

**Baker v Beckford**

2023 NY Slip Op 31706(U)

April 25, 2023

Supreme Court, Kings County

Docket Number: Index No. 501985/2019

Judge: Mark I. Partnow

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At IAS Part FRP of the Supreme Court of the State of New York, Kings County, located at 360 Adams Street, Brooklyn New York, on the 25th day of April, 2023.

**PRESENT: Hon. Mark I. Partnow, JSC**

Michael Baker, et al

*Plaintiff(s)*

- against -

Dwayne Beckford Individually, et al

*Defendant(s)*

**SHORT FORM ORDER**

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Cal. No. \_\_\_\_\_

Recitation of the papers considered in review of this motion:	Papers Numbered
Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed	
Answering Affidavit (Affirmation)	
Reply Affidavit (Affirmation)	
Affidavit (Affirmation)	
Pleadings - Exhibits	
Stipulations - Minutes	
Filed Papers	

Plaintiff's motion (sequence 4) for leave to renew pursuant to CPLR 2221(e) and leave to amend the initial complaint pursuant to CPLR 3025(b) is granted. A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" (CPLR 2221[e] [2]). "Generally, a motion for leave to renew is intended to bring to the court's attention to new or additional facts which were in existence at the time the original motion was made, but unknown to the movant" (Citimortgage, Inc. v. Espinal, 136 AD3d 857, 858 [2d Dept 2016]). "While it is true that a motion for leave to renew is intended to direct the court's attention to new or additional facts which, although in existence at the time the

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original motion was made, were unknown to the movant and were, therefore, not brought to the court's attention, the rule is not inflexible and the court, in its discretion, may grant renewal, in the interest of justice, upon facts known to the movant at the time of the original motion" (RJBC of N v. Ruzic, 175 AD3d 1574, 1574-1575 [2d Dept 2019]). "The Supreme Court has discretion in determining what constitutes a reasonable justification for a party's failure to present certain facts initially" (Verizon New York, Inc. v. Supervisors of Town of North Hempstead, 169 AD3d 740, 742 [2d Dept 2019]). Here, the Court grants plaintiff's motion to reargue as plaintiff set forth new facts that would change the Court's prior determination. Additionally, plaintiff presented a reasonable justification for his failure to present the newly discovered evidence on the prior motion (Reid v. Wells Fargo, NA, 195 AD3d 647 [2d Dept 2021]).

Upon renewal, Maka's motion (sequence 2) for summary judgment is denied. Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and thus, should only be employed when there is no doubt as to the absence of triable issues of material fact (Kolivas v Kirchoff, 14 AD3d 493 [2005]; see also Andre v Pomeroy, 35 NY2d 361, 364 [1974]). The papers submitted in the context of the summary judgment application are always viewed in the light most favorable to the party opposing the motion (Marine Midland Bank, N.A. v Dino & Artie's Automatic Transmission Co., 168 AD2d 610 [2d Dept 1990]). "The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (Manicone v City of New York, 75 AD3d 535, 537 [2010]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, "the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (Garnham & Han Real Estate Brokers v Oppenheimer, 148 AD2d 493 [1989]). Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient to defeat a motion for summary judgment (Zuckerman v City of New

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York, 49 NY2d 557 [1980]).

Real Property Law § 266 protects the title of a bona fide purchaser for value who lacked knowledge of an alleged fraud (Irwin v. Regal 22 Corp., 175 AD3d 671, 671-672 [2d Dept 2019]). “A bona fide purchaser for value has been described as one which purchased property for valuable consideration and with no knowledge of an alleged prior fraud by the seller” (*id.*; quoting Emerson Hills Realty v. Mirabella, 220 AD2d 717 [2d Dept 1995]). “However, the status of good faith purchaser for value cannot be maintained by a purchaser with either notice or knowledge of a prior interest or equity in the property, or one with knowledge of facts that would lead a reasonably prudent purchaser to make inquiries concerning such” (Bello v. Quелlette, 211 AD3d 784, 785 [2d Dept 2022] [internal citations omitted]). “If the purchaser fails to use due diligence in examining the title, he or she is chargeable, as a matter of law, with notice of the facts which a proper inquiry would have disclosed” (*id.*). “Therefore, to establish itself as a bona fide purchaser for value, a party has the burden of proving that it purchased the property for valuable consideration and did not have knowledge of facts that would lead a reasonably prudent purchaser to make inquiry” (*id.*).

As discussed in the Court’s April 9th, 2021 decision, the Court finds that Maka met its prima facie showing. However, considering the new evidence presented by plaintiff, the Court finds that plaintiff raised a triable issue of fact. Mr. Alexander’s statements in the video submitted by plaintiff, raise a triable issue of fact as to whether Maka had notice of facts which a reasonably prudent purchaser would make inquiries concerning.

“In order for a piece of evidence to be of probative value, there must be proof that it is what its proponent says it is. The requirement of authentication is thus a condition precedent to admitting evidence” (People v. Price, 29 NY3d 472, 476 [2017]). “Accuracy or authenticity is established by proof that the offered evidence is genuine and that there has been no tampering with it” (*id.*). “Where a party seeks to admit tape recordings, authenticity may often be established by testimony from a participant in the conversation attesting to the fact that the recording is a fair and

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accurate reproduction of the conversation” (id.). Here, the Court finds that the subject video is admissible as plaintiff avers that the video truly and accurately depicts the exchange between plaintiff and Mr. Alexander.

The portion of plaintiff’s motion to amend his complaint is likewise granted. “Permission to amend a pleading should be freely given where the proposed amendment is neither palpably insufficient nor patently devoid of merit, and there is no evidence that the amendment would prejudice or surprise the opposing party” (Bank of New York v. Karistina Enterprises, LLC. 209 AD3d 820, 822 [2d Dept 2022]). “No evidentiary showing of merit is required under CPLR 3025(b), and a court shall not examine the legal sufficiency or merits of a pleading unless the insufficiency or lack of merit is clear and free from doubt” (id.). Here, since the portion of plaintiff’s motion seeking reargument was granted, resulting in the denial of Maka’s summary judgment motion, the Court finds that granting plaintiff’s request to amend the complaint is warranted as the proposed amendments are neither palpably insufficient nor patently devoid of merit and would not cause prejudice to the defendant.

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ENTERED / SO ORDERED

*[Handwritten Signature]*  
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SUPREME COURT JUSTICE