

Fulmore v 1128 Jefferson LLC

2025 NY Slip Op 33628(U)

September 30, 2025

Supreme Court, Kings County

Docket Number: Index No. 711/2019

Judge: Joy F. Campanelli

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS:IAS PART 6

-----X
TIMOTHY FULMORE, Individually and as an agent Pursuant to a Power of Attorney for JUANITA FULMORE,

Index No.: 711/2019

DECISION AND ORDER

Plaintiff,

Hon. Joy F. Campanelli, J.S.C.

- against -

1128 JEFFERSON LLC and JOSEPH FULMORE,

Defendants.
-----X

The following e-filed papers read herein:

Papers Numbered:

	Seq. No. 11	Seq. No. 12
Notice of Motion/Order to Show Cause/ Petition, Affidavits (Affirmations and Exhibits) Annexed	1,2	1,2
Opposing Affidavits (Affirmations and Exhibits)	3	3
Affidavits/ Affirmations in Reply	4	4
Other Papers: _____		

Defendant 1128 Jefferson LLC moves by notice of motion (sequence number 11) pursuant to CPLR 3211, for an Order dismissing this case. Plaintiff, Timothy Fulmore, also moves by notice of motion (sequence number 12), pursuant to CPLR 3211 (b) for an Order granting plaintiff summary judgment and awarding attorney’s fees to plaintiff. Oral argument was held before the Court in person on July 30, 2025.

FACTUAL BACKGROUND

This case arises out of the sale of real property located at 1128 Jefferson Avenue, Brooklyn, New York (hereinafter, “the subject property”) on October 11, 2018 by plaintiff Juanita Fulmore. Juanita Fulmore is the mother of both Plaintiff and Defendant Joseph Fulmore. Juanita Fulmore owned the subject property jointly with her husband James C. Fulmore and Rose Hamer pursuant

to a deed dated March 1, 1967. Juanita Fulmore obtained sole title of the premises pursuant to a deed dated September 17, 2007, with a date of actual conveyance of October 15, 2007.

On or about December 12, 2015, Juanita Fulmore executed a power of attorney naming Plaintiff Timothy Fulmore as her agent. On or about August 24, 2015, Juanita Fulmore executed a Health Care Proxy naming Timothy Fulmore as her agent.

Plaintiff Timothy Fulmore has resided at 1128 Jefferson Avenue since approximately April 27, 2018. On August 29, 2018, a power of attorney was executed in California naming Joseph Fulmore as Juanita Fulmore's agent. On or about October 11, 2018, Joseph Fulmore closed on the sale of the premises to Defendant 1128 Jefferson LLC using the August 29, 2018 power of attorney.

Plaintiff commenced this action by filing a Summons and Complaint against Defendants on or about February 13, 2019.

From the outset of this action, there were questions about Juanita Fulmore's competency due to her alleged dementia diagnosis. Following extensive motion practice and requests from both plaintiff and defendants to appoint a guardian ad litem, the Court issued an Order on December 30, 2024. This Order, in relevant part: (i) appointed James M. Caffrey as GAL to have "full authority and control over any claims or defenses of Juanita brought in this action," (ii) ordered the Guardian to "meet with Juanita, remotely or in person, to initiate efforts to assess her competency and the meritoriousness of her claims and defenses in this action, within thirty (30) days of the date this Order is served upon the Guardian," and "report to the Court their assessment and recommendation within fifteen (15) days of said meeting," (iii) ordered that "if the Guardian is unable to contact Juanita or to meet with her remotely or in-person, as set forth above, the Guardian shall submit a sworn statement to the Court stating he or she has been unable to meet

with her and the efforts made by the Guardian to contact her,” and (iv) ordered that “if the Guardian submits such a sworn statement to the Court defendant may move to dismiss without prejudice all claims in this action[.]” *See* Order (NYSCEF Doc. No. 188).

On February 24, 2025, the Guardian filed an Initial Report. *See* Initial Report (NYSCEF Doc. No. 194). The Initial Report states that Timothy provided Juanita’s address as 1874 View Parkway, Chula Vista, California, and the Guardian mailed a letter to that address. *Id.* The Guardian also confirmed that, based on his review of the closing documents, “restoration of title to [Juanita] does not appear to be appropriate under the circumstances.” *Id.*

LEGAL STANDARD

NYS GOL§5-1501B(1)(b) states that a statutory power of attorney must "be signed and dated by a principal with capacity, with the signature of the principal duly acknowledged in the manner prescribed for the acknowledgment of a conveyance of real property."

The Court of Appeals has found that a power of attorney must be executed in strict compliance with statutory mandates, including acknowledgment by a properly licensed and authorized notary public under New York law. *Galetta v. Galetta*, 21 N.Y.3d 186 (2013).

The Second Department held in *Freedman et. al. v. Oppenheim* that if the power of attorney is defectively notarized, it could not be sustained in a court of law. *Freedman et. al. v. Oppenheim*, 80 A.D. 487, 81 N.Y.S. 110, (1903). The Court in that case affirmed the reasoning of the trial Court, which found that a defective acknowledgement invalidated a contract for sale of real property. The Second Department explained that a purchaser could not take title pursuant to a power of attorney that lacked the proper acknowledgement. In that case, the subject power of attorney was defective because it lacked a “certificate to the effect that the notary knew the person

who so appeared before him to be the person described in and who executed the power of attorney.”
Id at 488.

The Second Department has also opined that a lease for real property is invalid when it is executed pursuant to a defective power of attorney. The Court in *Rahman v. Alim* stated plainly that, “[a] document is void and conveys nothing when the attorney-in-fact was acting pursuant to an invalid power of attorney.” *Rahman v. Alim* 213 A.D.3d 874 (2d Dept. 2023); *See also ABN AMRO Mtge. Group, Inc. v Stephens*, 91 AD3d801, 939 N.Y.S.2d 70 (2d Dept. 2012), holding that “[i]f 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.” Under New York Law, a transfer of interest in real property cannot be effectuated pursuant to a defective power of attorney.

Further, any purchaser of real property has a duty to inspect and investigate the title of said property prior to closing. An intended purchaser “must be presumed to have investigated the title, and to examine every deed or instrument properly recorded and to have known every fact disclosed or to which an inquiry suggested by the record would have led.” *Fairmont Funding, Ltd. V. Stefansky*, 301 A.D.2d (2d Dept. 2003); *HSBC mtge. Servs., Inc. v. Alphonso*, 58 A.D.3d (2d Dept. 2009). If the purchaser fails to conduct due diligence in investigating the title, they are nonetheless charged as a matter of law with notice of the facts which a proper inquiry would have disclosed. *Id.* Therefore, if a purchaser fails to detect a defect in title which due diligence would have revealed, they are charged with notice of that defect.

DISCUSSION

Here, Charlene N. Antun, is the notary public who acknowledged the August 29, 2018 power of attorney that was used to convey Juanita Fulmore's property to Defendant 1128 Jefferson

LLC. Charlene N. Antun was licensed in the as a Notary Public in the state of New Jersey at the time she acknowledged the August 29, 2018 power of attorney. She was not licensed in New York State or in California on August 29, 2018. Nor was she authorized by the State of New Jersey to perform Remote Notarizations. *Pltf. Exhibits M & O*. It is undisputed that Juanita Fulmore did not appear in person before Ms. Antun when the 2018 power of attorney was notarized.

On these facts, there is no question that the 2018 power of attorney is defective as a matter of law. Defendants 1128 Jefferson LLC do not substantively address the defect in their opposition papers other than to refer to it is “technical.” *Def. Aff in Opp*. Para 10. Regarding the 2015 power of attorney, defendants state that it is “implausible” that that power of attorney was valid. *Def. Aff. in Supp*. Para. 12. However, they offer nothing of substance to argue that the 2015 power of attorney had expired or was invalid on its face. Therefore, the 2015 power of attorney was still in effect, the 2018 power of attorney was defective as a matter of law, and Joseph Fulmore had no authority to sell the subject property in 2018.

Further, Defendant 1128 Jefferson LLC cannot take title to the subject property pursuant to the 2018 power of attorney. As the Court held in *Freedman*, a party cannot take title to real property pursuant to a defective power of attorney. Moreover, 1128 Jefferson LLC cannot be said to be a good faith purchaser, as they failed to address the defective power of attorney at closing. 1128 Jefferson LLC failed to meet their obligation to examine title at the time of closing. The record demonstrates lack of due diligence on the part of Defendants, and they are therefore charged with notice of the defect. On these facts, 1128 Jefferson LLC is not a bona fide purchase for value.

In support of their motion to dismiss, Defendant argues that plaintiff Timothy Fulmore does not have standing to pursue any cause of action in this matter either on his own behalf or on behalf of Juanita Fulmore. With respect to the claims on behalf of Juanita Fulmore, the issue of

standing was resolved by the December 30, 2024 Order of this Court which appointed a GAL to represent her interests in this matter. Therefore, the standing argument with respect to Juanita Fulmore's claims is moot.

Regarding the argument that Timothy Fulmore does not have standing, Defendants have raised this argument in prior motions to dismiss. Defendant 1128 Jefferson LLC made applications for dismissal on September 25, 2020, and April 20, 2022. In deciding both of those motions, the Court agreed that a GAL needed to be appointed to pursue Juanita Fulmore's interest in this case, but did not dismiss Timothy Fulmore's individual claims. Defendants cannot continually seek dismissal of the Complaint on arguments that have already been decided by the Court.

CONCLUSION

Plaintiffs' motion for summary judgment must be granted only as to the claims brought by Juanita Fulmore. It is clear from the record that the sale of the subject property was made pursuant to a defective power of attorney. As such, the 2018 deed must be set aside. Given that the sale is a legal nullity, 1128 Jefferson LLC does not have title to the subject property. Nor are they entitled to equitable relief because they are charged with notice of the defect and are not a good faith purchaser.

WHEREFORE it is hereby:

ORDERED that Plaintiff's motion for summary judgment, sequence number 12, is granted only as to the claims of Juanita Fulmore and denied as to the claims for Timothy Fulmore; and it is hereby,

ORDERED that Defendant's motion sequence number 11 for dismissal of the Complaint is denied; and it is hereby,

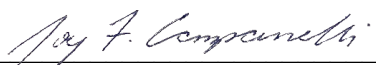
ORDERED that the deed dated October 11, 2018, is set aside; and it is hereby,

ORDERED that title to the property located at located at Block 3388, Lot 24 known as 1128 Jefferson Avenue Brooklyn, NY shall be restored to Juanita Fulmore; and it is hereby,

ORDERED that said property shall not be sold or encumbered until a court of competent jurisdiction is able to establish a guardianship for the person of Juanita Fulmore.

This constitutes the decision and order of the Court.

DATED: September 30, 2025
Brooklyn, New York



Hon. Joy F. Campanelli, J.S.C.