

<b>Rios v Straightfellow Farms, Ltd.</b>
2018 NY Slip Op 30787(U)
May 1, 2018
Supreme Court, New York County
Docket Number: 153591/2016
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 32  
-----X  
NILSA LYONS RIOS AND LEON LYONS REJINCOS,

**DECISION & ORDER**  
**Index No. 153591/2016**

Motion Seq: 005  
ARLENE P. BLUTH, JSC

Plaintiffs,

-against-

STRAIGHTFELLOW FARMS, LTD., DANIEL ROLING AND  
TAMARA LYONS CONCEPTION,  
  
Defendants.

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The motion for leave to reargue a specific portion of this Court’s previous decision on Motion Sequence 002 is granted and upon rearguement, the Court rescinds that portion of its previous decision and order.

**Background**

This familial dispute arises out of prior litigation in Puerto Rico between plaintiff Nilsa and her half-sister defendant Tamara. In 2003, plaintiffs started an action in Puerto Rico against Tamara and others in connection with the estate of their deceased father. Plaintiffs are brother and sister. Plaintiffs alleged in the Puerto Rico action that Tamara (and others) had embezzled millions of dollars from their father’s account before he died. Plaintiffs won a judgment against Tamara for over \$3 million in September 2010. The judgment was affirmed on appeal in 2012

and a petition for writ of certiorari (made to Puerto Rico's Supreme Court) was denied in 2013. Plaintiffs claim that they domesticated the judgment in 2015. This action was brought in April 2016.

In June 2007, during discovery in the Puerto Rico action and well before the 2010 judgment was entered, plaintiffs deposited Tamara. Tamara testified that the prior year, in 2006, she transferred her ownership of an apartment on West 56<sup>th</sup> Street in Manhattan to defendant Straightfellow Farms, Ltd. ("Straightfellow") \$915,000 (the "Apartment Transfer"). Straightfellow was a close corporation owned by both Tamara and her then-husband, defendant Daniel Roling ("Daniel").

Plaintiffs maintain that Tamara testified falsely at her deposition because she never received any cash proceeds from Straightfellow in the Apartment Transfer. Plaintiffs allege that they learned this during a 2015 deposition of Tamara.

### Discussion

"A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision" (*William P. Pahl Equipment Corp. v Kassis*, 182 AD3d 22, 27, 588 NYS2d 8 [1st Dept 1992]).

Plaintiffs move to reargue the portion of this Court's decision that dismissed certain allegations of the fourth cause of action brought pursuant to Debtor and Creditor Law § 273-a. The Court reasoned that because plaintiffs learned all the relevant facts about the Apartment Transfer in 2007, causes of action based on that transaction were time-barred. Plaintiffs stress

that there is a distinction between the statute of limitations for fraud and for a claim brought under Debtor and Creditor Law § 273-a. Plaintiffs insist that there must be a final judgment before a cause of action under this provision begins to accrue.

Defendants stress that plaintiffs had actual knowledge of the Apartment Transfer in 2007 and that under plaintiffs' theory they would be granted 13 years to attack the transfer as fraudulent.

Debtor and Creditor Law § 273-a provides that: "Every 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, 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."

"The existence of an unsatisfied judgment is an essential element of a cause of action pursuant to Debtor and Creditor Law § 273-a. Thus, as recently held by this Court . . . the six-year limitations period for a cause of action pursuant to Debtor and Creditor Law § 273-a begins to run on the date of entry of the judgment" (*Commrs. of State Ins. Fund v P.S.G. Constr. Co., Inc.*, 91 AD3d 643, 643-44 [2d Dept 2012] [internal quotations and citations omitted]).

A plain reading of Debtor and Creditor Law § 273-a reveals that this Court overlooked the fact that entry of a final judgment is required in order for this cause of action to accrue. Simply put, a defendant cannot fail to satisfy a judgment if there has not been a final judgment entered against him or her. It is impossible to give effect to every portion of this provision without finding that there must be a final judgment. And although plaintiffs knew of the Apartment Transfer, there is no violation of this provision Debtor-Creditor Law until a judgment

is unsatisfied. Therefore, the portions of the fourth cause of action relating to the Apartment Transfer are reinstated.

To the extent that defendants claim that plaintiffs failed to properly allege that there was no fair consideration, that claim fails. Plaintiffs allege that Tamara did not receive fair consideration in the Apartment Transfer and include a specific allegation that Tamara never received cash proceeds from the sale (*see* NYSCEF Doc. No. 56 ¶¶ 16-18 [Amended Complaint]). At the motion to dismiss stage, plaintiffs have stated a cause of action under Debtor and Creditor Law § 273-a relating to the Apartment Transfer.

### Summary

The Court acknowledges defendants' position that plaintiffs knew about the Apartment Transfer for more than six years prior to bringing the lawsuit. But this Court cannot rewrite a provision of the Debtor and Creditor Law based on plaintiffs' actual knowledge. And it makes sense to wait until there has been a final judgment – if defendant had satisfied the judgment, then plaintiff would not have a cause of action under Debtor and Creditor Law § 273-a.

In this case, although plaintiffs knew about the Apartment Transfer in 2007, they had not yet won a judgment against Tamara. People are allowed to buy and sell property while a lawsuit is pending, and it was possible that defendant would pay any judgment entered against her. Plaintiffs could not have brought a Debtor and Creditor Law § 273-a claim before they obtained a judgment. They could not even bring it until the judgment went unsatisfied. The fact is that there was no unsatisfied judgment until September 2010 and this case was brought in April 2016.

NYSCEF DOC. NO. 177

RECEIVED NYSCEF: 05/01/2018

Accordingly, it is hereby

ORDERED that the motion for leave to reargue the branch of this Court's decision on Motion Sequence 002 relating to the Apartment Transfer and Debtor and Creditor Law § 273-a is granted and upon reargument, the Court rescinds its previous decision only to the extent that those portions of the Fourth Cause of action that relate to the Apartment Transfer remain.

This is the Decision and Order of the Court.

**Dated: May 1, 2018**  
**New York, New York**



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ARLENE P. BLUTH, JSC

**HON. ARLENE P. BLUTH**  
**J.S.C.**