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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 199 SSM 28  
Thomas P. Cashel,  
Plaintiff,  
v.  
Francine Cashel,  
Defendant.

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Thomas P. Cashel,  
Appellant,  
v.  
Francine Cashel, et al.,  
Defendants,  
Mortgage Electronic Registration  
Systems, Inc., et al.,  
Respondents.  
(And Another Action.)

Submitted by Michael Chetkof, for appellant.  
Submitted Michael J. Siris, for respondents.

MEMORANDUM:

The order of the Appellate Division, insofar as  
appealed from, should be reversed, with costs, and the motion by  
defendants Fremont Investment & Loan and Mortgage Electronic  
Registration Systems, Inc. for summary judgment dismissing the  
first cause of action against them denied.

Issues of fact exist with respect to whether plaintiff Thomas P. Cashel possessed the requisite "knowledge of material facts" concerning the allegedly binding deed (New York State Med. Transporters Assn. v Perales, 77 NY2d 126, 131 [1990]). Although plaintiff admitted to receiving certain monies from Francine Cashel, he alleged that she "advis[ed] him that she had received these funds from the proceeds of the mortgage loan," which he had authorized her to obtain as his agent. Moreover, as argued by plaintiff, his receipt of these monies does not prove that he had any prior knowledge of Francine's alleged forgery of the deed, especially considering that he authorized her to obtain a mortgage on the property. In addition, plaintiff claimed that he had not learned of the alleged forgery until June 2004 and that he filed a notice of pendency on the property in August 2004 -- several months before defendant Fremont Investment & Loan issued its loan to Francine. Thus, the Court cannot conclude, as a matter of law, that plaintiff ratified the deed.

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On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, reversed, with costs, and the motion by defendants Fremont Investment & Loan and Mortgage Electronic Registration Systems, Inc. for summary judgment dismissing the first cause of action against them denied, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided August 31, 2010