

Yin Wu v Wu

2001 NY Slip Op 30004(U)

April 20, 2001

Supreme Court, New York County

Docket Number: _300108/3341

Judge: Paula J. Omansky

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Paula J. Omansky

Justice

PART 47

[Handwritten Signature]

INDEX NO.

10833498

MOTION DATE

2/20/01

MOTION SEQ. NO.

93

MOTION CAL. NO.

174

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Repeating Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*Motion decided in accordance with
accompanying memorandum.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____

Dated: 2/20/01

[Handwritten Signature]
PAULA J. OMANSKY
S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 47

-----X
YIN WU

Index No.108334/98

Plaintiff,

DECISION AND ORDER

-against-

RICHARD WU, WAI MING HO, SIMON LEE,
ERIC WONG and XU MEI ZHOU,

Defendants.

-----X
PAULA J. OMANSKY, J.:

Plaintiff in this action seeking to impose a constructive trust over funds involved in an alleged fraudulent transfer of real property [specifically, a forged deed in the chain of title], moves for leave to renew or reargue a decision on a cross-motion of defendants Wong and Zhou which dismissed the compliant against them.

FACTS

The basis for the motion to renew is a newly discovered letter from Margaret Dato, Vice President and Counsel for STG Associates, the title company which insured Wong and Zhou, the purchasers of the property, to attorney Simon Lee, the attorney involved in the closing, a defendant herein, dated October 17, 1996, in which Dato advised Lee that STG was unable to dispose of certain exceptions in the title report because STG could not ascertain the name of the title company which insured Lee's clients and asked for assistance.

The facts of this case are set out in the decision/order of September 8, 2000, and will not be repeated except as relevant.

In that decision, the court had noted that Dato "state[d] in her affidavit that at no time was she aware of any forgery". In her affirmation Dato also stated that she was unaware of "any other break " in the chain of title.

DISCUSSION

The motion to renew is granted, and upon renewal, the court adheres to its original decision. As stated in this court's decision, Real Property Law §266 and *Emerson Hills Realty, Inc. v Mirabella* (220 AD2d 717 [2nd Dept. 1995]) protects a purchaser for value of real property where there is no evidence of knowledge of prior fraud on the on the part of the vendor. *Kearns v Manufacturers Hanover Trust* (51 Misc. 2d 34 [Sup. Ct. Suffolk Co. 1960]), cited by the plaintiff for the proposition that a forged deed cannot convey good title is distinguishable from the instant situation in that the Kearns grantees had knowledge of the forgery.

Here, the recently unearthed letter indicates that STG had questions and investigated those questions. Since STG ultimately insured the title, it is reasonable to assume that the questions were resolved prior to closing. Further, it is quite a stretch to bootstrap Dato's diligent title investigation into the conclusion that Dato an/or the purchasers therefore "knew or should have known of the sellers' alleged prior fraud" (see, *Emerson Hills Realty, Inc. v Mirabella*, supra). Further, even

evidence of a gratuitous transfer in the chain of title does not, without knowledge of fraud, render a conveyance fraudulent and voidable as against a purchaser or mortgagee for value (see, Real Property Law § 266; Debtor

and Creditor Law § 278; *Anderson v. Blood*, 152 N.Y. 285, rearg denied 153 N.Y. 649, *Stearns v. Gage*, 79 N.Y. 102).


(See, *Miner v Edwards*, 221 AD2d 934 [4th Dept. 1995])

Finally, plaintiff's speculative arguments in his reply affirmation regarding possible collusion on the part of Wong and Zhou, are simply unsubstantiated by even a scintilla of proof. That Ho, the former wife of defendant Richard Win, who took title to the property allegedly as part of a settlement in a matrimonial action, cannot be located does not implicate Wong and Zhou as perpetrators of a fraud upon plaintiff.

Accordingly, upon renewal the court declines to vacate its prior decision/order dismissing the complaint against Wong and Zhou.

This constitutes the decision and order of the court.

DATED: April 26, 2001



PAULA J. OMANSKY
J.S.C.