

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

LaBoy v. Diven

2025 NY Slip Op 07381 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2025) · No. 2022-02506 · Decided December 31, 2025

SUMMARY

The Appellate Division, Second Department modified an order in an action involving specific performance of a real-property sale contract, alleged wrongful eviction, and personal property allegedly retained by the defendants. The court upheld the denial of relief concerning wrongful eviction, possession, contempt, attorneys' fees, and sanctions because factual issues existed regarding abandonment and the temporary restraining order lacked an unequivocal mandate. It held that the plaintiff should be permitted to amend the complaint to add a replevin cause of action.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; Valerie Brathwaite Nelson, J.; Deborah A. Dowling, J.; Lourdes M. Ventura, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 31, 2025
DOCKET	2022-02506
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed from stated portions of an order denying motions for relief in an action involving specific performance of a contract for the sale of real property, alleged wrongful eviction, possession of personal property, contempt, and sanctions.
STANDARD OF REVIEW	The order was reviewed on the law and in the exercise of discretion. Leave to amend a pleading is freely granted unless the proposed amendment is palpably insufficient, prejudicial or surprising, or patently devoid of merit.
PRECEDENTIAL VALUE	Published

PARTIES

Michael LaBoy v. Charles J. Diven, Jr., Anna M. Diven, et al.

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QUESTIONS PRESENTED

1. Whether the plaintiff established that he was wrongfully evicted under RPAPL 768 and was entitled to damages.
2. Whether the plaintiff was entitled to a preliminary injunction restoring him to possession.
3. Whether the defendants could be held in contempt for violating the purported temporary restraining order.
4. Whether the plaintiff should be granted leave to amend the complaint to add a cause of action for replevin.
5. Whether the plaintiff established that the defendants' or their counsel's conduct was frivolous and warranted attorneys' fees or sanctions under 22 NYCRR 130-1.1.

HOLDINGS

1. The plaintiff was not entitled to a declaration of wrongful eviction or related damages at the motion stage because the defendants raised an issue of fact concerning whether the plaintiff had abandoned the property.
2. The plaintiff was not entitled to a preliminary injunction restoring possession because factual issues concerning abandonment undermined his likelihood of success on the merits of the wrongful-eviction claim.
3. Contempt relief was properly denied because the purported temporary restraining order did not clearly express an unequivocal mandate.
4. The Supreme Court should have granted the plaintiff leave to amend the complaint to add a cause of action for replevin.
5. The plaintiff was not entitled to attorneys' fees or sanctions because he failed to establish that the defendants' or their counsel's conduct was frivolous.

KEY QUOTATIONS

“Abandonment in law depends on the concurrence of two and only two factors; one, an intention to abandon or relinquish; and two, some overt act, or some failure to act, which carries the implication that [a party] neither claims nor retains any interest in the subject matter of the abandonment” ([*2])

“Leave to amend a pleading should be freely given, provided the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit” ([*3])

“Contempt findings are inappropriate where, as here, there can be legitimate disagreement about what the terms of an order or judgment actually mean” ([*3])

FACTUAL BACKGROUND

In July 2019, Charles J. Diven, Jr., agreed to sell residential property in Westchester County to Michael LaBoy. Before the closing, LaBoy moved into the property under an oral agreement while renovations were completed, and the parties disputed whether he was required to pay rent. In January 2021, Diven asserted that the property was unsecured, unheated, and largely abandoned, while LaBoy claimed that he and his family were legally occupying the property and that the defendants unlawfully entered and changed the locks while they were away. Diven had LaBoy’s remaining personal property placed in storage and allegedly did not return it despite demands.

PROCEDURAL HISTORY

The plaintiff entered into a contract to purchase residential property and commenced an action for specific performance after the sale did not close. While the action was pending, the plaintiff sought relief alleging wrongful eviction, including damages, a preliminary injunction restoring possession, leave to amend to assert replevin, and sanctions. The Supreme Court, Westchester County, denied the requested relief and denied a separate contempt motion. The Appellate Division modified the order to grant leave to amend to add replevin and affirmed the order as otherwise appealed from.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The order is modified by deleting the provision denying leave to amend the complaint to add a replevin cause of action and substituting a provision granting that branch of the motion. The order is otherwise affirmed insofar as appealed from.

CASES CITED

- Masheh v JHF Mgt., LLC, 200 AD3d 1621, 1621-1622
- City of Binghamton v Gartell, 275 App Div 457, 460
- Patton v Modern Asian, Inc., 208 AD3d 1491, 1492
- Salem v US Bank N.A., 82 AD3d 865, 866
- Lombard v Station Sq. Inn Apts. Corp., 94 AD3d 717, 721
- Cooper v Board of White Sands Condominium, 89 AD3d 669, 669
- Board of Mgrs. of Brightwater Towers Condominium v M. Marin Restoration, Inc., 206 AD3d 605, 607
- Matter of Mendoza-Pautrat v Razdan, 160 AD3d 963, 964

- Matter of Banks v Stanford, 159 AD3d 134, 145
- Integrity Real Estate Consultants v Re/Max of N.Y., Inc., 213 AD3d 815, 820
- Shea v Signal Hill Rd. LLC, 206 AD3d 1541, 1544
- Tenenbaum v Ziv, 231 AD3d 1181, 1182
- Ortega v Bisogno & Meyerson, 2 AD3d 607, 609
- Bhatara v Kolaj, 222 AD3d 926, 929
- Westbury Recycling, Inc. v Westbury Transfer & Recycling, LLC, 209 AD3d 929, 932
- Baron v Suissa, 167 AD3d 689, 689-690
- Kimso Apts., LLC v Gandhi, 24 NY3d 403, 411
- Cirillo v Lang, 206 AD3d 611, 612
- West Hempstead Water Dist. v Buckeye Pipeline Co., L.P., 152 AD3d 558, 558-559
- Stone Mtn. Holdings, LLC v Spitzer, 119 AD3d 548, 550

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