

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

D21577  
X/kmg

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Argued - November 17, 2008

STEVEN W. FISHER, J.P.  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

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2007-09668

DECISION & ORDER

Betty Toles, respondent,  
v Kenneth Stuart, et al., appellants,  
et al., defendants.

(Index No. 14352/05)

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Jonathan I. Edelstein, New York, N.Y. (Michael A. Gangadeen of counsel), for appellants Kenneth Stuart and Margo Arthur.

Gerard J. White, Rockville Centre, N.Y., for appellant Eugenia Baptiste Burton.

Scott R. Cohen, Bellmore, N.Y., for respondent.

In an action, inter alia, to recover damages for fraud, to impose a constructive trust on certain real property, and to compel specific performance of an oral agreement to convey the real property, the defendants Kenneth Stuart and Margo Arthur appeal, and the defendant Eugenia Baptiste Burton separately appeals, as limited by their respective briefs, from so much of an order of the Supreme Court, Nassau County (Feinman, J.), entered September 28, 2007, as denied their respective motions for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with one bill of costs payable by the appellants appearing separately and filing separate briefs.

There are issues of fact requiring the denial of summary judgment (*see Alvarez v Prospect Hosp.*, 68 NY2d 320).

FISHER, J.P., ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

December 23, 2008

TOLES v STUART