

**Wright v Mitchell**

2012 NY Slip Op 30934(U)

April 3, 2012

Sup Ct, New York County

Docket Number: 114804/10

Judge: Eileen A. Rakower

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

PRESENT: **HON. EILEEN A. RAKOWER**  
*Justice*

PART 15

Index Number : 114804/2010  
WRIGHT, KATRINA  
vs  
MITCHELL, TOMMIE  
Sequence Number : 003  
RENEWAL

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 003

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

### UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1418).

Dated: 4/3/12



**HON. EILEEN A. RAKOWER** J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

**UNFILED JUDGMENT**  
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KATRINA WRIGHT,

Plaintiff,

Index No. 114804/10

- against -

Seq No.: 003 & 004

Decision and Order

TOMMIE MITCHELL,

Defendant.

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff, Katrina Wright, brings this action seeking to set aside and cancel a deed to the premises known as 55 West 161<sup>st</sup> Street New York, NY, as fraudulent and void. The property at issue was owned by Dudley Mitchell ("Dudley"). Dudley was married to Ms. Wright's mother, Merlynda Edwards. Dudley died in 1994. In his Will, Dudley bequeathed all his title and interest in the subject property to his wife, Ms. Edwards. Ms. Edwards died in 1998. On February 24, 2011, Ms. Wright became the Administratrix of Dudley Mitchell's estate. Ms. Wright discovered that a deed to the property, which had purportedly been executed in 1990, had been recorded with the City Register in 2010. The deed showed a transfer of the property from Dudley to his son, defendant Tommie Mitchell. The deed is signed by Dudley and is acknowledged by a Notary Public. Thereafter, Ms. Wright commenced this action, alleging that the deed is a forgery.

Ms. Wright moved for summary judgment on August 24, 2011. In support of her motion, Ms. Wright submitted the affidavit of Marc. D. Moel, General Counsel of BlumbergExcelsior, Inc., the company that distributed the deed form. Mr. Moel affirmed that the deed could not have been signed in 1990 because the document contained the notation "www.blumberg.com" printed at the top of the page. Mr. Moel stated that Blumberg forms containing this notation did not exist prior to 2002.

By order dated December 9, 2011, the court denied Ms. Wright's motion for

summary judgment, reasoning as follows:

With respect to the deed, Ms. Wright does not dispute the authenticity of the signature, but rather submits Mr. Moel's affidavit as prima facie evidence that the deed could not have been executed while Dudley was still alive. However, the 'weight and value' attached to the acknowledgment of Dudley's signature by a Notary 'survives contrary proof,' and is 'sufficient to send a case to the jury so that it may decide between the probative force of the certificate [of acknowledgment] and the evidence produced in rebuttal.' (*In re Goodman's Will*, 2 AD2d 558 [1st Dept. 1956]). Moreover, "the contrary proof must be established through disinterested witnesses, [and] must be clear and convincing." (*Id.* at 562).

Ms. Wright now moves to renew her prior motion for summary judgment and directs the court's attention to the acknowledgment contained in the alleged deed. In addition, Ms. Wright moves by Order to Show Cause for an order consolidating this action with the Housing Court proceeding brought by Tommie Mitchell against her. On February 15, 2012, after the parties appeared in court, the court signed the OSC and granted a temporary restraining order, which stayed the Housing Court proceeding pending the hearing of Ms. Wright's motion for consolidation.

In her motion to renew, Ms. Wright directs the court's attention to the deed's Acknowledgment, purportedly signed by Notary Public Stanley Gross on September 12, 1990. The acknowledgment reads as follows:

**ACKNOWLEDGMENT IN NEW YORK STATE (RPL 309-a)**

**State of New York, County of New York s.s.:**

On 12, day of Sept. 1990 before me, the undersigned,  
personally appeared

Dudley Mitchell

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Ms. Wright notes that the Acknowledgment references Real Property Law §309-a and employs the language mandated thereby, despite the fact that RPL §309-a did not become law until 1997, three years after Dudley's death and seven years after the deed was purportedly signed and acknowledged by Mr. Gross. Ms. Wright annexes Chapter 179 of the Laws of New York, 1997. Chapter 179, §2 specifically provides that "The real property law is amended by *adding a new section 309-a ...*" (emphasis added).

When the parties appeared on February 15, 2012, Tommie Mitchell indicated that he had no response to the foregoing evidence, and has failed to submit any affidavits or other documents in opposition to the motion to renew.

While in its prior order the court found that an issue of fact was presented by the contradictory evidence of the Moel affidavit on the one hand, and the acknowledgment of Dudley's signature by a Notary on the other, Ms. Wright has now alerted the court that the signature of the Notary is not authentic, leaving no evidence to rebut her showing that the Deed filed was invalid. Not only will Ms. Wright be able to demonstrate by clear and convincing evidence that the deed is fraudulent, but there is no issue of fact presented. Specifically, the Notary's acknowledgment, which cites to and quotes verbatim a statute not even in existence at the time of the purported deed, and the pre printed Blumberg deed form itself was not in existence at the time it was purportedly signed. The court further notes that the date upon which Mr. Gross's commission expires is altered on the face of the acknowledgment, with the year stricken and another inserted, further challenging the authenticity of the acknowledgment. Mr. Mitchell provides no opposition to these facts as presented and they remain unrebutted.

Wherefore it is hereby

ORDERED that Ms. Wright's motion to renew is granted without opposition; and it is further

ORDERED that upon renewal, the motion for summary judgment is

granted; and it is further

ORDERED, ADJUDGED AND DECLARED that the deed dated September 12, 1990 from Dudley Mitchell to Tommie Mitchell for the subject property located at 550 161<sup>st</sup> Street, New York, and recorded in the office of the City Register for the County of New York on October is canceled, and deemed void, and that the Clerk of the City Register's Office for the County of New York where such deed was recorded is further directed to strike said deed from the records and to make a notation on the records of said office to the effect that said deed is null and void; and it is further

ORDERED that Ms. Wright's motion for consolidation is denied as moot and the TRO is hereby lifted.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: April 3, 2012

  
\_\_\_\_\_  
EILEEN A. RAKOWER, J.S.C

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