

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

D19339
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_____AD3d_____

Submitted - April 10, 2008

REINALDO E. RIVERA, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-05512

DECISION & ORDER

Joseph C. Scopelliti, plaintiff, v Maria C. Scopelliti,
defendant.
(Action No. 1)

Maria C. Scopelliti, respondent, v Robert L. Scopelliti,
et al., appellants, et al., defendants.
(Action No. 2)

(Index Nos. 14438/05, 15527/06)

Carl F. Lodes, Carmel, N.Y., for appellants Robert L. Scopelliti and Joseph C. Scopelliti (separate briefs filed).

Kitson Kitson & Bisesto, LLP, White Plains, N.Y. (Patricia T. Bisesto of counsel),
for respondent.

In two related actions which were joined for trial, inter alia, for a divorce and ancillary relief and to set aside a conveyance as fraudulent, Joseph C. Scopelliti and Robert L. Scopelliti, defendants in Action No. 2, separately appeal, as limited by their respective briefs, from so much of an order of the Supreme Court, Westchester County (Jamieson, J.), dated May 14, 2007, as granted that branch of the motion of the plaintiff in Action No. 2 which was for summary judgment on the first cause of action alleging fraudulent conveyance of the former marital residence.

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ORDERED that the order is reversed insofar as appealed from, on the law, with one bill of costs to the appellants, and that branch of the motion of the plaintiff in Action No. 2 which was for summary judgment in Action No. 2 on the first cause of action alleging fraudulent conveyance of the former marital residence is denied.

The respondent established her prima facie entitlement to judgment as a matter of law on the first cause of action in Action No. 2 alleging fraudulent conveyance of the former marital residence (*see* Domestic Relations Law § 236[B][1][c]; Debtor and Creditor Law § 276; *DeJesus v DeJesus*, 90 NY2d 643, 652; *Dempster v Overview Equities*, 4 AD3d 495, 498; *see generally Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

However, in opposition, the appellants raised a triable issue of fact as to whether the former marital residence was the separate property of the appellant Joseph C. Scopelliti (*see Raphael v Raphael*, 20 AD3d 463, 464; *Gorelik v Gorelik*, 303 AD2d 553; *Harley v Harley*, 157 AD2d 916, 917-918).

RIVERA, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court