MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

# COUNTY OF ERIE

**MARK C. POLONCARZ**
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

March 25, 2013

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

| | |
|---|---|
| File Name: | *Sadler, Joanne v. Butler, Myrtle, Davis, J. Glenn and Erie County Clerk* |
| Document Received: | Summons and Complaint |
| Name of Claimant: | Joanne Sadler<br>31 Delaware Road<br>Williamsville, New York 14221 |
| Claimant's attorney: | Dean M. Drew, Esq.<br>Drew & Drew, LLP<br>159 Linwood Avenue<br>Buffalo, New York 14209 |

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JOANNE SADLER
31 Delaware Road
Williamsville, New York 14221

vs.

Plaintiff,

MYRTLE BUTLER
680 Riverside Drive, Apt. 5A
New York, New York 10031

J. GLENN DAVIS
70 Niagara Street, Suite 500
Buffalo, New York 14202

and

ERIE COUNTY CLERK
92 Franklin Street
Buffalo, New York 14202

Defendants.

Index No._____

This paper received at
Erie County Clerk's Office
on the 20 day of MAR 2013
at 9:59 a.m. p.m.
by Cheryl Campbell
Deputy Clerk

ERIE COUNTY
RECEIVED
2013 MAR 20 AM 10:28
COUNTY CLERK
382742

To the Above Named Defendants:

**SUMMONS**

YOU ARE HEREBY SUMMONED to answer the annexed Complaint in this action and to serve a copy of your Answer on the Plaintiff's attorneys within TWENTY (20) days after the service of this Summons exclusive of the day of service (or within THIRTY (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York; and in case of your failure to answer, Judgment will be taken against you by default for demanded in the Complaint.

THE RELIEF SOUGHT is a judgment declaring Plaintiff sole owner removing all clouds on Plaintiff's title to the Real Property and, alternatively, money judgment in the amount of $200,000.00.

UPON YOUR FAILURE TO ANSWER Judgment will together with the costs and disbursements of this action, from

The basis of the venue designated is the County in which the transaction took place and tl County in which the plaintiff resides.

Dated: Buffalo, New York
December 11, 2012

Dean M. Drew
DREW & DREW, LLP
Attorneys for Plaintiff
JOANNE SADLER
Office & P.O. Address
159 Linwood Avenue
Buffalo NY 14209
Tel: 716/885-1150

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ERIE

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JOANNE SADLER
31 Delamere Road
Williamsville, New York 14221

Plaintiff,

Index No.:_____

vs.

MYRTLE BUTLER
680 Riverside Drive, Apt. 5A
New York, New York 10031

FILED
ACTIONS & PROCEEDINGS
JAN - 7 2013
ERIE COUNTY
CLERK'S OFFICE

J. GLENN DAVIS
701 Niagara Street, Suite 500
Buffalo, New York 14202

and

ERIE COUNTY CLERK
92 Franklin Street
Buffalo NY 14202

Defendants.

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**COMPLAINT**

Plaintiff JOANNE SADLER, by her attorneys, Drew & Drew, LLP, complaining of the defendants MYRTLE BUTLER and J. GLENN DAVIS alleges that at all times relevant hereto:

**PARTIES**

1. Plaintiff was a resident of Erie County, New York.
2. Upon information and belief, defendant MYRTLE BUTLER ("BUTLER") was a resident of New York County, New York.

3. Upon information and belief, defendant J. GLENN DAVIS ("DAVIS") was a resident of Erie County, New York.

4. Upon information and belief, defendant ERIE COUNTY CLERK is the Clerk of the County of Erie, New York, a municipal subdivision of the State of New York, with offices at 92 Franklin Street, Buffalo, New York.

## BACKGROUND & FACTS

5. This action seeks, in part, nullification and vacatur of a deed pursuant to Article 15 of the Real Property Actions and Proceedings Law.

6. No claim is made herein against the Erie County Clerk, but the Erie County Clerk is a necessary party to this action, as the action seeks a judgment, in part, directing the Erie County Clerk to strike the said deed from his records.

7. Plaintiff acquired property commonly known as 170 Blaine Avenue in the City of Buffalo (herein "the Property") pursuant to a deed recorded in the Erie County Clerk's Office on October 24, 1986 in Liber 9635, Page 480, a copy of which is annexed hereto as Exhibit A.

8. The Property is improved by a two-family residence.

9. Upon information and belief, defendant DAVIS has occupied the upper apartment of this residence since approximately 1987 as a month to month tenant.

10. In 2005, defendant DAVIS asked Plaintiff to execute and deliver a Deed conveying an undivided one-half interest in the Property to his mother, defendant BUTLER, without compensation.

11. Plaintiff refused the said request.

12. In 2011, Plaintiff applied for a loan for the purpose of making repairs to the Property.

13. As a result of her loan application, Plaintiff became aware that a deed dated August 16, 2005 and purporting to bear her signature and her acknowledgement had been recorded in the Erie County Clerk's Office on April 4, 2007 in Liber 11127, Page 5630, conveying to BUTLER an undivided one-half interest in the Property as tenant in common of the Property ("the Butler Deed"). A copy of the Butler Deed is annexed hereto as Exhibit B and made a part hereof.

14. Plaintiff did not execute or did not knowingly execute the Butler Deed.

15. Plaintiff did not acknowledge the Butler Deed.

16. Plaintiff did not deliver or authorize the delivery of the Butler Deed.

17. Upon information and belief, the signature that appears on the Butler Deed is not that of the Plaintiff.

18. Upon information and belief, defendant DAVIS, without Plaintiff's knowledge or consent, prepared, affixed a signature purporting to be that of Plaintiff to, certified that Plaintiff had acknowledged, and then recorded the Butler Deed.

19. After learning of the Butler Deed Plaintiff demanded of defendant BUTLER that she reconvey all right, title and interest in and to the Property to Plaintiff, but defendants BUTLER and DAVIS refused Plaintiff's demand.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT MYRTLE BUTLER**

20. Plaintiff realleges the allegations of paragraphs 1 through 19 to have the same force and effect as if fully here set forth.

21. Defendant BUTLER's claim is a cloud upon Plaintiff's title to the Property, which diminishes its value and interferes with Plaintiff's ability to sell or encumber the Property.

22. Defendant BUTLER's claim to the Property constitutes unjust enrichment due to a false instrument purporting to be a deed which affects the legal right of the Plaintiff's interest in the Property.

23. In the premises, Plaintiff is entitled to a judgment declaring the Butler Deed to be null and void, and directing the Erie County Clerk to strike the Butler Deed from his records, and directing Butler to execute, acknowledge, deliver and record a deed quit claiming and conveying all of her right, title and interest in and to the Property to Plaintiff.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT J. GLENN DAVIS**

24. Plaintiff realleges the allegations of paragraphs 1 through 23 to have the same force and effect as if fully here set forth.

25. Upon information and belief, defendant DAVIS was a duly qualified as a notary public in the County of Erie, State of New York.

26. Upon information and belief, defendant DAVIS was an attorney licensed to practice law in the State of New York, with offices located at 70 Niagara Street, Suite 500, Buffalo, New York 14202.

27. Upon information and belief defendant DAVIS caused an undivided one-half interest in the Property to be fraudulently transferred to defendant BUTLER.

28. Upon information and belief, defendant DAVIS falsely represented that Plaintiff had executed and acknowledged the Butler Deed which purported to convey an undivided one-half ownership interest in the Property to defendant BUTLER, as a tenant in common with Plaintiff.

29. In preparing, affixing a signature purporting to be that of Plaintiff, certifying Plaintiff's acknowledgment and recording the Butler deed, all without the knowledge and consent of

Plaintiff, defendant DAVIS falsely made, completed, and/or altered and presented for recording a written instrument which was or purported to be a deed transferring ownership interest in the Property.

30. Upon information and belief, defendant DAVIS committed the foregoing acts with intent to benefit himself or another, to wit, defendant BUTLER.

31. Defendant D AVIS acted intentionally to deprive Plaintiff of sole possession of the Property.

32. As a result of defendant DAVIS's actions, Plaintiff has been unlawfully deprived of her ownership interest in the Property.

33. In the premises, Plaintiff is entitled to a judgment against defendant DAVIS in the amount of $200,000 for compensation for her loss of value in the Property, and a judgment against defendant DAVIS for her costs, disbursements and attorneys' fees incurred in the prosecution of the action.

**WHEREFORE,** Plaintiff respectfully requests that the Court grant her a judgment against defendants including the following relief:

A. Vacating the Butler Deed; and,

B. Directing the Erie County Clerk to strike the Butler Deed from his records; and,

C. Directing defendant Butler to execute, acknowledge, deliver and record a deed quit claiming and conveying all of her right, title and interest in and to the Property to Plaintiff; and

D. A money judgment against defendant DAVIS in the sum of $200,000; and

E. A money judgment against defendant BUTLER for all of Plaintiff's costs, disbursements and attorneys' fees incurred in prosecuting this action; and

F. For such other, further or different relief as this Court may deem just and proper.

Dated: Buffalo, New York
December 11, 2012

Dean M. Drew
DREW & DREW, LLP
Attorneys for Plaintiff
JOANNE SADLER
159 Linwood Avenue
Buffalo, New York 14209
Tel: 716-885-1150