

<b>Merin v City of New York</b>
2016 NY Slip Op 31161(U)
May 9, 2016
Supreme Court, Queens County
Docket Number: 713069/15
Judge: Kevin J. Kerrigan
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE KEVIN J. KERRIGAN  
Justice

Part 10

FILED  
MAY 12 2016  
COUNTY CLERK  
QUEENS COUNTY

-----X  
Jennifer Merin,

Index  
Number: 713069/15

Plaintiff,

- against -

Motion  
Date: 5/3/16

The City of New York, The New York City  
Department of Finance, The New York City  
Department of Finance Office of the  
City Register and Annette M. Hill,

Motion  
Cal. Number: 105

Defendants.

Motion Seq. No.: 1

-----X  
The following papers numbered 1 to 7 read on this motion by  
defendant, The City of New York, to dismiss.

Papers  
Numbered

Notice of Motion-Affirmation-Exhibits.....	1-3
Memorandum of Law.....	4
Memorandum of Law in Opposition.....	5
Reply Memorandum of Law-Appendix.....	6-7

Upon the foregoing papers it is ordered that the motion is  
decided as follows:

Motion by the City to dismiss the complaint pursuant to CPLR  
3211(a)(7) for failure to state a cause of action is granted.

The essential facts underlying the complaint are not in  
dispute. Plaintiff is the owner of a private home located at 226-08  
141<sup>st</sup> Avenue in Queens County. She obtained title to the property  
as sole heir and devisee of the estate of one Ida Hershman. On  
March 6, 2014, one Darrell Beatty filed a fraudulent Real Property  
Transfer Report with the City Register indicating a sale of the  
property in 2013 to him from one Edith Moore and on March 20, 2014  
filed a fraudulent deed with the City Register. Thereafter, Beatty  
broke into the home, changed the locks and took up residency. Upon  
going to the home to inspect it, plaintiff discovered that the  
locks had been changed and she called the police to report a  
burglary. When the NYPD arrived, Beatty, who was present at the  
premises, produced the fraudulent deed, and the officers refused to  
arrest Beatty for burglary and left. On June 3, 2014, the

Surrogates Court, Queens County, issued plaintiff letters of administration for the estate of Hershman and the next day, plaintiff executed and recorded a deed transferring the property to herself.

On June 13, 2014, plaintiff commenced an action against Beatty under RPAPL Article 15 and §329 of the RPL to cancel and discharge of record any deed or lien against the property other than plaintiff's deed and to cancel and declare null and void the fraudulent deed and to declare plaintiff the owner of the property in fee simple absolute. Beatty failed to answer or otherwise appear and on November 5, 2014, plaintiff moved for a default judgment, pursuant to CPLR 3215, which motion was granted pursuant to the order of Justice Rudolph E. Greco, Jr., issued on December 4, 2014, without opposition.

Plaintiff thereafter commenced a squatter holdover proceeding in the Housing Part of the Civil Court, Queens County, to evict Beatty from the property. A Judgment of possession and a warrant of eviction were issued in favor of plaintiff, and a City Marshal took back possession of the premises in November 2014.

Plaintiff filed a notice of claim against the "Department of Finance - Office of Land Records" with the Office of the Comptroller on May 21, 2015, asserting a claim for "damages resulting from the negligent registration of an obviously fraudulent deed to my family home at 226-08 141 Ave, Queens...thereby violating my constitutional right to property and necessitating my incurring legal and other expenses, and resulting in the loss of use of home, cost of repair and damages done to it and loss of valuable personal belongings".

Plaintiff thereafter commenced the present action on December 18, 2015 alleging causes of action for negligent recording of the fraudulent deed, negligent failure to implement proper procedural safeguards to ensure the authenticity of registered deeds and the protection of property rights and violation of her Constitutional right not to be deprived of property without due process under the 14<sup>th</sup> Amendment, pursuant to 42 U.S.C. §1983, based upon the registration of the fraudulent deed without any investigation or inquiry as to its authenticity and failure to be notified both before and after the fraudulent deed was registered.

The recording of a deed is a purely ministerial function, and the recording clerk must accept a deed for filing that meets the minimal requirements of the recording statute, which requirements are only that the deed be acknowledged and that the recording fees be paid (see Real Property Law §291; MERSCORP v Romaine, 8 NY 3d 90

[2006]). The recording clerk has no authority to look beyond the instrument that is being presented for recording (see id.). Thus, as a matter of law, the City Register, defendant Hill, owed no duty to plaintiff, and indeed had no authority, to investigate the authenticity of the underlying transaction reflected in the instrument being recorded and thus whether or not the deed was fraudulent as a condition to accepting the instrument for recording. Therefore, no cognizable cause of action for negligent recording exists under New York Law. For the same reason, no cognizable cause of action lies for the negligent failure to implement proper procedural safeguards to ensure the authenticity of registered deeds and the protection of property rights, as such measures are beyond the authority and job function of the City Register. For the same reason, no cognizable cause of action under §1983 for violation of due process property rights has been set forth in the complaint based upon the failure of defendants to conduct an investigation as to the authenticity of the conveyance of the subject property, to ascertain that plaintiff was the rightful owner and to notify plaintiff prior to and/or after the acceptance of the deed for recording.

In order to impose liability on the City acting in its governmental capacity, it is necessary to demonstrate that a special relationship existed between plaintiff and the City (Cuffy v City of New York, 69 NY2d 255 [1987]). A special relationship between the plaintiff and the municipality or municipal entity is an exception to governmental immunity from liability for the negligent performance of a ministerial act Pelaez v Seide (2 NY 23 186 [2004]) and Kovit v Estate of Hallums (4 NY 3d 499 [2005]). Thus, ministerial municipal acts form the basis for liability against a municipality only where a special duty is involved (McLean v City of New York, 12 NY 3d 194 [2009]).

"A special relationship can be formed in three ways: (1) when the municipality violates a statutory duty enacted for the benefit of a particular class of persons; (2) when it voluntarily assumes a duty that generates justifiable reliance by the person who benefits from the duty; or (3) when the municipality assumes positive direction and control in the face of a known, blatant and dangerous safety violation" (Pelaez v. Seide, 2 NY 3d 186, supra at 199-200 (internal citation omitted)).

There has been no allegation or showing of the existence of a breach of any statute enacted specifically for the benefit of plaintiff or a class of individuals of which plaintiff is a part. There has also been no showing or allegation that a special duty arose out of the third basis, namely, the assumption of positive direction and control in the face of a known, blatant and dangerous

safety violation. No specific safety violation is cited.

Moreover, there is no showing, on this record, that the voluntarily assumed an affirmative duty that induced justifiable detrimental reliance on the part of plaintiff (see Cuffy v. City of New York, supra).

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Indeed, the complaint fails to allege that there was a special duty owed to plaintiff and thus fails to state a cause of action as a matter of law.

As to plaintiff's third cause of action, the only vehicle for an individual to seek a civil remedy for violations of constitutional rights committed under color of any statute, ordinance, regulation, custom or usage of any State is a claim brought pursuant to 42 U.S.C. §1983 (see generally Manti v New York City Transit Auth., 165 AD 2d 373 [1<sup>st</sup> Dept 1991]). However, a municipality may only be found liable under 42 U.S.C. §1983 where plaintiff specifically pleads and proves an official policy or custom that causes plaintiff to be subjected to a denial of a constitutional right (see Monell v. Department of Social Services, 436 U.S. 658 [1978]). Plaintiff's third cause of action fails to allege any official policy or custom that caused plaintiff to be deprived of her constitutional rights. Moreover, plaintiff fails to set forth in her opposition papers what official policies or customs were implemented or practiced that resulted in the violation of her constitutional rights and there is no showing that plaintiff's injuries were caused as a result of the implementation of an official policy or custom of the City. Even if plaintiff's counsel had set forth sufficient proof of a policy, custom or practice in his opposition papers, which he has failed to do, plaintiff has not cross-moved to amend her complaint to set forth the requisite allegations. Since plaintiff failed to even allege the existence of a policy or practice in her complaint, and since there is no showing, on this record, of any official policy, custom, practice or pattern of behavior so as to support a §1983 cause of action, plaintiff's third cause of action must be dismissed, as a matter of law.

Finally, the complaint fails to state a cause of action against the Department of Finance and the Office of the City Register, since those named defendants are merely departments or agencies of the City and not distinct entities.

Accordingly, the action is dismissed.

Dated: May 9, 2016

  
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KEVIN J. KERRIGAN, J.S.C.