

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

D30434  
Y/ct

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Argued - February 4, 2011

WILLIAM F. MASTRO, J.P.  
PETER B. SKELOS  
RANDALL T. ENG  
SANDRA L. SGROI, JJ.

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2010-02497

DECISION & ORDER

Herman Morris, etc., respondent, v Malcom Louis  
Adams, et al., appellants.

(Index No. 27670/07)

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Donohue, McGahen, Catalano & Belitsis, Jericho, N.Y. (Nicholas J. Donohue and  
Michael Belitsis of counsel), for appellants.

Neil Martin Zang, New York, N.Y., for respondent.

In an action for the partition and sale of real property and for an accounting, the defendants appeal from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated January 8, 2010, as denied their motion for summary judgment dismissing the complaint, and granted those branches of the plaintiff's cross motion which were to dismiss their second and thirteenth affirmative defenses.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying the defendants' motion for summary judgment dismissing the complaint, and substituting therefor a provision granting the motion; as so modified, the order is affirmed insofar as appealed from, with one bill of costs to the defendants.

The Supreme Court properly granted that branch of the plaintiff's cross motion which was to dismiss the defendants' second affirmative defense alleging that the plaintiff lacked authority to bring this partition action. The plaintiff established his entitlement to dismissal of this affirmative defense by submitting proof that he obtained nunc pro tunc approval from the Queens County Surrogate to bring this action on behalf of the estate of Samuel Morris (*see* RPAPL 901[4]; SCPA 1901[2][i]).

March 15, 2011

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However, the Supreme Court erred in denying the defendants' motion for summary judgment dismissing the complaint. Pursuant to Real Property Law § 266, the title of a bona fide purchaser is protected unless he or she had previous notice of "the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor" (see *Commandment Keepers Ethiopian Hebrew Congregation of the Living God, Pillar & Ground of Truth, Inc. v 31 Mount Morris Park, LLC*, 76 AD3d 465; *Maiorano v Garson*, 65 AD3d 1300, 1302; *Fleming-Jackson v Fleming*, 41 AD3d 175, 176; *Emerson Hills Realty v Mirabella*, 220 AD2d 717). Here, the defendants made a prima facie showing that the defendants Malcolm Louis Adams and Tricia C. Gordon Adams (hereinafter the Adams defendants) were bona fide purchasers by submitting evidentiary proof that they purchased the subject premises from Mohammed Hanif for the sum of \$350,000, in good faith and without knowledge that a 1989 deed conveying title to Hanif's grantor was allegedly fraudulent (see *Commandment Keepers Ethiopian Hebrew Congregation of the Living God, Pillar & Ground of Truth, Inc. v 31 Mount Morris Park, LLC*, 76 AD3d 465). The defendants' submissions further established that the Adams defendants had no knowledge of facts that would lead a reasonably prudent purchaser to make inquiry of possible fraud (see *TCJS Corp. v Koff*, 74 AD3d 1188, 1189; *Bachurski v Polish & Slavic Fed. Credit Union*, 33 AD3d 739, 741; see also RPAPL §341). In opposition, the plaintiff failed to raise a triable issue of fact (see *TCJS Corp. v Koff*, 74 AD3d at 1189; *Bachurski v Polish & Slavic Fed. Credit Union*, 33 AD3d at 741; *Kissling v Leary*, 289 AD2d 377).

In light of our determination, the parties' remaining contentions have been rendered academic.

MASTRO, J.P., SKELOS, ENG and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court