

**Williams v Mentore**

2014 NY Slip Op 33118(U)

July 31, 2014

Supreme Court, Queens County

Docket Number: 13135/2011

Judge: Allan B. Weiss

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS IA Part 2  
Justice

RUBY WILLIAMS, x

Plaintiff,

-against-

ESDEL MENTORE, AMAN BINDRA,  
GARFIELD LONDON, GEM-SEALES-LONDON  
PARMANAND RAMDASS, WELLS FARGO  
BANK, N.A.

Defendants.

Index  
Number 13135/2011

Motion  
Date March 11, 2014

Motion Seq. Nos. 7, 8, 9

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The following numbered papers read on this motion Seq. #7 by defendant Aman Bindra pursuant to CPLR 3212 for summary judgment dismissing the complaint and cross claims insofar as asserted against him, and to award sanctions pursuant to 22 NYCRR 130.1-1; this motion Seq. # 8 by defendant Wells Fargo Bank, N.A. (Wells Fargo) pursuant to CPLR 3212 for summary judgment and to dismiss the complaint pursuant to CPLR 3211(a)(10) for failure to join an indispensable party, or alternatively, for summary judgment on its counterclaim for equitable subrogation; and this motion Seq. #9 by defendant Esdel Mentore pursuant to CPLR 3212 for summary judgment in his favor, and dismissing the complaint and cross claims of codefendants Bindra and Wells Fargo, and to impose sanctions and to award legal fees and costs pursuant to 22 NYCRR 130.1-1.

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Upon the foregoing papers it is ordered that the motions Seq. ## 7, 8 and 9 are determined together as follows:

Plaintiff, an elderly woman, commenced this action alleging that she is the true owner of the real property known as 187-15 Keeseville Avenue, St. Albans, New York, where she resides, and that she is the victim of a scheme to defraud her of title to her property. In her complaint, she alleged that she was the victim of a scheme perpetrated by defendant Mentore, an alleged real estate broker and others, to defraud her of her title to her property and strip her of her equity in her home. She alleged that in late 2002, at a time when she was unable to keep up with payments of her medical bills and repairs on her home, she sought to refinance the then-existing mortgage on the property, and her daughter-in-law, Grace Haye Williams, agreed to assist her. Title was transferred to Grace Haye Williams by deed dated December 5, 2002, and Grace Haye Williams obtained a mortgage from Security American Mortgage Co. Inc. (Security American mortgage) against the property.

Grace Haye Williams allegedly thereafter sought to have her name removed from the mortgage, and plaintiff was referred to defendant Mentore for assistance in obtaining a reverse mortgage. Plaintiff alleged that he indicated a reverse mortgage would not be an appropriate option, falsely advising her that the “government” would only give her a few dollars and then would take her home away. She also alleged that defendant Mentore ingratiated himself to her, assured her that he would assist her in arranging the transfer of the mortgage from Grace Haye Williams, and convinced plaintiff to refinance the mortgage instead. Plaintiff further alleges that unbeknownst to her, title already had been transferred from Grace Haye Williams back to plaintiff by deed dated March 28, 2006.

Defendant Mentore allegedly sent a car to bring plaintiff to his office at 8:00 P.M. on January 5, 2007 purportedly for the closing of the mortgage transaction. At the closing, defendant Mentore allegedly falsely claimed to assist plaintiff and promised never to allow her to do anything to put her or her house at risk, and in doing so, induced her to sign documents purportedly to allow defendant Aman Bindra to “take over the mortgage” for one year, and to give her daughter Hope Jackson, an opportunity to take the mortgage over thereafter. Plaintiff alleged she did not understand the papers, including that she was conveying her home to defendant Aman Bindra or that defendant Bindra’s name would be on the deed. She also alleged she asked defendant Mentore what was going on, and expressed concern that she was signing her house away, but relied upon the assurances of defendant Mentore that she should not worry, and to trust him and sign the documents. She further alleged that during the closing, there was no discussion of her surrendering the premises, turning over keys to the house, or paying any use or occupancy until her vacatur of the property, or when defendant Bindra would perform a final inspection or move in.

It is alleged that two mortgage loans from Fremont Investment & Loan were issued to defendant Bindra on January 5, 2007, and the Security American mortgage was discharged. Bindra, in turn, transferred the subject property to defendant Garfield London

by deed dated October 16, 2008. To finance that purchase, defendant London allegedly obtained a mortgage loan from defendant Wells Fargo, and when defendant London defaulted, a foreclosure action entitled *Wells Fargo Bank, N.A. v London* (Supreme Court, Queens County, Index No. 12555/2011) was commenced against London.<sup>1</sup>

Plaintiff alleged that the individual defendants conspired to defraud her of her property, and that she did not knowingly sign the deed into defendant Bindra or convey her title to the property. Plaintiff also alleged that defendant Mentore used defendants Bindra and London as “straw buyers” to conceal his ownership interest in the targeted property, and obtain fraudulent mortgages. Plaintiff further alleged that defendant Bindra aided and abetted defendant Mentore by providing his name to finance the sham purchase with the Bindra mortgages, and transferring title to the property to defendant London, who also aided and abetted defendant Mentore, by providing his name to finance his sham purchase with the Wells Fargo mortgage. Defendant Parmanand Ramdass allegedly aided and abetted defendant Mentore by serving as the buyers’ attorney and settlement/closing agent in connection with the fraudulent deed transactions, while aware the transactions were arranged by defendant Mentore to enrich himself. Plaintiff claimed that defendant Wells Fargo failed to exercise due diligence when making the mortgage loan to defendant London. It is alleged that plaintiff continually resided at the premises since 1976, and defendant Wells Fargo should have made further inquiries about defendant Bindra’s ownership of the property prior to making the loan. Plaintiff asserts causes of action pursuant to article 15 of the RPAPL and General Business Law § 349, and sounding in fraud, conspiracy to commit, and aiding and abetting, fraud and conversion. Plaintiff seeks declaratory, injunctive, monetary relief, including a declaration setting aside two conveyances and the Wells Fargo mortgage on the ground of fraud.

Plaintiff previously moved to consolidate this action with the *Wells Fargo* foreclosure action (Index No. 12555/2011). That motion was granted to the extent of joining the actions for trial (*see* order dated February 29, 2012).

It is well settled that the proponent of a summary judgment motion “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]). The failure to make such a prima facie showing requires the denial of the motion regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med.*

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<sup>1</sup>

Ruby Williams is a defendant in the foreclosure action, having been named and joined as a “John Doe” defendant.

*Ctr.*, 64 NY2d 851 [1985]). Furthermore, the court's function on a motion for summary judgment is issue finding, not issue determination (*see Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]).

With respect to the branch of the motions by defendants Bindra and Mentore for summary judgment dismissing the complaint insofar as asserted against them, defendants Bindra and Mentore contend that plaintiff lacks standing to bring this action. They assert that plaintiff's has not held any ownership interest in the subject property since December 5, 2002 when she transferred title to it to Grace Haye Williams by deed of that date. They claim that the deed dated March 28, 2006, and recorded on April 10, 2006, purportedly reconveying the subject property from Grace Haye Williams to plaintiff is a forgery.<sup>2</sup>

To the extent defendant Bindra seeks summary judgment dismissing the complaint insofar as asserted against him based upon lack of standing, he failed to assert such defense in his answer or by way of a pre-answer motion to dismiss the complaint. As a consequence, he waived such defense (*see CPLR 3211[a][3]*, [e]; *Harris v Thompson*, 117 AD3d 791 [2d Dept 2014]; *JPMorgan Chase Bank, N.A. v Bauer*, 92 AD3d 641 [2d Dept 2012]; *32nd Avenue, LLC v Angelo Holding Corp.*, 88 AD3d 986 [2d Dept 2011]).

To the extent defendant Mentore also asserts lack of standing, the copy of his answer submitted in support of the motion is missing pages 14 and 15.<sup>3</sup> The incomplete copy does not include any affirmative defense based upon lack of standing.<sup>4</sup> Furthermore, the allegation that Grace Haye Williams executed an affidavit stating her signature on the deed

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Grace Haye Williams has commenced an action to quiet title against Ruby Williams, Bindra, London and Wells Fargo entitled *Williams v Williams* (Supreme Court, Queens County, index No. 704783/2013) seeking a judgment setting aside the March 28, 2006, January 5, 2007 and October 16, 2008 deeds, and the Wells Fargo mortgage, as void, and to obtain an award of damages. In the complaint in that action, Grace Haye Williams alleges she never signed the March 28, 2006 deed, and her purported signature thereon is a forgery.

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A search of the County Clerk's file does not reveal any copy of an answer of defendant Mentore on file.

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Among the submitted pages of the answer is an affirmative defense based upon failure to state a claim, followed by a reference to "SECOND AFFIRMATIVE DEFENSE," without any allegations following thereafter except for the phrase "claims are clarified in the course of this litigation" which appears on page 16.

purportedly reconveying the property to plaintiff is a forgery does not constitute an affirmative defense based upon lack of standing. Defendant Mentore, therefore, has failed to demonstrate he asserted such defense in his answer or by means of pre-answer motion to dismiss and thus, is deemed to have waived it (CPLR 3211[a][3], [e]; *Harris v Thompson*, 117 AD3d 791; *JPMorgan Chase Bank, N.A. v Bauer*, 92 AD3d 641; *32nd Avenue, LLC v Angelo Holding Corp.*, 88 AD3d 986).

Moreover, to the extent defendants Bindra and Mentore seek to attack the validity of the March 28, 2006 deed into plaintiff, it was accepted for recording and appears in the chain of title for the subject premises, and they have failed to show it has been set aside or declared void. That Grace Haye Williams seeks to set aside such deed in the action entitled *Williams v Williams* (Supreme Court, Queens County, index No. 704783/2013), defendants Bindra and Mentore have failed to demonstrate that the issue of the validity of the March 28, 2006 deed has been necessarily decided in such action and is decisive of the present action (*see Buechel v Bain*, 97 NY2d 295, 304 [2001], *cert denied* 535 US 1096 [2002]; *Capellupo v Nassau Health Care Corp.*, 97 AD3d 619 [2d Dept 2012]; *Laing v Cantor*, 1 AD3d 406 [2d Dept 2003]). Consequently, that branch of the motions by defendants Bindra and Mentore for summary judgment dismissing the complaint insofar as asserted against them is denied.

The branch of the motion by defendant Mentore for summary judgment dismissing the cross claims for common-law indemnification and contribution asserted against him by defendants Bindra and Wells Fargo is denied. Defendant Mentore has failed to make a prima facie showing of entitlement to summary judgment dismissing those cross claims asserted against him (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

That branch of the motion by defendant Bindra for summary judgment dismissing the cross claims for common-law indemnification and contribution asserted against him by defendant Wells Fargo is denied. Defendant Bindra has failed to make a prima facie showing of entitlement to summary judgment dismiss those cross claims asserted him (*see id.*). That branch of the motion by defendant Bindra for summary judgment dismissing the cross claims asserted against him by defendants Mentore, London, Gem Seales London and Ramdass is denied. Defendant Bindra has failed to establish that those defendants have asserted any cross claims against him.

That branch of the motions by defendants Bindra and Mentore to impose sanctions as against plaintiff and her counsel is denied.

That branch of the motion by defendant Wells Fargo pursuant to CPLR 3211(a)(10) to dismiss the complaint insofar as asserted against it for failure to join an indispensable party is denied. Real Property Actions and Proceedings Law § 1501(1) provides in relevant part:

“1. Where a person claims an estate or interest in real property ... such person ... may maintain an action against any other person, known or unknown ... to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make ....” RPAPL 1511(2) provides that, in an action such as this, “[w]here it appears to the court that a person not a party to the action may have an estate or interest in the real property which may in any manner be affected by the judgment, the court, upon application of such person, or of any party to the action, or on its own motion, may direct that such person be made a party.” Necessary parties are “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action” (CPLR 1001[a]) (*see Sorbello v Birchez Associates, LLC*, 61 AD3d 1225 [3d Dept 2009]). Defendant Wells Fargo has failed to identify or describe which person or entity is an indispensable or necessary party to this action.

With respect to that branch of the motion by defendant Wells Fargo for summary judgment dismissing the complaint insofar as asserted against it or alternatively, in its favor on its counterclaim for equitable subrogation, it previously moved for such relief. By order dated July 9, 2012 (Elliot, J.), the prior motion was denied. By decision and order dated March 5, 2014 of the Appellate Division, Second Department, the July 9, 2012 order of the Supreme Court was affirmed (*see Williams v Mentore*, 115 AD3d 664 [2d Dept 2014]). The Appellate Division determined that defendant Wells Fargo had failed to establish its prima facie entitlement to judgment as a matter of law on the issues of whether it lacked notice of a potential fraud, and whether the subject deeds are void ab initio on the ground of fraud in the factum. It also determined that defendant Wells Fargo had failed to establish its prima facie entitlement to judgment as a matter of law with respect to its counterclaim for equitable subrogation, insofar as triable issues of fact exist as to whether Wells Fargo should have been aware of potential fraud in connection with the conveyance.

Plaintiff contends that the determinations in the prior order (as affirmed) constitute the law of the case and preclude defendant Wells Fargo from arguing there are no questions of fact as to whether the subject deeds are void as the product of fraud in the factum, and it is a bona fide encumbrancer, or alternatively, entitled to equitable subrogation.

New York law has a “strong policy against allowing successive motions for summary judgment” (*Baron v Charles Azzue, Inc.*, 240 AD2d 447 [2d Dept 1997]). This policy is especially true where the motion is based on legal grounds and factual assertions that were or could have been raised in an earlier motion (*see Abramoff v Federal Ins. Co.*, 48 AD2d 676 [2d Dept 1975]; *Powell v Trans-Auto Systems, Inc.*, 32 AD2d 650, [2d Dept 1969]). “Successive motions for summary judgment should not be entertained without a showing of



newly discovered evidence or other sufficient justification” (*Jones v 636 Holding Corp.*, 73 AD3d 409, 409 [1st Dept 2010]). Similarly, the doctrine of the law of the case should not be ignored except in extraordinary circumstances such as a change in law or a showing of new evidence (*Foley v Roche*, 86 AD2d 887 [2d Dept 1982]; see *Brownrigg v New York City Hous. Auth.*, 29 AD3d 721, 722 [2d Dept 2006]).

Although this motion is the second time that defendant Wells Fargo has moved for summary judgment, the instant motion includes an excerpt of the transcript of plaintiff’s deposition testimony,<sup>5</sup> which was not elicited until after the submission of the prior motion (*Auffermann v Distl*, 56 AD3d 502, 502 [2d Dept 2008]; see *Staib v City of New York*, 289 AD2d 560, 561 [2d Dept 2001]). It constitutes new evidence, and therefore the law of the case doctrine does not bar this court’s consideration of the motion by defendant Wells Fargo for summary judgment dismissing the complaint insofar as asserted against it.

Defendant Wells Fargo asserts that the deed dated January 5, 2007 from plaintiff into defendant Bindra is not the product of fraud in the factum, and that in any event, Wells Fargo is a bona fide encumbrancer for value, protected in its rights pursuant to Real Property Law § 266. Defendant Wells Fargo also claims that it is entitled to equitable subrogation, regardless of any finding by the court with respect to the claims by plaintiff vis-a-vis its co-defendants.

The submissions herein by defendant Wells Fargo, however, do not establish its prima facie entitlement to judgment as a matter of law on the issues of whether the subject deeds are void ab initio on the ground of fraud in the factum, and it is a bona fide encumbrancer for value. The excerpted deposition testimony of plaintiff fails to eliminate all triable issues of fact as to whether plaintiff was misled by defendants Mentore and Bindra to sign certain documents which turned out to be of an entirely different nature and character from what she thought she was signing (see *First Natl. Bank of Odessa v Fazzari*, 10 NY2d 394, 397 [1961]; *Dalessio v Kressler*, 6 AD3d 57, 61 [2d Dept 2004]; *Mix v Neff*, 99 AD2d 180, 182 [3d Dept 1984]; cf. *Cash v Titan Financial Servs., Inc.*, 58 AD3d 785 [2d Dept 2009]). In addition, the Appellate Division determined that “Wells Fargo’s submissions contain[ed] information regarding the plaintiff’s possession of the property that put it on inquiry notice as to the plaintiff’s potential right to the property (see *Stracham v Bresnick*, 76 AD3d 1009,

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The previous motion by defendant Wells Fargo was made prior to the depositions of the parties and non-party witnesses. In opposition to the motion by defendant Wells Fargo, plaintiff also relies upon excerpts of the transcripts of party depositions (i.e., defendants Bindra, Ramdass and Wells Fargo), and also offers excerpts of non-party witness depositions (i.e., Grace Haye Williams, Robert Williams, Hope Jackson and Ronald Reid.



1010-1011 [2d Dept 2010])” (*Williams v Mentore*, 115 AD3d 664, 665). The testimony of plaintiff does not have a bearing on the issue of whether defendant Wells Fargo was on inquiry notice as to her potential right to the property and thus, does not constitute new evidence with respect to that determination by the Appellate Division. Likewise, her testimony does not resolve the triable issues of fact determined to exist by the Appellate Division as to whether Wells Fargo should have been aware of potential fraud in connection with the conveyance and hence, defendant Wells Fargo has failed to establish its prima facie entitlement to judgment as a matter of law on its counterclaim for equitable subrogation.

That branch of motion by defendant Wells Fargo for summary judgment dismissing the complaint insofar as asserted against it is denied.

Dated: July 31, 2014

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J.S.C.