

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)

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