

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

D21627
X/prt

_____AD3d_____

Argued - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-05864
2007-05868

DECISION & ORDER

William John Rudge, etc., respondent,
v Adeline Latopolski, appellant, et al.,
defendants.
(Action No. 1)

Adeline Latopolski, etc., appellant,
v William John Rudge, etc., respondent.
(Action No. 2)

(Index Nos. 20419/02, 31370/02)

Greshin, Ziegler & Amicizia, LLP, Smithtown, N.Y. (Vincent M. Amicizia of counsel), for appellant.

Brody, O'Connor & O'Connor, Northport, N.Y. (Scott A. Brody of counsel), for respondent.

In related actions, inter alia, to recover damages for trespass (Action No. 1), and to set aside a deed on the ground of undue influence (Action No. 2), Adeline Latopolski, the defendant in Action No. 1 and the plaintiff in Action No. 2, appeals from (1) an order of the Supreme Court, Suffolk County (Spinner, J.), dated January 16, 2007, which denied her motion pursuant to CPLR 4404(b) to set aside a decision of the same court dated December 8, 2006, and (2) a judgment of the same court entered April 25, 2007, which, upon the decision, as amended January 27, 2007, made after a nonjury trial, and upon the order, among other things, is in favor of William John Rudge, the plaintiff in Action No. 1 and the defendant in Action No. 2, and against her in the principal sum of

December 30, 2008

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\$25,000, and ratified and confirmed the validity of the subject deed.

ORDERED that the appeal from the order is dismissed, without costs or disbursements; and it is further,

ORDERED that the judgment is modified, on the law, by deleting the provision thereof which is in favor of the respondent and against the appellant in the principal sum of \$25,000 and substituting therefor a provision which is in favor of the respondent and against the appellant in the principal sum of \$1; as so modified, the judgment is affirmed, without costs or disbursements.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the actions (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see CPLR 5501[a][1]*).

We agree with the appellant's contention that the respondent, William John Rudge, failed to establish his entitlement to an award of monetary damages upon his cause of action alleging trespass. Accordingly, the respondent was entitled to an award of \$1 as nominal damages (*see Ligo v Gerould*, 244 AD2d 852).

The evidence adduced by the appellant at trial failed to establish undue influence.

The appellant's remaining contentions are without merit.

MASTRO, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court