

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF MONROE

JAMES R CAPUTO,

Plaintiff,

v.

NATHAN HOLT, et al.,

Defendants.

Index No. E2024000703

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT MONROE COUNTY
CLERK'S OFFICE MOTION TO DISMISS**

John P. Bringewatt, Monroe County Attorney
Attorney for Defendant Monroe County Clerk's Office
Miguel A. Munoz
Deputy County Attorney
307 County Office Building, 39 W. Main Street
Rochester, New York 14614
585.753.1413
miguelmunoz@monroecounty.gov

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PRELIMINARY STATEMENT

Plaintiff's claim for breach of fiduciary duty against Defendant Monroe County Clerk's Office ("Defendant County Clerk"), which is based on Defendant County Clerk's alleged failure to properly maintain a record of Plaintiff's mechanic's lien, should be dismissed because: (1) Plaintiff failed to file a notice of claim; (2) the statute of limitations has passed; and (3) the Complaint fails to state a claim for breach of fiduciary duty.

BACKGROUND AND INTRODUCTION

Plaintiff James R Caputo's ("Plaintiff") complaint arises out of home improvement work that Plaintiff allegedly performed as a contractor on the home located at 4 Chambord Drive, Mendon, NY 14506 ("subject premises"). Plaintiff allegedly contracted with Defendant Robert T. Houle and/or Defendant Houle Sales Consulting, Inc. (collectively, "Defendant Houle"), to perform various home improvement services on the aforementioned premises on August 3, 2021. [NYSCEF Doc. No. 2 ¶ 11].

After Plaintiff performed various home improvement services, Defendant Houle allegedly breached the agreement by failing to pay Plaintiff the total amount Plaintiff claimed he was owed. [NYSCEF Doc. No. 2 ¶ 25]. On January 21, 2022, Plaintiff alleges that he filed a Notice of Mechanic's Lien with the Defendant County Clerk. [NYSCEF Doc. No. 2 ¶ 27]. Defendant Houle allegedly sought to have the lien removed from the subject premises, or alternatively, to have his personal name removed from the lien. [See NYSCEF Doc. No. 2 ¶¶ 32, 35]. To that end, Defendant Houle, his attorney Defendant Donald Cheney ("Defendant Cheney"), and Plaintiff allegedly engaged in negotiations and litigation in the first half of 2022. *Id.*

Plaintiff alleges that on June 29, 2022, the subject premises was "secretively sold" by Defendant Houle to Defendants Holt and Billet, with no disclosure to Plaintiff, despite Plaintiff's

mechanic's lien. [NYSCEF Doc. No. 2 ¶ 44]. Plaintiff allegedly discovered the subject premises was sold on August 9, 2022. [NYSCEF Doc. No. 2 ¶ 48].

Plaintiff allegedly obtained certified copies of "all active filings" pertaining to the subject premises from January 2020 to August 11, 2020 from Defendant County Clerk on August 11, 2020. [NYSCEF Doc. No. 2 ¶ 49]. Plaintiff alleges that such certified copies did not include the mechanic's lien. *Id.*

Thereafter, Plaintiff allegedly reached out to a number of individuals and entities involved in the sale of the subject premises. [*E.g.*, NYSCEF Doc. No. 2 ¶¶ 50, 52]. On August 11, 2022, Plaintiff allegedly personally met with a senior representative of Defendant Premium Mortgage Corporation, [NYSCEF Doc. No. 2 ¶ 50], the alleged current mortgage holder/lender for the subject premises, [NYSCEF Doc. No. 2 ¶ 3]. The senior representative allegedly informed Plaintiff "that the lien was indeed seen...but was apparently deemed invalid by Don Cheney..." [NYSCEF Doc. No. 2 ¶ 50].

On August 29, 2022, Plaintiff allegedly received a communication from Stewart Title Company, who allegedly provided an abstract redate to Defendant Cheney. [NYSCEF Doc. No. 2 ¶ 62]. Plaintiff alleges Stewart Title Company indicated the abstract redate correctly set out the mechanic's lien on the subject premises. *Id.*

On the same day, Plaintiff allegedly received an email from Defendant Cheney stating "...that all parties to the sale..., the title company, the lender, and" Defendant Houle, "were well aware of the lien and were willing to look past it." [NYSCEF Doc. No. 2 ¶ 58]. Plaintiff goes on to allege to Defendants Holt and Billet were aware of the mechanic's lien when they entered into the mortgage agreement for the subject premises. [NYSCEF Doc. No. 2 ¶¶ 75, 76].

Plaintiff filed a Complaint with this Court on January 11, 2024, naming nine defendants, and setting forth eight causes of action. With respect to Defendant County Clerk, Plaintiff sets forth a cause of action for breach of fiduciary duty. [NYSCEF Doc. No. 2 ¶¶ 109-112]. Plaintiff claims Defendant County Clerk breached a fiduciary duty to Plaintiff by “failure of the public records to show on August 11, 2022 an in-force mechanic’s lien on (both) an online search of the subject premises, as well as certified copies of the same being printed out in-person by a member of the Clerk’s Office....” [NYSCEF Doc. No. 2 ¶ 109]. Plaintiff alleges that such failure “suggests that there may exist foul play going on within this official State and County office.” [NYSCEF Doc. No. 2 ¶ 110]; *see also* [NYSCEF Doc. No. 2 ¶ 111] (“...something improper may have occurred within the offices of the Monroe County Clerk pertaining to the subject premises....”).

LEGAL STANDARD

When determining a motion to dismiss under CPLR 3211(a)(7), a court must afford the pleading a liberal construction, accept the facts as alleged in the complaint as true, and accord the plaintiff the benefit of every possible favorable inference. *See Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). “However, while the allegations in the complaint are to be accepted as true when considering a motion to dismiss, allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration.” *Salvatore v. Kumar*, 45 A.D.3d 560, 563 (2d Dep’t 2007) (internal quotation omitted).

DISCUSSION

Plaintiff alleges Defendant County Clerk breached its fiduciary duty to Plaintiff by failing to properly maintain a record of Plaintiff’s mechanic’s lien. The Complaint should be dismissed as against Defendant County Clerk because: (1) Plaintiff failed to file a notice of claim; (2) the

statute of limitations has passed; and (3) the Complaint fails to state a claim for breach of fiduciary duty.

I. Plaintiff failed to file a notice of claim.

As a threshold matter, Plaintiff's Complaint should be dismissed because Plaintiff failed to comply with the condition-precedent of serving a notice of claim before filing his Complaint. Notice of claim requirements apply to claims against county departments and agencies, including the Monroe County Clerk's Office.¹ *Cf., Moore v. Melesky*, 14 A.D.3d 757, 759 (3d Dep't 2005) (applying General Municipal Law 50-e notice of claim requirement in lawsuit against county department of social services and county). General Municipal Law § 50-e(1)(a) provides as follows:

[i]n any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general construction law, or any officer, appointee or employee thereof, the notice of claim shall comply with and be served in accordance with the provisions of this section within ninety days after the claim arises.

County Law § 52(1) states:

Any claim or notice of claim against a county for damage, injury or death, or for invasion of personal or property rights, of every name and nature, and whether casual or continuing trespass or nuisance and any other claim for damages arising at law or in equity, alleged to have been caused or sustained in whole or in part by or because of any misfeasance, omission of duty, negligence or wrongful act on the part of the county, its officers, agents, servants or employees, must be made and served in compliance with section fifty-e of the general municipal law.

“County Law § 52...mandates notices of claim in a much broader scope of matters than the General Municipal Law.” *Sager v. Cnty. of Sullivan*, 145 A.D.3d 1175, 1176–77 (3d Dep't 2016).

¹ To the extent the Court finds that notice of claim requirements do not apply to lawsuits against the Monroe County Clerk's Office, Defendant County Clerk argues that the Monroe County Clerk's Office is not a proper party to this action, and that the action should have named Monroe County instead. *See* County Law § 51 (“Actions or proceedings by or against a county shall be in the name of the county”); County Code ch. 39 (setting forth Monroe County's obligation to defend and indemnify its employees).

Plaintiff's claim for breach of fiduciary duty falls within the purview of County Law § 52 because it constitutes a claim against a county for damage that is alleged to have been caused by misfeasance and/or an omission of duty on the part of the county, its officers, agents, servants or employees. Specifically, Plaintiff is claiming damages that were allegedly caused by Defendant County Clerk's alleged failure to properly maintain the record of Plaintiff's mechanic's lien. [NYSCEF Doc. No. 2 ¶ 109]. As such, Plaintiff was obligated to file a notice of claim prior to commencing suit pursuant to County Law § 52.

Plaintiff filed his Complaint without first serving a notice of claim. (*See* accompanying Munoz Affirm.). Additionally, Plaintiff's Complaint does not allege that he served a notice of claim. Because Plaintiff failed to comply with the aforementioned notice of claim requirements, the Complaint should be dismissed.

II. Plaintiff's claim is barred by the statute of limitations.

The Complaint should be dismissed because Plaintiff did not commence his action against Defendant County Clerk within one year and ninety days after the happening of the event upon which Plaintiff's claim is based. General Municipal Law § 50-i states:

No action or special proceeding shall be prosecuted or maintained against a city, county, town, village, fire district or school district for personal injury, wrongful death or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of such city, county, town, village, fire district or school district or of any officer, agent or employee thereof...unless... the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based....

County Law § 52(1) states “[e]very action upon such claim shall be commenced pursuant to the provisions of section fifty-i of the general municipal law.” As noted above, County Law § 52 applies to a broader scope of claims than General Municipal Law. *See Sager*, 145 A.D.3d at 1176–77. As set forth in Section I of this Motion, a breach of fiduciary duty claim falls within

the purview of County Law § 52. According to General Municipal Law § 50-i, as applied to counties by County Law § 52, Plaintiff was required to file suit within one year and ninety days after the happening of the event upon which Plaintiff's claim is based. Here, Plaintiff identifies August 11, 2022 as the date he allegedly visited Defendant County Clerk, obtained certified copies of "all active filings," and noted the mechanic's lien was missing from such documents. [NYSCEF Doc. No. 2 ¶ 49]. Since Plaintiff filed the Complaint more than one year and ninety days after August 11, 2022, the Complaint is barred by the statute of limitations set forth in General Municipal Law § 50-i, applied to counties by County Law § 52. Therefore, the Court should dismiss the Complaint, with prejudice.

III. The Complaint fails to state a cause of action.

The Court should dismiss Plaintiff's Complaint as against Defendant County Clerk because the Complaint fails to state a cause of action for breach of fiduciary duty. "The elements of a cause of action for a breach of fiduciary duty are 'the existence of a fiduciary relationship, misconduct by defendant, and damages directly caused by that misconduct.'" *Kaleida Health v. Hyland*, 200 A.D.3d 1654, 1655 (4th Dep't 2021) (quoting *Wells v. Hurlburt Rd. Co., LLC*, 145 A.D.3d 1486, 1487 (4th Dep't 2016)). "A cause of action sounding in breach of fiduciary duty must be pleaded with particularity under CPLR 3016(b)." *WMC Realty Corp. v. City of Yonkers*, 193 A.D.3d 1018, 1023 (2d Dep't 2021). Here, Plaintiff failed to allege the existence of a fiduciary relationship and damages directly caused by the alleged misconduct, and failed to meet CPLR 3016(b)'s specificity requirements.

Defendant County Clerk was unable to locate any precedent acknowledging that a fiduciary relationship exists between a county clerk and its patrons. "A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another

upon matters within the scope of the relation.” *Id.* Plaintiff does not allege any interaction with a Monroe County Clerk employee that would establish such a relationship. Plaintiff only alludes to a general duty for Defendant County Clerk “to maintain the records on public and private real property located within the county....” [NYSCEF Doc. No. 2 ¶ 109]. That allegation fails to sufficiently plead the existence of a fiduciary relationship between Plaintiff and Defendant County Clerk.

The Complaint fails to allege that Plaintiff’s damages were directly caused by Defendant County Clerk’s alleged misconduct. Rather, the Complaint suggests Defendant County Clerk’s alleged misconduct had no causal relation to Plaintiff’s damages because all parties involved in the sale of the subject premises already knew of the mechanic’s lien before the sale. Plaintiff describes interactions with Defendant Premium Mortgage Corporation, [NYSCEF Doc. No. 2 ¶ 50], and Stewart Title Company, [NYSCEF Doc. No. 2 ¶ 62], in which each entity indicates that the entity was already aware of Plaintiff’s mechanic’s lien before the sale. Plaintiff also alleges an interaction with Defendant Cheney in which Defendant Cheney indicated “...that all parties to the sale..., the title company, the lender, and” Defendant Houle, “were well aware of the lien and were willing to look past it.” [NYSCEF Doc. No. 2 ¶ 58]. Plaintiff alleges Defendants Holt and Billet were aware of the mechanic’s lien when they entered into the mortgage agreement for the subject premises. [NYSCEF Doc. No. 2 ¶¶ 75, 76]. Notably, the Complaint fails to identify a single person involved in the sale of the subject premises that was not aware of the lien. The Complaint does not allege that anybody involved in the sale of the subject premises was not aware of the lien. Since the allegations indicate that everybody involved in the sale of the subject premises was aware of the lien, it follows that Defendant County Clerk’s alleged misconduct—i.e., failure to list the

mechanic's lien in records for the subject premises on or about August 11, 2022/the time of sale—cannot have directly caused Plaintiff's damages.

Finally, Plaintiff failed to plead a cause of action for breach of fiduciary duty that meets CPLR 3016(b)'s requisite specificity because a number of Plaintiff's allegations are based on conjecture. Plaintiff alleges that the mechanic's lien allegedly going missing around the time of the sale of the subject premises:

- "...*suggests* that there *may* exist foul play going on..." [NYSCEF Doc. No. 2 ¶ 110] (emphasis added).
- "...stands in further testimony and evidence that something improper *may* have occurred..." [NYSCEF Doc. No. 2 ¶ 111] (emphasis added).
- "...*may* have been a factor in that (otherwise) prohibited sale..." [NYSCEF Doc. No. 2 ¶ 112] (emphasis added).

Such allegations stand in tension with CPLR 3016(b)'s specificity requirements.

CONCLUSION

Plaintiff's Complaint should be dismissed as against Defendant County Clerk pursuant to County Law § 52 for failure to serve a notice of claim, County Law § 52 and CPLR § 3211(a)(5) because the Plaintiff's claim is barred by the statute of limitations, and CPLR § 3211(a)(7) for failure to state a cause of action.

WHEREFORE, the Defendant County Clerk hereby respectfully requests that the Complaint and all of the claims therein be dismissed with prejudice as against Defendant County Clerk pursuant to County Law § 52, CPLR § 3211(a)(5), and CPLR § 3211 (a)(7), and that the Court grant such other and further relief as it deems good and proper.

Dated: January 31, 2024

John P. Bringewatt, Monroe County Attorney
Attorney for Defendant Monroe County Clerk's Office

By:  _____

Miguel A. Munoz
Deputy County Attorney
307 County Office Building, 39 West Main Street
Rochester, New York 14614
Telephone: 585.753.1413
Email: miguelmunoz@monroecounty.gov

To: James R Caputo, *by NYSCEF*
Counsel of record, *by NYSCEF*

CERTIFICATION:

I hereby certify that this document contains **2,914 words**, not including the caption, table of contents, table of authorities, and signature block, and that this document is in compliance with new Uniform Civil Rules for the Supreme Court and the County Court, § 202.8-b.

Dated: January 31, 2024

s/ Miguel A. Munoz
Miguel A. Munoz