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

Hyde v. Okolie

Hyde, 2026 NY Slip Op 02334 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 152489/16; Appeal No. 6388; Case No. 2025-01579 · Decided April 16, 2026

SUMMARY

The Appellate Division, First Department, affirmed an order denying summary judgment to Phyllis Weitzman and Bow Faith Co., LLC, which sought dismissal of claims arising from alleged fraud and misuse of funds belonging to William Boise. The court held that factual issues remained concerning aiding and abetting fraud, actual fraud, undue influence, promissory estoppel, unjust enrichment, joint and several liability, and constructive trust. The court also stated that Bow Faith's assets might be reached if plaintiff proves at trial that the entity was used to perpetrate fraud.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Moulton, J.P.; Scarpulla, J.; Shulman, J.; Rodriguez, J.; Michael, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	April 16, 2026
DOCKET	Index No. 152489/16; Appeal No. 6388; Case No. 2025-01579
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants Phyllis Weitzman and Bow Faith Co., LLC appealed from an order of Supreme Court, New York County, denying their motion for summary judgment dismissing several fraud, undue influence, promissory estoppel, unjust enrichment, joint-and-several-liability, and constructive-trust claims.
STANDARD OF REVIEW	On a motion for summary judgment, the movants bear the burden of establishing entitlement to judgment as a matter of law; summary judgment must be denied where the evidence presents triable issues of fact concerning the claims.
PRECEDENTIAL VALUE	published

PARTIES	Phyllis Weitzman, also known as Phyllis Okolie, Bow Faith Co., LLC v. Maurice Hyde, administrator of the Estate of William Boise

TOPICS

summary judgment · fraud · constructive trust · remedies · appellate procedure

PRACTICE AREAS

civil procedure · fraud · trusts · remedies · real estate

QUESTIONS PRESENTED

1. Whether defendants established entitlement to summary judgment dismissing the aiding-and-abetting constructive-fraud, aiding-and-abetting actual-fraud, and actual-fraud claims.
2. Whether defendants established entitlement to summary judgment dismissing the undue-influence claim arising from the Maspeth transaction.
3. Whether defendants established entitlement to summary judgment dismissing the promissory-estoppel claim.
4. Whether defendants established entitlement to summary judgment dismissing the unjust-enrichment claim.
5. Whether the joint-and-several-liability and constructive-trust causes of action were properly sustained.
6. Whether Bow Faith's assets could potentially be reached if plaintiff proves at trial that Weitzman used the entity to perpetrate fraud.

HOLDINGS

1. Defendants failed to establish entitlement to summary judgment dismissing the claims for aiding and abetting constructive fraud, aiding and abetting actual fraud, and actual fraud.
2. Defendants failed to establish entitlement to summary judgment dismissing the undue-influence claim.
3. Defendants were not entitled to summary judgment dismissing the promissory-estoppel claim.
4. Defendants did not establish entitlement to summary judgment dismissing the unjust-enrichment claim.
5. Co-conspirators found liable for aiding-and-abetting fraud may be held jointly and severally liable for damages; therefore, the joint-and-several-liability cause of action was properly sustained.
6. A constructive trust was an available remedy under the circumstances because Boise and Weitzman had a confidential relationship arising from their purported joint venture.
7. If plaintiff proves at trial that Weitzman used Bow Faith to perpetrate fraud on Boise, plaintiff may be entitled to reach the entity's assets.

KEY QUOTATIONS

> *“Co-conspirators found liable for aiding-and-abetting fraud may be held jointly and severally liable for damages”* ([*3])

> *“Moreover, under the circumstances here, a constructive trust is available as a remedy because Boise and Weitzman were in a confidential relationship by virtue of their joint venture”* ([*3])

FACTUAL BACKGROUND

Maurice Hyde, administrator of William Boise's estate, alleged that between 2011 and 2014 Weitzman and Okolie misappropriated more than one million dollars from Boise, who suffered from dementia. Okolie obtained authority over Boise's financial accounts and transferred substantial sums to Weitzman. Weitzman received more than $300,000 of Boise's funds for a purported joint investment in a Maspeth property, acquired the property in her own name, and later transferred it to Bow Faith Co., LLC. Medical records and expert testimony indicated that Boise was totally mentally and physically incapacitated before signing the purported partnership agreement, and factual disputes remained regarding whether Weitzman returned Boise's money.

PROCEDURAL HISTORY

The administrator of William Boise's estate sued, alleging that Weitzman and Cyril Okolie misappropriated more than one million dollars from Boise while he was suffering from dementia. Supreme Court denied Weitzman and Bow Faith's motion for summary judgment on eight causes of action. The Appellate Division, First Department, unanimously affirmed that order with costs.

DISPOSITION

affirmed

CASES CITED

- Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 [2009]
- Oster v Kirschner, 77 AD3d 51, 55-56 [1st Dept 2010]
- Matter of Kotick v Shvachko, 130 AD3d 472, 473 [1st Dept 2015]
- Rocchio v Biondi, 40 AD3d 615, 616 [2d Dept 2007]
- Sepulveda v Aviles, 308 AD2d 1, 7 [1st Dept 2003]
- Condor Funding, LLC v 176 Broadway Owners Corp., 147 AD3d 409, 411 [1st Dept 2017]
- Agress v Clarkstown Cent. School Dist., 69 AD3d 769, 771 [2d Dept 2010]
- Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173, 182 [2011]
- Visual Arts Found., Inc. v Egnasko, 91 AD3d 578, 579 [1st Dept 2012]
- Bankers Sec. Life Ins. Socy. v Shakerdge, 49 NY2d 939, 940 [1980]
- Sharp v Kosmalski, 40 NY2d 119, 121 [1976]
- Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135, 140-141 [1993]

OPINION

PER CURIAM.

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Hyde alleges that between 2011 and 2014, Weitzman, together with defendant Cyril Okolie, worked together to misappropriate more than a million dollars from Boise, who was suffering from dementia. Weitzman submitted an affidavit in support of her motion in which she states that she and Okolie were married in 1983 and have two children together. Weitzman avers that they separated in 2009 but maintain an amicable relationship.

Okolie is a former student of Boise, who was a professor for many years at New York University.FN1</p> <p>The complaint alleges that Weitzman used Boise's funds, transferred to her through Okolie, to purchase property in Maspeth, New York, which she then transferred to defendant Bow Faith, as its sole asset. Okolie also used his authority over Boise's financial accounts to make further transactions that allegedly benefited Weitzman.</p> <p> The court properly determined that defendants failed to establish their entitlement to summary judgment dismissing plaintiff's claims for aiding and abetting constructive and actual fraud committed by Okolie and for actual fraud (<i>see Eurycleia Partners, LP v Seward & Kissel, LLP</i>, 12 NY3d 553, 559 [2009]; <i>Oster v Kirschner</i>,77 AD3d 51, 55-56 [1st Dept 2010]).

The evidence demonstrates that, Weitzman, at Okolie's behest, acted as witness to the execution of Boise's health care proxy and durable power of attorney naming Okolie. Subsequently, Okolie was added as a joint accountholder on Boise's accounts and moved Boise and himself into a costly two-bedroom apartment, paid for by Boise. Using this authority, Okolie then transferred large sums of money to Weitzman.</p> [*2] <p>With respect to the Maspeth property, Okolie facilitated and was present at conversations in which Weitzman and Boise allegedly discussed buying a joint investment property together, with Boise having the option to live at the property.

To that end, Boise and Weitzman executed a "partnership agreement" on January 1, 2012. Plaintiff offered medical records and expert testimony that indicates that Boise was suffering from total mental and physical incapacitation in December 2011, before he purportedly signed the partnership agreement. Weitzman then received more than $300,000 of Boise's funds, through Okolie, to apply toward the purchase of the Maspeth property.</p> <p> Weitzman contends that she and Boise intended to purchase an investment property where Boise could live, and that she returned Boise's money once Okolie indicated that Boise decided to back out of the deal.

Weitzman then purchased the Maspeth property in her individual name. While she asserts that she returned $250,000 to Okolie to give to Boise, there is no conclusive evidence that the $250,000 was ever returned to Boise.</p> <p> Defendants also failed to establish entitlement to summary judgment dismissing the undue influence claim (<i>see Matter of Kotick v Shvachko</i>, 130 AD3d 472, 473 [1st Dept 2015]).

By virtue of a joint venture, a confidential relationship existed between Weitzman and Boise (<i>see</i> <i>Rocchio v Biondi</i>, 40 AD3d 615, 616 [2d Dept 2007]). Weitzman, as the transaction's beneficiary, failed to show that the purported partnership was free of undue influence (<i>see Sepulveda v Aviles</i>, 308 AD2d 1, 7 [1st Dept 2003]). There is evidence indicating that Weitzman exerted influence over Boise through multiple conversations with Boise about their purported joint venture, with Okolie, Boise's presumptive caretaker, acting as intermediary.

Supreme Court properly found that the Maspeth transaction is entangled with the other allegedly fraudulent transactions recounted in the complaint that center on Okolie's actions.</p> <p> Further, defendants were not entitled to summary judgment dismissing plaintiff's cause of action for promissory estoppel (<i>see Condor Funding, LLC v 176 Broadway Owners Corp.</i>, 147 AD3d 409, 411 [1st Dept 2017]).

Based on Weitzman's own statements, there are issues of fact as to whether Weitzman made clear and unambiguous promises to Boise and whether he reasonably relied upon the alleged promises (<i>see Agress v Clarkstown Cent. School Dist.</i>, 69 AD3d 769, 771 [2d Dept 2010]).</p> [*3] <p>Defendants did not establish entitlement to summary judgment on the unjust enrichment claim (<i>see Mandarin Trading Ltd. v Wildenstein</i>, 16 NY3d 173, 182 [2011]).

The evidence shows that since the purchase of the Maspeth property, which plaintiff contends was purchased with Boise's funds, Weitzman acquired sole title to and occupancy of the property. It is undisputed that Boise never moved into the Maspeth property and never benefitted from the investment. Additionally, there is a dispute as to whether Weitzman reimbursed Boise $250,000 of the more than $300,000 that Boise gave to the purported partnership.</p> <p>Co-conspirators found liable for aiding-and-abetting fraud may be held jointly and severally liable for damages (<i>see Visual Arts Found., Inc. v Egnasko</i>, 91 AD3d 578, 579 [1st Dept 2012]), thus, this cause of action was properly sustained.

Moreover, under the circumstances here, a constructive trust is available as a remedy because Boise and Weitzman were in a confidential relationship by virtue of their joint venture (<i>see Bankers Sec. Life Ins. Socy. v Shakerdge</i>, 49 NY2d 939, 940 [1980]; <i>Sharp v Kosmalski</i>, 40 NY2d 119, 121 [1976]). </p> <p>To the extent plaintiff shows at trial that Weitzman used Bow Faith to perpetrate a fraud on Boise, plaintiff may beentitled to reach the assets of that entity (<i>see Matter of Morris v New York State Dept. of Taxation & Fin., </i>82 NY2d 135, 140-141 [1993]).</p> <p>We have considered defendants' remaining arguments and find them unavailing. </p> <p>THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.</p> <p>ENTERED: April 16, 2026</p> <div> <hr> <h4>Footnotes</h4> Footnote 1: Okolie is not a party to this appeal. </div> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>

PER CURIAM.

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