

**Yakobson v Igal Ocean, LLC**

2024 NY Slip Op 32869(U)

July 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 529862/2023

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS: PART 13**

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RIMMA YAKOBSON,

Plaintiff,

-against-

Cal. No.: 40 (MSQ No.:2)  
Cal. No.: 41 (MSQ No.: 1)

IGAL OCEAN, LLC and 2029 OCEAN AVE LLC,

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**DECISION & ORDER**

Defendants.  
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**Recitation, as required by CPLR 2219(a), of the papers considered in the review of Plaintiff’s order to show cause for injunctive relief and Defendants’ motion to dismiss: NYSCEF Doc. Nos.: 9 – 12; 16 – 38.**

Upon the foregoing documents and following oral argument, Defendants’ motion to dismiss the complaint pursuant to CPLR 3211(a)(5) (MSQ No.: 2) and Plaintiff’s Order to Show Cause for a preliminary injunction (MSQ No.: 1), are decided as follows:

Plaintiff is a judgment creditor as only against Defendant IGAL OCEAN, LLC (hereinafter “IGAL”). A default judgment in the amount of \$83,788.25 was entered in Kings County against Defendant IGAL on October 21, 2010 (hereinafter “Judgment”). On the date of the subject Judgment, Defendant IGAL was the titled owner of the properties at 2025 Ocean Avenue, Brooklyn, NY and 2029 Ocean Avenue, Brooklyn, NY (hereinafter “Properties”). The Properties were transferred to Defendant 2029 OCEAN AVE LLC (hereinafter “OCEAN”), a non-judgment debtor, on March 28, 2017 (“2017 Transfer” or “Transfer”).

**Assertions of Parties**

More than six years after the March 28, 2017, transfer of the Properties, Plaintiff

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commenced the instant action on October 16, 2023, asserting that the above referenced Properties were fraudulently conveyed. Defendants interposed an answer on December 11, 2023. Plaintiff, by way of order to show cause, sought a temporary restraining order (hereinafter “TRO”) to enjoin and restrain Defendants from selling and/or transferring their ownership interest in the Properties. The Court (Hon. Kenneth P. Sherman), on January 3, 2024, in signing Plaintiff’s order to show cause, declined Plaintiff’s request to issue a TRO at that time.

Defendants now moves this Court to dismiss Plaintiff’s verified complaint, pursuant to CPLR 3211(a)(5), in that no cause of action may be maintained against Defendants because the action was not timely commenced under the applicable statute of limitations.

**Void Ab Initio vs Voidable:**

While Plaintiff had a statutory ten-year judgment lien on the Properties, Plaintiff failed to execute on that lien during the statutory ten-year period. Consequently, pursuant to CPLR 5203(a), the lien expired on October 21, 2020. Additionally, Plaintiff did not attempt to extend the lien prior to its expiration pursuant to CPLR 5203(b). Nor did Plaintiff levy execution on the Properties within the ten-year life of the docketed lien. Plaintiff also did not institute an action to set aside the 2017 Transfer within the six year statute of limitations to bring an action alleging fraudulent transfer of the Properties.

Plaintiff argues that the 2017 Transfer was void *ab initio*, and that she is entitled to enforce her statutory lien under CPLR 5203(a) indefinitely, including after her statutory lien ceased to exist on October 21, 2020. Further, while Plaintiff concedes that the action was not commenced within six years of the subject transfer, Plaintiff argues that she can avail herself of the two-year reasonable discovery provision governing actions for fraud. Defendants, in turn, contend that the

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2017 Transfer was not void *ab initio* but merely voidable as to the judgment creditor. Defendants assert that Plaintiff failed to (i) timely bring an action under CPLR 5203(a) before her lien lapsed on October 21, 2020. Defendants further contend that Plaintiff also failed to extend the lien and failed to levy execution within the ten-year statutory time period of CPLR 5203(a) and CPLR 5203(b). Additionally, Defendants argue that Plaintiff failed to bring the action to set aside the 2017 Transfer under the fraudulent conveyance statutes before her time expired on March 28, 2023, in spite of having actual prior notice of the 2017 Transfer for more than five years prior to her commencement of the instant action. Consequently, Defendant contends that the two-year discovery provision is unavailable to Plaintiff.

### **COURT'S FINDINGS**

This Court finds that the 2017 transfer was not void but voidable (*Standard Nat'l Bank v. Garfield Nat'l Bank*, 70 A.D. 46, 47-48 [1st Dept 1902] ["A transfer of property by a debtor, fraudulent as to creditors, is not void *ab initio*, but voidable only at the election of the creditors."]) The Court of Appeals opined in *Faison v. Lewis*, 25 NY3d 220 (2015) that:

A forged deed that contains a fraudulent signature is distinguished from a deed where the signature and authority for conveyance are acquired by fraudulent means. In such latter cases, the deed is voidable. The difference in the nature of the two justifies this different legal status. A deed containing the title holder's actual signature reflects "the assent of the will to the use of the paper or the transfer ... though that assent may have been induced by fraud, mistake or misplaced confidence." (*citing Marden v Dorothy*, 160 NY 39, 50 [1899]).

(*Id* at 225).

Therefore, contrary to Plaintiff's assertion that the subject transfer was void *ab initio*, it was instead voidable and subject to the appropriate statutory limitations period.

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### **Statute of Limitations**

Where an alleged fraudulent transfer takes place during the ten-year statutory lien period, the judgment creditor is afforded rights under CPLR 5203(a) or fraudulent conveyance statutes (Debt. & Cred. Law §§ 270–281).<sup>1</sup> However, there is still the issue of the role that the statute of limitations plays in regard to the judgment creditor’s attempt to collect on the debt. As the Court of Appeals noted in *Importers' & Traders' Nat'l Bank v Quackenbush*, 143 NY 567 (1894) “every remedy which a creditor has by law for the enforcement of the debt becomes barred by the lapse of some definite period of time, and when barred it cannot be revived at his mere will and pleasure without some new proceeding for that purpose of which the debtor has notice” (*Id* at 570).

(i) **CPLR 5203**

CPLR 5203(a) states that the docketing lien has a shelf life of no more than ten years unless extended pursuant to CPLR 5203(b). In the instant action, Plaintiff’s options concerning the Properties were to either to proceed with execution of the judgment lien, which must be done within the ten-year period from judgment docketing unless extended by the court pursuant to CPLR 5203(b), or bring an action for fraudulent conveyance, which is subject to the applicable statute of limitations period under CPLR 213. Here, the record is clear, Plaintiff neither extended the lien, nor did she levy execution on the Properties within the ten-year statutory life of the docketing of the lien. As such, any action under CPLR 5203(a) is to no avail.

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<sup>1</sup> Plaintiff in her complaint asserts violations of Debt. & Cred. Law §§ 273; 273-a, 275; 276; 276-A. But note, the beforementioned debtor and creditor laws were repealed April 4, 2020, and replaced by “The New York Uniform Voidable Transaction Act (effective date April 4, 2020)

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(ii) **Statute of Limitations**

In New York, the time in which to bring an action for fraudulent conveyance is six years (CPLR 213[1]; CPLR 213[8] [*see also Maio v Gardino*, 267 AD2d 816 [3d Dept 1999]; *Durazinski v Chandler*, 41 AD3d 918, 919 [2007] [“The gravamen of the complaint is that the conveyance was fraudulently made by defendant and it is, therefore, governed by a statute of limitations which is the greater of six years from the date the cause of action accrued or two years from the time the plaintiff, or the person under whom the plaintiff claims, discovered the fraud or could with reasonable diligence have discovered it.” [*citations omitted*]).

While Plaintiff concedes that the action was not commenced within six years of the subject transfer, Plaintiff argues that she can avail herself of the two-year reasonable discovery provision governing actions for fraud because she did not have notice of the 2017 Transfer. However, in the instant action, this Court finds that more than five years prior to the commencement of this action, Plaintiff was a Defendant in a foreclosure action relating to the subject Properties: **Index No.: 508521/2018 (hereafter “2018 Foreclosure”)**. The allegations in the 2018 Foreclosure action complaint included the following:

The mortgaged premises being known as and by street address 2025 OCEAN AVE, BROOKLYN, NY 11230, bearing tax map designation: Block: 6767 Lot(s): 77 was thereafter transferred to 2029 OCEAN AVENUE LLC by deed dated March 28, 2017 recorded in the City Register of the City of New York, County of Kings on April 28, 2017 in CRFN 2017000162332.

(NYSCEF Doc. No.: 37: Summons and Complaint in the 2018 Foreclosure proceeding, para 4c).

“2029 OCEAN AVENUE LLC; is named herein as necessary party defendants because they acquired ownership interests in the subject premises by deed dated March 28, 2017, and recorded on April 28, 2017 in CRFN 2017000162332. That their interest in the said premises was acquired after Plaintiff’s mortgage was recorded, therefore Plaintiff’s mortgage has priority over said defendants’ interest.”

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(NYSCEF Doc. No.: 37: Summons and Complaint in the 2018 Foreclosure proceeding, Schedule B).

The record in this case supports a finding that Elliot Katsnelson, Esq. was served with the subject pleading, that Plaintiff, through counsel, appeared in that foreclosure action by filing an answer, and that the answer was personally verified by Plaintiff. It is axiomatic that when a party personally verifies a responsive pleading, that party is charged with knowledge of the allegations to which she is responding. Nonetheless, Plaintiff argues that she should not be charged with the knowledge of the substance of the complaint in the 2018 Foreclosure action because she does not speak English and submits an affidavit to that effect without an accompanying affidavit of translation.<sup>2</sup>

Plaintiff's argument that she should be excused and not be charged with knowledge of the complaint to which she personally verified an answer is unpersuasive. Aside from Plaintiff statement under oath that the pleading was true to her knowledge, notice to her attorney on this issue is also notice to Plaintiff (*e.g.*, *Farr v Newman*, 14 NY2d 183, 187 [1964]; *People ex rel. Knowles v Smith*, 54 NY2d 259, 266 [1981]; *Center. v Hampton Affiliates, Inc.*, 66 NY2d 782, 784 [1985]). This Court thus finds that the evidence in the record before this Court establishes that more than two years prior to the commencement of the instant action, Plaintiff knew or reasonably should have known of the underlying transfer which is now the subject of this action and Plaintiff cannot avail herself of the 2 year discovery rule. As a result, all of Plaintiff's claims based in fraud are time-barred.

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<sup>2</sup> In their affirmation in reply, Defendants point out that Plaintiff claims to speak and read very little English. However, the affidavit submitted by her does not contain an affidavit of translation required by CPLR 2101(b). The absence of this affidavit of translation would appear to render Plaintiff's affidavit inadmissible (*Martinez v. 123-16 Liberty Ave. Realty Corp.*, 47 AD3d 901, 902 [2d Dept 2008]).

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Since the action must be dismissed, the issue of Plaintiff's application for a preliminary injunction is rendered moot.

Upon the aforementioned reasons, it is


**ORDERED**, that Defendants' motion to dismiss Plaintiff's Complaint is **GRANTED**, and the Complaint is dismissed. It is further

**ORDERED**, that Plaintiff's Order to Show Cause is **DENIED** in its entirety. It is further

**ORDERED**, that all applications not specifically addressed herein is denied.

This constitutes the decision and order of this Court.

Dated: July 25, 2024

  
HON. RUPERT V. BARRY, J.S.C.