

**7296- 7304 Realty Corp. v Guastamaccia**

2008 NY Slip Op 33718(U)

October 3, 2008

Supreme Court, Richmond County

Docket Number: 100705/08

Judge: Joseph J. Maltese

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND DCM PART 3**

7296-7304 REALTY CORP. and  
NICHOLAS ANTONELLI

**Index No:** 100705/08  
**Calendar No:** 2238-001

*Plaintiffs,*

**DECISION & ORDER**

*-against-*

STEVEN GUASTAMACCIA, CATHERINE  
GUASTAMACCIA, VITO LENTINI, ANNETTE  
LENTINI and HCI MORTGAGE, n/k/a  
HOME CONSULTANTS, INC.,

**HON. JOSEPH J. MALTESE**

*Defendants.*

-----x  
The following papers numbered 1 to 3 were submitted on this motion the 5<sup>th</sup> day of  
September, 2008:

	Pages Numbered
Notice of Motion by Defendant HCI Mortgage, n/k/a Home Consultants, with Supporting Papers.....	1
Plaintiffs' Affirmation in Opposition.....	2
Reply Affirmation by Defendant HCI Mortgage, n/k/a Home Consultants.....	3

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Upon the foregoing papers, the motion of defendant HCI Mortgage, n/k/a Home Consultants, Inc. (hereinafter "HCI"), to stay plaintiff's entry of a default judgment against defendants Steven Guastamaccia, Catherine Guastamaccia, Vito Lentini and Annette Lentini pending the trial of this action and to conduct of an inquest against said defaulting defendants is granted to the extent indicated.

This is an action for, *inter alia*, monetary damages allegedly arising out of defendants' fraud, misrepresentation and commercial bad faith in connection with a business transaction involving the development and sale of six parcels of real property in Staten Island, New York. Plaintiffs also seek (1) to impose a constructive trust upon two of

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those properties and (2) the entry of a judgment declaring that (i) the deeds to those two parcels are void and of no force and effect, (ii) they be set aside and cancelled of record, (iii) defendants are liable for any liens imposed on said properties as a result of their conduct, and (iv) the mortgages held by defendant HCI on the subject parcels be set aside and cancelled of record.

It is alleged in the verified complaint that defendants Steven Guastamaccia, Catherine Guastamaccia, Vito Lentini and Annette Lentini, none of whom have not appeared in this action, fraudulently and without authority executed deeds conveying the subject parcels of real property from the corporate plaintiff to themselves for no consideration. In connection with this transfer, the defaulting defendants allegedly obtained financing from defendant HCI that was secured by mortgages on the disputed properties.

In moving to stay the entry of a default judgment against the non-appearing defendants, co-defendant HCI maintains that setting aside and voiding the subject deeds at this stage of the proceeding would be highly prejudicial to HCI's claimed status as a bona fide encumbrancer for value under Real Property Law §266.

In opposition, plaintiffs argue, *inter alia*, that HCI will not be prejudiced in defending this action if the deeds are set aside. The Court disagrees.

Although Real Property Law §266 states that a bona fide purchaser or encumbrancer for value such as HCI purports to be, is protected in his or her title/lien unless he or she is chargeable with notice of the alleged prior fraud by the seller or mortgagor (*see Fischer v Sadov Realty Corp.*, 34 AD3d 630, 631; *Karan v Hoskins*, 22 AD3d 638, 639). However, "[o]ne cannot be[come] a bona fide encumbrancer for value through a forged deed, as it is void and conveys no title" (*LaSalle Bank National Assn. v Ally*, 39 AD3d 597, 600). Moreover, it is well recognized that the validity of a purported deed, whether void *ab initio* due to fraud in the factum or forgery (*see Dalessio v Kressler*, 6 AD3d 57,61), or merely

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voidable based upon fraud in the inducement, is entirely dependent upon the facts of the particular case (*see e.g. Marden v Dorothy*, 160 NY 39,49; *Fischer v Sadov Realty Corp.*, 34 AD3d at 631; *Karan v Hoskins*, 22 AD3d at 639).

Here, it is clear to this Court that the entry of a default judgment voiding and setting aside the subject deeds would deprive the sole appearing defendant of the opportunity to litigate the validity of the subject deeds and mortgages based on its claimed status as a bona fide encumbrancer under Real Property Law §266 (*see Ameriquest Mortgage Co. v Gaffney*, 41 AD2d 750, 751; *see also Skiff-Murray v Murray*, 17 AD3d 807, 808-809; *Greenpoint Sav. Bank v Guiliano*, 238 AD2d 472, 473, *app dismissed* 90 NY2d 935). In this regard, it is pertinent to note (1) plaintiff's failure to make out a prima facie case of forgery (*see LaSalle Bank Assn. v Ally*, 39 AD3d at 600), (2) defendant HCI's financial interest in upholding the validity of the non-appearing defendants' title to the subject properties, and (3) the prejudicial effect on HCI's mortgage lien of cancelling and setting aside the deeds at issue without affording the mortgagee a full and fair opportunity to be heard on all of the issues related to the validity of the subject mortgages. Under these circumstances, it is the Court's opinion that granting all of the equitable relief sought by plaintiffs based solely on the default of the non-appearing defendants is unwarranted at this juncture. Rather, the matter of, e.g., the validity of HCI's mortgages should be deferred to the time of trial pursuant to CPLR §3215(d) where the moving defendant may be able to establish that the deeds in question are valid or, in the alternative, voidable rather than void (*see Greenpoint Sav. Bank v Guiliano*, 238 AD2d at 473; 43A NY Jur 2d, Deeds, §218).

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Accordingly, it is hereby:

ORDERED, that defendants Steven Guastamaccia, Catherine Guastamaccia, Vito Lentini and Annette Lentini are declared to be in default in this action; and it is further

ORDERED, that a default judgment be entered in favor of plaintiffs and against said non-appearing defendants on the second cause of action (fraud and misrepresentation) and the third cause of action (commercial bad faith); and it is further

ORDERED, that the issue of damages to be awarded to plaintiffs on their second and third causes of action be set down for an inquest upon the filing of the necessary papers and the payment of any required fees; and it is further

ORDERED, that any further proceedings for the entry of a default judgment as against the non-appearing defendants on plaintiffs' first, fourth and fifth causes of action seeking, *inter alia*, the imposition of a constructive trust and a declaratory judgment setting aside and cancelling the subject deeds and mortgages, be conducted at the time of the trial or other disposition of this action against the sole appearing defendant, HCI Mortgage, n/k/a Home Consultants, Inc., or its successor in interest; and it is further

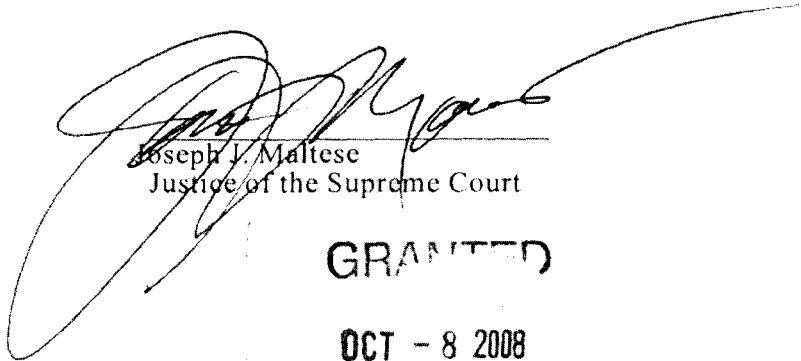
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ORDERED, that a copy of this Decision and Order with notice of entry be served upon the non-appearing defendants within thirty days of the date hereof by first class mail to their places of residence in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof that the communication is from an attorney or concerns an action against the persons to be served; and it is further

ORDERED, that the Clerk enter judgment accordingly.

ENTER,

Dated: October 3, 2008

  
Joseph J. Maltese  
Justice of the Supreme Court

GRANTED

OCT - 8 2008

*Stephen J. Flala*