Wen Rui Yang v Di
2017 NY Slip Op 31015(U)
April 11, 2017
Supreme Court, Suffolk County
Docket Number: 08-45907
Judge: Martha L. Luft

[* 1]

SHORT FORM ORDER

INDEX No. 08-45907
CAL. No. 16-00345-EQ

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - SUFFOLK COUNTY

PRESENT:

Hon. MARTHA L. LUFT
Acting Justice of the Supreme Court

MOTION DATE 6/30/16 (#014)
MOTION DATE 7/26/16 (#015)
MOTION DATE 8/9/16 (#017)
MOTION DATE 9/6/16 (#018, #019 & #020)
ADJ. DATE 10/18/16
Mot. Seq. #014 - MD Mot. Seq. #018 - MotD
Mot. Seq. #015 - MotD Mot. Seq. #019 - XMotD
Mot. Seq. #017 - MotD Mot. Seq. #020 - XMotD

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WEN RUI YANG,

Plaintiff,

- against -

DAN DI, DI YANG, XAIODONG YANG, CHEVY CHASE BANK, NATIONAL CITY BANK, SCOTT S. SNYDER, HONG LI SNYDER, and WELLS FARGO BANK, N.A.,

Defendants.

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Upon the following papers numbered 1 to 218 read on these motions and cross motions for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1-34; 35-58; 59-93; 94-123; Notice of Cross Motion and supporting papers 124-131; 132-141; Answering Affidavits and supporting papers 142-143; 144-154; 155-165; 166-176; 177-183; 184-195; 196-204; Replying Affidavits and supporting papers 205-207; 208-209; 210-211; 212-215; 216-218; Other Wells Fargo's memorandum of law (#014); Snyders' memorandum of law (#015); Chevy Chase's memorandum of law (#017); National City's memorandum of law (#018); National City's reply memorandum of law re: plaintiff (#018); National City's reply memorandum of law re: Wells Fargo (#018); National City's reply memorandum of law re: Snyders (#018); it is

ORDERED that these motions are hereby consolidated for purposes of this determination; and it is further

ORDERED that the motion by defendant Wells Fargo Bank, N.A. for an order pursuant to CPLR 3212, granting summary judgment dismissing the complaint against it, dropping it from the caption of this action, and amending the caption accordingly, is denied; and it is further

ORDERED that the motion by defendants Scott S. Snyder and Hong Li Snyder for an order pursuant to CPLR 3212, granting partial summary judgment (i) dismissing the first, second, and fourth causes of action in the complaint against them, and (ii) in their favor on their first counterclaim, is granted to the extent of granting summary judgment dismissing the plaintiff's first and second causes of action against them, and is otherwise denied; and it is further

ORDERED that the motion by defendant Chevy Chase Bank for an order pursuant to CPLR 3212, granting summary judgment dismissing the complaint and the cross claims of defendants Scott Snyder, Hong Li Snyder, and Wells Fargo Bank, N.A. against it, is granted to the extent of granting summary judgment dismissing the complaint and the cross claims for unjust enrichment against it, and is otherwise denied; and it is further

ORDERED that the motion (incorrectly denominated as a cross motion) by defendant National City Bank for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint and the cross claims of defendants Scott Snyder, Hong Li Snyder, and Wells Fargo Bank, N.A. against it, is granted to the extent of granting summary judgment dismissing the complaint and the cross claims for unjust enrichment against it, and is otherwise denied; and it is further

ORDERED that the cross motion by defendants Scott S. Snyder and Hong Li Snyder for an order pursuant to CPLR 3212, granting summary judgment dismissing the cross claim of defendant National City Bank against it, is denied; and it is further

ORDERED that the cross motion by defendants Scott S. Snyder and Hong Li Snyder for an order pursuant to CPLR 3212, granting summary judgment dismissing the cross claim of defendant Chevy Chase Bank against it, is denied.

In this action, the plaintiff seeks declaratory and injunctive relief, as well as damages, arising from a

series of allegedly fraudulent transfers of the property located at 2 Jefferson Landing Circle, Port Jefferson, New York.

It appears from the amended complaint that Dan Di is the plaintiff's ex-wife, and that Di Yang is the daughter of the plaintiff and Dan Di; that the plaintiff and Di Yang purchased the property, as joint tenants with rights of survivorship, for a price of $810,000.00, by deed dated November 13, 2003 and recorded on December 1, 2003; that on or about May 5, 2004, a power of attorney was executed on the plaintiff's behalf, purporting to appoint Dan Di as his attorney-in-fact with authority to act in real estate transactions, banking transactions, and tax matters; that the plaintiff never executed the power of attorney, that his signature was forged by Dan Di or by someone acting on her behalf, and that Dan Di knew that she did not have the plaintiff's authority to act as his attorney-in-fact; that on or about July 12, 2004, a second power of attorney was executed in which Di Yang appointed Dan Di as her attorney-in-fact with authority to act in real estate transactions, banking transactions, and tax matters; that on July 21, 2004, Dan Di, allegedly acting on behalf of the plaintiff and Di Yang, transferred the deed to the property to Xaiodong Yang; that the deed, listing a purchase price of $990,000.00, was recorded on October 13, 2004; that the power of attorney from the plaintiff to Dan Di was also recorded on October 13, 2004; that a mortgage for the transaction in the amount of $742,500.00, listing the mortgagor as Chevy Chase Bank, was also recorded on October 13, 2004; that on October 16, 2005, Xaiodong Yang executed a power of attorney in which he appointed Dan Di as his attorney-in-fact with authority to act in real estate transactions, banking transactions, insurance transactions, personal relationships and affairs, and tax matters; that on November 22, 2005, Dan Di, acting on behalf of Xaiodong Yang, took out a second mortgage on the property in the amount of $200,000.00, listing the mortgagor as National City Bank, and that the mortgage was recorded on December 16, 2005; that on January 20, 2006, Dan Di, acting on behalf of Xaiodong Yang, transferred the deed to the property to Di Yang, and that the deed was recorded on July 24, 2006; and that the plaintiff did not learn of the forgeries and fraudulent conveyances until he attempted to move into the house in September 2006. This action followed, with Dan Di, Di Yang, Xaiodong Yang, Chevy Chase Bank, and National City Bank named as defendants.

It also appears that on December 29, 2010, following the commencement of this action, the property was sold to Scott S. Snyder and Hong Li Snyder as a short sale; that the mortgage loans given by Chevy Chase Bank and National City Bank were satisfied, in reduced amounts, from the sale proceeds; that a deed and a mortgage for the transaction in the amount of $390,600.00, listing the mortgagor as Wells Fargo Bank, N.A., were recorded on January 20, 2011; that on January 26, 2011, the plaintiff, for the first time, filed a notice of pendency against the property; and that the plaintiff subsequently obtained leave of court to amend the complaint and add Scott S. Snyder, Hong Li Snyder, and Wells Fargo Bank, N.A. as additional party defendants.

The plaintiff pleads four causes of action in his amended complaint. The first, against Dan Di, Di Yang, Xaiodong Yang, Scott S. Snyder, and Hong Li Snyder, is to recover damages for fraud; the second, against the same defendants, is for injunctive relief, vacating the aforesaid mortgages and restoring his ownership interest in the property, and to recover damages, on a theory of unjust enrichment; the third, against Dan Di, Di Yang, and Xaiodong Yang, is for injunctive relief, vacating the aforesaid mortgages and restoring his ownership interest in the property, and to recover damages, ostensibly on a theory of conspiracy to commit fraud; and the fourth, against Di Yang, Scott S. Snyder, Hong Li Snyder, Chevy Chase Bank,

National City Bank, and Wells Fargo Bank, N.A., brought under RPAPL article 15, is for judgment declaring that the plaintiff is vested with an absolute and unencumbered title in fee to his share of the joint tenancy in the property and that the defendants be barred from all claims in the plaintiff's estate or interest in the property.

Scott S. Snyder and Hong Li Snyder, in their answer, and Wells Fargo Bank, N.A., in its answer, assert various counterclaims as well as cross claims against Dan Di, Di Yang, Xaiodong Yang, Chevy Chase Bank, and National City Bank. As is relevant to this determination, the Snyders' first counterclaim is for judgment declaring that they are the bona fide purchasers of the property and that any interest claimed by the plaintiff in the property is invalid; both the Snyders and Wells Fargo allege in their cross claims, ostensibly sounding in fraud and unjust enrichment, that their codefendants knew of the pendency of this action and of the plaintiff's claim of a title interest in the property prior to the short sale but failed to disclose such information and made fraudulent representations of good title, that they reasonably relied on those misrepresentations to their detriment, that they never would entered into a contract for the sale of the property or issued a note and mortgage relative to its sale had they known that there was a dispute over title ownership to the property, and as a consequence, that they are entitled to damages and restitution for their expenses.

Chevy Chase Bank and National City Bank each assert a single cross claim against Scott S. Snyder, Hong Li Snyder, and Wells Fargo Bank, N.A. seeking reinstatement of their respective mortgage liens should they be held liable and be required to divest proceeds of the short sale closing which they received in satisfaction of their mortgages.

By orders dated March 31, 2014 and May 15, 2014, the court granted the plaintiff leave to enter default judgments against Dan Di and Xaiodong Yang. By order dated June 3, 2015, the court directed that the assessment of damages and entry of judgment against the defaulting defendants be held in abeyance pending the trial or other disposition of the action as to the non-defaulting defendants.

Upon the completion of discovery, the plaintiff filed a note of issue on February 26, 2016.

Now before the court are the defendants' respective applications for summary judgment, which will be addressed seriatim below.

Wells Fargo's motion is denied in its entirety. To the extent it is addressed to the plaintiff's first and second causes of action, the court notes that neither of those causes of action is pleaded against Wells Fargo. As for the plaintiff's fourth cause of action, Wells Fargo contends, in an argument joined by the Snyders, that any claim for relief under RPAPL article 15 against them is barred by laches by reason of the plaintiff's failure to timely file a notice of pendency–*i.e.*, that because of his inaction, the plaintiff forfeited his right to claim an interest in the property. The court finds the defendants' showing insufficient as a matter of law to establish laches as a ground for relief.

> The essence of the equitable defense of laches is prejudicial delay in the assertion of rights (*see Matter of Schulz v State of New York*, 81 NY2d 336, 348 [1993]; *Weiss v Mayflower*

> *Doughnut Corp.*, 1 NY2d 310, 318 [1956]; *Wilds v Heckstall*, 93 AD3d 661, 663 [2012]). "To establish laches, a party must show: (1) conduct by an offending party giving rise to the situation complained of, (2) delay by the complainant in asserting his or her claim for relief despite the opportunity to do so, (3) lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief, and (4) injury or prejudice to the offending party in the event that relief is accorded the complainant" (*Cohen v Krantz*, 227 AD2d 581, 582 [1996]; *see Meding v Receptopharm, Inc.*, 84 AD3d 896, 897 [2011]; *Dwyer v Mazzola*, 171 AD2d 726, 727 [1991]). In order for laches to apply to the failure of an owner of real property to assert his or her interest, "it must be shown that [the] plaintiff inexcusably failed to act when [he or] she knew, or should have known, that there was a problem with [his or] her title to the property. In other words, for there to be laches, there must be present elements to create an equitable estoppel" (*Kraker v Roll*, 100 AD2d 424, 432-433 [1984] [citations omitted]). "Equitable estoppel arises when a property owner stands by without objection while an opposing party asserts an ownership interest in the property and incurs expense in reliance on that belief. The property owner must inexcusably delay in asserting a claim to the property, knowing that the opposing party has changed his position to his irreversible detriment" (*Bank of Am., N.A. v 414 Midland Ave. Assoc., LLC*, 78 AD3d 746, 750 [2010] [internal quotation marks and citation omitted]; *see Wilds v Heckstall*, 93 AD3d at 664).

(***Stein v Doukas***, 98 AD3d 1026, 1028, 950 NYS2d 773, 775-776 [2012]; *accord* ***Deutsche Bank Natl. Trust Co. v Joseph***, 117 AD3d 982, 986 NYS2d 545 [2014]). Although the plaintiff did not file a notice of pendency until January 2011–a month after the short sale that transferred the property to the Snyders–it is evident that this action was commenced some two years prior. As such, whatever the plaintiff's delay in asserting a claim to the property, excusable or otherwise–the plaintiff acknowledges having learned of the forgeries and fraudulent conveyances as early as September 2006–it does not appear how its effect was to prejudice these defendants in any way. Nor has it been shown that delay in filing a notice of pendency, of itself, is sufficient to constitute laches. Certainly, it has not been demonstrated that the plaintiff, by any delay, fraudulently induced the Snyders to purchase the property and Wells Fargo to issue the related note and mortgage (*see* ***Kraker v Roll***, 100 AD2d 424, 474 NYS2d 527 [1984]).

The Snyders' motion is granted as to both the plaintiff's first and second causes of action. Relative to the first cause of action, the plaintiff alleges that when the Snyders purchased the property in December 2010, they knew or should have known that the plaintiff did not sign the March 5, 2004 power of attorney; it is also alleged that the Snyders' action was intended to injure the plaintiff. "To properly plead a cause of action for fraud, a plaintiff must allege all of the following requisite elements: (1) the defendant made a misrepresentation or a material omission of fact which was false and which the defendant knew to be false; (2) the misrepresentation was made for the purpose of inducing the plaintiff to rely upon it; (3) the plaintiff justifiably relied on the misrepresentation or material omission; and (4) injury" (***Bannister v Agard***, 125 AD3d 797, 798, 5 NYS3d 114, 115 [2015]). The Snyders, in support of their motion, submit the affidavit of Scott S. Snyder, who claims that neither he nor his wife has ever met or spoken to the plaintiff, that at no point during the negotiations to purchase the property was either of them informed by anyone that this action was pending or that the plaintiff was making any claim of ownership to the property and, consequently, that

the plaintiff could not possibly have been defrauded by anything that he or his wife said or did in connection with their purchase of the property. They also contend that the pleading is legally insufficient, as it contains no allegation of a material statement of fact made by either of them upon which the plaintiff claims to have relied. In response to the Snyders' prima facie showing, the plaintiff does not provide evidentiary facts making out a cause of action and, therefore, has failed to demonstrate a triable issue of fact (*see* ***Alvord & Swift v Muller Constr. Co.***, 46 NY2d 276, 413 NYS2d 309 [1978]; ***Lindquist v County of Schoharie***, 126 AD3d 1096, 4 NYS3d 708 [2015]); his claims that he "was not present during the inception of the [allegedly fraudulent] plan" and "realistically cannot be expected to plead to [the Snyders'] actual state of mind" do not suffice to withstand summary judgment. Nor is the Snyders' mere participation in the subject chain of conveyances, without proof of their knowledge of the forgery or of any misrepresentation upon which the plaintiff relied to his detriment, sufficient to sustain a cause of action for aiding and abetting a fraud (*see* ***Nabatkhorian v Nabatkhorian***, 127 AD3d 1043, 7 NYS3d 479 [2015]). As to the second cause of action, the plaintiff alleges that the Snyders were unjustly enriched "as a result of receiving and holding a Deed to the property * * * that purports to give them complete ownership." This, too, is deficient. To plead a legally sufficient cause of action for unjust enrichment, a plaintiff must allege that the defendant was enriched at the plaintiff's expense, and that it would be against equity and good conscience to permit the defendant to retain what the plaintiff seeks to recover (***Suntrust Mtge. v Mooney***, 113 AD3d 836, 978 NYS2d 901 [2014]). Additionally, since a cause of action for unjust enrichment derives from contract law, it must appear that there is a relationship between the parties or, at least, an awareness by the defendant of the plaintiff's existence (***Georgia Malone & Co. v Rieder***, 19 NY3d 511, 950 NYS2d 333 [2012]; ***Mandarin Trading Ltd. v Wildenstein***, 16 NY3d 173, 919 NYS2d 465 [2011]). Here, absent a showing of evidentiary facts indicating a connection between the parties that could have caused reliance or inducement, the court finds their relationship too attenuated as a matter of law to support an unjust enrichment claim.

In all other respects, the Snyders' motion is denied. To the extent they seek summary judgment dismissing the plaintiff's fourth cause of action as barred by laches, the court refers to its analysis of Wells Fargo's motion *supra*. As to their first counterclaim, pursuant to which they seek a declaration that they are bona fide purchasers of the property, the court finds the plaintiff's proof, including his deposition testimony, sufficient to raise a triable issue of fact as to the validity of their deed, precluding an award of summary judgment in their favor. At the plaintiff's deposition, he testified that he did not recognize the May 5, 2004 power of attorney purporting to appoint Dan Di as his attorney-in-fact, that the signature appearing on the document was not his, and that he never had any discussions about giving Dan Di formal authority to sell the property. "If a signature of a power of attorney is forged, any document executed by the purported attorney-in-fact pursuant to the power of attorney is void. If a document purportedly creating a property interest is void, it conveys nothing, and a subsequent bona fide purchaser or bona fide encumbrancer for value receives nothing" (***ABN AMRO Mtge. Group v Stephens***, 91 AD3d 801, 803, 939 NYS2d 70, 72 [2012] [citations omitted]). "[A] person cannot be a bona fide purchaser or encumbrancer for value through a forged deed, as such a deed is void and conveys no title" (***Karan v Hoskins***, 22 AD3d 638, 639, 803 NYS2d 666, 667 [2005]). "A deed based on forgery or obtained by false pretenses is void ab initio, and a mortgage based on such a deed is likewise invalid" (***Cruz v Cruz***, 37 AD3d 754, 832 NYS2d 217, 218 [2007]). Even assuming, then, that failure to file a notice of pendency could be found to support a defense of laches (*cf.* ***Chopra v Metrocities Mtge.***, 29 Misc 3d 1206[A], 958 NYS2d 306 [2010]), such failure cannot serve as a basis for conveying property rights which, viewing the evidence in a light most favorable to the plaintiff (*see* ***Marine***

Midland Bank v Dino & Artie's Automatic Transmission Co., 168 AD2d 610, 563 NYS2d 449 [1990]), may not exist.

Because the motions by Chevy Chase and National City seek nearly identical relief, they will be analyzed conjointly; for the same reason, and because Chevy Chase's motion was timely made (*see* CPLR 3212 [a]), the court will consider National City's untimely motion on its merits (*see* ***Bressingham v Jamaica Hosp. Med. Ctr.***, 17 AD3d 496, 793 NYS2d 176 [2005]).

The motions by Chevy Chase and National City are granted in part and denied in part. (Although both defendants–like Wells Fargo–direct arguments to the plaintiff's first and second causes of action, the court notes that neither of those causes of action is pleaded against them.) As to the plaintiff's fourth cause of action, they correctly contend that because their respective mortgage liens were satisfied by the short sale, they no longer have any claim to the property and are not proper party defendants (*see* ***Jean v Joseph***, 41 AD3d 657, 838 NYS2d 780 [2007]; ***Berman v Golden***, 131 AD2d 416, 515 NYS2d 859 [1987]); dismissal is, therefore, appropriate. "A party having no claim to any estate or interest in the subject realty is neither a necessary nor a permissive party [to an action under RPAPL article 15]" (2-24 Warren's Weed, New York Real Property § 24.29 [2017]). The court is constrained, however, to deny summary judgment as to the cross claims for fraud. Although Chevy Chase and National City claim that they made no affirmative misrepresentations and that they had no duty to disclose based on a confidential or fiduciary relationship, there remain issues of fact relative to their liability for fraudulent concealment, particularly given the delay in the filing of a notice of pendency–namely, whether the plaintiff's claim of interest in the property was a matter of information which the Snyders and Wells Fargo could readily have discovered through the exercise of ordinary diligence and, if not, whether Chevy Chase and National Bank had superior knowledge as to the existence of a potential cloud on title, rendering nondisclosure inherently unfair (***Barrett v Freifeld***, 64 AD3d 736, 883 NYS2d 305 [2009]; ***Swersky v Dreyer & Traub***, 219 AD2d 321, 643 NYS2d 33 [1996]). Conversely, as the cross claims purporting to sound in unjust enrichment are likewise based on the alleged withholding of material information from the Snyders and Wells Fargo, the court finds them subject to dismissal as duplicative of the cross claims for fraud (*see* ***American Mayflower Life Ins. Co. of N.Y. v Moskowitz***, 17 AD3d 289, 794 NYS2d 32 [2005]).

The Snyders' respective cross motions, addressed to the cross claims asserted by Chevy Chase and National City, are denied as untimely, having been made more than 120 days after the filing of the note of issue without any showing of good cause for the delay (*see* CPLR 3212 [a]; ***Brill v City of New York***, 2 NY3d 648, 781 NYS2d 261 [2004]). Absent a showing of good cause, "a court has no discretion to entertain even a meritorious, nonprejudicial summary judgment motion" (***Hesse v Rockland County Legislature***, 18 AD3d 614, 795 NYS2d 339, 340 [2005]). And while a court may entertain an untimely (motion or) cross motion for summary judgment if it is deciding a timely motion made on nearly identical grounds (*e.g.* ***Grande v Peteroy***, 39 AD3d 590, 833 NYS2d 615 [2007])–the theory being that the court is empowered to search the record and grant summary judgment to any party without the necessity of a cross motion (*see* CPLR 3212 [b])–the court's search is limited to those causes of action or issues that are the subject of the timely motion (***Dunham v Hilco Constr. Co.***, 89 NY2d 425, 654 NYS2d 335 [1996]; ***Whitehead v City of New York***, 79 AD3d 858, 913 NYS2d 697 [2010]). Here, the untimely cross motions may not be considered, as they address pleadings and concern issues not already properly before the court.

The court directs that the claims as to which summary judgment was granted are hereby severed and that the remaining claims shall continue (*see* CPLR 3212 [e] [1]).

Dated: April 11, 2017

Martha L. Luft
A.J.S.C.
HON. MARTHA L. LUFT

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**

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