

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

PHOTIOS COUGENTAKIS,

Plaintiff,

-v.-

SAYEH SASSOUNI a/k/a SAYEH KHORSHAD;
TOLA NEW YORK ENTERPRISES INC., a New
York corporation, a/k/a TOLA of NEW YORK
ENTERPRISES INC., NEJATOLLAH
SASSOUNI, individually and in his capacity as
president of TOLA New York Enterprises Inc.,
SUSAN SASSOUNI, JOHN DOES 1-10, and
JOHN DOE ENTITIES 1-10,

Defendants.

SUMMONS

Index No. 604439/2015

Date Filed: 7/8/15

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the **verified complaint** in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Nassau County as the place of trial. The basis of venue is Plaintiff's address. Plaintiff is located at 320 East Shore Road, Great Neck, New York.

Dated: July 8, 2015, Port Washington, New York

/s/ David Yerushalmi

David Yerushalmi, Esq.

Counsel for Plaintiff

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Defendants.

VERIFIED COMPLAINT

Index No. 604439/2015

Date Filed: 7/8/15

Plaintiff Photios Cougentakis, by his attorneys, the Law Offices of David Yerushalmi, P.C., as and for his Verified Complaint, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action brought by a creditor of Defendant Sayeh Sassouni (“S. Sassouni”) for non-payment of a mortgage note and fraudulent conveyance. Plaintiff seeks monetary damages pursuant to the terms of the mortgage note and statutory relief for fraudulent conveyance. In addition, Plaintiff seeks equitable relief in the form of reinstatement of Plaintiff’s mortgage or, in the alternative, the imposition of an equitable mortgage.
2. In essence, Defendant defaulted on a mortgage note wherein she promised to pay Plaintiff \$2 million. At the time, the mortgage securing the debt was in second place behind a foreclosing bank. Defendant S. Sassouni entered into a fraudulent scheme whereby her parents acquired the first mortgage on her premises from the foreclosing bank in order for her parents to stand in the bank’s shoes to foreclose and thus wipe out Plaintiff’s \$2 million second mortgage. Yet, after Defendant’s parents “foreclosed” on the home with a bid of \$100,

Defendant S. Sassouni continued to reside at the home without paying any consideration and does so to this day. Not surprisingly, Defendant S. Sassouni's parents never sought a deficiency judgment. Quite simply, the foreclosure sale was the result of a fraudulent scheme by the Sassouni family and only conducted as a ruse to wipe out Plaintiff's mortgage.

THE PARTIES

3. Plaintiff is a Nassau County, New York resident.
4. Defendant S. Sassouni, also known by her married name, Sayeh Khorshad, resides at 34 Hemlock Drive, Great Neck, New York ("Premises").
5. Defendant TOLA New York Enterprises, Inc. ("TOLA") is a New York corporation doing business in New York.
6. Upon information and belief, Defendant Nejatollah Sassouni ("N. Sassouni") is Defendant S. Sassouni's father and serves as president of Defendant TOLA, and is a Nassau County, New York resident.
7. Upon information and belief, Defendant Susan Sassouni is Defendant N. Sassouni's wife and Defendant S. Sassouni's mother, and is a Nassau County, New York resident.

JURISDICTION AND VENUE

8. Subject matter jurisdiction is conferred on this Court by Article VI, § 7(a) of the New York State Constitution and New York Judiciary Law § 140-b. Personal jurisdiction is conferred on this Court by § 301 of the New York Civil Practice Law and Rules ("CPLR").
9. Venue is proper in this county pursuant to §§ 503(a) and (d) of the CPLR.

FACTUAL BACKGROUND

10. Over a period of 12 years, Plaintiff loaned Defendant S. Sassouni or her designee \$2,488,311. At one point, when Defendant S. Sassouni sought yet additional loans, Plaintiff asked for her to execute a note and mortgage to cover some part of the outstanding loans.

11. As a result, Defendant S. Sassouni executed a \$2 million mortgage note, dated November 2, 2005, payable to Plaintiff (“Mortgage Note”). (A true and correct copy of the Mortgage Note is attached hereto as Exhibit 1.)

12. The Mortgage Note was secured by a mortgage on the Premises owned by Defendant S. Sassouni, which Plaintiff duly recorded on December 7, 2005 (“Mortgage”). (A true and correct copy of the Mortgage is attached hereto as Exhibit 2.)

13. Plaintiff’s Mortgage was in second position behind a note and mortgage granted to Eastern Savings Bank (“ESB”) in the principal amount of \$2,450,000 (“ESB Note and Mortgage”). ESB initiated foreclosure proceedings (“ESB Foreclosure”) pursuant to the ESB Note and Mortgage in October 2006, and in September 2008 the Court issued a judgment of foreclosure and sale. (A true and correct copy of the Court’s order in the ESB Foreclosure granting a judgment of foreclosure and sale in the matter of *Eastern Savings Bank, FSB v. Sayeh Sassouni et al.*, Index No. 16988/06 [Nassau Sup. Ct.] and dated September 18, 2008, is attached hereto as Exhibit 3.)

14. Plaintiff was named as a defendant in the ESB Foreclosure as a second position lienholder and subsequently filed cross-claims against Defendant S. Sassouni for payment of the \$2 million mortgage note, for payment of additional monies loaned pursuant to oral agreements in the amount of \$813,311, and for any surplus proceeds from the ESB foreclosure sale. (A true and correct copy of the First Amended Verified Cross Claims, filed in the ESB Foreclosure and dated June 10, 2008, is attached hereto as Exhibit 4.)

15. The Court’s judgment of foreclosure and sale severed Plaintiff’s cross-claims for trial in the ESB Foreclosure.

16. Unbeknownst to Plaintiff, Defendant S. Sassouni’s parents, Defendants N. Sassouni and S. Sassouni, acting as Defendant S. Sassouni’s alter ego and/or co-conspirator and/or aider

and abettor, agreed with Defendant S. Sassouni that Defendant N. Sassouni would acquire the ESB Note and Mortgage through Defendant TOLA New York Enterprises Inc. (“TOLA”), which Defendant N. Sassouni treated as his alter ego. Defendants agreed amongst themselves and with one another that the purpose of the acquisition of the ESB Note and Mortgage was to effect a fraudulent foreclosure by having Defendant TOLA, acting for and on behalf of Defendant S. Sassouni, foreclose on Defendant S. Sassouni, thereby wiping out Plaintiff’s Mortgage.

17. Defendants proceeded to carry out their scheme. Thus, Defendant TOLA acquired ESB’s position and on May 25, 2010, Defendant TOLA conducted a foreclosure sale and purchased the Premises for \$100, thereby booking a total deficiency of \$3,930,928.68.

18. At the time of the foreclosure sale, the Premises had a fair market value of approximately \$2,500,000.

19. According to the Referee Report of Sale, the Referee’s Deed was executed, acknowledged, and delivered to Defendant TOLA on October 15, 2010. (A true and correct copy of the Referee Report of Sale is attached hereto as Exhibit 5.)

20. At no time subsequent to TOLA’s foreclosure sale, and certainly not within the 90-day limitation period set forth in NY RPAPL § 1371(2), has TOLA sought to recover a deficiency judgment against Defendant S. Sassouni.

21. Defendant TOLA subsequently deeded the Premises to Defendant S. Sassouni’s parents for nominal consideration, who have in turn provided the Premises to Defendant S. Sassouni and her family rent free from the day of the foreclosure to the present.

COUNT I

DEFAULT UNDER THE MORTGAGE NOTE

(As To Defendant S. Sassouni)

22. Plaintiff repeats, re-alleges, and restates the allegations set forth above as though fully alleged herein.

23. Defendant S. Sassouni is the maker of the Mortgage Note, dated November 2, 2008, wherein Defendant S. Sassouni was obligated to pay \$2 million to Plaintiff on January 1, 2008, together with interest accruing at the rate of 13 percent per annum.

24. On January 30, 2008, Plaintiff's attorney at the time, William Turkish, served a notice of default upon Defendant S. Sassouni.

25. Defendant S. Sassouni has to the day of the filing of this complaint paid no amounts due under the Mortgage Note.

26. Consequently, Defendant S. Sassouni is in default under the Mortgage Note and owes Plaintiff the full amount of principal and interest in an amount at the day of filing this complaint totaling no less than \$3,955,342.47.

27. Plaintiff's cause of action for default under the Mortgage Note accrued upon Defendant S. Sassouni's failure to pay the principal and interest amount due on January 1, 2008.

28. On or about May 30, 2008, Plaintiff filed and served his original cross-claims against Defendant S. Sassouni in the ESB Foreclosure seeking, *inter alia*, damages for non-payment of the Mortgage Note. (True and correct copies of Plaintiff's original cross-claims in the ESB Foreclosure and Affidavit of Service are attached hereto as Exhibit 6.)

29. On March 22, 2010, sometime after Defendant TOLA acquired ESB's Note and Mortgage, the Court granted ESB's order to show cause application to change the caption of the ESB Foreclosure to substitute in TOLA as the plaintiff in lieu of ESB. (A true and correct

copy of the Court's order changing the caption of the ESB Foreclosure to name Defendant TOLA as the plaintiff is attached hereto as Exhibit 7.)

30. Subsequent to the Court's severing Plaintiff's cross-claims when granting ESB's motion for summary judgment seeking an order of foreclosure and sale, on February 22, 2010, the Court issued an order certifying the cross-claims ready for trial and directed Plaintiff as defendant/cross-claimant to file a note of issue by May 25, 2010. The Court noted in its order that Plaintiff's failure to file the note of issue by May 25, 2010, would result in automatic dismissal of the cross-claims without further order of the Court. The Court's order does not indicate dismissal would be with prejudice. (A true and correct copy of the Court's order dated February 22, 2010, is attached hereto as Exhibit 8.)

31. Plaintiff did not file a note of issue in the ESB Foreclosure and as such his cross-claims in the ESB Foreclosure were dismissed without prejudice on May 25, 2010.

COUNT II

FRAUDULENT CONVEYANCE

(As To Defendants S. Sassouni, TOLA, N. Sassouni, Susan Sassouni)

32. Plaintiff repeats, re-alleges, and restates the allegations set forth above as though fully alleged herein.

33. From the time Defendant TOLA acquired the ESB Note and Mortgage through and including Defendant TOLA's putative foreclosure sale, Defendant S. Sassouni was insolvent insofar as the present fair salable value of the Premises and of all other of Defendant S. Sassouni's assets was less than the amount due on the ESB Note and Mortgage and Plaintiff's Mortgage Note.

34. At all times relevant hereto, when Defendant TOLA acquired the ESB Note and Mortgage, Defendant TOLA was acting as the alter ego and/or co-conspirator and/or aider and

abettor of Defendant S. Sassouni insofar as Defendant TOLA acquired the ESB Note and Mortgage with the intent to conduct a fraudulent foreclosure on behalf of Defendant S. Sassouni wherein Defendant TOLA was not acting on its own behalf but rather entirely on behalf of Defendant S. Sassouni.

35. Thus, Defendant TOLA bid \$100 to acquire the Referee's Deed at the foreclosure sale but took no steps to obtain a deficiency judgment for the deficiency, which was in excess of \$3.9 million.

36. Further, even if Defendant TOLA had bid the full amount due under the acquired ESB Note and Mortgage, the fair market value of the Premises at the time was no more than \$2.5 million, leaving a real deficiency in excess of \$1.4 million.

37. Subsequent to the foreclosure sale, Defendant TOLA deeded the property to Defendant S. Sassouni's parents for nominal consideration. During all of this time, from the foreclosure sale of the Premises by Defendant TOLA to this very day, Defendant S. Sassouni has resided at the Premises with her husband and children and has never paid any rent to Defendant TOLA or to her parents, Defendants N. Sassouni and Susan Sassouni.

38. In effect, Defendants N. Sassouni and Susan Sassouni, using Defendant TOLA, gave their daughter a way to pay-off the ESB Note and Mortgage, wipe-out Plaintiff's second-position Mortgage Note, and remain in the Premises as the beneficial owner. By keeping title in the parents' names—itsself a transfer from Defendant TOLA without fair consideration—Defendant S. Sassouni has in effect worked a fraudulent foreclosure sale to herself without actually taking title to keep her creditors away from the Premises, where she lives without cost.

39. In the transactions described above, Defendant TOLA acted merely as an alter ego of Defendants N. Sassouni and S. Sassouni in that (1) Defendant N. Sassouni exercised total dominion and control over Defendant TOLA on behalf of his daughter, Defendant S. Sassouni;

(2) Defendant TOLA lacks offices, formal stationary, employees or staff, and formally lists its main offices located at 17 Martin Court in Great Neck, Defendant N. Sassouni's residence; (3) Defendant N. Sassouni used Defendant TOLA's funds to acquire the ESB Note and Mortgage for the benefit of his daughter Defendant S. Sassouni at Defendant TOLA's expense; (4) Defendant N. Sassouni used his dominion and control over Defendant TOLA to prevent Defendant TOLA from seeking a deficiency judgment against his daughter Defendant S. Sassouni; and (5) Defendant N. Sassouni used his dominion and control over Defendant TOLA to take title to the property (together with his wife) for a nominal consideration and to allow his daughter Defendant S. Sassouni to continue to live at the Premises rent-free as the beneficial owner, thereby keeping the Premises sheltered from Defendant S. Sassouni's creditors.

40. Based upon an abstract of judgments search for Defendant S. Sassouni, from 2009 through 2014 there were 8 different judgments entered against Defendant S. Sassouni in the aggregate amount in excess of \$609,402.

41. Consequently, Defendants S. Sassouni, TOLA, N. Sassouni, and Susan Sassouni have conspired together, and have aided and abetted one another, to conduct a fraudulent foreclosure sale in violation of New York's Uniform Fraudulent Conveyances Act (NY Dr & Cr § 270 et seq.).

42. As such, Plaintiff seeks an order from the Court setting aside the fraudulent conveyances described hereinabove and permitting Plaintiff to attach and/or levy execution on the Premises for the full amount of the debt owed under Plaintiff's Mortgage Note.

43. Plaintiff also seeks attorney's fees and costs.

COUNT III

REINSTATEMENT OF MORTGAGE AND/OR EQUITABLE MORTGAGE

(As To Defendants S. Sassouni, TOLA, N. Sassouni, Susan Sassouni)

44. Plaintiff repeats, re-alleges, and restates the allegations set forth above as though fully alleged herein.

45. Based upon Defendants' collusive and fraudulent conduct herein described, Plaintiff seeks equitable relief to reinstate his Mortgage on the Premises and to do so as superior to any claim as to any interest in, or judgment lien affecting, the Premises, as if Defendant TOLU's foreclosure sale had not taken place.

46. In the alternative, Plaintiff seeks an equitable lien to be imposed upon the Premises with a superiority over other claims as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

- A. award Plaintiff damages in the amount due under Plaintiff's Mortgage Note;
- B. award Plaintiff appropriate relief under New York's Uniform Fraudulent Conveyances Act, including, but not limited to, an order permitting Plaintiff to attach or to levy execution on the Premises for the full amount of the debt owed under Plaintiff's Mortgage Note;
- C. award Plaintiff the legal fees and costs incurred in filing and pursuing this action as additional damages in an amount to be determined at trial;
- D. exercise its equitable powers to reinstate Plaintiff's Mortgage on the Premises as a superior lien on the Premises or to impose an equitable mortgage on the Premises as a superior lien, to the extent the Court deems equitable and proper under the circumstances; and

E. award and grant such other and further relief as this Court deems just and proper in this matter.

Dated: July 8, 2015, Port Washington, New York

/s/ David Yerushalmi
David Yerushalmi, Esq.
Counsel for Plaintiff
640 Eastern Parkway
Suite 4C
Brooklyn, New York 11213
Telephone Number: 646.262.0500
Facsimile: 801.760.3901
Email: david.yerushalmi@verizon.net

To Be Served Upon Defendants:

Defendants' Addresses:

- **Sayeh Sassouni a/k/a Sayeh Khorshad**
34 Hemlock Drive
Great Neck, New York 11023
- **TOLA New York Enterprises Inc.**
17 Martin Court
Great Neck, New York 11024
- **Nejatollah Sassouni**
17 Martin Court
Great Neck, New York 11024
- **Susan Sassouni**
17 Martin Court
Great Neck, New York 11024

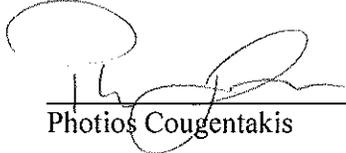
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Photios Cougentakis, being duly affirmed, deposes and says that deponent has read the within Verified Complaint and knows the contents thereof; that the matters alleged therein are true to deponent's knowledge except as to matters stated to be alleged on information and belief and that as to such matters deponent believes the matters set forth to be true.

The grounds for deponent's belief as to such matters are personal inquiry.

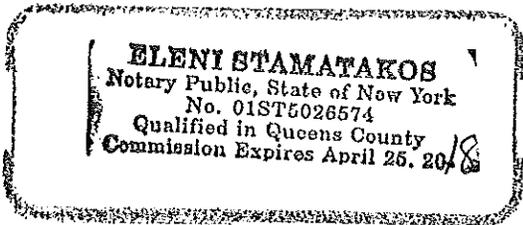
This submission is not frivolous as defined under 22 NYCRR 130.1.



Photios Cougentakis

STATE OF NEW YORK)
)ss.
COUNTY OF NASSAU)

On the 24 day July, 2015, before me, the undersigned, personally appeared Lior Cohen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the entity upon behalf of which the individual acted, executed the instrument.




Notary Public
My commission expires on: 4/25/2018

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Attorneys for the Plaintiff:

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