

SUPREME COURT- STATE OF NEW YORK
PART 70, SUFFOLK COUNTYPRESENT:
HON. PAUL M. HENSLEY, JSCCLEARWATER BEACH PROPERTY
OWNERS ASSOCIATION, INC.,

Plaintiff,

-against-

DAVID POSNETT,

MARIA NORDONE,

Defendants.

Index No. 630978/2025

Motion Date: 4/17/2026

Submit Date: 5/26/2026

Motion Seq.: 002-MD; 003-MG

ATTORNEY FOR PLAINTIFF

Tarbet & Lester, PLLC

Brian Jay Lester, Esq.

132 N. Main St.

East Hampton, NY 11937

ATTORNEY FOR DEFENDANT

Esseks, Hefter, Angel, Ditalia & Pasca LLP

Patricia Mary Carroll, Esq.

108 E. Main St.

Riverhead, NY 11901

Upon the following papers read on plaintiff's motion for summary judgment pursuant to CPLR 3212: NYSCEF documents 1 thru 103; it is hereby

ORDERED plaintiff's motion for summary judgment in its favor pursuant to CPLR 3212 is denied; and it is

ORDERED that defendants David Posnett and Maria Nordone's cross-motion for summary judgment pursuant to CPLR 3212 to dismiss plaintiff's complaint is granted.

Plaintiff, Clearwater Beach Property Owners Association, Inc. (hereinafter "Clearwater"), commenced this action on November 17, 2025, by filing a summons and complaint seeking a declaratory judgment and injunctive relief maintaining that defendants, David Posnett and Maria Nordone, violated restrictive covenants governing Clearwater Beach. On February 2, 2026, defendants answered and raised affirmative defenses that the covenants and restrictions do not apply to ADUs (Accessory Dwelling Units); public policy; RPAPL § 1951; selective enforcement as at least three other properties have accessory apartments; unclean hands; selective enforcement as an "Artist Studio" and a Bed & Breakfast exist; lack of authority; and a violation of the Fair Housing Act 42 U.S.C. § 3604 (f). On February 3, 2026, a temporary restraining order was vacated and the application for a preliminary injunction was denied.

Plaintiff now moves for summary judgment maintaining that discovery is not required to resolve the legal issues presented. In support of the motion, plaintiff submits, among other things, the pleadings, an affirmation of counsel, an affidavit of Kurt Miller, President of Clearwater, a memorandum of law, defendants' deed, a recording of a meeting, various correspondence, and covenants and restrictions.

A party moving 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" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action (see *Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]). Mere conclusions, expressions of hope, or unsubstantiated allegations are insufficient to raise a triable issue (see *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (see *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339, 937 NYS2d 157 [2011]).

Plaintiff's primary position is that the covenants and restrictions which apply to the subject property limit development to a "private single-family dwelling and one private garage for the use of the occupants of the dwelling." Clearwater's counsel states, "CBPOA has consistently interpreted and enforced this provision to prohibit any independent residential unit separate from the primary dwelling." Clearwater maintains that the proposed structure "constitutes a second dwelling" and, therefore, it is entitled to summary judgment. Contrary to Clearwater's position, as a matter of law, it has not established that it is entitled to the relief requested.

The affidavit of Kurt Miller (NYSCEF document 59) is particularly shocking to the conscience of the Court as President Miller avers that Clearwater currently has 862 members, and at paragraph 12 "*[t]o my knowledge, virtually all of the 943 properties within the Clearwater Beach contain only one single-family dwelling, in accordance with the Covenants.*" At best, this statement is sharp practice, at worst it is perjurious.

Defendants have asserted selective enforcement as an affirmative defense. Defendants have provided a building permit to 188 Norfolk Drive, a property located across the street from the subject property, which contains *a lower level accessory apartment owned by President Kurt Miller*. Additionally, defendants have demonstrated that 1105 Fireplace Road contains a 600-square-foot accessory apartment and that 120 Kings Point Road contains a 572-square-foot accessory apartment. Defendants have also established that 73 Hog Creek Lane contains a two-bedroom rental apartment. Likewise, 57 Tyrone Drive and 62 Waterhold Road both advertise separate studio apartments for rent. Two other properties also challenge the notion that Clearwater has "consistently interpreted and enforced covenant restrictions." 9 Bon Pinck Way advertises a Bed & Breakfast, and 58 Fenmarch Road advertises an "Artist Studio" for rent. Unlike *Broadway Flushing Homeowners' Association, Inc. v Eastern NY Enterprises, Inc.*, 40 Misc.3d 1220 (A), 977 NYS2d 665 (Sup Ct. Queens County 2013), relied upon by plaintiff, there

is significant evidence in this record that plaintiff has acted with bad faith and discriminatory intent especially where plaintiff's president's property contains an accessory apartment.

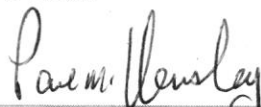
Moreover, defendant Maria Nordone has established that her daughter suffers from Spina Bifida, and weighs 80 lbs. Plaintiff's position that defendants have not offered medical documentation, professional evaluations, care plans or other evidence to support the necessity of a caregiver's dwelling is disingenuous and specious. Plaintiff has waived discovery, bringing this motion prior to a preliminary conference, and turns a blind eye to the defendant's daughter's disabilities.

The Court need not discuss defendant's other affirmative defenses as based upon the totality of the evidence presented plaintiff's application for summary judgment is denied.

On the cross-motion and in opposition defendants submit, among other things, an affirmation of counsel, an affirmation of Maria Nordone, a memorandum of law, various deeds, building permits, correspondence, and FOIL responses. Defendants have established that the Accessory Dwelling Unit on their former property does not violate the covenants and restrictions of Clearwater Beach Property Owners Association, Inc. Nowhere in the covenants and restrictions are Accessory Dwelling Units prohibited. In fact, nowhere do the covenants and restrictions refer to Accessory Dwelling Units or ADUs. An Accessory Dwelling Unit is neither a "second dwelling" nor a "rental apartment", rather it is an accessory use to a single-family residence. Moreover, as defendants are no longer owners of the subject property, and plaintiff's complaint has not been amended to include the current property owner, the action must be dismissed as to defendants David Posnett and Maria Nordone. More troubling is the selective enforcement and discriminatory conduct alleged to have been engaged in by plaintiff, especially by its President Kurt Miller. As defendants' answer contains no counterclaim plaintiff's discriminatory conduct cannot be addressed herein.

Accordingly, on both procedural and substantive grounds plaintiff's complaint is dismissed.

ENTER:



Hon. Paul M. Hensley
Justice of the Supreme Court

Date: May 26, 2026
Riverhead, New York