

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

D33222  
N/kmb

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Argued - October 7, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

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2010-08932

DECISION & ORDER

SMS Financial XV, LLC, etc., respondent, v  
Raquette Lake Camps, Inc., et al., appellants.

(Index No. 9227/10)

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Salamon, Gruber, Blaymore & Strenger, P.C., Roslyn Heights, N.Y. (Sanford Strenger and Michael C. Sferlazza of counsel), for appellants.

Helfand & Helfand, New York, N.Y. (Andrew B. Helfand and Michael A. D’Emidio of counsel), for respondent.

In an action, inter alia, to set aside alleged fraudulent conveyances pursuant to Debtor and Creditor Law article 10, the defendants appeal from an order of the Supreme Court, Westchester County (Murphy, J.), entered August 26, 2010, which denied their motion pursuant to CPLR 3211(a)(7) to dismiss the first, second, and third causes of action, and, sua sponte, granted the plaintiff leave to serve an amended complaint asserting an additional cause of action pursuant to CPLR 5225.

ORDERED that the appeal from so much of the order as, sua sponte, granted the plaintiff leave to serve an amended complaint asserting an additional cause of action pursuant to CPLR 5225 is dismissed, without costs or disbursements, as no appeal lies as of right from an order which does not determine a motion made on notice, and we decline to grant leave to appeal (*see* CPLR 5701[a][2]); and it is further,

ORDERED that the order is reversed insofar as reviewed, on the law, with costs, and the defendants’ motion pursuant to CPLR 3211(a)(7) to dismiss the first, second, and third causes of action is granted.

December 13, 2011

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The plaintiff allegedly was assigned a judgment that had been entered against the defendant Edward E. Lapidus (hereinafter Edward), among others, in 1993 in the amount of \$2,787,985.80. In 2000, the defendant KL Camps, LLC (hereinafter KL Camps), of which Edward's wife, the defendant Kathryn Lapidus (hereinafter Kathryn), is the sole shareholder, purchased the defendant Raquette Lake Camps, Inc. (hereinafter Raquette Lake Camps), with Kathryn's separately owned assets. Since that time, Edward allegedly has provided his services to Raquette Lake Camps as a camp director for no compensation.

The plaintiff commenced this action asserting two causes of action pursuant to Debtor and Creditor Law §§ 273 and 276, respectively, seeking, inter alia, to set aside the alleged fraudulent conveyances of Edward's services to Kathryn, KL Camps, and Raquette Lake Camps for no compensation, and to recover money damages. The plaintiff also asserted a third cause of action for attorneys' fees pursuant to Debtor and Creditor Law § 276-a. The defendants moved pursuant to CPLR 3211(a)(7) to dismiss the first, second, and third causes of action, arguing that Edward's failure to receive a salary is not a conveyance as defined in the Debtor and Creditor Law. The Supreme Court, among other things, denied their motion.

The Supreme Court should have granted the defendants' motion pursuant to CPLR 3211(a)(7) to dismiss the first, second, and third causes of action. Contrary to the Supreme Court's determination, personal services provided by a judgment debtor are not "[c]onveyance[s]" which may be set aside as fraudulent pursuant to Debtor and Creditor Law §§ 273 and 276 (Debtor and Creditor Law § 270; *see Abbey v Deyo*, 44 NY 343, 346-347; *Buckley v Wells*, 33 NY 518, 520-521; *Brumbaugh, Graves, Donohue & Raymond v Ledes*, 238 AD2d 298).

RIVERA, J.P., FLORIO, LOTT and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court