

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ  
*Justice*

PART 13

FANDORF PROPERTIES, INC. and MICHAEL ADAMSON  
as Administrator of the Estate of Randolph Adamson,

INDEX NO. 113094/2010

Plaintiffs,

MOTION DATE 02-27-2015

-against-

MOTION SEQ. NO. 005

MOTION CAL. NO. \_\_\_\_\_

CLASSIC BROWNSTONES UNLIMITED, LLC, 15 WEST  
129<sup>TH</sup> STREET CORP., and CATHAY BANK.

Defendants.

The following papers, numbered 1 to 7 were read on this motion to dismiss the complaint.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

1 - 3

Answering Affidavits — Exhibits \_\_\_\_\_

4 - 5

Replying Affidavits \_\_\_\_\_

6 - 7

Cross-Motion:  Yes  No

Upon a reading of the foregoing cited papers, it is Ordered that defendant Cathay Bank's motion to dismiss the Amended Complaint is granted, the causes of action asserted as against Bank are severed and dismissed.

Plaintiffs bring this action pursuant to Article 15 of the Real Property Actions and Proceedings Law for a judgment declaring that they are the owners of real property located at 15 West 129<sup>th</sup> Street, New York, New York 10027 (herein "Building"). Plaintiffs allege that the deed transferring the Building to the defendants Classic Brownstones Unlimited, LLC (herein "Brownstones") and 15 West 129<sup>th</sup> Street Corp. (herein "15 West") was a forgery and thereby the defendants converted the Building. Defendant Cathay Bank holds two mortgages on the Building.

The Building was owned by Randolph Adamson who on May 21, 1974 transferred title to Fan-Dorf Properties, Inc., by virtue of a deed. In October of 2000 the Building was transferred from Fan-Dorf Properties, Inc. to 15 West. The deed was signed by Robert Adamson, as president, was duly notarize and recorded in the Office of the City Register of the City of New York on October 20, 2000. The deed and Building were transferred five times from 2001 to 2006, at which point the deed and Building were transferred to Brownstones.

Plaintiffs claim that the deed transferring the Building from Fan-Dorf Properties Inc. to 15 West is a forgery. Brownstones claims that it is a bona fide purchaser for value that purchased the Building in an arms length transaction.

Plaintiffs served an Amended Complaint dated October 1, 2014 added defendant Bank to this action and asserted causes of action seeking to quiet title to the Building and remove two security interests held by Bank on the Building totaling \$800,000.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Bank now moves to dismiss the Amended Complaint as against her pursuant to CPLR 3211(a)(1),(3), and (7) for a defense found upon documentary evidence, lack of capacity to maintain this action, and for failure to state a cause of action.

Bank argues that the corporate entity Fan-Dorf Properties, Inc. has no right to relief because it did not exist in 2000 when the alleged fraudulent transfer was made. Fan-Dorf Properties, Inc. was dissolved in 1993 by the New York State Secretary of State for its failure to pay franchise taxes.

Tax Law Section 203-a(1) grants the Secretary of State the authority to dissolve businesses that are delinquent in paying the state franchise tax. "Upon dissolution, the corporation's legal existence terminates (see *Lorisa Capital Corp. v. Gallo*, 119 A.D.2d 99, 109, 506 N.Y.S.2d 62). A dissolved corporation is prohibited from carrying on new business (see Business Corporation Law § 1005[a][1] ) and does not enjoy the right to bring suit in the courts of this state, except in the limited respects specifically permitted by statute" (*Moran Enterprises, Inc. v. Hurst*, 66 A.D.3d 972, 975, 888 N.Y.S.2d 109, 112 [2<sup>nd</sup> Dept., 2009]), such as the winding down of business (see Business Corporation Law § 1006).

Sections 203-a(7) and (8) of the Tax Law allow for the filing of a certificate with the Department of State, upon consent of the commission of taxation and finance, which has the effect of "annulling all of the proceedings theretofore taken for the dissolution of such corporation under the provisions of this section and it shall thereupon have such corporate powers, rights, duties and obligations as it had on the date of the publication of the proclamation, with the same force and effect as if such proclamation had not been made or published."

Here, the alleged fraudulent conveyance occurred seven years after Fan-Dorf Properties, Inc. was dissolved by the Secretary of State for failure to pay its franchise taxes. This action was commenced ten years after the alleged fraudulent conveyance and seventeen years after Fan-Dorf Properties, Inc. was dissolved.

Although Fan-Dorf Properties, Inc. was reinstated in 2010 upon payment of the unpaid franchise taxes up until 1993, that reinstatement was not retroactive. In a letter dated June 5, 2014, the New York State Department of Taxation and Finance wrote plaintiffs and stated in relevant part that:

A dissolved corporation that is merely a record title holder of real property located in New York State as a nominee for the benefit of others, and is otherwise inactive, is not conducting business in New York State as contemplated by section 209.3 of the New York State Tax Law. Therefore, Fan-Dorf Properties, Inc. is not subject to taxation under Article 9-A of the Tax Law after it was dissolved by proclamation on June 23, 1993.

Further, in opposition, plaintiffs do not cite any governing statute or authority in their favor. Rather, plaintiffs concede that they require the certificate annulling the 1993 dissolution. Plaintiffs stated "[we] are now waiting for the certificate of consent reference in Tax Law Section 203-a(7) ... to be given by the commission of taxation and finance.

Once this happens, plaintiffs will file this certificate of consent with the New York Department of State and [Fan-Dorf Properties, Inc.] will be revived retroactively pursuant to Tax Law sec. 203-a(7) ... as if dissolution never took place" (see Aff. In Opp., PP. 8).

Fan-Dorf Properties, Inc. was dissolved seven years prior to the alleged fraudulent conveyance, and although reinstated in 2010, ten years after the alleged fraudulent conveyance, Fan-Dorf Properties, Inc. has not been retroactively reinstated upon consent of the commissioner of taxation and finance and the Department of State. Fan-Dorf Properties, Inc. lacks capacity to maintain this action, and defendant Cathay Bank's motion to dismiss pursuant to CPLR 3211(a)(3) is granted. The Court does not reach defendant Bank's remaining arguments.

Accordingly, it is ORDERED that this motion to dismiss by defendant Cathay Bank for Plaintiff's lack of legal capacity to sue is granted, and it is further,

ORDERED, that the two causes of action as against defendant Cathay Bank asserted in the Amended Complaint are hereby severed and dismissed, and it is further,

ORDERED that the caption in this action is amended as follows:

FANDORF PROPERTIES, INC. and MICHAEL ADAMSON  
as Administrator of the Estate of Randolph Adamson,

Plaintiffs,

-against-

CLASSIC BROWNSTONES UNLIMITED, LLC, and 15 WEST  
129<sup>TH</sup> STREET CORP.

Defendants.

,and it is further,


ORDERED, that the moving defendant serve a copy of this Order with Notice of Entry within 10 days from the date of this Order upon the General Clerk's Office (Room 119) and upon the County Clerk (Room 141B), who are directed to amend the caption and the court's records accordingly, and it is further,

ORDERED, that the remaining parties appear for a Conference in IAS Part 13 located at 71 Thomas St., Rooms 210, New York, New York on April 15, 2015 at 9:30AM.

MANUEL J. MENDEZ  
J.S.C.

Enter:

Dated: March 13, 2015

  
\_\_\_\_\_  
MANUEL J. MENDEZ  
J.S.C.

Check one:  FINAL DISPOSITION      X NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST       REFERENCE