

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of November, two thousand twenty-four.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
PIERRE N. LEVAL,
ALISON J. NATHAN,
Circuit Judges,

JAMES PELCZAR,

Plaintiff-Appellant,

v.

23-7283

PETER V. MAIMONE, ESQ., ALBERT MAIMONE & ASSOCIATES, P.C.,

Defendants-Counter-Claimants-Appellees,

DOREEN PELCZAR

*Defendant-Appellee.**

* The Clerk of Court is respectfully directed to amend the official caption as set forth above.

1 For Plaintiff-Appellant: JAMES PELCZAR, *pro se*, New Port Richey, FL.
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3 For Defendants-Counter- PETER V. MAIMONE, Albert Maimone & Associates,
4 Claimants-Appellees: P.C., New York, NY.
5
6 For Defendant-Appellee: MAX D. LEIFER, Max D. Leifer, P.C., New York, NY.
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8 Appeal from a judgment of the United States District Court for the Eastern District of New
9 York (Donnelly, *J.*).

10 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
11 **DECREED** that the judgment of the district court is **AFFIRMED**.

12 Plaintiff-Appellant James Pelczar (“Pelczar”) appeals from a judgment entered by the
13 United States District Court for the Eastern District of New York (Donnelly, *J.*) on September 22,
14 2023, granting the defendants judgment on the pleadings under Federal Rule of Civil Procedure
15 (“Rule”) 12(c) and dismissing the complaint with prejudice. Pelczar has sued Doreen Pelczar,
16 his sister, Peter V. Maimone, an attorney, and Maimone’s law firm, alleging that the defendants
17 made fraudulent misrepresentations about the ownership of a house, which had been previously
18 transferred to an irrevocable trust by his parents. On appeal, Pelczar claims that the district court
19 improperly granted judgment on the pleadings and that the law of the case should have prevented
20 it from doing so. We assume the parties’ familiarity with the underlying facts, procedural history
21 of the case, and issues on appeal, which we reference only as necessary to explain our decision to
22 **AFFIRM**.

23 **1. Judgment on the Pleadings**

24 Pelczar first argues that the district court erred by granting judgment on the pleadings to
25 the defendants. We review *de novo* a district court’s decision to grant a motion for judgment on
26 the pleadings pursuant to Federal Rule of Civil Procedure 12(c). *Vega v. Hempstead Union Free*

1 *Sch. Dist.*, 801 F.3d 72, 78 (2d Cir. 2015).¹ Judgment on the pleadings is proper if a complaint’s
2 well-pleaded facts, taken as true and with all reasonable inferences drawn in the plaintiff’s favor,
3 fail to state a plausible claim for relief. *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159,
4 166 (2d Cir. 2024); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007); *Lively v. WAFRA*
5 *Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301 (2d Cir. 2021) (explaining judgment for a defendant on
6 the pleadings is inappropriate where there are issues of fact which, if proven, would defeat recovery).
7 According to Pelczar, the district court improperly granted judgment by focusing on the
8 fact that his parents’ trust had terminated and the property vested in Doreen, rather than focusing
9 on the defendants’ fraudulent conduct, intent, and damages alleged in the complaint.² For the
10 following reasons, we disagree.

11 To assert a fraud claim under New York law, a complaint must detail “a material misrep-
12 resentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by
13 the plaintiff and damages.” *Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 N.Y.3d 553,
14 559 (2009); *Pasternack v. Lab’y Corp. of Am. Holdings*, 27 N.Y.3d 817, 827 (2016). In addition,
15 “a party must state with particularity the circumstances constituting fraud or mistake. Malice,
16 intent, knowledge, and other conditions of a person’s mind may be alleged generally.” Fed. R.
17 Civ. P. 9(b); *see also Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1175 (2d Cir. 1993); *Fin.*

¹ The standard for granting a Rule 12(c) motion for judgment on the pleadings is the same as the standard for granting a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Lynch v. City of New York*, 952 F.3d 67, 75 (2d Cir. 2020).

² This conduct and evidence of intent included, *inter alia*: 1) failing to obtain an order from the Surrogate’s Court transferring the house to Doreen Pelczar; 2) filing of documents in the Surrogate’s Court that did not list Pelczar as the owner of the home; and 3) defendants’ statements that the house was estate property and that the Surrogate’s Court did not need to determine the validity of the power of appointment.

1 *Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 783 F.3d 395, 402–03 (2d Cir. 2015); *Meyer v.*
2 *Seidel*, 89 F.4th 117, 139 (2d Cir. 2023). Pelczar failed to adequately assert a claim.

3 As a threshold matter, the district court correctly concluded that Pelczar had no legal claim
4 to the home after his father’s death. Under New York law, a testator may appoint property by
5 will and may terminate a trust upon an express condition, such as death. N.Y. Est. Powers &
6 Trusts Law §§ 3-3.7(a), 7-2.2. Here, Pelczar’s parents created an irrevocable trust that would
7 terminate “upon the death of the Grantors” and dispose of the trust property “as the Grantors may
8 direct and appoint” by their wills. S.A. 5–6, 15. Pelczar’s father then exercised this “limited
9 power of appointment” in his will to devise the house to Pelczar’s sister.³ S.A. 22. Thus, title
10 to the house automatically vested in Doreen upon her father’s death, and Pelczar lost any legal
11 claim to it. *In re Matter of Miller*, 257 N.Y. 349, 356 (1931); *In re Matter of Jones*, 306 N.Y.
12 197, 206 (1954).

13 The district court properly granted judgment on the pleadings based on this finding. All
14 the alleged misrepresentations occurred *after* Pelczar’s legal claim to the house terminated. A
15 plaintiff cannot be defrauded of property to which he has no valid claim. *Murray v. Nat’l Broad.*
16 *Co.*, 844 F.2d 988, 994 (2d Cir. 1988), *abrogated on other grounds by Nadel v. Play-By-Play Toys*
17 *& Novelties, Inc.*, 208 F.3d 368 (2d Cir. 2000); *see also Anderson v. Smitley*, 126 N.Y.S. 25, 29
18 (1910). Here, any misrepresentations the defendants made could not have been material or
19 caused injury, because the will and death of Pelczar’s father had already divested Pelczar of the
20 house. *Murray*, 844 F.2d at 994; *see also Lama Holding Co. v. Smith Barney Inc.*, 88 N.Y.2d

³ Contrary to Pelczar’s assertions, this use of the power was proper because New York law provides that if one grantor predeceases the other, the surviving grantor may exercise sole power of appointment. N.Y. Est. Powers & Trusts Law § 10-6.7; S.A. 5–6.

1 413, 421–22 (1996) (finding no fraud because the harm occurred independently, by operation of
2 law, *prior* to the alleged misrepresentations); *Anderson*, 126 N.Y.S. at 29 (finding pleadings on
3 damages insufficient because even if the plaintiff proved she was induced by fraud to execute
4 particular deeds, “still she would have had no claim upon that estate”).⁴ Thus, even assuming
5 *arguendo* that Pelczar sufficiently alleged the other elements of fraud, the district court properly
6 granted judgment on the pleadings.

7 We agree with the district court’s conclusion that judgment on the pleadings was also
8 proper because Pelczar failed to plausibly allege damages. Losses must be the “direct, immedi-
9 ate, and proximate result” of the fraud. *Goldberg v. Mallinckrodt, Inc.*, 792 F.2d 305, 307 (2d
10 Cir. 1986); *Kregos v. Associated Press*, 3 F.3d 656, 665 (2d Cir. 1993). Pelczar listed, *inter alia*,
11 \$890,000 in damages for the full value of the house, but he failed to explain how that figure
12 amounted to his losses from the defendants’ misrepresentations, rather than from operation of the
13 will. *Jemima O. v. Schwartzapfel, P.C.*, 115 N.Y.S.3d 244, 246 (App. Div. 2019) (finding failure
14 to allege fraud where claimed losses resulted from an independent action and not from purportedly
15 false statements); *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 772 (2d Cir. 1994)
16 (finding dismissal proper because the plaintiff did not plead facts showing injury was caused by
17 misstatements as opposed to other likely causes). As a result, judgment on the pleadings was
18 proper.⁵

⁴ See also *Revak v. SEC Realty Corp.*, 18 F.3d 81, 89–90 (2d Cir. 1994); *Wall St. Transcript Corp. v. Ziff Commc’ns Co.*, 225 A.D.2d 322, 322 (N.Y. App. Div. 1996); *Small v. Lorillard Tobacco Co.*, 94 N.Y.2d 43, 56 (1999); *RKA Film Fin., LLC v. Kavanaugh*, 99 N.Y.S.3d 267, 270 (App. Div. 2019).

⁵ Pelczar’s two procedural challenges are meritless. The district court did not err in granting judgment despite the existence of disputed facts. While judgment is inappropriate if there are disputed facts which “if proved would defeat recovery,” *Lively*, 6 F.4th at 301, no such facts existed here, where Pelczar never disputed the language of the trust or will. Pelczar’s other claim—that his sister never submitted a

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⁶ Nor did the district court ignore our instructions on remand in violation of the law of the case. *United States v. Ciriame*, 563 F.2d 26, 32–33 (2d Cir. 1977). The district court considered Pelczar’s damages claim, consistent with our decision that it had jurisdiction to do so. *Pelczar v. Pelczar*, 833 Fed. Appx. 872, 876 (2d Cir. 2020).

