

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D25220
Y/cb

_____AD3d_____

Argued - October 8, 2009

PETER B. SKELOS, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2008-05947

DECISION & ORDER

NYCTL 1998-2 Trust, et al., plaintiffs, v Gus Plagakis,
et al., respondents, University Studio, Inc., appellant,
et al., defendants.

(Index No. 47579/99)

Edward S. Kanbar, New York, N.Y., for appellant.

Andrew Hirschhorn, Rosedale, N.Y., for respondent Gus Plagakis.

John Bouzas, Astoria, N.Y., respondent pro se.

In an action to foreclose a tax lien, the defendant University Studio, Inc., appeals from an order of the Supreme Court, Kings County (Dabiri, J.), dated April 21, 2008, which denied its motion, in effect, for summary judgment on its cross claims to set aside a conveyance of real property as fraudulent pursuant to Debtor and Creditor Law §§ 273, 275, and 276 and for awards of an attorney's fee, costs, and punitive damages.

ORDERED that the order is affirmed, with one bill of costs.

The appellant, which claims to be a creditor of the defendant Gus Plagakis, did not satisfy its burden of demonstrating its entitlement to judgment as a matter of law as to its cross claims to set aside a conveyance of real property by Plagakis to the defendant John Bouzas. The appellant did not demonstrate, as a matter of law, that it had been assigned a judgment against Plagakis and that the challenged conveyance was fraudulent (*see* Debtor and Creditor Law § 273, 275, 276; *Primus Automotive Fin. Servs., Inc. v. Lee*, 26 AD3d 365; *Northpak Assoc., LP v. S.H.C. Mergers, Inc.*, 8 AD3d 642; *cf. Dempster v Overview Equities*, 4 AD3d 495).

December 1, 2009

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The appellant's remaining contentions are without merit.

SKELOS, J.P., FLORIO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer
Clerk of the Court