

# Case Law Shorts

July 19, 2013

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*New York, Appellate Division, Second Dept.*

**Deed/Fraudulent Conveyance/Debtor Creditor Law/"Badges of Fraud"/Intent:** Husband transferred property to wife. Judgment creditor sued to set aside the deed, arguing that Husband made the transfer to avoid paying creditor, and moved for summary judgment. The Supreme Court, Kings County denied but the Second Dept. reversed. . . . "Pursuant to Debtor and Creditor Law § 276, [e]very conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors'" (Matter of U.S. Bancorp Equip. Fin., Inc. v Rubashkin, 98 AD3d 1057, 1060; see Pen Pak Corp. v LaSalle Nat'l Bank of Chicago, 240 AD2d 384, 386). "Direct evidence of fraudulent intent is often elusive. Therefore, courts will consider badges of fraud,' which are circumstances that accompany fraudulent transfers so commonly that their presence gives rise to an inference of intent" (Pen Pak Corp. v LaSalle Nat'l Bank, 240 AD2d at 386, quoting MFS/Sun Life Trust-High Yield Series v Van Dusen Airport Servs. Co., 910 F Supp 913, 935 [SD NY 1995])." The Court stated that husband continued to reside in the premises and transferred the property for inadequate consideration. Husband argued that the transfer was made in anticipation of a divorce, but that the parties reconciled. However, the Court was not persuaded and stated that the evidence was insufficient. 5706 Fifth Ave., LLC v Louzieh, Appellate Division, Second Department, 2013 NY Slip Op 05187, July 10, 2013

[opinion](#)

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