

Lucky's Real Estate Group LLC v Powell

2025 NY Slip Op 32190(U)

May 20, 2025

Supreme Court, Kings County

Docket Number: Index No. 502603/2014

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 20th day of May, 2025.

P R E S E N T :
HON. WAVNY TOUSSAINT,
Justice.

LUCKY'S REAL ESTATE GROUP LLC and
LUCKY CONTI,

Plaintiffs,

Index No.: 502603/2014

- against -

DECISION AND ORDER

LAWRENCE L. POWELL, JR., K.D. 1 REALTY &
CONSULTING, INC, KANWARJEET MALIK,
ALPAHEMA CAPITAL LLC, WFG NATIONAL TITLE
COMPANY, EASTCOR LAND SERVICES INC,
YARIV KATZ ESQ, THOMAS MCGARRITY ESQ,
BETH CHAMOW ESQ, YOLANDA A CARION ESQ,
ROBERT JONES CPA, & WALLY DUVAL ESQ,

Defendants.

The following papers numbered 1 to read herein
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

Papers Numbered

306-322; 324-325; 329-335

Upon the foregoing papers, plaintiffs Lucky's Real Estate Group, LLC (Lucky's) and Lucky Conti move (Seq. 16) for an order, pursuant to CPLR §3121 and Real Property Law (RPL) Article 9, §329, vacating the August 30, 2013 deed recorded against the subject property in the name of defendant K.D. 1 Realty & Consulting Inc. ("K.D.1"). Plaintiffs

also seek an order awarding liquidated damages of \$76,306.93 in legal fees, \$40,000 in restitution for fees paid to settle and discharge the related mortgage, and restitution of \$222,000 (plus interest) being the amount the subject property allegedly was denuded as a result of the mortgage.¹ The motion is unopposed.

BACKGROUND AND PROCEDURAL HISTORY

Lucky's is a single member LLC formed by Lucky Conti, having a principal business address of 189 Orchard Street, New York, NY. Lucky's acquired title to 769 & 771 Cleveland Street, Brooklyn, NY, Block 4313, Lot 65 (the "subject property") from Selina A. Johnson, as Administrator of the Estate of Joann Johnson, by deed dated November 10, 2010. As this was a cash transaction, the subject property remained unencumbered up to August 29, 2013. On August 30, 2013, K.D.1, acting through defendant Kanwarjeet Malik ("Malik"), acquired title to the subject property in accord with the subject deed. Lawrence L. Powell, Jr. ("Powell"), who held himself out as a member of Lucky's, executed the subject deed as grantor on behalf of Lucky's. K.D.1's acquisition was secured by a \$222,000 mortgage held by defendant Alpahema Capital LLC ("Alpahema"), also dated August 30, 2013, and recorded against the subject property on September 21, 2013 (the "subject mortgage"). This mortgage was subsequently assigned to defendant WFG National Title Company ("WFG") on August 12, 2014.

In so far as stated in the complaint, plaintiff sues to quiet title to the subject property alleging defendants K.D.1, Malik and Powell, in conjunction with the other named

¹ Lucky's also moves to substitute a representative for individual plaintiff Lucky Conti, who passed away during the pendency of this matter. Periodic reference to Lucky Conti, as a plaintiff herein, is continued for ease of reference.

defendants, conspired in a scheme to effectuate the fraudulent transfer of the subject property from Lucky's to K.D.1, with all sales proceed appearing to pass directly to Powell. Lucky's alleges Powell was not its member and lacked authority to execute the subject deed or the Certificate of Authority and Resolution authorizing the sale, as well as other related transfer documents.

The action was discontinued against Alphema by order of the court dated April 22, 2015. A default was entered against defendants K.D.1, Powell, Malik, Robert Jones CPA and Wally Duval, Esq. (the "defaulting defendants") by order of the court dated April 4, 2018.² By stipulation dated March 27, 2023, the action was further discontinued against defendants WFG, Eastcor Land Services, Inc., Yariv Katz, Esq., Thomas McGarrity, Esq., and Yolanda A. Carion, Esq., occasioned in part upon plaintiffs' payment of \$40,000.00 to discharge the subject mortgage.³

An inquest on damages as to the defaulting defendants was scheduled for May 22, 2024, but did not go forward as the LLC was without a fact witness, given the intervening death of Lucky Conti on April 12, 2024. Plaintiffs now proceed on damages by the within motion, filed December 6, 2024. In support of the motion, plaintiffs submitted, among other things, the verified complaint, the subject deed, contract of sale, transfer documents; corporate authorizations of the LLC; the subject mortgage (and related satisfaction); and documentation of plaintiff's legal fee billings and payments; along with the attorney affirmation of defendant Beth Chamon, Esq. and that of plaintiff's counsel attesting, *inter*

² This order also discontinued the action against defendant Beth Chamow, Esq.

³ The Court notes Alphema was again included in the stipulation.

alia, to the defaulting defendants' failure to answer or appear in this action -- all of which are unopposed.

DISCUSSION

It is well-settled that all traversable allegations contained in the complaint and reasonable inferences flowing therefrom, including the basic allegation of liability, are deemed admitted by a defaulting defendant (*Rokina Opt. Co. v. Camera King*, 63 NY2d 728, 730 [1984]; *see also Znojewski v Mamczur*, 219 AD3d 1383, 1384 [2d Dept 2023]; *Abad v 2431 Francis Lewis, LL*, 219 AD3d 1389, 1390 [2d Dept 2023]). "As such, the sole issue to be determined at the inquest [is] the extent of the damages sustained by the plaintiff" (*id.*).

A deed executed and procured by fraud is void *ab initio* (*Faison v Lewis*, 25 NY3d 220, 224-225 [2015]; *see also Selene Finance, L.P. v Jones*, 203 AD3d 1191, 1194 [2d Dept 2022]; *Deramo v Laffey*, 149 AD3d 800, 802 [2d Dept 2017]; *Cruz v Cruz*, 37 AD3d 754, 754 [2d Dept 2007]). "If a document purportedly conveying a property interest is void, it conveys nothing, and a subsequent bona fide purchaser or bona fide encumbrancer for value receives nothing" (*Faison*, 25 NY3d at 225; *Selene Finance, L.P.*, 203 AD3d at 1194).

Further, as relevant here, the former Debtor and Creditor Law § 276-a ("DCL§ 276-a") applies as a basis for plaintiffs to recover attorneys' fees where actual intent to defraud is demonstrated (*5706 Fifth Ave., LLC v Louzieh*, 108 AD3d 589, 590 [2d Dept 2013] *citing Ford v Martino*, 281 AD2d 587, 588 [2d Dept 2001]).⁴ As "[d]irect evidence of fraudulent

⁴ "In 2019, New York enacted the Uniform Voidable Transactions Act, which repealed and replaced certain provisions of the Debtor and Creditor Law relating to fraudulent conveyances, which became effective April 4, 2020" (*see Silber Investment Properties, Ltd. V BJB Islandia Realty, LLC*, 2025 WL 850245, *2 [2d Dept 2025] *citing to the Uniform Voidable Transactions Act*, L 2019, ch 580, §2 [eff Apr. 4, 2020] [further citations omitted]). As such, DCL § 276-a is applicable here given the relevant time frame at issue.

intent is often elusive . . . courts will consider ‘badges of fraud,’ which are circumstances that accompany fraudulent transfers so commonly that their presence gives rise to an inference of intent" (*Argyle Funds SPC, Inc. v Barrick*, 226 AD3d 673, 675 [2d Dept 2024]; *5706 Fifth Ave., LLC*, 108 AD3d at 590).

Plaintiffs established, both directly and by inference, that the defaulting defendants intentionally and knowingly engaged in an illegal scheme to facilitate the fraudulent transfer of the subject property from Lucky’s to K.D.1. It is unrefuted that Powell, who was not a member of Lucky’s, acting together with Malik, executed the fraudulent contract of sale, deed, corporate authorizations, and related transfer and recording documents, leading to the subject mortgage encumbering the subject property. Under these circumstances, K.D.1 cannot be considered a bona fide purchaser and as such, its fraudulently acquired interest in the subject property is not protected under Real Property Law § 266 (“RPL § 266”) (*JPMorgan Chase Bank, N.A. v Aspilaire*, 188 AD3d 850, 853 [2d Dept 2020]).⁵

The Court further finds that Powell acted without the consent, knowledge or permission of Lucky Conti, the sole founding member of Lucky’s. It also is evident from the record that neither Lucky’s nor Lucky Conti received any of the \$280,000 in sales proceeds, a further indicia of fraud. The Court particularly credits the affirmed statements

⁵ RPL § 266 states, in part: “This article does not in any manner affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appears that such purchaser or incumbrancer had previous notice, whether actual or constructive, of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.”

of defendant Beth Chamon, Esq. set forth in the March 21, 2018 affirmation, wherein she states:⁶

“I spoke to Plaintiff’s Counsel and informed him that I had no knowledge of this case. I explained to him, that I was shocked in receiving this motion [referring to Motion Seq. 09] . . . I have no knowledge of this transaction and was not involved in this transaction in any capacity. I did not attend the closing, transfer money, create documents, record documents including but not limited to the contract of sale which has my name printed on it without my permission or knowledge and which was fraudulently created. I do not know any of the parties, except for representing a man call[ed] “Kush” [defendant Malik] in an eviction proceeding who I presume was K.D. Realty and Consulting which occurred over 5 years ago. Clearly my name was printed on the contract without my permission and knowledge and clearly constitutes a fraudulent document. I have been practicing law over 35 years, and I have practiced law with the highest of ethics and integrity.”

The Court takes judicial notice of the verified complaint in which Lucky Conti averred that he had always been and remained the sole managing member and member of Lucky’s; that he had never authorized Powel or anyone else to sell, transfer, or assign the property to K.D.1 or any other party; and that the subject deed and various other documents Powell purportedly submitted at the closing were forged or fraudulent (*Gray v Doyle*, 170 AD3d 969, 970 [2d Dept 2019]; *Triangle Props. #2, LLC v Nrang*, 73 AD3d 1030, 1032 [2d Dept 2010]). Upon proof of the actual fraudulent intent of Malik and Powell, acting in concert with the other defaulting defendants, plaintiffs are entitled to recover reasonable attorneys’ fee and costs, as sought in the “THIRD” and “FOURTH” causes of action of the complaint, pursuant to DCL § 276-a. (*5706 Fifth Ave., LLC*, 108 AD3d at 590; *Ford v Martino*, 281 AD2d 587, 588 [2d Dept 2001]).

⁶ This affirmation (NYSCEF Doc. No. 312) is submitted in support of the within Motion Seq. 16 and is the same affirmation previously submitted on prior motions, beginning with Motion Seq. 09 (see, e.g., NYSCEF Doc. No. 151).

Finally, as set forth in the Supplemental Affirmation of plaintiffs’ counsel (NYSCEF Doc. No. 329), Vanie Conti has been appointed Executor for the Estate of Lucky Conti, pursuant to Letters Testamentary issued on January 6, 2025 by the Surrogate’s Court, Queens County (File No.: 2024-2310). As further set forth in the affirmation, Vanie Conti has instructed counsel to continue the prosecution of this action on the estate’s behalf. Accordingly, the application for an order substituting Vanie Conti, as Executor of the Estate of Lucky Conti, as plaintiff herein; and to amend the caption as set forth in the “WHEREFORE” clause of the affirmation, is hereby granted.

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiffs’ motion (Seq. 16) is granted to the extent that: (1) Vanie Conti, as Executor of the Estate of Lucky Conti, is substituted as plaintiff for Lucki Conti, deceased and (2) the caption is hereby amended accordingly and shall hereinafter read as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

**LUCKY’S REAL ESTATE GROUP LLC and
VANIE CONTI, as EXECUTOR OF THE ESTATE OF
LUCKY CONTI,**

Index No.: 502603/2014

Plaintiffs,

- against -

**LAWRENCE L. POWELL, JR., K.D. 1 REALTY &
CONSULTING, INC, KANWARJEET MALIK,
ALPAHEMA CAPITAL LLC, WFG NATIONAL TITLE
COMPANY, EASTCOR LAND SERVICES INC,**

YARIV KATZ ESQ, THOMAS MCGARRITY ESQ,
BETH CHAMOW ESQ, YOLANDA A CARION ESQ,
ROBERT JONES CPA, & WALLY DUVAL ESQ,

Defendants.

and, it is further

ORDERED, that the subject deed filed on August 30, 2013 with the New York City Department of Finance, Office of the City Register, and recorded on September 21, 2013 at CRFN 2013000389860, is hereby declared void *ab initio*, invalid and of no legal effect, and the same is hereby stricken and cancelled of record as to the subject property, commonly known as 769 & 771 Cleveland Street, Brooklyn, NY, Block 4313, Lot 65, located in Kings County, City and State of New York; and it is further

ORDERED, that the deed filed on November 10, 2010 with the New York City Department of Finance, Office of the City Register, and recorded on December 3, 2010 at CRFN 20100000405783, wherein plaintiff Lucky's Real Estate Group, LLC acquired title to the subject property from grantor Selina A. Johnson, as Administrator of the Estate of Joann Johnson, is hereby restored; and it is further

ORDERED and ADJUDGED that in so far as the subject mortgage filed on August 30, 2013 with the New York City Department of Finance, Office of the City Register, and recorded September 21, 2013 at CRFN 201300038986, has been discharged upon plaintiffs' payment of \$40,000 to defendant WFG National Title Company as of August 28, 2023, plaintiffs are hereby awarded, and shall have judgment and recover from the defaulting defendants, the sum of \$40,000, together with interest at the rate of nine percent *per annum*,

from August 30, 2013, as reimbursement for said discharge payment, necessarily arising from the fraudulent subject deed and mortgage, and that plaintiffs shall have execution therefor; and it is further

ORDERED and ADJUDGED that plaintiffs are hereby awarded, and shall have judgment and recover from the defaulting defendants, the sum of \$\$76,306.93, together with interest at the rate of nine percent *per annum*, from March 26, 2014 (the date this action was filed), as and for attorneys' fees incurred in the prosecution of this action, and that plaintiffs shall have execution therefor; and it is further

ORDERED that plaintiffs shall, within thirty (30) days from entry of this order, present a true, complete, and certified copy of this order to the Kings County Register, which is hereby directed to record and index this order against the subject property, commonly known as 769 & 771 Cleveland Street, Brooklyn, NY, Block 4313, Lot 65, located in Kings County, City and State of New York.

All other relief requested by plaintiffs not specifically addressed herein, has been fully considered and is denied.

This constitutes the decision and order of the Court.

The clerk may enter judgment accordingly.

E N T E R



J.S.C.

HON. WAVNY TOUSSAINT
J.S.C.

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FILED
KINGS COUNTY CLERK