

**Sampson v Pepper**

2008 NY Slip Op 33488(U)

December 22, 2008

Supreme Court, Nassau County

Docket Number: 14785/06

Judge: Karen V. Murphy

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT - STATE OF NEW YORK  
TRIAL TERM, PART 22 NASSAU COUNTY**

**PRESENT:**

***Honorable Karen V. Murphy***  
**Justice of the Supreme Court**

\_\_\_\_\_  
**RONNIE SAMPSON AND JAY CORBIN,  
TEMPORARY ADMINISTRATORS OF THE  
ESTATE OF LEON J. CORBIN, a/k/a LEON  
CORBIN,**

**Index No. 14785/06**

**Motion Submitted: 10/10/08  
Motion Sequence: 003, 004**

**Petitioner(s),**

**-against-**

**LOUIS A.H. PEPPER AND RENEE PEPPER,**

**Respondent(s).**

\_\_\_\_\_  
The following papers read on this motion:

Notice of Motion/Order to Show Cause.....XX  
Answering Papers.....X  
Reply.....  
Briefs: Plaintiff's/Petitioner's.....X  
Defendant's/Respondent's.....

Petitioners move this Court for an order pursuant to CPLR § 3212 granting summary judgment in their favor finding that the conveyance of real property at issue in this case is fraudulent pursuant to Debtor and Creditor Law § 276, setting the matter down for an inquest for attorneys' fees pursuant to Debtor and Creditor Law § 276-a, and awarding Petitioner costs. Respondent opposes the requested relief and cross moves for an order pursuant to CPLR § 3025 granting leave to serve an amended answer and counterclaim in the form annexed to the moving papers.

A challenge to an allegedly fraudulent conveyance in violation of the Debtor and Creditor Law must be prosecuted as an action since it is not a statutorily-authorized special proceeding. However, since this Court has personal jurisdiction over the parties, this proceeding is converted into a plenary action pursuant to CPLR § 103(c). (*Taskiran v. Murphy*, 8 A.D.3d 360, 777 N.Y.S.2d 769 [2d Dept., 2004]).

The Respondent, Louis A.H. Pepper, an attorney at the time, represented the estate of Leon J. Corbin a/k/a Leon Corbin (the Estate). On December 9, 2004 Leon Corbin gave a check to Respondent in the sum of \$55,000.00. Leon Corbin died on December 17, 2004. Mr. Pepper negotiated the check on January 4, 2005, 18 days after the death of Leon Corbin. In Decision No. 705 under File No. 33560, dated September 26, 2005, Surrogate Riordan ordered Mr. Pepper to return the sum of \$55,000 to the estate. Surrogate Riordan signed an Amended Order dated December 9, 2005, directing judgment against Mr. Pepper in the sum of \$59,596.84 including interest and costs.

The Lawyers' Fund for Client Protection of the State of New York (The Lawyers' Fund) received a claim from Ronnie Sampson and Jay Corbin, Temporary Administrators of the Estate of Leon Corbin (the claimant) for reimbursement of the \$55,000.00 taken from the estate by Respondent when he was the attorney for the late Leon Corbin. After an investigation The Lawyers' Fund determined that the claimants' application for reimbursement of the amount taken by the Respondent from the estate merited an award in the amount of \$55,000.00. In consideration of the award, each Temporary Administrator executed and delivered to The Lawyers' Fund on behalf of the claimant a Reimbursement Agreement, by which the claimants subrogated and assigned to The Lawyers' Fund "all rights, claims and causes of action" they held against Respondent Louis A.H. Pepper, including all of their rights in this specific action. With the assignment, a judgment for \$59,596.84 based on Judge Riordan's Amended Order dated December 9, 2005, was entered in favor of The Lawyers' Fund in the Office of the Nassau County Clerk on September 26, 2007. The Lawyers' Fund is continuing this action in the name of Ronnie Sampson and Jay Corbin, the Petitioners in the Surrogate's Court proceeding, pursuant to CPLR § 1018. At issue in this case is the conveyance of the Respondents' marital residence at 53 Cedar Drive, Great Neck, New York, from the Respondents, as joint tenants by the entirety, to Respondent Renee Pepper. The conveyance placing title solely in the name of Renee Pepper was made by a deed dated March 25, 2005, and recorded in the Nassau County Clerk's Office on April 15, 2005.

It is well recognized that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact. (*Andre v. Pomeroy*, 35 N.Y.2d 361, 320 N.E.2d 853, 362 N.Y.S.2d 131 [1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue

as to any material fact. (*Cauthers v. Brite Ideas, LLC*, 41 A.D.3d 755, 837 N.Y.S.2d 594, [2d Dept., 2007]). The Court's analysis of the evidence must be viewed in the light most favorable to the non-moving party, herein Respondents. (*Makaj v. Metropolitan Transportation Authority*, 18 A.D.3d 625, 796 N.Y.S.2d 621 [2d Dept., 2005]).

In determining whether a conveyance was fraudulent, the court considers "badges of fraud," which are circumstances that accompany fraudulent transfers so commonly that their presence gives rise to an inference of intent. These "badges of fraud" include the lack or inadequacy of consideration; family, friendship, or close associate relationship between transferor and transferee; the debtor's retention of possession, benefit, or use of the property in question; the existence of a pattern or series of transactions or course of conduct after the incurring of the debt, and the transferor's knowledge of the creditor's claim and the inability to pay it. (See *Steinberg v. Levine*, 6 A.D.3d 620, 774 N.Y.S.2d 810 [2d Dept., 2004]).

The Petitioners have set forth the following alleged "badges" in support of Respondents' actual fraudulent intent: a close, familial relationship between the parties (the Respondents are husband and wife who were living together at the time of the transfer of their marital residence); the transfer of Respondents' marital residence was not done in the ordinary course of business. The transfer was not part of a bona fide sale, divorce, or separation agreement. The transfer was done around the time that Louis A.H. Pepper was served with charges of serious professional misconduct; inadequate consideration: According to the deed New York State Transfer Taxes were not paid, indicating no consideration was given for the transfer; retention of control over the conveyed property (currently both Respondents continue to live as husband and wife in the property); knowledge of creditors' claims: at the time of the conveyance, Mr. Pepper was facing serious charges of professional misconduct; he had already been served with a Petition by the Grievance Committee and had been arrested in Nassau County and charged with grand larceny. There was a strong likelihood that he would be compelled to pay restitution and sanctions.

The Petitioners have made an adequate *prima facie* showing of entitlement to summary judgment by clearly and convincingly establishing that Mr. Pepper transferred his ownership interest in his residence with actual intent to hinder, delay and defraud his creditors. (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 501 N.E.2d 572, 508 N.Y.S.2d 923 [1986]).

In opposition to the motion for summary judgment to set aside the conveyance as fraudulent, Louis A. H. Pepper has submitted an affidavit sworn to September 25, 2008, in which he explains that before the transfer of the deed to his wife in March, 2005, a refinance of the subject real property occurred and debts of his wife in the amount of \$573,000 were paid by funds from the refinancing. He alleges that prior to the date of the transfer his wife

[\* 4 ]

Renee Pepper "advanced other substantial amounts over a long period of time to pay various other debts of Respondent Pepper, as well as operating expenses of the law office of Respondent Pepper." Annexing copies of a check written by Renee Pepper with the names of the payees redacted is of no probative value. There is no affidavit from Renee Pepper explaining the consideration she allegedly received for the transfer. Nor is there an affidavit or other probative evidentiary documentation to rebut the clear and convincing showing that Mr. and Mrs. Pepper transferred the property, and refinanced with the purpose of "cashing out" the equity in the marital residence and in contemplation of the criminal and disciplinary charges. Mr. Pepper claims that the deed transfer and refinance were not done under the cloud of serious professional misconduct charges pending against him, though a suspension order of the Appellate Division, Second Department dated May 9, 2005, was issued.

"Fraudulent intent, by its very nature is rarely susceptible to direct proof and must be established by inference from the circumstances surrounding the allegedly fraudulent act." (*Marine Midland v. Murkoff*, 120 A.D.2d 122, 128, 508 N.Y.S.2d 17 (2d Dept., 1986); *Farmers Production Credit Ass'n of Middletown v. Taub*, 121 A.D.2d 681, 504 N.Y.S.2d 448 (2d Dept., 1986); *Furlong v. Storch*, 132 A.D.2d 866, 518 N.Y.S.2d 216 [3d Dept., 1986]). This Court is not satisfied that Respondents have raised an issue of fact based on the evidence before it. Quite to the contrary, all reasonable inferences established a fraudulent intent.

Summary judgment is granted. Submit judgment on notice.

In light of this Court's determination, Respondents' motion to amend its Answer is denied as moot.

The foregoing constitutes the Order of this Court.

Dated: December 22, 2008  
Mineola, N.Y.

*Karen V. Murphy*  
**ENTERED**

JAN 02 2009

NASSAU COUNTY  
COUNTY CLERK'S OFFICE