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through to the present,) as well as request for dissolution of R&L Realty Associates pursuant to Partnership Law §63 as a result of alleged self-dealing, were consolidated for trial.

On June 19, 2006, this Court added Mali Fuchs (Ruth Shomron's partner and Yoram Fuchs' wife) as a party defendant in order to allow the Court to hear all claims against Mali Fuchs.

FINDING OF FACTS AND CONCLUSIONS OF LAW

The plaintiff, Ms. Shomron, on behalf of R&L Realty Associates, testified that Mali and Yoram Fuchs failed to disclose Yoram Fuchs' interest in the trust, (with attorney Gadil Hill as trustee, and Greenland Holding Co., Ltd.) to Ruth Shomron. Ms. Shomron thought the partnership was selling the four apartments to buyers in Israel. Had she known either of the Fuchs had a financial interest in the apartments, she never would have consented to the sale by R&L Realty Associates to the Trust or to Greenland Holding Co., Ltd.

Ruth Shomron moved to New York City in 1972. In 1985, Ms. Shomron formed a partnership, R&L Realty Associates, with Larry Goldstein, a real estate broker. In 1985, R&L Realty Associates bought 205 West 103rd Street, a 360 unit run-down apartment building. In 1987, they started converting it to a co-op. In that same year, Howard Simon became a partner of R&L Realty Associates. R&L Realty Associates needed to raise money for the renovation of the existing apartments and the maintenance of the building. In the mid-1980s, Ruth Shomron met Mali and Yoram Fuchs and the families became close friends. In 1989, Shomron asked Mali Fuchs to join her partnership. Mrs. Fuchs subsequently purchased a one-half subpartnership interest in Ruth Shomron's one-third interest in R&L Realty Associates, for \$125,000, including any

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she knew investors in Israel who would purchase apartments. In January of 1992, the Greater New York Savings Bank began to foreclose on the building.

When the real estate recession hit, Mali represented to Ruth that she had found buyers in Israel. One of these buyers, Gadi Hill, contacted R&L Realty Associates, stating that he was the attorney for the purchaser of apartments 5E and 1D. Gadi Hill was made Trustee of the defendant Trust, and purchased the two apartments in the name of the Trust at \$82,000 for 5E and \$40,000 for 1D. Unbeknownst to Ruth Shomron, the Trust represented by Gadi Hill was the Yoram Fuks Revocable Trust, of which Mr. Fuks was the sole settler and beneficiary. In December of 1992, Greenland, which had loaned money to R&L Associates, agreed to accept the transfer of apartment 1C. Greenland also purchased unit 6B for the price of \$60,000. Again, Ruth Shomron was unaware of the fact that Yoram Fuks was the sole shareholder and principal of the Greenland Holding Co., Ltd., and therefore consented to what amounted to Yoram Fuks' purchase of the apartments without knowing it.

Ruth Shomron asserts, and the Court believes, that she would not have agreed to the sale of units 1C, 6B, 5E and 1D to the Trust and Greenland Holding Co., Ltd. if she had known Yoram Fuks was the true purchaser. There was a great disparity between the amount of funds contributed by Ruth Shomron and the much lower amount contributed by Mali Fuks. R&L Realty Associates was in desperate need of money; the bank was foreclosing on the building and Ruth Shomron could not rely on Mali Fuks for her promised contributions. Ruth definitely felt pressure to sell to the Fuks' "friends"; even for a below market price. Mali Fuks readily agreed to the sale.

Besides Ruth Shomron, Mali Fuks, and Gadi Hill, the following witnesses appeared: Sonja Talcantik, Zvi Zer and Yoram Fuks.

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time the plaintiff [...] discovered the fraud, or could with reasonable diligence have discovered it," or within "six years from the date the cause of action accrued." CPLR §213.8.

The defendants also contend that Ruth Shomron would have sold Yoram Fuchs the four apartments had he disclosed his identity as the buyer. Again, based upon the testimony presented before this Court, I am persuaded that Mali and Yoram Fuchs obfuscated their identities in the purchase of the four apartments for a "distress sale" price, and Ruth Shomron would not have consented to this had she known his identity as the buyer. After all, if Mali could buy the apartments, she should have been able to contribute funds to the partnership, making the sale unnecessary. As husband and wife, the law treats Mali and Yoram as one. Therefore, the purchase by Mr. Fuchs and the subsequent legal ramifications reflects equally upon Mali Fuchs. *London v. Goodman*, 6 Misc.2d 277, 162 N.Y.S.2d 972 (Sup. Ct. N.Y. County 1957).

The defendants further contend that Ruth Shomron must return the sum paid as consideration for the sale in order to demand rescission and return of the apartments. It is well settled that a party induced by fraud to enter a contract may rescind the contract and return the consideration. *Adams v. Gillig*, 199 N.Y. 314, 317, 319 (1918). Equitable rescission, unlike an action for damages on account of fraud, is not to compensate for the wrong, but to undo the wrong and put the parties in status quo. *In re Teller's Estate*, 277 A.D. 937, 938, 98 N.Y.S.2d 875, 876 (4th Dept. 1950). Therefore, the defendants must return the apartments to R&L Realty Associates in return for the sum paid. Since the sale is a nullity, no interest is due on the sum. In any case, since their hands are unclean, they cannot make a profit on their misdeeds. The court further finds that the promissory notes were procured by fraud and are nullities.

TOTAL P.08

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This Court denies all of Yoram Fuchs' counterclaims as without merit. The sale from R&L Realty Associates to Greenland Holding Co., Ltd. is set aside. The four apartments are hereby returned to the partnership, R&L Realty Associates. The partnership will return the purchase price to the buyers. R&L Realty Associates will be the recipient of a constructive trust imposed against Moll Fuchs for the rents and profits she and Yoram Fuchs realized, as owners of the four apartments, from the time of the sale till the present. *Birnbaum v. Birnbaum*, 177 A.D. 409, 420, 503 N.Y.S.2d 451, 458 (4th Dept. 1968). Subsequently, the partnership will be dissolved and the assets divided equitably.

JUDGMENT FOR THE PLAINTIFF

The attorneys are directed to pick up exhibits in room 308 at 80 Centre Street within 30 days of the date of this order.

[Handwritten signature]
 JOHN H. STACKHOUSE
 JSC

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 SEP 27 2006
 NEW YORK
 COUNTY CLERK'S OFFICE