

At an IAS Term, Part CSCP of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the day **17<sup>th</sup>** of August, 2012.

**P R E S E N T:**

**HON. RICHARD VELASQUEZ**

Justice.

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CITY OF NEW YORK,

Plaintiff,

-against-

Index No.: 14415/08  
3<sup>RD</sup> Party Index No. 15445/08

**KHALEEF ALLICOTT, individually, and as the Administrator of the Estate of JACQUELINE WOOD ALLICOTT, a/k/a/ JACQUELINE WOOD, NYC PARTNERSHIP HOUSING DEVELOPMENT FUND COMPANY, Inc., L&M DEVELOPMENT, LLC, JP MORGAN CHASE BANK, JP MORGAN CHASE BANK, D.C., N.A., CHASE MANHATTAN MORTGAGE CORPORATION, a/k/a CHASE MORTGAGE SERVICES, INC., and "JOHN AND JANE DOE # 1-30," et al,**

Defendants.

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THE FOLLOWING PAPERS NUMBERED 1 to 15 READ ON THIS MOTION

	Papers Numbered
Defendants' NOTICE OF MOTION - AFFIDAVIT(S) - AFFIRMATION(S)	1-2, 3-4, 5-6,
ANSWERING AFFIDAVIT(S) - AFFIRMATION(S)	7,8
REPLY AFFIDAVIT(S) - AFFIRMATION(S)	9, 10, 11
CROSS-MOTION - AFFIRMATION(S) - AFFIDAVIT(S)	12, 13
EXHIBITS AND OTHER PAPERS - MEMORANDA OF LAW	14, 15

Plaintiff is represented by Michael A. Cardozo, Esq., Corporation Counsel of the City of New York, Debra Hochman, of Counsel; Defendant Chase Home Finance, LLC. is

represented by David K. Fiveson, Esq. of Butler, Fitzgerald, Fiveson & McCarthy, P.C.; Defendants Khaleef Allicott and the Estate of Allicott are represented by Neil Cohen, Esq.; Defendants JP Morgan Chase Bank and JP Morgan Chase Bank, NA are represented by Pittoni, Bonchonsky & Zaino, LLP.; and Defendant NYC Partnership Housing Development Fund Company, Inc. is represented by Torys LLP.

Defendant Chase Home Finance, LLC, successor by merger with Chase Manhattan Mortgage Corporation moves the Court for an Order granting defendant summary judgment pursuant to CPLR §3212 as a matter of law.

Defendant Khaleef Allicott, individually and as administrator of the Estate of Jacqueline Wood Allicott, moves the Court pursuant to CPLR §3212 for summary judgment dismissing plaintiffs' claim against defendant individually and as administrator of the Estate of Jacqueline Wood Allicott as a matter of law and/or equity.

Defendant L & M Development LLC moves the Court pursuant to CPLR § 3211 (a)(7) to dismiss the complaint and all cross-claims against defendant on the grounds that plaintiff, including third party plaintiff NYC Partnership Housing Development Fund have failed to state a cause of action upon which relief may be granted.

Plaintiff City of New York and Third Party Plaintiff NYC Partnership Housing Development Fund oppose defendants' motions on the grounds that the Deed at issue is "void *ab initio*."

For the reasons stated below, all defendants' motions are hereby granted in their entirety and with prejudice.

### Discussion

By Order dated September 24, 2011, this Court denied the summary judgment motions of the City and the Partnership finding that both failed to demonstrate a prima facie entitlement of summary judgment as their claims lack legal merit. The Court found that the Deed and closing papers may not have been signed by Jacqueline Wood Allicott, the purchaser of the property, but that the person signing the Deed and closing papers in the purchaser's stead **did not do so to commit fraud**. Plaintiff City of New York failed to demonstrate or even allege that a forgery was committed by demonstrating that there was an intent to defraud the purchaser's heirs or the sellers.. New York law is clear: "A defendant commits forgery 'when, with intent to defraud, deceive or injure another, he falsely makes, completes, or alters a written instrument".<sup>1</sup>

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<sup>1</sup> See this Court's September 24, 2011 decision for a full analysis of plaintiff City of New York's legal argument that any Deed signed by someone other than the purchaser, in the name of the purchaser, regardless of the intent of the signer, is a forgery and "void *ab initio*". Plaintiff City of New York offered no case law or statute in contravention of the "law of the case" in the Court's prior decision as support for its opposition to the instant actions.

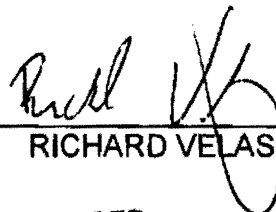
An intent to defraud is the essence of forgery and involves an intent to deceive causing detrimental reliance and injury. Plaintiffs have not demonstrated or even alleged that the motive of the person signing the closing papers and the Deed with the name of Jacqueline Wood Allicott, did so with a motive to commit fraud and injury to the heir of Jacqueline Wood Allicott, but rather the clear implication of his/her act was to effectuate Ms. Allicott's wishes as manifested by the contract entered into by the defendant Partnership and Ms. Allicott.

In plaintiff City's opposition to defendants' motions for summary judgment and dismissal of the complaint and all cross-complaints, it simply repeats over and over that the Deed at issue was rendered *void ab initio* as someone other than Ms. Allicott may have signed the Deed and closing papers. The City offers no relevant case law, no statutes, or no set of facts that could possibly be interpreted by this Court as demonstrating that the signer of the Deed and closing papers did so to benefit her/himself, to defraud the rightful heir of Ms. Allicott, or to benefit personally by having signed Ms. Allicott's name to the Deed and closing papers. Thus, under no statute or case law brought to this Court's attention has a fraud been perpetrated upon the Court, Ms. Allicott's rightful heir, or any parties to this action.

As the Court found in its prior decision, "It is clear, however, that the intent of the Seller and Purchaser has been carried out in that pursuant to the contract [of sale], the Purchaser's heir, Khaleef Allicott, is now in possession of the subject premises, has made all mortgage and tax payments attendant to ownership and has made improvements to the property."

Accordingly, the plaintiffs have failed to rebut defendants, herein, *prima facie* entitlement to summary judgment and/ or dismissal of the complaint and any cross-claims, and have failed to raise even one triable issue of material fact. Defendants' motions for summary judgment and/or dismissal of plaintiffs' complaints are hereby granted in their entirety and with prejudice, and in this matter, specifically, **in the interest of justice.**

ENTER;



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RICHARD VELASQUEZ, J.S.C.

SO ORDERED

AUG 17 2012

Hon. Richard Velasquez

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KINGS COUNTY CLERK'S OFFICE

AUG 24 2012

**FILED**

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CLERK OF SUPERIOR COURT

