

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

RSD857, LLC v. Wright

2025 NY Slip Op 06833 · No. Index No. 158125/22; Appeal No. 5308; Case No. 2024-03849 · Decided December 9, 2025

SUMMARY

The Appellate Division, First Department unanimously affirmed an order denying John Viscusi's motion to dismiss fraud counterclaims asserted by Albert Wright. The court held that Wright adequately pleaded that Viscusi's appraisal significantly undervalued the property, contained misleading statements, and was reasonably relied upon in connection with a short sale.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Moulton, J.P.; Kapnick, J.; Mendez, J.; Shulman, J.; Hagler, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 9, 2025
DOCKET	Index No. 158125/22; Appeal No. 5308; Case No. 2024-03849
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying counterclaim defendant John Viscusi's motion to dismiss Albert Wright's counterclaims against him.
STANDARD OF REVIEW	Whether the counterclaims adequately pleaded a cause of action for fraud on a motion to dismiss.
PRECEDENTIAL VALUE	published
PARTIES	John Viscusi v. Albert Wright

TOPICS

fraud quiet title motions to dismiss real estate appellate procedure

PRACTICE AREAS

real estate fraud civil procedure appellate procedure

QUESTIONS PRESENTED

1. Whether Wright adequately pleaded a fraud claim based on Viscusi's appraisal and alleged misrepresentations.
2. Whether an expert appraisal may support a fraud claim when the grounds underlying the opinion are so flimsy as to indicate that the expert lacked a genuine belief in the opinion.
3. Whether Wright adequately pleaded Viscusi's knowledge that the appraisal would be relied upon, reasonable reliance, and sufficient particularity despite pleading some allegations on information and belief.

HOLDINGS

1. Although appraisals are generally not actionable under a theory of fraud, an expert opinion may be fraudulent when the grounds supporting it are so flimsy as to lead to the conclusion that there was no genuine belief behind it.
2. Wright adequately pleaded a fraud claim against Viscusi, including falsity, material misrepresentation, knowledge or awareness of intended reliance, reasonable reliance, and sufficient factual particularity.

KEY QUOTATIONS

“an opinion, especially an opinion by an expert, may be found to be fraudulent if the grounds supporting it are so flimsy as to lead to the conclusion that there was no genuine belief back of it” (at 1)

“Wright sets forth sufficient information to apprise Viscusi of the alleged wrongs” (at 1)

FACTUAL BACKGROUND

Wright, the prior owner of the property, alleged that real estate appraiser John Viscusi valued the property at \$825,000 in January 2019. Wright alleged that Viscusi failed to account for the property's value as a development site and relied on materially noncomparable sales. Wright further alleged that the appraisal materially contributed to his decision to agree to a short sale of the property in October 2019, and supported his allegations with a forensic analysis by appraiser Michael Pavlakos.

PROCEDURAL HISTORY

Wright asserted fraud counterclaims against Viscusi in an action to quiet title to real property. Supreme Court, New York County, denied Viscusi's motion to dismiss the counterclaims by order entered on or about May 15, 2024. The Appellate Division unanimously affirmed the order, with costs.

DISPOSITION

affirmed

CASES CITED

- Wells Fargo Bank, N.A. v. Alessi, 133 A.D.3d 1216 (4th Dep't 2015)

- *Ambassador Factors v. Kandel & Co.*, 215 A.D.2d 305 (1st Dep't 1995)
- *Ultramares Corp. v. Touche*, 255 N.Y. 170 (1931)
- *Houbigant, Inc. v. Deloitte & Touche*, 303 A.D.2d 92 (1st Dep't 2003)
- *Remediation Capital Funding LLC v. Noto*, 147 A.D.3d 469 (1st Dep't 2017)
- *Rapaport v. Strategic Fin. Solutions, LLC*, 190 A.D.3d 657 (1st Dep't 2021)
- *Allenby, LLC v. Credit Suisse, AG*, 134 A.D.3d 577 (1st Dep't 2015)

OPINION

PER CURIAM.

RSD857, LLC v Wright (2025 NY Slip Op 06833) RSD857, LLC v Wright 2025 NY Slip Op 06833 Decided on December 09, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: December 09, 2025 Before: Moulton, J.P., Kapnick, Mendez, Shulman, Hagler, JJ. Index No. 158125/22|Appeal No. 5308|Case No. 2024-03849| [*1]RSD857, LLC, Plaintiff, v Albert Wright, Defendant-Respondent, John Viscusi, Defendant-Appellant, Michael Petrokansky, et al., Defendants.

Wilson Elser Moskowitz Edelman & Dicker LLP, New York (Judy C. Selmecci of counsel), for appellant. Latham & Watkins LLP, New York (Sum Yi Jessica Hui of counsel), for respondent. Order, Supreme Court, New York County (Paul Goetz, J.), entered on or about May 15, 2024, which, to the extent appealed from, denied counterclaim defendant John Viscusi's motion to dismiss the counterclaims against him by defendant/counterclaim plaintiff Albert Wright, unanimously affirmed, with costs.

Supreme Court properly denied Viscusi's motion to dismiss the counterclaims against him because Wright adequately pleaded a claim for fraud. Although appraisals are generally not actionable under a theory of fraud (see *Wells Fargo Bank, N.A. v Alessi*, 133 AD3d 1216, 1217 [4th Dept 2015]), "an opinion, especially an opinion by an expert, may be found to be fraudulent if the grounds supporting it are so flimsy as to lead to the conclusion that there was no genuine belief back of it" (*Ambassador Factors v Kandel & Co.*, 215 AD2d 305, 308 [1st Dept 1995] [internal quotation marks omitted]; see also *Ultramares Corp. v Touche*, 255 NY 170, 186 [1931]). In this action to quiet title to real property, Wright, the prior property owner, alleges that in January 2019, Viscusi, a real estate appraiser, significantly undervalued the property at \$825,000, by, among other things, failing to account for its value as a development site and using "comparable" sales based on properties that were not at all comparable.

Wright also alleges that the appraisal was a significant factor in convincing him to ultimately agree to a short sale of the property in October 2019. Wright's allegations that Viscusi's valuation of the

property at \$825,000, and that "statements used to support this valuation" were "false and misleading and misrepresented material facts," were supported by the forensic analysis performed by appraiser Michael Pavlakos annexed to Wright's pleading (see *Houbigant, Inc. v Deloitte & Touche*, 303 AD2d 92, 99 [1st Dept 2003]; *Ambassador Factors*, 215 AD2d at 308).

Specifically, Pavlakos determined that Viscusi's appraisal egregiously undervalued the property by millions of dollars, contained numerous errors, was misleading, and not credible. Moreover, Wright adequately pleaded that Viscusi was aware that his misrepresentations would reasonably be relied upon by Wright (see *Houbigant*, 303 AD2d at 100). Viscusi's appraisal explicitly stated that its intended recipient was Wright, and that its intended use was for Wright, as "lender/client," to evaluate the property as to its fair market value.

Wright sufficiently pleaded that he reasonably relied on Viscusi's appraisal for this purpose (see *Remediation Capital Funding LLC v Noto*, 147 AD3d 469, 470-471 [1st Dept 2017]). Viscusi's suggestion that Wright, an elderly, legally blind man, and the alleged victim of a predatory scheme, should have exercised "ordinary intelligence," by, for instance, performing an internet search to independently assess the true value of the property, has no merit (see *Rapaport v Strategic Fin.*

Solutions, LLC, 190 AD3d 657, 657 [1st Dept 2021]). To the extent Wright's allegations of fraud are "based on information and belief," Wright "sets forth sufficient information to apprise" Viscusi "of the alleged wrongs" (*Allenby, LLC v Credit Suisse, AG*, 134 AD3d 577, 579-580 [1st Dept 2015] [internal quotation marks omitted]).

We have considered Viscusi's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 9, 2025

PER CURIAM.

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