condominium

¹ In the Breach of Contract Action, the undersigned rendered a Trial Decision Order awarding damages to plaintiff and against the Judgment Debtor in the amount of \$3,020,640, with interest thereon from September 18, 2015. On July 29, 2025, a Judgment was issued against Judgment Debtor in the amount of \$5,703,973.32 (the “Judgment”).

with a secured loan in the amount of \$5,140,000 (“Sterling Loan”), leaving the subject property with zero equity and rendering plaintiff’s Judgment worthless.

Out of the sale proceeds of the residential condominium unit, it is undisputed that Judgment Debtor paid off \$54,400,000 of the \$80,000,000 mortgage encumbering the property. Plaintiff alleges that, after transfer taxes and other fees were paid at closing, the balance of the \$49,950,000 in net proceeds was transferred to defendant OFAV, who then distributed those net proceeds to defendants OFAM and SJD, who then distributed same to NRM, HDR, AAE, Meadow, Slate, Schwartz, Nussbaum and 1 Flatbush, leaving Judgment Debtor with zero dollars. The remaining balance of the \$80,000,000 mortgage recorded against the property, in the amount of \$25,600,000, was recorded against the commercial unit so that, along with the Sterling Loan, the commercial unit was encumbered with \$31,000,000 in secured debt. Plaintiff alleges that the Sterling Loan was also distributed to the Moving Defendants.

After the Judgment was entered in the Breach of Contract Action, plaintiff alleges that it was disclosed for the first time to plaintiff that the Judgment Debtor had no assets. Moreover, that even if One Flatbush Retail became liable for the Judgment or the fraudulent conveyance of the commercial unit was set aside, the \$31,000,000 in secured debt would have priority over the Judgment leaving such Judgment uncollectable.

On November 17, 2025, plaintiff commenced this action against defendants alleging the following eight causes of action: (1) fraudulent conveyances under the New York Debtor and Creditor Law (“DCL”) § 273-A against Judgment Debtor, One Flatbush Retail and Nussbaum; (2) fraudulent conveyances under DCL § 273-A against “all defendants;” (3) fraudulent conveyances under DCL § 276 against defendants; (4) fraud and deceit; (5) successor liability against One Flatbush Retail; (6) unjust enrichment against OFAV, OFAM, SJD, NRM, HDR, AAE, Meadow,

Slate, Schwartz, Nussbaum and 1 Flatbush; (7) money had and received against OFAV, OFAM, SJD, NRM, HDR, AAE, Meadow, Slate, Schwartz, Nussbaum and 1 Flatbush; and (8) legal fees pursuant to DCL § 276 against defendants.

In their motion to dismiss, Moving Defendants argue that plaintiff's first cause of action under DCL § 273-a fails to state a claim since, in 2019, New York repealed the existing debtor-creditor law and replaced it with the Uniform Voidable Transactions Act, which became effective on April 4, 2020, and applies to transactions made on or after that date. Moving Defendants state that there is no provision comparable to § 273-a, which applied to transfers made without fair consideration while the debtor was a defendant in an action for money damages and was later unable to satisfy any judgment without regard to intent.

Regarding the second cause of action, Moving Defendants argue that such claim should be dismissed because plaintiff fails to adequately allege an intentional fraudulent conveyance under DCL § 273(a)(1). In this regard, Moving Defendants highlight that the residential unit was sold for full value to an unrelated entity and the purchase proceeds were used to pay over 75% of the debt owed on the property. In addition, that the sale occurred five years before any judgment was rendered in plaintiff's favor and that none of the Moving Defendants was a transferee of any of the proceeds. Similarly, Moving Defendants contend there can no recovery from One Flatbush Retail regarding transfer of the commercial unit because none of the other Moving Defendants received any funds from the proceeds of the loan obtained by One Flatbush Retail, which were used to pay-off the property's existing mortgage debt. Moreover, Moving Defendants assert that the transfer to One Flatbush Retail was for reasonably equivalent value since the commercial condominium unit constituted approximately 19% of the property and One Flatbush Retail paid off approximately 25% of the debt on the property.

Regarding the third cause of action, Moving Defendants submit that the version of DCL § 276 that is quoted in the complaint was repealed in 2019 and is now subsumed by § 273. They point out that language similar to the provision quoted in paragraph 64 of the complaint is now subsumed in DCL § 273(a), which is already the subject of plaintiff's second cause of action.

Regarding the fourth cause of action for fraud, Moving Defendants argue plaintiff fails to state a claim as there are no allegations of any misrepresentation. Moving Defendants contend that the complaint attempts to allege an omission by claiming that Judgment Debtor failed to disclose to the plaintiff and the court during the pendency of the Breach of Contract Action that it had transferred the residential and commercial condominium units in June 2020, but fails to allege that Judgment Debtor or any other defendant had any duty to make the disclosure. Further, that the docket in the Breach of Contract Action shows no court order prohibiting the transfer of the property. Lastly, Moving Defendants point out that the complaint fails to allege which defendant made which misrepresentation or omission, thus failing to meet the requirements of CPLR 3016(b).

Regarding the fifth cause of action, Moving Defendants argue that successor liability is not an independent cause of action and the claim should thus be dismissed. In any event, Moving Defendants argue plaintiff cannot show successor liability as to One Flatbush Retail since (1) most of Judgment Debtor's assets were transferred to 1 FBBK Owner LLC in the form of the residential unit; (2) One Flatbush Retail took on the obligation to pay and then satisfied the \$25,954,903.34 mortgage debt still owed by the Judgment Debtor after the transfer of the condominium unit, amounting to approximately 25% of the debt on the combined property, thus paying full value for the transfer; (3) Judgment Debtor was in the business of purchasing, combining and developing land into a new 19-story mixed-use condominium while One Flatbush Retail purchased a fully

developed commercial condominium unit to operate and did not continue the Judgment Debtor's business.

Regarding the sixth cause of action for unjust enrichment and seventh cause of action for money had and received, Moving Defendants argue that the documentary evidence demonstrates that none of Venture LLC, Member LLC, SJD, NRM, HDR, AAE, Meadow, Slate, Schwartz, Nussbaum nor Partners LLC received any monies from the sale of the residential condominium unit since no proceeds of that sale went to the Judgment Debtor to enable it to distribute any money to any of the other defendants. As for the refinancing of the mortgage on the commercial unit by One Flatbush Retail, Moving Defendants argue that the documentary evidence shows that a mere \$5,640.07 from the refinancing was paid to One Flatbush Retail and that it is absurd to conjecture that One Flatbush Retail then distributed that de minimis amount to any of the other defendants.

Regarding the final eighth cause of action seeking legal fees under DCL § 276, Moving Defendants argue that plaintiff cannot recover legal fees since the documentary evidence establishes there was never any conveyance of any kind to Venture LLC, SPG, Member LLC, SJD, NRM, HDR, AAE, Meadow, Slate, Schwartz, Nussbaum or Partners LLC. In addition, that under caselaw, even if plaintiff proved a fraudulent conveyance, such conduct would not give rise to punitive damages. For all of the foregoing reasons, Moving Defendants argue the complaint should be dismissed as against them.

In opposition, plaintiff argues that it has stated a claim under DCL § 273(a)(1) by adequately pleading badges of fraud insofar as it has plead that (1) Judgment Debtor transferred the commercial unit to an entity wholly owned by OFAV, i.e., to an insider; (2) Moving Defendants retained possession and control of the commercial unit after the transfer through OFAV and/or One Flatbush Retail; (3) Moving Defendants concealed the transfer of the residential and

commercial units from Vance, Vance's counsel, and Justice Boddie despite the prosecution of the Breach of Contract Action in a bench trial against Judgment Debtor between June 23, 2025 and June 25, 2025; (4) at the time of the subject transfers, litigation had been pending for four years; (5) transfers of the residential and commercial units constituted all of the Judgment Debtor's assets; and (6) the value of the consideration received by Judgment Debtor for the commercial unit was not the reasonable equivalent of the value of the asset transferred, since Judgment Debtor received no consideration in exchange for the conveyance of One Flatbush Retail.

Regarding Moving Defendants' argument that there is no relief for Vance because loan proceeds from One Flatbush Retail were used to pay off Judgment Debtor's existing mortgage debt, plaintiff argues that, even assuming pre-existing debts on the property were paid off, such fact fails to undermine its claim that Judgment Debtor's principals profited from those debts since defendants Nussbaum and Schwartz, through their entities Meadow and Slate, were also the developers of the residential and commercial units and thus pocketed tens of millions of dollars in development fees from the conveyance of those units. Thus, that Moving Defendants fail to demonstrate that the transfers and loans made between corporate insiders were taken for legitimate, good faith purposes. In addition, plaintiff states that, even in situations where setting aside a transfer is not possible or will not adequately compensate the creditor, the DCL still provides a basis to award damages to judgment creditors against those who participate in and benefit from a fraudulent conveyance.

Regarding its claims for fraud, unjust enrichment, and money had and received, plaintiff contends these causes of actions are adequately plead. Regarding its claim for successor liability, plaintiff submits it has adequately alleged that One Flatbush Retail is a mere continuation of Judgment Debtor by alleging that (1) all or substantially all assets of Judgment Debtor were

transferred to 1FBBK and One Flatbush Retail; (2) Judgment Debtor was effectively extinguished; (3) the successor assumed an identical or nearly identical name as there are obvious similarities between “One Flatbush Avenue Property” and “One Flatbush Avenue Retail;” (4) the successor retained one or more of the same corporate officers, directors, and/or employees as Vance alleges, and the retail deed shows, that defendant Nussbaum effected the sale of the property on behalf of Judgment Debtor and to its successor, One Flatbush Retail; and (5) the successor continued the same business as Judgment Debtor by owning and operating the commercial unit.

Lastly, plaintiff argues that, having alleged tort liability (fraud) against Moving Defendants, punitive damages are available and is thus sufficiently plead. Similarly, that the DCL provides for attorneys’ fees and, having stated a cause of action for fraudulent conveyance, plaintiff may seek its attorneys’ fees.

In reply, Moving Defendants contend that plaintiff’s argument that “developers” pocketed money from the June 2020 transactions is factually wrong and not even alleged in plaintiff’s complaint. Further, that there is no allegation in the complaint that any defendant benefitted from the payoff of the secured debt on the Property, nor is any affirmation to that effect submitted. In any event, Moving Defendants argue that no borrower benefits from paying back a loan and the law is clear that “a conveyance which satisfies an antecedent debt made while the debtor is insolvent is neither fraudulent nor otherwise improper, even if its effect is to prefer one creditor over another.”

Regarding plaintiff’s argument that no consideration was given for the transfer of the commercial unit from Judgment Debtor to One Flatbush Retail, Moving Defendants re-emphasize that One Flatbush Retail took on the existing mortgage debt on the property as an additional borrower under the consolidated mortgage loans from 2018 and thereafter took new loans to satisfy

the remainder of the outstanding mortgage owed by Judgment Debtor, thus relieving Judgment Debtor of all mortgage debt. Moving Defendants further assert that the complaint is devoid of any allegation that the \$101,500,000 paid by 1FBBK was not full value for the residential unit.

Lastly, Moving Defendants reiterate that plaintiff's complaint fails to adequately allege fraud, unjust enrichment, money had and received, and successor liability.

Discussion

On a motion to dismiss a plaintiff's claim pursuant to CPLR 3211[a][7] for failure to state a cause of action, the court is not called upon to determine the truth of the allegations (*see Campaign for Fiscal Equity v State*, 86 NY2d 307, 317 [1995]). Rather, the court is required to afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference (*Kamchi v Weissman*, 125 AD3d 142, 150 [2d Dept 2014]). The court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). "A motion to dismiss pursuant to CPLR 3211 [a][1] will be granted only if the documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (*Fontanetta v John Doe 1*, 73 AD3d 78, 83-84 [2d Dept 2010] [*quoting Fortis Fin. Servs. v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002])).

As an initial matter, it is undisputed that the transfers at issue occurred after April 4, 2020, and are therefore governed by the amendments to the DCL effected by the New York Uniform Voidable Transactions Act ("UVTA"), which became effective April 4, 2020 and applies to transactions made on or after that date (*Bd. of Managers of the 165 E. 62nd St. Condominium v Churchill E 62nd LLC*, 2023 NY Slip Op 31828[U], 12 [Sup Ct, NY County 2023]). DCL § 273(a), as amended by the UVTA, provides:

“A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.”

“Section 273 (b) sets forth 11 factors, which derive from the common law ‘badges of fraud,’ constituting an inexhaustive list to be considered in determining ‘actual intent’ under section 273 (a)(1)” (*Bd. of Managers of the 165 E. 62nd St. Condominium v Churchill E 62nd LLC, supra*).²

Here, as a preliminary matter, plaintiff’s first and third causes of action, asserting claims for fraudulent conveyances, are dismissed for the reasons stated in Moving Defendants’ motion. Namely, those claims rely on repealed provisions of the DCL. Plaintiff otherwise sufficiently states a claim for fraudulent conveyances against defendants under DCL § 273(a)(1) regarding transfer of the residential and commercial units. The documentary evidence proffered by Moving Defendants fails to conclusively dispose of plaintiff’s claim. Notably, plaintiff asserts that Judgment Debtor was rendered insolvent by Moving Defendants’ actions, which takes this case

² The 11 factors listed under DCL § 273(b) are: “(1) the transfer or obligation was to an insider; (2) the debtor retained possession or control of the property transferred after the transfer; (3) the transfer or obligation was disclosed or concealed; (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; (5) the transfer was of substantially all the debtor's assets; (6) the debtor absconded; (7) the debtor removed or concealed assets; (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and (11) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.”

out of the purview of *Ultramar Energy v Chase Manhattan Bank*, 191 AD2d 86 [1st Dept 1993] (see *Tap Holdings, LLC v Orix Fin. Corp.*, 109 AD3d 167, 176 [1st Dept 2013]). Moreover, it is undisputed that Judgment Debtor sold its residential unit for \$101,350,000. From those proceeds, Judgment Debtor paid off \$54,400,000 of the \$80,000,000 mortgage encumbering the property. Moving Defendants fail to explain the disposition of the remainder of the proceeds. Even assuming that the transfers were for fair equivalency of consideration, such a showing would not preclude plaintiff's claim under DCL § 273(a)(1) given plaintiff sufficiently alleges actual intent.

Turning to plaintiff's claim for common law fraud, "[t]he essential elements of a cause of action sounding in fraud are a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury" (*Orlando v Kukielka*, 40 AD3d 829, 831 [2d Dept 2007]). "Where the fraud claim at issue is based on an omission or concealment of a material fact, the plaintiff must demonstrate that the defendant had a duty to disclose material information and failed to do so" (*Nissan Motor Acceptance Corp. v Scialpi*, 94 AD3d 1067, 1067 [2d Dept 2012] [citation omitted]). Here, plaintiff's allegations do not state a claim for fraud or fraudulent concealment as plaintiff fails to allege that the Judgment Debtor had a duty to disclose. Thus, plaintiff's fourth cause of action is dismissed.

Plaintiff's claims for unjust enrichment (sixth cause of action) and money had and received (seventh cause of action) are also dismissed. The Breach of Contract Action was premised on a written agreement with Judgment Debtor, which precludes quasi-contract claims. The instant action concerns the alleged fraudulent conveyances by the Judgment Debtor to evade plaintiff's Judgment against it. If plaintiff is ultimately unsuccessful in establishing a fraudulent conveyance, equitable claims such as unjust enrichment and money had and received would not be viable claims

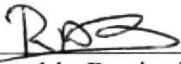
in the alternative (*see Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [unjust enrichment claim viable only when “it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered”]). Thus, plaintiff’s sixth and seventh causes of action are dismissed.

With regard to plaintiff’s fifth cause of action asserting successor liability against One Flatbush Retail, although successor liability is not a separate cause of action, but merely a theory for imposing liability on a defendant based on a predecessor’s conduct (*see Precious Care Mgt., LLC v Monsey Care, LLC*, 221 AD3d 922, 925 [2d Dept 2023]), such theory is sufficiently plead against One Flatbush Retail. Lastly, that part of Moving Defendants’ motion seeking dismissal of plaintiff’s eighth cause of action for attorneys’ fees under DCL § 276 is denied since plaintiff has stated a claim under the DCL. However, plaintiff’s request for punitive damages is dismissed as unwarranted.

Conclusion

Based on the foregoing, Moving Defendants’ motion to dismiss is granted as to plaintiff’s claims under the repealed provisions of the DCL and for punitive damages. In addition, the causes of action for fraud, unjust enrichment, and money had and received are dismissed. The motion is otherwise denied.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.