Akodes v Pyatetsky
2015 NY Slip Op 03112
Decided on April 15, 2015
Appellate Division, Second Department
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Decided on April 15, 2015 SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Second Judicial Department
WILLIAM F. MASTRO, J.P.
REINALDO E. RIVERA
THOMAS A. DICKERSON
JOSEPH J. MALTESE, JJ.

2013-05120
2013-11239
(Index No. 29672/08)

[*1]Leonid Akodes, et al., appellants,

v

Roman Pyatetsky, et al., defendants, Anatoly Shvartsberg, et al., respondents.

Treff & Lowy, PLLC, Brooklyn, N.Y. (Michael Paneth and Paul Youkilis of counsel), for appellants.

DECISION & ORDER

In an action, inter alia, to recover damages for fraud, the plaintiffs appeal (1) from an order of the Supreme Court, Kings County (Demarest, J.), dated October 3, 2012, which denied their motion for summary judgment on the nineteenth cause of action, which was to set aside an alleged fraudulent conveyance pursuant to Debtor and Creditor Law § 274, and (2), as limited by their brief, from so much of an order of the same court dated May 7, 2013, as, upon reargument, adhered to the original determination.

ORDERED that the appeal from the order dated October 3, 2012, is dismissed, as that order was superseded by the order dated May 7, 2013, made upon reargument; and it is further,

ORDERED that the order dated May 7, 2013, is reversed insofar as appealed from, on the law, upon reargument, the order dated October 3, 2012, is vacated, and the plaintiffs' motion for summary judgment on the nineteenth cause of action, which was to set aside an alleged fraudulent conveyance pursuant to Debtor and Creditor Law § 274, is thereupon granted; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

Upon reargument, the Supreme Court should have granted the plaintiffs' motion for summary judgment on the nineteenth cause of action, which was to set aside an alleged fraudulent conveyance pursuant to Debtor and Creditor Law § 274. Pursuant to Debtor and Creditor Law § 274, a conveyance is fraudulent when it is "made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his [or her] hands after the conveyance is an unreasonably small capital." Here, the plaintiffs established, prima facie, that the subject conveyance was fraudulent as defined by Debtor and Creditor Law § 274 (*see* Debtor and Creditor Law §§ 272, 274; *Prudential Farms of Nassau County v Morris,* 286 AD2d 323; *Rampello v Cioffi,* 282 AD2d 442, 443; *Merman v Miller,* 82 AD2d 826, 826-827). In opposition, the defendants Anatoly Shvartsberg and Galina Pyatetsky failed to raise a triable issue of fact.

MASTRO, J.P., RIVERA, DICKERSON and MALTESE, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court

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