Ohana v Levy
2015 NY Slip Op 30877(U)
May 21, 2015
Sup Ct, Kings County
Docket Number: 504396/2013
Judge: Carolyn E. Demarest

At an IAS Term, Part Comm-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21st day of May, 2015.

P R E S E N T:

HON. CAROLYN E. DEMAREST,
Justice.

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RAFAEL OHANA AND ARIK OHANA,

Plaintiffs,

- against -

Index No. 504396/2013

ETAY LEVY, KEREN LEVY AND "JOHN DOES NOS. 1 THROUGH 100,"

Defendants.

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The following e-filed papers read herein:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	10-24
Opposing Affidavits (Affirmations)	29-35
Reply Affidavits (Affirmations)	38-39
Affidavit (Affirmation)	
Memoranda of Law	25, 28, 36

In this action by plaintiffs Rafael Ohana and Arik Ohana (collectively, plaintiffs) against defendants Etay Levy (Etay) and Keren Levy (Keren) (collectively, defendants), and "John Does Nos. 1 through 100," plaintiffs move, under motion sequence number one, for an order: (1) pursuant to CPLR 3212, granting them partial summary judgment in their favor under Debtor and Creditor Law § 273, § 273-a, and § 276, vacating, setting aside, and

otherwise voiding as a fraudulent conveyance the transfer of Etay's interest in the real property known as 1518 East 12th Street, Brooklyn, New York 11330 (Block 6758, Lot 13) (the East 12th Street property) to Keren by deed dated March 5, 2010, recorded on March 11, 2010 in the City Register under CRFN 20100000085414, (2) under CPLR 3217 (b), voluntarily dismissing their second cause of action for unjust enrichment, without prejudice, as duplicative, and (3) under Debtor and Creditor Law § 276-a, awarding them attorney's fees and costs, fixing the manner of their determination, and entering judgment against defendants for such amount.

BACKGROUND

By a deed dated March 31, 1998 and recorded on May 14, 1998, Etay acquired title to the East 12th Street property. By a deed dated May 20, 2003 and recorded on January 14, 2004, Etay conveyed his interest in the East 12th Street property to himself and Keren, his wife.

On January 13, 2009, plaintiffs commenced an action in Supreme Court, Kings County, entitled *Metro Marketing Inc v Zalmanovich* (Sup Ct, Kings County, index No 803/09) (the Kings County action), in which Etay was a defendant. During the pendency of the Kings County action, Etay, by a deed dated March 5, 2010, conveyed his interest in the East 12th Street property to Keren. Keren did not give Etay any money or anything else of value in exchange for his interest in the East 12th Street property, and Etay continues to live at the East 12th Street property, along with Keren. This transfer made Etay insolvent since,

other than an interest in a 2006 Minivan car with an excess of 100,00 miles, he has no assets worth more than $1,000.

After a bench trial in the Kings County action by this court, plaintiffs recovered a judgment against Etay in the amount of $264,962.21 (the judgment), together with interest thereon from May 16, 2013. The judgment remains unsatisfied.

On August 1, 2013, plaintiffs filed this action against defendants, and also filed a notice of pendency against the East 12th Street property. Defendants interposed their answer on October 14, 2013. Plaintiffs' complaint sets forth two causes of action. Plaintiffs, in their first cause of action, allege a claim of fraudulent conveyance and, in their second cause of action, allege a claim for unjust enrichment. Plaintiffs seek a judgment against defendants, pursuant to Debtor and Creditor Law § 273, § 273-a, and § 276, voiding and setting aside Etay's March 5, 2010 transfer of the East 12th Street property to Keren as a fraudulent conveyance, and awarding them attorney's fees, as provided by Debtor and Creditor Law § 276-A. Discovery has taken place, including the depositions of Etay and Keren. On October 1, 2014, plaintiffs filed their instant motion.

DISCUSSION

Debtor and Creditor Law § 273 provides that "[e]very conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his [or her] actual intent if the conveyance is made or the obligation is incurred without a fair consideration." Plaintiffs have asserted that the transfer

of the East 12th Street property to Keren rendered Etay insolvent, and it is undisputed that this conveyance was made for no consideration. In opposition, defendants do not deny that Etay was rendered insolvent by the transfer and that it was for no consideration. In fact, defendants do not, in any way, oppose plaintiffs' motion insofar as it seeks summary judgment in their favor on their Debtor and Creditor Law § 273 claim. Thus, since no triable issue of fact is raised as to this claim, plaintiffs are entitled to summary judgment in their favor as to it (*see* CPLR 3212 [b]).

Debtor and Creditor Law § 273-a provides that "[e]very conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him [or her], is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment." It is undisputed that the transfer of the East 12th Street property by Etay to Keren was made without fair consideration when he was a defendant in the Kings County action, and that he has failed to satisfy the judgment rendered in that action. Thus, plaintiffs have established their entitlement to summary judgment in their favor on their Debtor and Creditor Law § 273-a claim. Defendants have not opposed plaintiffs' motion insofar as it seeks summary judgment in their favor on this claim. Consequently, summary judgment in plaintiffs' favor as to this claim must be granted (*see* CPLR 3212 [b]).

Pursuant to Debtor and Creditor Law § 278, "[w]here a conveyance or obligation is fraudulent as to a creditor," such a creditor, may "[h]ave the conveyance set aside or obligation annulled to the extent necessary to satisfy [its] claim. Thus, plaintiffs are entitled to have the March 5, 2010 deed to the East 12th Street property set aside, and title to the East 12th Street property revert back to defendants as it existed at the moment before the March 5, 2010 transfer to Keren, and this is not disputed by defendants.

While defendants have not opposed plaintiffs' motion with respect to their claims under Debtor and Creditor Law § 273 and § 273-a, they oppose plaintiffs' motion insofar as it seeks summary judgment in their favor on their Debtor and Creditor Law § 276 claim and the related claim for attorney's fees under Debtor and Creditor Law § 276-a. Debtor and Creditor Law § 276 provides that "[e]very conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors." A plaintiff that successfully establishes actual intent to defraud is entitled to a reasonable attorney's fee under Debtor and Creditor Law § 276-a (*see Kreisler Borg Florman Gen. Constr. Co., Inc. v Tower 56, LLC*, 58 AD3d 694, 696 [2d Dept 2009]; *Ford v Martino*, 281 AD2d 587, 588 [2d Dept 2001]). Defendants argue that plaintiffs should not be permitted to recover their attorney's fees pursuant to this section.

Notably, Debtor and Creditor Law § 276 "addresses actual fraud, as opposed to constructive fraud, and [unlike Debtor and Creditor Law § 273 and § 274] does not require

proof of unfair consideration or insolvency" (*Wall St. Assoc. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999]; *see also Atsco Ltd. v Swanson*, 29 AD3d 465, 465 [1st Dept 2006]). A cause of action pursuant to Debtor and Creditor Law § 276 "requires proof that the transferor actually intended to 'hinder, delay, or defraud' any present or future creditors" (*Zanani v Meisels*, 78 AD3d 823, 825 [2d Dept 2010], quoting Debtor and Creditor Law § 276). "The burden of proof to establish actual fraud under Debtor and Creditor Law § 276 is upon the creditor who seeks to have the conveyance set aside . . . , and the standard for such proof is clear and convincing evidence" (*Kreisler Borg Florman Gen. Constr. Co., Inc.*, 58 AD3d at 696 [internal quotation marks and citations omitted]; *see also Matter of U.S. Bancorp Equip. Fin., Inc. v Rubashkin*, 98 AD3d 1057, 1060 [2d Dept 2012]).

However, "'[d]irect evidence of fraudulent intent is often elusive'" (*5706 Fifth Ave., LLC v Louzieh*, 108 AD3d 589, 590 [2d Dept 2013], quoting *Pen Pak Corp. v LaSalle Natl. Bank of Chicago*, 240 AD2d 384, 386 [2d Dept 1997]). "'[F]raudulent 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'" (*Kreisler Borg Florman Gen. Constr. Co., Inc.*, 58 AD3d at 696, quoting *Marine Midland Bank v Murkoff*, 120 AD2d 122, 128 [2d Dept 1986], *appeal dismissed* 69 NY2d 875 [1987]).

"'"Therefore, courts will consider 'badges of fraud,' which are circumstances that accompany fraudulent transfers so commonly that their presence gives rise to an inference of intent"'" (*5706 Fifth Ave., LLC*, 108 AD3d at 590, quoting *Pen Pak Corp.*, 240 AD2d at

386, quoting *MFS/Sun Life Trust-High Yield Series v Van Dusen Airport Servs. Co.*, 910 F Supp 913, 935 [SD NY 1995]; *see also Dempster v Overview Equities*, 4 AD3d 495, 498 [2d Dept 2004], *lv denied* 3 NY3d 612 [2004]; *Matter of Shelly v Doe*, 249 AD2d 756, 758 [3d Dept 1998]). "Badges of fraud" from which fraudulent intent may be inferred include: (1) a close relationship between the parties to the transaction, (2) secrecy and haste in making the transfer, (3) the inadequacy of consideration, (4) the transferor's knowledge of the creditor's claim, or a claim so likely to arise as to be certain, and the transferor's inability to pay it, and (5) the retention of control of property by the transferor after the conveyance (*see Matter of Steinberg v Levine*, 6 AD3d 620, 621 [2d Dept 2004]; *Dempster*, 4 AD3d at 498; *Board of Mgrs. of 14 Hope St. Condominium v Hope St. Partners, LLC*, 40 Misc 3d 1215[A], 2013 NY Slip Op 51201[U], *7 [Sup Ct, Kings County 2013]).

As to these "badges of fraud," here, as discussed above, defendants are married, and it is undisputed that no consideration was given by Keren to Etay for the transfer. The transfer was made at the time that Etay was a defendant in the Kings County action and just two months before the judgment was rendered against him in that action. After the transfer, Etay retained possession and control over the East 12th property, continuing to live there as though nothing had changed (*see Matter of Steinberg*, 6 AD3d at 621).

As further proof of Etay's fraudulent intent, plaintiffs point to Etay's deposition testimony. Etay, at his deposition, admitted that he was aware, at the time of the transfer that he was a defendant in the Kings County action (Etay's Dep. Transcript at 39). Etay testified

that he made the transfer because of "legal advice," and because he was "confused over legal issues (*Id.* at 25, 39-40). He then admitted that the "legal issues" for which he sought legal advice included the Kings County action and the claim for legal fees by his attorneys in the lawsuit (*Id.* at 44). He specifically testified that there was no other motive for the transfer other than the Kings County action (*Id.* at 66-67). He stated that he had sought legal advice due to the lawsuit, and that everything, including the legal issues for which he had sought legal advice, sprouted out of the lawsuit and there was not anything which fell into the category of legal issues that did not fall under the umbrella of the lawsuit (*id.*).

Plaintiffs also point to Keren's deposition testimony as showing further proof of fraudulent intent. Keren similarly testified, at her deposition, that the March 5, 2010 transfer was based on legal advice (Keren's Dep. Transcript at 20-22). She testified that Etay told her that the transfer was necessary due to "certain pressures," but she was not sure what they were and did not seek any further explanation from him (*Id.* at 24-25). She admitted, however, that Etay told her "a little bit about how he owed a lawyer money due to the lawsuit (*Id.* at 31). She further admitted that there was no other motivation or intention that Etay had for transferring his interest in the East 12th Street property to her other than the legal problems that he was experiencing with plaintiffs in March 2010 (*Id.* at 35). She specifically testified that she was not aware of any other intention by Etay for transferring the East 12th Street property into her name aside from the Kings County action, and that she was aware of all of Etay's motivations behind the transfer (*Id.* at 35-36).

Plaintiffs, by the foregoing, have submitted clear and convincing evidence establishing that the conveyance the East 12th Street property by Etay to Keren was made with the intent to hinder, delay, or defraud their ability to collect on their judgment against Etay. Plaintiffs have thus made a prima facie showing that they are entitled to judgment as a matter of law on their cause of action to set aside the conveyances as fraudulent pursuant to Debtor and Creditor Law § 276, which would also entitle them to attorney's fees under Debtor and Creditor Law § 276-a. This shifted the burden to defendants to raise a genuine triable issue of fact.

Defendants, in opposition to plaintiffs' motion, attempt to raise a triable issue of fact by pointing out that in order to award attorney's fees under Debtor and Creditor Law § 276-a, it must be demonstrated that the conveyance of property was made by the debtor and received by the transferee with actual intent to hinder, delay, or defraud either present or future creditors (*see Key Bank of N.Y. v Diamond*, 203 AD2d 896, 898 [4th Dept 1994]). They argue that plaintiffs have not shown that Keren had the actual intent to hinder, delay, or defraud them when she received the East 12th Street property from Etay, and that there is a triable issue of fact as to whether she had such actual intent. They also argue that plaintiffs have not conclusively proven that there is no material issue of fact as to whether Etay had actual intent to hinder, delay, or defraud plaintiffs by his conveyance of the East 12th Street property to Keren. They contend that summary judgment should, therefore, not be granted in plaintiffs' favor on the issue of attorney's fees pursuant to Debtor and Creditor Law § 276-

a and that plaintiffs' remedy should be limited to reverting the ownership of the East 12th Street property back to them, as its owners prior to the alleged fraudulent conveyance.

In attempting to raise a triable issue of fact, Keren has now submitted an affidavit, in which she attempts to modify her deposition testimony. She asserts that she did understand that Etay was facing some legal difficulties, but she knew that he was facing them before the commencement of the Kings County action. This assertion, however, does not raise a triable issue of fact as to intent with respect to the March 5, 2010 transfer. The fact that Keren was already aware that Etay had legal difficulties prior to plaintiff's commencement of the Kings County action does not show that the transfer was not made to hinder, delay, or defraud either present or future creditors. Moreover, as previously noted, the transfer was made when the Kings County action was already pending.

Keren, in her affidavit, further asserts that her intent in accepting the transfer of the East 12th Street property from Etay was to assist in estate planning purposes since she knew Etay's business was not doing well. This assertion, however, directly contradicts her prior deposition testimony that there was no other motivation or intention that Etay had for transferring his interest in the East 12th Street property to her other than the legal problems that he was experiencing with plaintiffs in March 2010, that she was not aware of any other intention by Etay for transferring the East 12th Street property into her name aside from the Kings County action, and that she was aware of all of Etay's motivations behind the transfer (Keren's Dep. Transcript at 35). Keren's attempt to create a feigned issue of fact by making

statements in an affidavit which contradict her prior sworn deposition testimony must fail (*see Blocker v Filene's Basement #51-00540*, 126 AD3d 744, 746 [2d Dept 2015]; *Bluth v Bias Yaakov Academy for Girls*, 123 AD3d 866, 866 [2d Dept 2014]; *Zylinski v Garito Contr.*, 268 AD2d 427, 428 [2d Dept 2000]).

Furthermore, Keren does not assert in her affidavit, nor did she testify at her deposition, that the transfer was made in conjunction with the preparation of wills, or that she and Etay were organizing their assets as part of an actual estate plan to minimize death taxes or for any other legitimate reason. Nor does Keren state what legitimate estate planning purpose such a transfer would have in view of the fact that the East 12th Street property was held by Etay and Keren as tenants by the entirety (since the deed was silent as to the form of ownership and they are husband and wife) and, upon Etay's death, the East 12th Street property would have vested in Keren alone (*see* EPTL 6-2.2 [b]). Rather, Keren asserts that her intent was to assist in such "estate planning" for the reason that she knew that Etay's business was "not doing well," thereby confirming her intent to assist Etay in preventing his business creditors from reaching the East 12th Street property by making it unavailable to them and to thereby preserve it for his estate. Such an assertion demonstrates an intent to hinder, delay, and defraud Etay's creditors.

Keren, in her affidavit, additionally claims that she had no actual intent to defraud or hinder any creditors. However, this bare self-serving conclusory statement is insufficient to create a triable issue of fact (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

Etay has also submitted his affidavit in an attempt to create a triable issue of fact as to his intent with respect to the transfer of the East 12th Street property to Keren. He asserts, in his affidavit, that he sought legal advice from various counsel even before the Kings County action was commenced, and that the legal advice that he had sought had to do with the dissolution of his partnership with plaintiffs and not just the Kings County action that was later commenced by plaintiffs. This assertion by Etay that he may have had other creditors in mind at the time of the transfer which related to the dissolution of his business with plaintiffs, however, only serves to confirm his intent to hinder, delay, or defraud present or future creditors.

Etay further states, in his affidavit, that when he referred to "legal issues" in his deposition, he was referring not only to the Kings County action, but also to all of the issues that related to the dissolution of his business. This assertion, though, simply confirms that when Etay was referring to legal issues in his deposition, he was, in fact, referring to the Kings County action, as well as the issues that related to the dissolution of his business, evidencing his intent to avoid a judgment in the Kings County action, as well as any possible other creditors.

Etay also states, in his affidavit, that when he testified at his deposition that "[i]f there is a headline to the problem, it's the lawsuit," and that "[e]verything sprout out of the lawsuit," what he meant by these statements was that his business relationship with plaintiffs started falling apart. Etay, however, already admitted at his deposition that there was not

anything which fell into the category of legal issues that did not fall under the umbrella of the lawsuit (Etay's Dep. Transcript at 66-67), and, thus, this assertion merely raises a feigned issue solely designed to avoid the consequences of his earlier deposition testimony (*see Blocker*, 126 AD3d at 746; *Bluth*, 123 AD3d at 866; *Zylinski*, 268 AD2d at 428).

Etay, in his affidavit, additionally claims that his intent in transferring the East 12th Street property to Keren was only to ensure that she would be taken care of if his business failed and not to avoid the judgment in the Kings County action, and that his intent was not to delay, hinder, or defraud creditors. Etay's attempt to provide for Keren, rather than to pay his creditors, however, only confirms the existence of his fraudulent intent with respect to the transfer.

Thus, the assertions made in the affidavits by Etay and Keren fail to raise a genuine triable issue of fact sufficient to defeat plaintiffs' motion insofar as it seeks summary judgment in their favor on their Debtor and Creditor Law § 276 claim and the related claim for attorney's fees under Debtor and Creditor Law § 276-a. Indeed, the circumstances warrant the conclusion that the transfer of the East 12th Street property to Keren evinced actual intent to defraud (*see Kreisler Borg Florman Gen. Constr. Co., Inc.*, 58 AD3d at 696).

Therefore, based on the "badges of fraud" discussed above and defendants' failure to proffer any legitimate explanation for the conveyance, defendants' actual fraudulent intent is readily inferrable, and plaintiffs are entitled to a judgment setting the March 5, 2010 conveyance of the East 12th Street property aside under Debtor and Creditor Law § 276 (*see*

Machado v A. Canterpass, LLC, 115 AD3d 652, 654 [2d Dept 2014]; *Kreisler Borg Florman Gen. Constr. Co., Inc.*, 58 AD3d at 696; *Matter of CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership*, 25 AD3d 301, 303 [1st Dept 2006]; *B.M.H. Mgt., Inc. v 81 & 3 of Watertown, Inc.*, 13 AD3d 1182. 1182 [4th Dept 2004], *lv denied* 5 NY3d 701 [2005]; *Jensen v Jensen*, 256 AD2d 1162, 1163 [4th Dept 1998]; *Pen Pak Corp.*, 240 AD2d at 386; *Dillon v Dean*, 236 AD2d 360, 361 [2d Dept 1997], *lv dismissed* 89 NY2d 1085 [1997]; *Marine Midland Bank v Murkoff*, 120 AD2d 122, 133 [2d Dept 1986], *appeal dismissed* 69 NY2d 875 [1987]).

Furthermore, plaintiffs are entitled to an award of their reasonable attorney's fees pursuant to Debtor and Creditor Law § 276-a (*see 5706 Fifth Ave., LLC*, 108 AD3d at 591; *Kreisler Borg Florman Gen. Constr. Co., Inc.*, 58 AD3d at 696; *Matter of National Enters., Inc. v Clermont Farm Corp.*, 46 AD3d 1180, 1182 [3d Dept 2007]; *Cadle Co. v Organes Enters., Inc.*, 29 AD3d 927, 929 [2d Dept 2006]; *Skiff-Murray v Murray*, 17 AD3d 807, 811 [3d Dept 2005]; *Ford v Martino*, 281 AD2d 587, 588 [2d Dept 2001]; *Dillon v Dean*, 256 AD2d 436, 437 [2d Dept 1998]; *Polkowski v Mela*, 143 AD2d 260, 262 [2d Dept 1988]; *Apple Bank for Sav. v Contaratos*, 204 AD2d 375, 376 [2d Dept 1994]). The amount of reasonable attorney's fees to be awarded is generally determined based upon the following factors: "'time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee

charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved'" (*Dillon*, 256 AD2d at 437, quoting *Matter of Freeman*, 34 NY2d 1, 9 [1974]).

In support of their request for attorney's fees, plaintiffs have submitted the affirmation of Mark F. Heinze, Esq. (Mr. Heinze), a partner of Ofeck & Heinze, LLP, who is their counsel in this action. Mr. Heinze, in his affirmation dated October 1, 2014, sets forth his qualifications as an attorney who was admitted to the bar in New York in 1990 and has since been practicing in the area of commercial and real estate litigation. He states that Patrick J. Jordan, Esq. (Mr. Jordan), an associate at his law firm who works under his direct supervision, has assisted him in this matter.

Mr. Heinze sets forth that his billing rate is $400 per hour, and that Mr. Jordan's billing rate is $225 per hour, and he has submitted a billing statement (exhibit L to plaintiffs' moving papers, Document # 24), which describes, in detail, the work performed, the dates on which such work was performed, the time spent, and the amount billed. The amount of legal fees billed, which total $15,507.50, were for services, including the preparation and service of the summons and complaint, the investigation of the subject fraudulent conveyance, the depositions of defendants, appearance at the preliminary conference, and the preparation and filing of this motion. In addition, Mr. Heinze requests expenses for filing fees, motion fees, depositions, copying, Federal Express charges, and other office expenses,

totaling $1,281.80. Thus, the attorney's fees, together with the expenses, requested as of September 30, 2014, totaled $16,789,30.

Mr. Heinze, in a supplemental affirmation, updates his earlier invoice and annexes an invoice dated January 13, 2015, for legal services and expenses incurred from October 1, 2014 to December 17, 2014, which total an additional $6,241. These legal services include charges for the December 17, 2014 court appearance, a review of the opposition papers, drafting the reply brief, and various calls and e-mails, and these expenses include photocopies and Federal Express charges. Plaintiffs thus request a total award of attorney's fees and expenses in the amount of $23,030.30.

While plaintiffs are entitled to recover their reasonable attorney's fees, and have submitted the affirmation and supplemental affirmation of their counsel, together with appropriate documentation, as to the basis of the legal fees charged to them, a determination of plaintiffs' reasonable attorney's fees must be fixed by the court, and such a determination is generally made following a hearing on this issue. In advance of a hearing by the court, defendants may respond to plaintiffs' demand for fees, as set forth in Mr. Heinze's affirmation and supplemental affirmation, within 20 days of the date of service upon them of a copy of this decision and order with notice of entry thereon. If the amount to be awarded as reasonable attorney's fees and expenses cannot be agreed upon by plaintiffs and defendants, a hearing will then be scheduled.

Plaintiffs, in their motion, also seek an order, pursuant to CPLR 3217 (b), voluntarily dismissing their second cause of action for unjust enrichment, without prejudice, as duplicative. Since plaintiffs seek to withdraw this cause of action and defendants do not oppose their motion in this respect, dismissal of this cause of action is warranted.

CONCLUSION

Accordingly, plaintiffs' motion is granted insofar as it seeks: (1) partial summary judgment in their favor against defendants with respect to their claims under Debtor and Creditor Law § 273, § 272-a, and § 276, vacating, setting aside, and otherwise voiding as a fraudulent conveyance the transfer of Etay's interest in the East 12th Street property to Keren, (2) the voluntary dismissal of their second cause of action for unjust enrichment, and (3) an award of their reasonable attorney's fees to be paid by defendants pursuant to Debtor and Creditor Law § 276-a. Defendants shall promptly comply with the procedure set forth above to determine the amount of the reasonable attorney's fees to be awarded to plaintiffs. A hearing may be scheduled on the issue of the amount of plaintiffs' reasonable attorney's fees following compliance with the above procedure.

This constitutes the decision, order, and judgment of the court.

E N T E R,

J. S. C.

HON. CAROLYN E. DEMAREST