STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: July 10, 2013)

WILLIAM J. NYE	:	
	:	
v.	:	**C.A. No. KC 12-1096**
	:	
SUSAN J. BROUSSEAU,	:	
PAUL G. BROUSSEAU,	:	
SUSAN J. BROUSSEAU TRUSTEE,	:	
PAUL G. BROUSSEAU TRUSTEE,	:	
AND THE BROUSSEAU FAMILY TRUST	:	

DECISION

NUGENT, J. This matter is before the Court for decision following a hearing on Defendants' motion for summary judgment. For the reasons set forth in this Decision, the Court denies in part and grants in part Defendants' motion. Jurisdiction is pursuant to Superior Court Rules of Civil Procedure 56(c).

I

Facts[1] and Travel

The underlying dispute between the parties, who are neighbors, arises from a boundary line that is marked by a row of shrubbery between their respective properties. Nye v. Brousseau, 47 A.3d 335, 336 (R.I. 2012). This dispute progressed into a nonjury trial held in the Superior Court over the course of five days in late June and early July of 2008. Id. (citing Nye v.

[1] The facts presented are gleaned from the parties' filings, as well as facts set out by the Supreme Court in prior cases between these litigants. See Nye v. Brousseau, et al., 992 A.2d 1002 (R.I. 2010); Nye v. Brousseau, et al., 47 A.3d 335 (R.I. 2012) (mem.). Although Plaintiff's memo continues to reiterate the historical facts surrounding the drawn out litigation between the parties, only those facts necessary to this Court's determination of the instant motion are included.

Brousseau, 992 A.2d 1002, 1007 (R.I. 2010)). When the trial concluded, the trial justice issued a written decision that was entered on September 23, 2008, which determined a new boundary line between the properties under the doctrine of title by acquiescence.[2] Id. This was stated as:

> "[t]he new boundary shall run from the granite bound, which is the northernmost border of the two properties, southward until the northernmost yew, then turning and running along the centerline of the yews to the southernmost yew, then turning slightly eastward and running directly to the point which is the edge of Mr. Nye's paved driveway at its intersection with Tiffany Avenue."

Nye, 992 A.2d at 1007.

The trial justice stipulated that "[a]ny property interest clarified, confirmed or conveyed to Mr. Nye by this Decision shall be invalid until it is set forth in a Judgment, duly approved by the Court and sufficiently describing this line." Id. Final judgment was entered on October 29, 2008, and to comply with the trial justice's decision, William Nye (Plaintiff) prepared and submitted an order with an attached surveyor's description of the new boundary line to the Superior Court on November 12, 2008. This legal description of the border was incorporated into the amended final judgment entered by the Court on April 30, 2009,[3] and which was affirmed on appeal by the Supreme Court on April 29, 2010.

Subsequently, on August 17, 2010, a second amended final judgment was entered that included the aforementioned description of the boundary line, a separate description in terms of

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[2] Under the doctrine of title by acquiescence, "even when there has been no express agreement, adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry.'" Nye, 992 A.2d at 1008-09 (quoting Acampora v. Pearson, 899 A.2d 459, 464 (R.I. 2006)).

[3] The trial justice's decision also enjoined Plaintiff from entering Defendant's property without consent—and vice versa—and also ordered Plaintiff to reimburse Defendants for one-half of the cost of a surveyor's bill. On appeal, the Supreme Court upheld the trial justice's ruling as to the boundary line determination as described above; however, the Court vacated—for reasons not pertinent here—the trial justice's rulings pertaining to both payment for the survey and the injunctive relief ordered. Nye, 992 A.2d at 1010, 1012.

metes and bounds, and a surveyor's map of the parcel thus conveyed to Plaintiff by the establishment of the new boundary line (Judgment Parcel). This Order was recorded by Plaintiff in the Land Evidence Records for the City of Warwick on September 13, 2010.

On September 26, 2012, Plaintiff filed a second Complaint, containing three counts against Susan J. Brousseau and Paul G. Brousseau—individually and in their capacity as trustees—and the Brousseau Family Trust (Defendants).[4] Count I of Plaintiff's Complaint, entitled "Quiet Title," alleges that on March 11, 2009, Defendants Susan and Paul Brousseau executed a quitclaim deed (Deed), thus conveying the entirety of their property—as it had been conveyed to them by the previous owners of the property—to the Brousseau Family Trust (Trust), of which the Defendants are named trustees. Plaintiff claims that this Deed was then recorded in the City of Warwick Land Evidence Records on March 31, 2009.

Plaintiff's Complaint states that at the time of Defendants' conveyance of their property to the Trust, a final judgment had not yet been entered regarding the disputed boundary line; thus, Defendants possessed full ownership of the estate conveyed. Plaintiff therefore maintains that as of the date the Deed was recorded, the Trust has full ownership of the property as described in the Deed. Plaintiff maintains that this ownership is evidenced by the Trust currently

[4] Plaintiff's second Complaint was filed after appearing before a different Superior Court justice on July 26, 2010—after final judgment had entered and the Supreme Court had issued a ruling—moving for the admission of new evidence and seeking to set aside as fraudulent the transfer of the property into a trust. The Superior Court justice told Plaintiff that he "need[ed] to file another lawsuit to address [the transfer of property]. That is a whole different subject." Nye, 47 A.3d at 337. The justice went on to say,

> "[t]here is nothing here anymore so your case is over. That case before [the trial justice] about a boundary line is over. Any of these new claims you have, you would have to proceed by filing a whole new Superior Court lawsuit and start the whole process all over again. You can't do it through motions connected from your old case." Id.

The justice then entered an order dismissing said motions; on appeal, the Supreme Court affirmed this order. Id.

being assessed and paying property taxes on the land as described by the Deed, with no reduction for the Judgment Parcel which was conveyed to Plaintiff by the Order of the Superior Court. Plaintiff further maintains that when the Superior Court issued its final order granting him the Judgment Parcel on August 17, 2010, Susan and Paul Brousseau, as the "judgment grantors," no longer held title to the land as it had been previously conveyed to the Trust, thus affecting Plaintiff's current ownership interest in the Judgment Parcel. As a result of the foregoing allegations, Plaintiff argues that he does not currently hold fee simple ownership of the Judgment Parcel, although he is entitled to it by the Order of the Superior Court.

Count II of Plaintiff's Complaint alleges that Defendants acted negligently when executing and recording the Deed, and "engaged in subsequent acts of omission or commission." (Pl.'s Compl. ¶ 55). This Count asserts that Defendants never mentioned the conveyance by Deed to the Trust, despite the ongoing litigation concerning the parties' contested and unsettled interest in adjoining land. Count III of Plaintiff's Complaint, entitled "Fraud," alleges both fraud and fraud on the court, claiming Defendants "set in motion an unconscionable scheme calculated to interfere with the judicial system, evidenced in part by elements of timing, non-disclosure, silence, concealment, and obstruction," including hampering the presentation of Plaintiff's claims in the original boundary line litigation, and by "improperly influencing the trier" of fact. (Pl.'s Compl. ¶¶ 79, 80).

On February 6, 2013, Defendants filed the instant motion for summary judgment, claiming that no dispute exists as to the boundary line as it is memorialized in the amended judgment entered on August 17, 2010, and recorded in the Land Evidence Records for the City of Warwick on September 13, 2010, thereby granting Plaintiff full ownership of the Judgment Parcel. Defendants further contend that Plaintiff's claim of negligence has no merit, and that

Plaintiff's allegations of fraud are unsupported. Plaintiff filed both an objection to Defendants' motion for summary judgment and a motion to continue, thereby seeking a continuance pursuant to Super. R. Civ. P. 56(f). Plaintiff also filed an affidavit and a supporting memorandum claiming that a dispute still exists as to ownership of the Judgment Parcel caused by the recorded quitclaim deed.

II

Standard of Review

"Summary judgment is 'a drastic remedy,' and a motion for summary judgment should be dealt with cautiously." Estate of Giuliano v. Giuliano, 949 A.2d 386, 390 (R.I. 2008). However, this Court will grant a motion for summary judgment if "'after reviewing the admissible evidence in the light most favorable to the nonmoving party[,]" "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law."' Liberty Mut. Ins. Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008) (quoting Roe v. Gelineau, 794 A.2d 476, 481 (R.I. 2002)). Alternatively, the nonmoving party "'has the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" Liberty Mut. Ins., 947 A.2d at 872 (quoting D'Allesandro v. Tarro, 842 A.2d 1063, 1065 (R.I. 2004)). To meet this burden, "'[a]lthough an opposing party is not required to disclose in its affidavit all its evidence, he [or she] must demonstrate that he [or she] has evidence of a substantial nature, as distinguished from legal conclusions, to dispute the moving party on material issues of fact.'" Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I.

1998) (quoting Gallo v. Nat'l Nursing Homes, Inc., 106 R.I. 485, 489, 261 A.2d 19, 21-22 (1970)).

III

Analysis

A

Continuance under Rule 56(f)

This Court will first address Plaintiff's request for a continuance pursuant to Super. R. Civ. P. 56(f). Initially, Plaintiff filed a motion for a continuance of Defendants' motion for summary judgment stating that it was "to allow the Plaintiff sufficient time to prepare a memorandum in support of Plaintiff's objection to Defendants' motion," and that if the "Plaintiff files a memorandum . . . the Plaintiff may consent that this motion [for continuance] pass from the calendar." Plaintiff subsequently filed a memorandum in support of his objection to Defendants' motion for summary judgment, and verbally agreed in open court that the motion for a continuance may pass from the calendar. However, notwithstanding this consent to forgoing a continuance and the filing of Plaintiff's memorandum in opposition to the motion for summary judgment—the preparation of which served as the basis of the need for a continuance—at hearing, Plaintiff once again touched upon continuing Defendants' motion for summary judgment pursuant to Super. R. Civ. P. 56(f) before going on to address the merits of his defense to the motion. This Court proceeded to hear both parties' arguments and reserved judgment on all issues.

"Rule 56(f) allows a party opposing a motion for summary judgment to seek additional time to conduct further discovery to respond to a motion for summary judgment." Martel Inv. Group, LLC v. Town of Richmond, 982 A.2d 595, 601 (R.I. 2009). Our Supreme Court has held

that "'a trial justice's decision to grant a continuance pursuant to Rule 56(f) is discretionary.'" Id. (quoting Chevy Chase, F.S.B. v. Faria, 733 A.2d 725, 727 (R.I. 1999)). In addition, "Rule 56(f) 'clearly mandates that the party opposing the motion for summary judgment file affidavits stating why he or she cannot present facts in opposition to the motion.'" Holley v. Argonaut Holdings, Inc., 968 A.2d 271, 276 (R.I. 2009) (quoting Rhode Island Depositors' Economic Protection Corp. v. Insurance Premium Financing. Inc., 705 A.2d 990 (R.I. 1997)).

Here, Plaintiff filed an affidavit and a memorandum in opposition to summary judgment stating that additional time is needed for discovery, while also claiming that there are "sufficient grounds" "as presented elsewhere in [Plaintiff's] memorandum, to deny the Defendants' application for judgment, regardless of any Rule 56(f)-related grounds." (Pl.'s Memo. Obj. to Summ. J. ¶ 2). Plaintiff also filed a completed memorandum in opposition to the motion for summary judgment—along with supporting documentation—which this Court will consider when rendering judgment.

Furthermore, this Court finds that Plaintiff has had sufficient time to conduct discovery relating to the issues at hand. Defendants filed the motion for summary judgment on February 6, 2013, and it was set for hearing on March 25, 2013, over six weeks later.[5] While the instant action was filed in September 2012, litigation—and discovery—between the parties concerning the subject matter at hand has been ongoing since 2006. See Holley, 968 A.2d at 276 (finding it "significant" that summary judgment motion was brought approximately five and one-half years

[5] This Court is cognizant that "[w]hile it is the right of plaintiffs to represent themselves, *pro se* litigants who invoke the complex and sometimes technical procedures of the courts assume a very difficult task." Gray v. Stillman White Co., Inc., 522 A.2d 737, 741 (R.I. 1987). However, it is well settled that even for *pro se* litigants "the courts of this state cannot and will not entirely overlook established rules of procedure, 'adherence to which is necessary [so] that parties may know their rights, that the real issue in controversy may be presented and determined, and that the business of the courts may be carried on with reasonable dispatch.'" Jacksonbay Builders, Inc. v. Azarmi, 869 A.2d 580, 585 (R.I. 2005).

from the date of underlying incident when denying continuance pursuant to Super. R. Civ. P. 56(f)). Finally, and most tellingly, Plaintiff himself willingly agreed to forego the motion for a continuance and conduct a hearing on the motion for summary judgment, at which Plaintiff was given ample time to speak and present his defenses to the motion. See Sullivan v. Town of Coventry, 707 A.2d 257, 259 (R.I. 1998) (plaintiff who argued the merits of a summary judgment motion without raising issues concerning the need for more time to respond thereto effectively waived objection). Accordingly, this Court denies Plaintiff's request for a continuance under Super. R. Civ. P. 56(f) and will now determine the motion for summary judgment on the merits.

B

Quiet Title

Pursuant to Chapter 16 of Title 34 of the Rhode Island General Laws, a plaintiff may bring a quiet title action to determine the validity of that person's title to certain real estate, even if his or her title to such real estate is undisputed among the parties.[6] Sec. 34-16-1. This

[6] In pertinent part, § 34-16-1 states:

> "[a]ny person or persons claiming title to real estate, which title is based upon or has come through a deed of a tax collector or town or city treasurer upon sale of real estate for the collection of taxes, assessments, or municipal liens of any kind, or of a sheriff on execution sale, or any deed, grant, *or conveyance given under judicial proceedings*, or otherwise, the validity of which depends upon notice of any kind, may, *although his or her title to the real estate is undisputed*, bring a civil action against the person or persons whose title and interest, or either, were sold out under the sale or proceedings, and against any other persons that may be interested in the real estate because of the sale or proceedings, or the giving of such a deed to determine the validity of the title or estate of the person or persons therein, to remove any cloud thereon, and to affirm and quiet the possession and title of the person or persons."

statutory provision allows this Court—in an exercise of its equitable powers—to determine the validity of a plaintiff's title, "and may affirm the title, or if it finds other parties to have any title and estate therein, it shall also determine the interest, title, and estate of those parties therein, and may remove any clouds on the title by reason of any deed, grant, or conveyance." Sec. 34-16-3. Once this Court makes a determination based on the law and evidence presented pursuant to a quiet title action, an order of this Court will be binding on the parties and all other persons claiming an interest thereunder. See sec. 34-16-3 ("all decrees in the action shall forever thereafter be binding upon all parties thereto and those claiming by, through, under, or by virtue of them, or any of them"); see also sec. 34-16-14 ("[t]he judgment, when final, shall be conclusive against all persons").

Notably, this chapter of our General Laws specifies that a quiet title judgment may not be entered by default, and that "proof satisfactory to the court" must be offered in support of a plaintiff's quiet title claim. Sec. 34-16-14. To facilitate such proof, Chapter 16 specifies that a plaintiff must include particular facts supporting a quiet title claim in his or her Complaint, and upon filing such a Complaint, "the plaintiff shall thereafter, at his or her own cost, select, with the approval of the court, a title company or an attorney familiar with the examination of land titles." Sec. 34-16-2. This company or attorney must then "proceed to examine the title to the real estate described in the complaint, and when the examination is completed, shall deposit an abstract of title to the real estate in the court, together with a report of the status of the title," as well as a list of any interested parties therein discovered. Id. Accordingly, the proof-facilitating purpose of this provision is further supported by Section 34-16-6, which affirms this Court's authority to "require that the plaintiff file an abstract of title to the real estate as specified in § 34-

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Sec. 34-16-1 (emphasis added).

16-2." Id. Notably, our Supreme Court has upheld the dismissal of a quiet title action due to a plaintiff's failure to file such required proof in accordance with § 34-16-2. See Conti v. Hines, 659 A.2d 117, 118 (R.I. 1995).

Here, Plaintiff filed a quiet title action against Defendants on September 26, 2012. Plaintiff's twelve-page Complaint contains all the factual information required under G.L. 1956 § 34-16-5.[7] Defendants subsequently filed an Answer to this Complaint on October 15, 2012, admitting that Plaintiff is entitled to ownership of the once-disputed Judgment Parcel. In fact, in moving for summary judgment on Count I, Defendants maintain that Plaintiff is entitled to the Judgment Parcel, and thus claim that no disputed issues of material fact exist.

However, § 34-16-1 clearly allows a plaintiff to bring a quiet title action "although his or her title to the real estate is undisputed." Id. Moreover, such an action may be instituted despite the fact that such title was recently granted to the plaintiff through "conveyance given under judicial proceedings," as is the case here. Id. Noticeably absent from the court file, however, is

[7] Section 34-16-5 specifies that:

> "[t]he complaint shall contain, among other things, to the extent known to plaintiff:
> (1) A complete and accurate description of the real estate involved, and the right, title and interest of the plaintiff claimed therein and the character and source thereof;
> (2) A recital of the character and source of claims adverse, or which may become adverse, whether asserted or unasserted, and, if unasserted, then of record;
> (3) The names and last known addresses of those asserting, or who may assert, any adverse claims;
> (4) The efforts made to ascertain and determine those claimants, who, or whose names and/or addresses, are unknown to plaintiff;
> (5) The duration of ownership, occupation, possession, and enjoyment by the plaintiff, and when relevant, by his or her predecessors in title, of the estate involved, together with a recital of acts performed as a normal incident of the possession enjoyed and the title claimed."

Id.

an abstract of the title to the real estate, or any similar report concerning the status of the title from a reputable source, as specified under § 34-16-2. Such a report is both required under the statute and necessary for this Court to adjudicate the validity of Plaintiff's quiet title action. As a result, the absence of this information creates a genuine issue of material fact which precludes Defendants' motion for summary judgment on Count I of Plaintiff's Complaint. Consequently, Plaintiff must first comply with the mandate of § 34-16-2 before this Court may adjudicate Plaintiff's quiet title action on the merits.

C

Negligence

Count II of Plaintiff's Complaint alleges that Defendants owed a duty to Plaintiff regarding their property and have acted negligently in recording the Deed and conveying their property to the Trust—without notice to Plaintiff—while judicial proceedings were ongoing. Defendants claim they conveyed their property to the Trust for estate planning purposes and that Plaintiff's negligence claim has been adjudicated, leaving no genuine issue of material fact.

It is well settled that to prevail on a claim of negligence, "'a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage.'" Habershaw v. Michaels Stores, Inc., 42 A.3d 1273, 1276 (R.I. 2012) (quoting Holley, 968 A.2d at 274). It is a fundamental principle of law that "'[a] defendant cannot be liable under a negligence theory unless the defendant owes a duty to the plaintiff.'" Lucier v. Impact Recreation, Ltd., 864 A.2d 635, 638 (R.I. 2005) (quoting Santucci v. Citizens Bank of Rhode Island, 799 A.2d 254, 256 (R.I. 2002)). Simply stated, "'[n]egligence is the breach of a duty, the existence of which is a question of law.'" Banks v. Bowen's Landing Corp., 522 A.2d 1222,

1224 (R.I. 1987) (quoting Barratt v. Burlingham, 492 A.2d 1219, 1221 (R.I. 1985)). Consequently, "'[w]hether there exists a duty of care running from the defendant to the plaintiff is, therefore, a question for the court and not for the jury.'" Id. (quoting D'Ambra v. United States, 114 R.I. 643, 649, 338 A.2d 524, 527 (1975)). Thus, "[i]f no such duty exists, then the trier of fact has nothing to consider and a motion for summary judgment must be granted." Id.

Here, Plaintiff asserts—without supporting case law—that Defendants were under a duty not to convey their land to a trust and to provide him with notice of the conveyance while judicial proceedings were ongoing. However, Defendants executed the Deed and conveyed their land to the Trust on March 31, 2009—long after the trial had concluded which determined the new boundary line between the properties, and well after final judgment entered on October 29, 2008. Even though Plaintiff subsequently filed additional information with the Court which caused the final judgment to be amended twice, it is clear that such filings did not alter—and only supported—the initial determination of the boundary line as made by the trial justice. Therefore, final judgment had long since entered and there was no ongoing dispute as to the boundary line at the time Defendants recorded the Deed.[8] Moreover, it is well settled that recording a deed under G.L. 1956 § 34-13-1 serves as constructive notice to all interested persons. Sec. 34-13-2.

Thus, despite blanket allegations of negligence, Plaintiff has not shown the existence of any facts tending to show that Defendants owed him a duty, breached that duty, or that such a breach caused any cognizable harm. See Liberty Mut., 947 A.2d at 872 (the nonmoving party "has the burden of proving by competent evidence the existence of a disputed issue of material

[8] Consequently, "'[u]nder a conveyance by a quitclaim deed, the grantee can acquire no better interest than the grantor had.'" Nye, 47 A.3d at 337 n.5 (quoting 23 Am. Jur. 2d, Deeds, § 276 at 256 (2002)).

fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions"). As a result, this Court finds that Defendants are entitled to summary judgment on Count II of Plaintiff's Complaint.

D

Fraud/Fraud on the Court

Count III of Plaintiff's Complaint, entitled "Fraud," refers to certain statements and interactions between the parties and continues to allege wrongdoing by Defendants related to the transfer of their property into the Trust without notice to Plaintiff. In moving for summary judgment on this count, Defendants state that Plaintiff has failed to establish the requisite elements of a fraud claim; namely, that Defendants have made no false representation to Plaintiff, and Plaintiff has not shown any detrimental reliance on his part.

Pursuant to Rule 9(b) of the Superior Court Rules of Civil Procedure, "the circumstances constituting fraud or mistake shall be stated with particularity." Id. The general purpose of Super. R. Civ. P. 9(b) is to give "fair and specific notice of the alleged fraud" to the adverse party. Women's Development Corporation v. City of Central Falls, 764 A.2d 151, 161 (R.I. 2001). To establish a prima facie case of common law fraud in Rhode Island, "'the plaintiff must prove that the defendant made a false representation intending thereby to induce plaintiff to rely thereon and that the plaintiff justifiably relied thereon to his or her damage.'" Parker v. Byrne, 996 A.2d 627, 634 (R.I. 2010) (quoting Bitting v. Gray, 897 A.2d 25, 34 (R.I. 2006)). Furthermore, such a representation must be false at the time that it is made. Id.

In this jurisdiction, fraud may "be grounded in either affirmative acts or concealment." Guilbeault v. R.J. Reynolds Tobacco Co., 84 F. Supp. 2d 263, 268-69 (D.R.I. 2000). Thus, a misrepresentation is a "manifestation by words or other conduct by one person to another that,

under the circumstances, amounts to an assertion not in accordance with the facts." Stebbins v. Wells, 766 A.2d 369, 372 n.4 (R.I. 2001). When concealment serves as the basis for a claim of fraud, however, "mere silence is not fraudulent unless there is a duty to speak." McGinn v. McGinn, 50 R.I. 236, 146 A. 636, 638 (1929); see Guilbeault, 84 F. Supp. 2d at 269 ("a claim based on concealment will not lie absent a duty to speak") (citing Home Loan & Inv. Ass'n v. Paterra, 105 R.I. 763, 767, 255 A.2d 165, 168 (1969)). Moreover, whether there is a duty to disclose information turns on the facts of the case. See 37 Am. Jur. 2d, Fraud and Deceit, § 200 at 227 (2001).

Here, there is no evidence presented by either party demonstrating that Defendants made any false representations to Plaintiff. Instead, the crux of Plaintiff's fraud claim centers upon Defendants' non-disclosure that they transferred their property to the Trust during the ongoing boundary dispute, which commenced in 2006. However, as previously stated, Defendants were under no duty to disclose the conveyance—or any other estate planning intentions—to Plaintiff, nor are there any facts tending to show that Defendants intentionally concealed the conveyance to Plaintiff's detriment. See 37 Am. Jur. 2d, Fraud and Deceit, § 200 at 228 ("fraudulent concealment requires some affirmative action, designed or intended to prevent, and which does prevent, the discovery of facts giving rise to the fraud claim"). Rather, upon the mere filing of the Deed in the land records, Plaintiff was given constructive notice of the transfer. Sec. 34-13-2. As such, this Court finds that besides mere allegations, there is no competent evidence tending to show an intentional misrepresentation or nondisclosure by Defendants which Plaintiff somehow relied upon to his detriment.

Additionally, the allegations contained in Count III of Plaintiff's Complaint refer to "fraud on the court." Because the Court's power to vacate a prior judgment for fraud on the

court is so great, it is important to note that a distinction exists between 'fraud upon the court' and common 'fraud.' See Toscano v. Commissioner of Internal Revenue, 441 F.2d 930, 933-34 (C.A. 9th Cir. 1971) ("[T]he phrase 'fraud on the court' should be read narrowly, in the interest of preserving the finality of judgments, which is an important legal and social interest.").

Rhode Island law is clear that "fraud on the court" transpires "'where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense.'" Lett v. Providence Journal Co., 798 A.2d 355, 364 (R.I. 2002) (quoting Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989)). Notably, courts in Rhode Island and around the country have been reluctant to find fraud on the court in cases where the alleged wrongdoing was only between the parties in the case and involved no direct assault on the integrity of the judicial process. See Dawkins v. Siwicki, 22 A.3d 1142, 1161 (R.I. 2011) (inconsistencies between expert witness's pretrial testimony and trial testimony did not constitute fraud upon court warranting relief from judgment); see contra Lett, 798 A.2d at 366-67 (fraud upon the court found where two plaintiffs entered into a scheme whereby they deliberately exaggerated the health and well-being of another plaintiff in order to permit him to avoid testifying during the trial). Markedly, nondisclosure by a party or a party's attorney has not been enough to meet this standard. See 11 Wright & Miller, Federal Practice and Procedure, Civil 2d § 2870 at 416-17 (1995); see, e.g., Marquip, Inc. v. Fosber America, Inc., 30 F. Supp. 2d 1142 (D.C. Wis. 1998) (accused patent infringer's calculated narrow construction of patentee's discovery requests was not such a corruption of the judicial process itself as to constitute fraud on the court for failing to disclose evidence).

Here, Plaintiff's claim centers upon statements made by Defendants during conversations with Plaintiff, as well as Defendants' non-disclosure of the fact that they had transferred their property to the Trust. Consequently, the allegations set forth by Plaintiff in this Count do not provide any facts tending to show that Defendants' actions have "sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Lett, 798 A.2d at 364. In fact, evidence presented shows that Defendants transferred their land to the Trust—of which they are the sole trustees—long after the trial between the parties and following judicial determination of the new boundary line. Moreover, Plaintiff's allegations of Defendants' non-disclosure relating to their intentions concerning their property do not rise to the high level necessary to proceed upon a claim of fraud on the court. Dawkins, 22 A.3d at 1161. Accordingly, this Court finds that Plaintiff's claims are not supported by competent evidence tending to show the existence of a disputed issue of material fact, and thus Defendants' motion for summary judgment is granted on Count III of Plaintiff's Complaint.

IV

Conclusion

Based on the foregoing facts and analysis, this Court denies Defendants' motion for summary judgment as to Count I of Plaintiff's Complaint and grants summary judgment as to Counts II and III. Defendants shall prepare an order consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	William J. Nye v. Susan J. Brousseau, Paul G. Brousseau, Susan J. Brousseau Trustee, Paul G. Brousseau Trustee, and the Brousseau Family Trust
CASE NO:	KC-12-1096
COURT:	Filed In Kent County Superior Court
DATE DECISION FILED:	July 10, 2013
JUSTICE/MAGISTRATE:	Nugent, J.
ATTORNEYS:	
For Plaintiff:	William J. Nye (Pro Se)
For Defendant:	Michael D. Coleman, Esq.