

STATE OF NEW YORK  
SUPREME COURT CHAMBERS  
HARRIETSTOWN TOWN HALL  
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SARANAC LAKE, NEW YORK 12983

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JAN H. PLUMADORE  
JUSTICE

December 11, 1989

✓  
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RE: KING v. CARELLA and COLLINS  
Index No. 1L-81  
CC No. 45-1-89-1031  
Our File No. SA-459

Gentlemen:

I am in receipt of your papers in this matter and will rule as follows: Defendant Carella's motion to dismiss is denied but her request for appointment of a guardian ad litem is granted; in this additional regard it is truly unfortunate that Mr. Hallow is no longer with us.

I will withhold decision on Plaintiffs' motion for summary judgment until a guardian ad litem has had a chance to review the papers and make at least a preliminary report. At this point, however, I offer the following observations:

- this form of support (Defendant Carella and the children being housed in a non-marital residence titled originally to Defendant Collins, the father, and Plaintiffs, his mother and stepfather, and now titled only to Plaintiffs) is no longer squarely mandated by virtue of the Appellate Division's October 19, 1988 decision reversing the April 15, 1987 and April 22, 1986 Saratoga Family Court Orders and the subsequent (September 8, 1989) decision of the Family Court on remand;


- however, the Appellate Division noted the Family Court's exclusive possession award but made no finding as to its propriety;
- the Family Court made note of the fact that Defendant Carella and the children were still living in the house when it made its September 8, 1989 decision;
- in its April 22, 1986 decision (overturned by the Appellate Division) the Family Court properly recognized the possibility of dispossession by transfer of title (or, implicitly, otherwise);
- Family Court has no jurisdiction over title, marital or otherwise;
- this Article 15 proceeding is almost unnecessary from Plaintiffs' viewpoint inasmuch as Carella and the children have no interest equivalent to or impinging upon title and Plaintiffs need only seek to evict them;
- given the apparent amount of support arrearages, however, and Defendant Collins' initial 1/3 interest in the home, Defendant Carella is entitled to assert fraudulent conveyance as either a defense to Plaintiffs' claim of fee simple absolute or in a separate action to protect her and the children's interest in the arrearages, which action would be consolidated with this one in any event;
- the fact that Defendant Collins is such, and the additional fact that he now resides in Florida, when he has purportedly extinguished his fee interest by a deed to Plaintiffs, are additional justification for asserting fraudulent conveyance now.

In light of all thereof I will reserve decision on Plaintiffs' motion for summary judgment until I hear further from you and the guardian ad litem. Defendant Carella may submit an order denying her motion but appointing Dianne N. Freestone, Esq. of Grogan, Pentkowski and Pastore, Box 425, Ushers Road, Clifton Park, New York 12065 as guardian ad litem.

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It should be emphasized that I do not currently anticipate the need for a hearing on Plaintiffs' motion and most certainly do not intend to re-litigate the support matters which have so plagued the parties and the Family Court to date.

Very truly yours,



HON. JAN H. PLUMADORE  
Supreme Court Justice

JHP:pk