

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

D25771
C/hu

_____AD3d_____

Submitted - December 8, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
L. PRISCILLA HALL
SANDRA L. SGROI, JJ.

2008-02955
2008-08427

DECISION & ORDER

Glenda Phillips, appellant, v Isaiah Owens
Funeral Service, Inc., et al., defendants, Tuthill
Finance, L.P., et al., respondents.

(Index No. 30258/06)

Kerner & Kerner, New York, N.Y. (Richard A. Kerner of counsel), for appellant.

Robinowitz Cohlan Dubow & Doherty, LLP, White Plains, N.Y. (Bruce Minkoff of counsel), respondent pro se and for respondents Tuthill Finance, L.P., Wainco, Inc., Jeffrey Wain, and John T. Doherty.

Edward C. Kesselman, New York, N.Y. (Douglas M. Lieberman of counsel), for respondent People's Bank.

In an action, inter alia, to set aside fraudulent conveyances pursuant to Debtor and Creditor Law article 10, the plaintiff appeals from (1) an order of the Supreme Court, Kings County (Vaughan, J.), dated February 20, 2008, which granted that branch of the motion of the defendants Tuthill Finance, L.P., Wainco, Inc., Jeffrey Wain, Robinowitz Cohlan Dubow & Doherty, LLP, and John T. Doherty which was for summary judgment dismissing the complaint insofar as asserted against them, and (2) an order of the same court dated July 16, 2008, which granted the motion of the defendant People's Bank for summary judgment dismissing the complaint insofar as asserted against it, and declaring that its mortgage lien was superior to the plaintiff's judgment lien.

ORDERED that the orders are affirmed, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

That branch of the motion of the defendants Tuthill Finance, L.P., Wainco, Inc., Jeffrey Wain, Robinowitz Cohlan Dubow & Doherty, LLP, and John T. Doherty (hereinafter the Tuthill defendants) which was for summary judgment dismissing the complaint insofar as asserted against them, and the motion of the defendant People's Bank, inter alia, for summary judgment dismissing the complaint insofar as asserted against it, were properly granted, as the movants established that the mortgage loan and assignment of mortgage at issue were supported by fair consideration and made in good faith and, therefore, the Tuthill defendants and People's Bank cannot be held liable for any fraudulent conveyance in connection with any of the transactions complained of (*see Murphy v Briggs*, 89 NY 446). The plaintiff's conclusory claims in opposition to that branch of the motion of the Tuthill defendants, and to the motion of People's Bank, were insufficient to defeat that branch of the Tuthill defendants' motion and the motion of the People's Bank, respectively (*see Freedman v Chemical Constru. Corp.*, 43 NY2d 260).

DILLON, J.P., FLORIO, HALL and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court