

**Lucas v Johnson**

2022 NY Slip Op 32083(U)

June 27, 2022

Supreme Court, Kings County

Docket Number: Index No. 527648/2019

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, Brooklyn, NY 11201, on the \_\_\_ day of \_\_\_\_\_ 2022.

**JUN 27 2022**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

**DECISION/ORDER**

-----X  
DORIS LUCAS,

Plaintiff,

Index No.: 527648/2019  
Motion Date:  
Motion Cal. No.:  
Mot. Seq. 3-4

-against-

MICHELE JOHNSON, HEATH JOHNSON, and KIARAH CRUZ,

Defendants.

-----X

After oral argument and a hearing on the record, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYSCEF DOC. #
<p>Plaintiff's Notice of Motion for Partial Summary Judgment (Motion Sequence #3) dated January 31, 2022, seeking: 1) Pursuant to C.P.L.R. § 3212, awarding Plaintiff partial summary judgment on her claims for a constructive trust and constructive fraud; and 1. Declaring pursuant to R.P.A.P.L §1501 that Plaintiff Doris Lucas is the sole owner in fee simple of the subject property; 2. Setting aside the deed, dated October 2, 2018, and recorded at the Office of the City Register on October 11, 2018, as null, void, unenforceable, and with no legal effect, and that it be canceled and discharged of record; 3. Setting aside the deed, dated October 15, 2018, and recorded at the Office of the City Register on October 17, 2018, as null, void, and unenforceable, and with no legal effect, and that it be canceled and discharged of record; 4. Directing that defendants Michele Johnson, Heath Johnson, and Kiarah Cruz execute all necessary documents to effectuate the final judgment of this Court; Attorney Affirmation of Leslie Salzman, affirmed on January 31, 2022;</p> <p>Exhibit A-Affidavit of plaintiff Doris Lucas sworn to on January 11, 2021; Exhibit B-Deed dated July 17, 1980 from Walter Lynch to Doris Lucas; Exhibit C-Deed dated September __ (notarized 9/25/1985) From Doris Lucas to Alexander Lucas and Doris Lucas, his wife; Exhibit D1-Summons and Complaint; Exhibit D2-Defendants' Answer; Exhibit E-Deposition of Michele Johnson held on 4/15/2021 (Partial);</p>	

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<p>Exhibit F-Kings County Divorce Summons dated 1/15/2017;                  Exhibit G-South Carolina Divorce Order dated April 12, 2018;                  Exhibit H-Letter dated 8/8/2017 from plaintiff's prior counsel to plaintiff's husband's counsel in South Carolina informing him of pending Kings County Divorce Action;                  Exhibit I-Deed dated 4/13/2017 from Alexander Lucas to Michele H. Johnson and Heath Z. Johnson, her husband;                  Exhibit J-Subpoena Response from Andrew Black, sworn to on 4/8/2021                  Exhibit K-NYC-RPT dated 4/13/2017;                  Exhibit L-NYC-RPT dated 10/2/2018;                  Exhibit M-Deposition Transcript of Kiarah Cruz held on 4/14/2021 (Partial);                  Exhibit N-Heath Johnson held on 4/14/2021 (Partial);                  Exhibit O-Plaintiff's Last Will and Testament dated 2/16/2018;                  Exhibit P-NYC Final Assessment of Property;                  Exhibit Q-Deed dated 10/2/2018 from Doris Lucas to Kiarah Cruz;                  Exhibit R-Affidavit of Andrew S. Black sworn to on 1/21/2021;                  Exhibit S-Deed dated 10/15/2018 from Kiarah Cruz to Michele H. Johnson and Heath Z. Johnson, as husband and wife;                  Exhibit T-Affidavit of Michele Johnson, sworn to on 1/20/2021;                  Exhibit U-Statement of Material Facts;</p> <p>Memorandum of Law.....</p>	<p>49-74</p>
<p>Defendants' Attorney Affirmation on behalf of defendants Johnson, in Opposition, of Kent Gross, Esq., affirmed on 3/16/2022;</p>	<p></p>
<p>Exhibit A-Deed dated 6/30/1980 from Eldica Crawford to Doris Lucas.....</p>	<p>78</p>
<p>Defendants Michele Johnson and Heath Johnson's Motion, by Order to Show Cause dated 4/18/2022 (Motion Sequence #4; NYSCEF #111):                  1) Suspending the Notice of Entry and Order dated January 27, 2022, (i) enjoining Defendants from entering upon, using, or occupying, or authorizing others to enter upon, use, or occupy 20 Hancock St., Brooklyn, New York 11216 (hereinafter "the subject property"); (ii) preliminarily enjoining Defendants from otherwise interfering with the quiet enjoyment of the subject property by Plaintiff and her son, pending resolution of this litigation; (iii) ordering Defendants to remove any belongings from the subject property and turning over keys to any locks they have changed to Defendants' attorney, who will then give them to Plaintiff's Counsel; (iv) preliminarily enjoining Defendants from transferring, leasing, selling, or encumbering the subject property pending the resolution of this litigation; and (v) ordering that Plaintiff shall be responsible for paying property taxes, homeowner's insurance and the gas, electric and water utilities for the subject property during the pendency of the preliminary injunction due to a change in circumstances subsequent to the order; 2) Ruling on the motion for partial summary judgment dated January 31, 2022; and for other relief; and the court ordering the parties to be ready to proceed at a hearing regarding the preliminary injunction to determine: 1) whether a confidential relationship existed between any of the parties; 2) whether the preliminary injunction should continue; and 3) for such other appropriate relief.</p>	<p></p>

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Defendants' Attorney Affirmation on behalf of defendants Michele Johnson and Heath Johnson of Kent Gross, Esq., affirmed on April 8, 2022; Affidavit of Josephine Lucas, sworn to on 4/6/2022; Affidavit of Michele Johnson, sworn to on 4/4/2022;	81, 94-98
JOINT DEFENSE AND COMMON INTEREST AGREEMENT dated 4/1/2022	101
Attorney Affirmation in support of Defendants' Michele and Heath Johnson, on behalf of Defendant Kiarah Cruz, of Russel Morgan, Esq., affirmed on 4/8/2022 (NYSCEF# 89); Affidavit of Josephine Lucas, sworn to on April 6, 2022; Affidavit of Kiarah Cruz, sworn to on 4/8/2022; Affidavit of Michele Johnson, Sworn to on 4/4/2022; "Exhibit C" (NYSCEF# 93).....	89-93
Plaintiff's Attorney Affirmation of Leslie Salzman, Esq., in Opposition to OSC, affirmed on 4/12/2022 (NYSCEF # 1050);  Exhibit A-NYC Notice of Eligibility Determination dated 8/24/2018 ("You have sufficient mental and physical capacity"); Exhibit B-Defendant Kiarah Cruz's Notice of Appearance of Russel Morgan, Esq., dated 3/16/2022.....	102-107

MONTELIONE, RICHARD J., J.

Plaintiff was 88 years old at the time this action was commenced on December 19, 2019 pursuant to RPAPL §1515 to quiet title to real property located at 20 Hancock Street, Brooklyn, NY 11216 ("subject premises"). Plaintiff seeks to void two deeds, one of which completely divested plaintiff of her ownership interest on October 2, 2018, when plaintiff transferred all her interest to her granddaughter Kiarah Cruz who two weeks later transferred her interest to her mother, Michelle H. Johnson, one of plaintiff's children. Heath Johnson is Michele H. Johnson's husband (plaintiff's son-in-law) and Kiarah Cruz is Michele Johnson's daughter (plaintiff's granddaughter).

The court issued a preliminary injunction by order dated January 27, 2022, enjoining the defendants from interfering with plaintiff's possession and quiet enjoyment of the subject premises pending resolution of this matter. (NYSCEF # 74).

Plaintiff had six children, only five of which were alive at the time of the two deed transfers: Michael Lucas, Alexis Blair, Timothy Lucas, Alexander Lucas Jr., and Defendant Michele Johnson. The following is the relevant legal chain of title:

DATE	INSTRUMENT	TRANSFEROR OR DIRECTIVE	TRANSFeree
7/31/1980 (recorded)	Deed	KING EDWARDS, ELDICA CRAWFORD AND WALTER LYNCH	DORIS LUCAS
9/25/1985	Deed	DORIS LUCAS	ALEXANDER LUCAS and DORIS LUCAS, his wife.

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4/13/2017	Deed	ALEXANDER LUCAS	MICHELE H. JOHNSON and HEATH Z. JOHNSON, her husband.
10/2/2018	Deed	DORIS LUCAS	KIARAH CRUZ
10/15/2018	Deed	KIARAH CRUZ	MICHELE H. JOHNSON and HEATH Z. JOHNSON, as husband and wife.

Plaintiff disinherited Alexander Lucas and Michele H. Johnson by Last Will and Testament executed on February 16, 2018, about eight months before the transfer of the subject premises to her granddaughter who then transferred it to plaintiff's disinherited daughter. Under this same Last Will and Testament, her other children were given a share of her estate including the subject premises.

#### Hearing

Plaintiff by motion dated January 31, 2022, moves for summary judgment on her claims for a constructive trust, and constructive fraud, declaring that plaintiff is the sole owner in fee simple of the subject property and setting aside the deed, dated October 2, 2018, and October 15, 2018. Defendants move by Order to Show Cause dated April 18, 2022, *inter alia*, to suspend the preliminary injunction, and for a ruling on the motion for partial summary judgment dated January 31, 2022.

The court held a hearing on May 4, 2022, and June 22, 2022, and heard testimony from plaintiff Doris Lucas, Michele Holly Johnson, Kiarah Cruz and Andrew Black, Esq.

After a review of the motion papers, exhibits annexed to those papers, the testimony of the witnesses, and arguments of counsel, the court finds the following:

1. Upon the death of Alexander Lucas sometime in July 2018, plaintiff became owner in fee simple absolute as a matter of law because Alexander Lucas and plaintiff were married and therefore tenants in the entirety and notwithstanding that Alexander Lucas transferred his interest to his daughter Michelle Johnson on April 13, 2017, as a tenant of the entirety, his full property interest reverted to plaintiff upon Alexander Lucas' death (*see Butt v. Malik*, 114 A.D.3d 716, 980 N.Y.S.2d 516, 2014 N.Y. Slip Op. 00957, 2014 WL 552999 [AD 2<sup>nd</sup> Dept 2014]);
2. There was a close confidential relationship between plaintiff and defendant daughter, granddaughter and son-in-law and the burden is upon the defendants to "...prove the transaction (was)

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fair and free from undue influence” (*citations omitted*), *see Hearst v. Hearst*, 50 A.D.3d 959, 962, 857 N.Y.S.2d 596, 600, 2008 N.Y. Slip Op. 03590, 2008 WL 1823301 (AD 2<sup>nd</sup> Dept 2008);

- 3. The subject real property was assessed by New York City of having a value of \$2.5M for 2020-2021 and there was no consideration paid for the transfer of interest from plaintiff to her granddaughter;
- 4. The testimony of Andrew Black, Esq., who prepared the deed which transferred the property was contacted by plaintiff’s daughter, did not meet personally at any point with plaintiff, was paid by plaintiff’s daughter, declined to prepare the deed transferring the ownership interest from plaintiff’s granddaughter to plaintiff’s daughter and was unaware that plaintiff disinherited plaintiff’s daughter eight months earlier;

Based on the foregoing, it is

ORDERED that defendants’ motion is DENIED (Motion Sequence #4) in its entirety as they have failed to show that the transfer of ownership by deed from plaintiff to her granddaughter Kiarah Cruz, by deed dated October 2, 2018, was for adequate consideration or otherwise met their burden of showing that the transfer was fair and free of undue influence; and it is further


ORDERED that plaintiff’s motion for summary judgment on her claims for constructive fraud, declaring that plaintiff is the sole owner in fee simple of the subject property and setting aside the deed, dated October 2, 2018, and October 15, 2018, as null, void, unenforceable, and with no legal effect and requesting that it be canceled and discharged of record is GRANTED (Motion Sequence #3); and it is further

ORDERED that plaintiff’s motion for summary judgment on her claims for a constructive trust, is DENIED as there is no express or implied promise or reliance on the promise (*Sarker v. Das*, 203 A.D.3d 973, 164 N.Y.S.3d 213, 2022 N.Y. Slip Op. 01826, 2022 WL 816081 [AD 2<sup>nd</sup> Dept 2022]).

All other requests for relief by any party are deemed DENIED.

Settle order on notice.

This constitutes the decision and order of the Court.

  
 Hon. Richard J. Montelione

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 NYSCEF