

**Grady v Grady**

2024 NY Slip Op 33062(U)

August 20, 2024

Supreme Court, Kings County

Docket Number: Index No. 521830/2022

Judge: Lisa S. Ottley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS – PART 24

JOSEPH GRADY, individually and as proposed  
Administrator of the Estate of Roger Grady, Sr.,

Plaintiff,

-against-

VICTOR GRADY, BERNADETTE GRADY, SOLOMON  
PAVEL, CHAIM J. PAVEL, LOAN DEPOT. COM, LLC,  
MERS, INFINITY LAND SERVICES, LLC, FIDELITY  
NATIONAL TITLE INSURANCE COMPANY, COMPASS,  
INC., and RONIT ABRAHAM,

Defendant(s).

Mot. Seq. No. 6

Index No. 521830/2022

**DECISION and ORDER**

HON. LISA S. OTTLEY, J.S.C.

Recitation as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion for Leave to Renew/Reargue, Amend Caption and Consolidate submitted on March 18, 2024.

Papers	Numbered
Notice of Motion and Affirmation.....	1, 2 and 3 [Exh. A-B]
Affirmation in Opposition.....	3; 4 [Exh. A-B]; 5[Exh. 1-4]
Memoranda of Law in Opposition.....	5 and 6

Plaintiff seeks leave to renew and reargue the Court’s decision and order dated October 13, 2023, and upon granting the plaintiff’s leave to renew and reargue, denying defendant’s motion and restoring the plaintiff complaint in its entirety, amending the caption, and consolidating the actions. Defendants, Solomon Pavel, Chaim J. Pavel, Loan Depot.com, LLC, Mers, Infinity Land Services, LLC, Fidelity National Title Insurance Company, Compass, Inc., and Ronit Abraham oppose plaintiff’s motion, as it relates to each defendant individually, on the grounds that plaintiff’s motion to renew is not based upon new facts not offered on the prior motion that would change this Court’s prior determination, nor does it establish that the court overlooked or misapprehended the law.

This matter was heard by the Hon. Karen Rothenberg who on October 13, 2023, issued a decision and order granting the moving defendants' respective motions [seq. nos. 1,2,3,4 and 5] to dismiss the plaintiff's complaint in its entirety, including the defendants' Compass and Abraham's motion to dismiss all crossclaims asserted against them.

After careful consideration of the moving papers, opposition and reply thereto, the court finds as follows:

Plaintiff alleges that the Estate of Roger Grady, Sr., and the defendants, Victor and Bernadette Grady, each possess a 50% interest in the real property located at 77 Somers Street, Brooklyn, New York. In 2022, the 100% ownership interest of the property was sold to the co-defendants, Solomon and Chaim Pavel. Plaintiff asserts that defendants, Victor and Bernadette Grady, Solomon and Chaim Pavel, Infinity Land Services, LLC, Fidelity National Title Insurance Company, Compass Inc., and Ronit Abraham are parties to a fraudulent conveyance, based on the allegation that they ignored, whether intentionally or negligently, the property interests of the heirs of the Estate of Roger Grady, Sr., causing him to lose 50% ownership interest in the subject property.

In addressing plaintiff's claims, the Hon. Karen Rothenberg held that the plaintiff failed to show that the defendants, Fidelity and Infinity, who allegedly performed the title search for the subject property, LoanDepot.com and Mers, the lender/mortgagee of the mortgage provided to the Pavels, and Compass and Abraham, the real estate brokerage company and real estate broker/agent, respectively, "owed plaintiff any duty or that there was a privity of contract," thereby, dismissing the complaint. The court further held, citing its broad discretion in determining whether an action should be dismissed pursuant to CPLR 3211(a)(4) on the ground that there is another action pending which seeks to quiet title between the plaintiff, Pavels, and Grady, that dismissal of the case at bar warranted dismissal.

Plaintiff herein seeks to renew and reargue on the grounds that the plaintiff, in fact, pled fraud, collusion, and other special circumstances relating to the title companies and brokers, and that even without privity, the defendants are properly subject to the lawsuit, because of the alleged perpetrated fraud. In addition, plaintiff argues that the two different actions are not identical, since two additional parties have been added to this action who are not included in the related action entitled Solomon Pavel and Chaim Pavel v. Victory Grady, Individually, Bernadette Grady and Joseph Grady, under Index No. 518762/2022.

Plaintiff does not seek reinstatement of the complaint against co-defendants, LoanDepot.com, LLC and MERS, who plaintiff states were listed since they were entitled to appear as co-defendants, to attempt to advocate and protect their respective interests. Therefore, this court will only address whether the complaint should be reinstated as to the remaining defendants.

### Discussion

A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination” (CPLR 2221[e][2]) and “shall contain reasonable justification for the failure to present such facts on the prior motion” (CPLR 2221[e][3]; see *Makropoulos v. City of New York*, 187 A.D.3d 885, 888, 130 N.Y.S.3d 378). A motion for leave to reargue must be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion. See, *Central Mtge. Co. v. McClelland*, 119 A.D.3d 885 at 886, 991 N.Y.S.2d 87 (2<sup>nd</sup> Dept., 2014).

The plaintiff’s motion to renew and reargue is hereby granted. First, the court will address the motion to renew as it relates to the fact that the plaintiff has obtained the Letters of Administration from the Kings County Surrogate, which goes to plaintiff’s ability to maintain this action. Now that the plaintiff has obtained the Letters of Administration, the action can be maintained since Joseph Grady has been appointed Administrator of the Estate of Roger Grady.

However, upon granting the motion to reargue, the court finds that the court did not overlook or misapprehend the law as to its findings, in its decision and order dated October 13, 2023. *Fairmont Funding, Ltd v. Stefansky*, 301 A.D.2d 562, 754 N.Y.S.2d 54 [2<sup>nd</sup> Dept., 2003], is distinguishable from the facts in this case, as it relates to a purchaser, who argued that he was a bona fide purchaser, as opposed to a title company. Justice Rothenberg, held “a title company hired by one party is not, absent evidence of fraud, collusion, or other special circumstances, subject to suit for negligent performance by one other than the party who contracted for its services.”

*In re Woodson*, 136 A.D.3d 691, 24 N.Y.S.3d 706 [2<sup>nd</sup> Dept., 2016], the court held “to plead a cause of action to recover damages for aiding and abetting fraud, the pleading must allege the existence of an underlying fraud, knowledge of the fraud by the aider and abettor, and substantial assistance by the aider and abettor in the achievement of the fraud. Plaintiff’s contention that the failure to find and disclose Roger Grady, Sr.’s deeded interest in the subject real property is “highly suspect,” is a bare, conclusory allegation, without supporting detail and fails to meet the specificity requirements of CPLR 3016(b) to sufficiently plead the existence of an underlying fraud, knowledge thereof on the party by the remaining defendants, or substantial assistance in achievement of the fraud against the plaintiff.

Accordingly, it is hereby ORDERED, that plaintiff's motion for leave to renew and reargue is granted, however, upon re-argument, the court adheres to the decision of the Hon. Karen Rothenberg, dated October 13, 2023.

The remaining relief seeking an Order granting plaintiff's permission to amend the caption to reflect Joseph Grady, as the Administrator of the Estate of Roger Grady, Sr., and for consolidation of this case and the related matter under Index No. 518762/2022, is hereby deemed moot, since the matter remains dismissed, as per Justice Karen Rothenberg's decision.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York  
August 20, 2024

  
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HON. LISA S. OTTLEY, J.S.C.  
**HON. LISA S. OTTLEY**

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