

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18632
O/kmg

_____AD3d_____

Argued - February 25, 2008

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2006-11965

DECISION & ORDER

Edward F. Campbell, et al., respondents, v
Edward F. Campbell, Jr., et al., appellants.

(Index No. 23391/01)

Rivkin Radler, LLP, Uniondale, N.Y. (Evan H. Krinick and Cheryl F. Korman of counsel), for appellants.

James D. Reddy, Lindenhurst, N.Y., for respondents.

In an action, inter alia, to set aside a deed conveying real property on the ground of undue influence and for a judgment declaring the deed invalid, the defendants appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Suffolk County (Baisley, Jr., J.), dated April 20, 2006, as, after a nonjury trial, annulled the conveyance, declared the deed invalid, and directed that it be cancelled.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

In reviewing findings made following a nonjury trial, this Court may render the judgment it finds warranted by the facts, taking account in a close case the fact that the trial judge had the advantage of seeing the witnesses (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Melius v Breslin*, 46 AD3d 524, 525; *Man Choi Chiu v Chiu*, 38 AD3d 619, 620). In light of the trial court's opportunity to hear and evaluate the credibility of the conflicting testimony as to the determinative issues, we find no reason to disturb its determination that a confidential relationship existed between the parties and that the defendants failed to prove by clear evidence that the transaction was fair, open, voluntary, and well understood, and therefore free from

undue influence (*see Matter of Gordon v Bialystoker Ctr. & Bikur Cholim*, 45 NY2d 692, 698–699).

FISHER, J.P., ANGIOLILLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:


James Edward Felner
Clerk of the Court