

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

D28488  
G/ct

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Submitted - September 13, 2010

PETER B. SKELOS, J.P.  
DANIEL D. ANGIOLILLO  
L. PRISCILLA HALL  
PLUMMER E. LOTT, JJ.

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2008-01057

DECISION & ORDER

Gihon, LLC, plaintiff-respondent, v 501 Second Street, LLC, et al., appellants; Norma Vigo, intervenor-respondent.

(Index No. 13933/04)

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Rachel Nash, New York, N.Y., for appellants.

Goldman & Greenbaum, P.C., New York, N.Y. (Martin W. Goldman of counsel), for plaintiff-respondent.

In an action, inter alia, to void a conveyance as fraudulent pursuant to Debtor and Creditor Law §§ 273, 273-a, 274, 276, 276-a, and 277, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Knipel, J.), dated December 28, 2007, as granted that branch of the plaintiff's motion which was for summary judgment declaring the conveyance fraudulent pursuant to Debtor and Creditor Law §§ 273, 273-a, and 276.

ORDERED that the order is affirmed insofar as appealed from, with costs.

A litigant may not raise any issue on a subsequent appeal which was raised, or could have been raised, on an earlier appeal which was dismissed for lack of prosecution (*see Bray v Cox*, 38 NY2d 350). Here, the defendant 501 Second Street, LLC, appealed from an order of the Supreme Court, Kings County, dated March 13, 2003. That appeal was dismissed by this Court for lack of prosecution. As we have on three prior appeals, we decline to exercise our discretion to determine the issues raised on the present appeal which could have been raised on the appeal from the order dated March 13, 2003 (*see Gihon, LLC v 501 Second St., LLC*, 51 AD3d 969, 970; *Gihon, LLC v*

October 12, 2010

GIHON, LLC v 501 SECOND STREET, LLC

Page 1.

*501 Second St., LLC*, 29 AD3d 630; *Gihon, LLC v 501 Second St., LLC*, 29 AD3d 628, 628-629).

The Supreme Court correctly awarded summary judgment to the plaintiff. The plaintiff presented sufficient documentary evidence demonstrating that the conveyance of the subject premises was fraudulent, thereby establishing its prima facie entitlement to judgment as a matter of law (see Debtor and Creditor Law §§ 273, 273-a, 276; *NPR, LLC v Met Fin. Mgt., Inc.*, 63 AD3d 1128, 1129; *Davey v Dolan*, 46 AD3d 854; *Cadle Co. v Organes Enters., Inc.*, 29 AD3d 927, 928). In opposition, the defendants failed to tender evidence in admissible form sufficient to raise a triable issue of fact (see *Zuckerman v City of New York*, 49 NY2d 557, 562; *NPR, LLC v Met Fin. Mgt., Inc.*, 63 AD3d at 1129).

The plaintiff's remaining contentions need not be addressed in light of our determination.

The defendants' remaining contentions are either not properly before this Court or without merit.

SKELOS, J.P., ANGIOLILLO, HALL and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court