

Leventhal v 331 Dahill LLC

2022 NY Slip Op 30859(U)

March 9, 2022

Supreme Court, Kings County

Docket Number: Index No. 504304/2016

Judge: Lillian Wan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 17

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JULES LEVENTHAL; and HAJE, LLC; ESTHER
FRANKEL-ROSS; and JOSEPH GOLDSTEIN,

Plaintiffs,

Index No. 504304/2016
Motion Seq. Nos.: 14, 15, 16, 17

- against -

331 DAHILL LLC; MAYER HERSH NOSKOW, D.D.S.;
RAMCHAL 5, LLC; ELLIOT PINCUS
GALPERN; STEVEN CHAIM GOLDBERGER
a/k/a Steven Goldberg a/k/a Chaim Goldberger
a/k/a Chaim Tzvi Goldberger; and RACHEL
GOLDBERGER,

Defendants.

DECISION AND ORDER

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ELLIOT PINCUS GALPERN,

Third-Party Plaintiff,

- against -

SUCCESSFUL ABSTRACT, LLC and STEWART TITLE
INSURANCE COMPANY,

Third-Party Defendants.

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Recitation, as required by CPLR § 2219(a), of the papers considered in the review of
the motions for summary judgment.

The following e-filed documents, listed by NYSCEF document number (Motion 14) 479-492,
497-520, 611, 614, and 615; (Motion 15) 376-416, 521-545, and 617-618; (Motion 16) 417-448,
493, 546-561, and 623 -625; (Motion 17) 449-479; 494, 562-599, 609-610, 613, 619-622 were
read on these motion for summary judgment. After oral argument and upon careful
consideration of the parties’ submissions, the motions are decided as set forth below.

This action was commenced by the plaintiffs seeking to set aside allegedly fraudulent
conveyances made by the defendants, and to enforce their respective judgments against real
property located at 331 Dahill Road (Dahill), in the County of Kings, City and State of New
York. An order granting default against defendant Steven Chaim Goldberger¹ (Steven
Goldberger) was entered on May 24, 2018, and defendant Rachel Goldberger’s answer was
stricken by order entered on September 21, 2020.

¹ Steven Goldberger is also referred to as “Chaim” in the parties’ submissions.

The complaint alleges that the defendant, Steven Goldberger, is the beneficial owner of the subject property, and has engaged in a series of transactions consisting of fraudulent conveyances, in an effort to keep the property from the reach of his creditors, and that therefore the conveyances must be set aside under Article 10 of the New York Debtor-Creditor Law. More specifically, the plaintiffs seek to set aside the November 24, 2010 conveyance of the subject property by the Goldbergers to Dahill; Dahill's February 22, 2011 conveyance of the property to Mayer Hersh Noskow (Noskow); Noskow's grant of the \$712,000.00 mortgage to Dahill; the assignment of the \$712,000.00 mortgage to Elliot Pincus Galpern (Elliot Galpern); and Noskow's conveyance of the property to an entity called Ramchal 5, LLC (Ramchal) on June 8, 2012. The plaintiffs' complaint asserts causes of action for fraudulent conveyance, turnover and/or judicial sale of the property, a declaratory judgment and for a levy on the property by the sheriff because Steven Goldberger holds a substantial interest in the property, despite the conveyances.

By way of background, the plaintiffs allege that Steven and Rachel Goldberger purchased the subject property on or about October 3, 2006 in an arms-length transaction for \$954,000.00. Upon information and belief, the Goldbergers defaulted on the mortgage, and a mortgage foreclosure action ensued in or about 2009. On or about November 24, 2010, the Goldbergers conveyed the property to Dahill, an entity which the plaintiffs claim is a strawman controlled by Steven and Rachel Goldberger in order to defraud the mortgage holder.

The plaintiffs allege that on or about February 22, 2011, Dahill conveyed the property to defendant Noskow, and that false paperwork was created to make it appear as if \$950,000.00 was paid, when in fact no monies were exchanged. An individual by the name of Jacob Herbst, whom the plaintiffs allege had no interest in the Dahill entity, signed the deed on behalf of Dahill. Noskow allegedly financed the property with a mortgage from Dahill in the amount of \$712,000.00.

On or about May 16, 2011, Elliot Galpern, his father Louis Galpern, and his sister Michelle Abramoff, allegedly loaned \$200,000.00 to Dahill, which was evidenced by a promissory note by Dahill. On that date, Dahill also executed an assignment of the \$712,000.00 mortgage in favor of Elliot Galpern.

Thereafter, on or about June 8, 2012, Noskow conveyed the property to Ramchal (Ramchal) for no consideration, and it is alleged that the Goldbergers are the beneficial owners of the entity. The plaintiffs maintain that even after the conveyance Steven and Rachel Goldberger continue to reside at the property up to the present time.

In connection with the loan, Successful Abstract, LLC (Successful) issued a lender's policy of title insurance through Stewart Title Insurance Company (Stewart) to Elliot Galpern. On or about August 7, 2016, Stewart denied coverage and refused to defend him in this action. Defendant Elliot Galpern brought a third-party action against Stewart, seeking to compel Stewart

to defend and indemnify him in this action. The third-party action also included Successful as a third-party defendant. Successful allegedly examined the title of the mortgage assignment to Elliot Galpern, and issued a title insurance policy through Stewart.

The plaintiffs seek an order granting summary judgment (Motion #14) against defendants Dahill, Noskow, Ramchal, Elliot Galpern and Steven and Rachel Goldberger, on their first cause of action for fraudulent conveyance of the property, and seek to set aside the conveyances, arguing that they were a sham created by Steven Goldberger to shield the subject property from the reach of the judgment creditors.

Third-party defendant, Stewart, moves for summary judgment and dismissal of the third-party complaint (Motion #15) brought by Elliot Galpern. Stewart argues that it properly denied Galpern's claim, pursuant to the terms of the 2006 ALTA Loan Policy exclusions. Stewart denied coverage and refused to tender a defense, alleging, inter alia, that Galpern's \$200,000.00 loan was a fraud, and that, even if it were not a fraud, the loan policy did not insure against claims of prior fraudulent conveyances.

Stewart asserts that according to the deposition testimony of Louis Galpern, Elliot Galpern's father and the money lender in the transaction, both Elliot and Louis Galpern knew that when Louis Galpern gave the loan to Dahill, Steven Goldberger was using Dahill and Herbst as a "front" to shield the property from his creditors. Stewart argues that Elliot Galpern knew that Steven Goldberger secretly retained full ownership of the property, and failed to inform Successful or Stewart of that unrecorded interest. Stewart argues that Louis Galpern was acting on behalf of his son, Elliot, who concealed his alleged knowledge of Steven Goldberger's fraudulent scheme in order to obtain insurance coverage for losses arising from the fraud.

Notably, Stewart previously sought summary judgment against Elliot Galpern for termination of the title insurance policy issued to him. In a decision and order dated November 20, 2018, the Honorable Karen B. Rothenberg denied Stewart's motion, holding that the portions of the insurance policy submitted by Stewart were irrelevant and "insufficient to establish that Galpern does not have an insurable interest" (citation omitted). The Court also held that "Stewart's reliance solely on the allegations in plaintiffs' complaint, fails to demonstrate that this was a fraudulent transaction, barring coverage under the policy" (citation omitted). Judge Rothenberg denied Stewart's motion with leave to renew upon submission of a complete copy of the title insurance policy issued to Elliot Galpern, with all attachments and/or proof of the fraud alleged. In its decision, the Court also denied Elliot Galpern's cross-motion seeking an extension of time to reply to Stewart's cross-claim and/or compelling Stewart to accept his reply, finding that it had previously denied the identical relief in its order of May 17, 2018, and the relief was barred by the law of the case doctrine.

Thereafter, Stewart again moved, inter alia, for summary judgment on Elliot Galpern's third-party complaint. By decision and order dated January 26, 2021, Judge Rothenberg held,

inter alia, that Stewart had not demonstrated, “irrespective of the allegations in plaintiffs’ complaint, that the subject policy was void from its inception on account of fraud or other misconduct perpetrated by him or by his agents” (citation omitted).

Defendant Noskow seeks summary judgment (Motion #16) and an order declaring the deed, dated February 22, 2011, conveying the subject property to him by Dahill null and void because Noskow never participated in the alleged purchase, and the signatures on the transfer documents were all forgeries; declaring the mortgage, dated February 22, 2011, between Noskow and Dahill null and void, and canceling the mortgage because the signature on the instrument is a forgery; declaring the deed, dated June 8, 2012, between Noskow and Ramchal null and void because the signature on the deed is a forgery; and for dismissal of the complaint.

Defendant/third-party plaintiff Elliot Galpern seeks summary judgment (Motion 17) as to Successful and/or Stewart arguing that Stewart is obligated to defend and indemnify him in this action. In the instant motion, Elliot Galpern argues that he is entitled to summary judgment because he has demonstrated, prima facie, that Successful breached its contractual and fiduciary duties to him by, inter alia, failing to review the Dahill operating agreements; failing to confirm that Herbst was authorized to act on behalf of Dahill; and failing to disclose information allegedly in its possession concerning the ownership interest of another individual in Dahill. Alternatively, Elliot Galpern seeks leave to amend the verified answer, cross-claim and third-party complaint to plead additional causes of action against the Goldbergers sounding in fraud, conversion, aiding and abetting Steven Goldberger in the commission of a tort by Rachel Goldberger, Dahill, Noskow and Ramchal, and declaring the deed to Ramchal void; and declaring Elliot Galpern the holder of an equitable lien or equitable mortgage on the subject property.

Summary judgment is a drastic remedy and should be granted only when it is clear that no triable issues of fact exist. *Alvarez v Prospect Hosp.*, 68 NY2d 320 (1986). The moving party bears the burden of showing its prima facie entitlement to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of any material issue of fact. *See CPLR § 3212(b); Giuffrida v Citibank Corp.*, 100 NY2d 72 (2003). When a prima facie showing has been made, the burden shifts to the opposing party to produce sufficient evidentiary proof to establish the existence of material factual issues. *See Alvarez*, 68 NY2d at 324; *Zuckerman v City of New York*, 49 NY2d 557 (1980). Issue-finding rather than issue-determination is the key in deciding a summary judgment motion. *See Ruiz v Griffin*, 71 AD3d 1112 (2d Dept 2010).

Neither Dahill nor Ramchal have submitted opposition to any of the summary judgment motions herein. Further, the Goldberger defendants have defaulted in this action, and have not opposed the motions. In response to the plaintiffs’ motion, defendant Noskow joins in the plaintiffs’ requested relief to set aside the allegedly fraudulent conveyances, including the conveyance to Noskow, claiming that the signatures contained on the documents were forgeries.

To the extent that Noskow seeks to join in the plaintiffs' motion, he opposes any finding of wrongdoing against him that he was involved in the fraudulent transactions. In their reply, the plaintiffs join in Noskow's arguments, and argue that based on their aligned interest with Noskow in setting aside the mortgage and deed of February 22, 2011, and the deed dated June 8, 2012, the plaintiffs' motion should be granted against Noskow.

The plaintiffs' summary judgment motion (Motion 14) against the defaulting defendants, Steven and Rachel Goldberger, and defendants Dahill and Ramchal are granted as unopposed. Although Noskow has not opposed the plaintiffs' motion, the plaintiffs' summary judgment motion against Noskow seeking to set aside the allegedly fraudulent conveyances is denied, as issues of fact exist concerning Noskow's involvement in the transactions of February 22, 2011 and June 8, 2012, and whether the documents involved contained forged signatures purporting to be that of Noskow. In particular, according to Noskow's deposition testimony, he admitted that he agreed to help Steven Goldberger obtain a mortgage because he was experiencing financial hardship. Noskow also testified that he provided Steven Goldberger with financial documents that included bank statements and copies of Noskow's social security card and driver's license to assist Steven Golberger in obtaining the mortgage. Noskow further testified that Steven Goldberger came to his home with what appeared to be a mortgage application, and that he understood the ramifications of co-signing on a mortgage.

The plaintiffs have also failed to demonstrate their prima facie entitlement to summary judgment against Elliot Galpern, who has opposed their motion. In support of the motion against Galpern the plaintiffs rely heavily on Louis Galpern's testimony to argue that it evidences the fraud, and also argues that it was an illegal transaction because Louis Galpern was attempting to evade New York State laws applicable to lenders of residential loans, and that Elliot Galpern has "unclean hands." The deposition testimony of Louis Galpern demonstrates that it was his understanding that Steven Goldberger was the owner of the property; that the loan could only be made if Steven Goldberger transferred the property to another individual or entity; and that in order to obtain the loan Steven Goldberger transferred the property to Dahill. While it is true that the testimony showed that Louis Galpern was aware that Steven Goldberg, and not Dahill, was the actual owner of the property when the loan was made, that testimony does not demonstrate that Elliot Galpern had actual knowledge and/or intended to defraud the plaintiffs. Louis Galpern's knowledge of who the actual owner of the property was at the time of the assignment is not dispositive of whether or not Elliot Galpern actually engaged in, or was aware of, the alleged fraud when the transaction took place on or about May 16, 2011.

Stewart's motion (Motion 15) is denied, as it is barred by the law of the case, based on the January 26, 2021 decision and order of Judge Rothenberg, finding that Stewart had failed to demonstrate that the subject loan policy was void from its inception based on fraud or misconduct by Elliot Galpern or his agents. *See Hampton Val. Farms, Inc. v Flower & Medalie*, 40 AD3d 699 (2d Dept 2007). The doctrine applies to legal determinations that were resolved on the merits in a prior decision. *See Ramanhathan v Aharon*, 109 AD3d 529 (2d Dept 2013).

Even if this Court was to consider Stewart's motion, to the extent that Stewart now relies on Louis Galpern's testimony to demonstrate Elliot Galpern's participation and/or knowledge of the fraud, that reliance is misplaced. The arguments made by Stewart concerning Elliot Galpern's alleged knowledge and participation in the fraud based on Louis Galpern's testimony are insufficient to establish, as a matter of law, that Elliot Galpern engaged in fraud and intentionally concealed his knowledge of the true owner of the property when he purchased the title insurance.

Noskow's motion (Motion 16) seeking dismissal of the complaint is denied, as Noskow does not oppose the plaintiffs' motion. The prong of Noskow's motion seeking to cancel and declare null and void the mortgage and deed of February 22, 2011 and the deed of June 8, 2012, which is opposed by Elliot Galpern, is also denied. As set forth above, despite Noskow's assertions that he had nothing to do with either of the transactions, issues of fact exist concerning Noskow's involvement in those transactions, and whether the signatures on the documents, purported to be Noskow's, are forgeries.

To the extent that Elliot Galpern seeks summary judgment against Stewart, the motion must be denied based on Judge Rothenberg's decision and order dated May 17, 2018, denying Elliot Galpern's motion seeking an order directing Stewart to defend him in this action, which constitutes the law of the case. *See Hampton Val. Farms, Inc. v Flower & Medalie*, 40 AD3d 699. Elliot Galpern's summary judgment motion against Successful must also be denied, as he has failed to submit evidence sufficient to establish, as a matter of law, that Successful had any knowledge of Steven Goldberger's ownership in the property and allegedly fraudulent conveyances, or that the Galperns conveyed that information to Successful. Likewise, there is no evidence that Successful knew, or should have known, that Herbst was not authorized to execute the subject assignment. In her affidavit, Deena Gestetner (Gestetner), the Vice-President of Successful, submitted in opposition to Elliot Galpern's motion, avers that it is not standard practice to investigate the signing authority of one who executes an assignment of mortgage. Gestetner also asserts that Successful was never made aware that Goldberger still retained an interest in Dahill after having conveyed the premises in 2010, and that contrary to Elliot Galpern's contentions, Successful also had no duty to search its records in connection with the 2010 closing to ascertain the identities of Dahill's members. Further, Successful argues that the Galperns allegedly had the knowledge that Steven Goldberger continued to hold an ownership interest in the property, and did not convey that information to Successful when Elliot Galpern sought to purchase the title insurance policy. As such, issues of fact exist that preclude a finding of summary judgment in Elliot Galpern's favor as to Successful.

Defendant Elliot Galpern is also not entitled to its alternative relief, seeking leave to amend his answer, cross-claim and third-party complaint, as he has failed to provide a reasonable excuse for seeking this relief, long after discovery has been completed and summary judgment motions have been made. *See Fischer v RWSP Realty, LLC*, 53 AD3d 595 (2d Dept 2008). Moreover, an amendment at this late stage of the proceedings would be unduly prejudicial. *See Yong Soon Oh v Hua Jin*, 124 AD3d 639 (2d Dept 2015).

The remaining contentions are without merit.

Accordingly, it is hereby

ORDERED, that the plaintiffs' motion (Motion 14) is **GRANTED** as unopposed as to 331 Dahill LLC, Ramchal 5, LLC, Steven Chaim Goldberger and Rachel Goldberger; and **DENIED** as to Mayer Hersh Noskow, D.D.S. and Elliot Pincus Galpern; and it is further

ORDERED, that defendant Stewart's motion for summary judgment (Motion 15) on the third-party complaint is **DENIED**; and it is further

ORDERED, that the summary judgment motion (Motion 16) of defendant Mayer Hersh Noskow, D.D.S., is **DENIED**; and it is further

ORDERED, that the summary judgment motion (Motion 17) of defendant Elliot Pincus Galpern, is **DENIED** in its entirety.

This constitutes the decision and order of the Court.

Dated: March 9, 2022



HON. LILLIAN WAN, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020.