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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X **PART 10**

**SEA CLIFF COAL AND LUMBER
COMPANY,**

Plaintiff,

INDEX NO. 10191/08

X X X

-against-

MOTION DATE: 10/16/09

SEQUENCE NO. 001, 002

**JAMES FREUD, PAUL BEEBER and
THERESE FREUD,**

Defendants.

-----X

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|--|------------|
| Notice of Motion, Affs. & Exs..... | <u>1</u> |
| Notice of Cross-Motion, Affs. & Exs..... | <u>2</u> |
| Affirmation In Opposition & Exs..... | <u>3</u> |
| Reply Affirmation & Exs..... | <u>4-5</u> |

Upon the foregoing papers, it is ordered that the motion by defendants for an order dismissing the action against them pursuant to CPLR 3212 is granted.

The cross-motion by plaintiff for an order dismissing defendants' counterclaim of defamation is granted.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

Defendants did not include the Amended Complaint with their motion. The Amended Complaint included in plaintiff's cross-motion claims.

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 (1986)). Once the movant has demonstrated a *prima facie* showing of entitlement to judgment, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (*Zuckerman v. City of New York*, 49 NY2d 557 (1980)).

Defendant James Freud was a commercial tenant by an undated written month-to-month lease between landlord Sea Cliff Coal and Lumber Company. Plaintiff terminated the lease and demanded unpaid rent of \$45,900.00 on December 12, 2007.

As a facet of his estate planning and providing a home for his sister, Therese Freud, defendant James Freud transferred title to his interest to defendant Therese Freud by deed dated October 27, 2007. Defendant James Freud retained a life estate; his sister, Therese Freud was his caretaker after a debilitating car accident. Defendant Paul Beeber was the attorney for defendants James Freud and Therese Freud for the estate planning.

Plaintiff seeks to rescind the October 27, 2007 transfer of title from defendant James Freud to defendant Therese Freud; an order compelling defendant to re-convey the aforementioned deed to James Freud and recovery of \$30,000 pursuant to DCL Article 10 and money damages for conspiring to defraud and punitive damages.

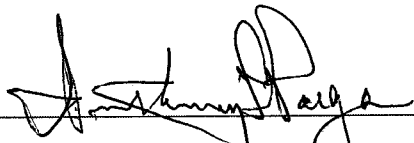
Plaintiff has not met its burden of demonstrating by admissible evidence that plaintiff has any standing or rights to assets belonging to defendant James Freud that were transferred before any judgment. The plaintiff's cross-motion by attorney's affirmation includes a judgment dated June 4, 2008 against James Freud in the amount of \$45,900.00 (unpaid rent for 59 Sea Cliff Avenue, Glen Cove, N.Y.) That

judgment alone is not demonstrative of defendants' acts of fraudulent conveyance of title or conspiracy to defraud by counsel Paul Beeber.

The documentation submitted by all parties shows that defendant James Freud relinquished title and retained a life estate on October 27, 2007 well before plaintiff terminated the lease, commenced the summary proceeding action and obtained a money judgment against James Freud. Plaintiff has offered no explanation as to why the unpaid rent of \$900 a month reached \$45,000 before a summary proceeding was commenced.

The Court cannot discern terms and enforcement thereof that plaintiff seeks to use as the keystone to the fraud theory.

Dated: December 21, 2009.



Anthony L. Parga, J. S. C.

ENTERED

DEC 23 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**