

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1090

CA 09-00273

PRESENT: SCUDDER, P.J., MARTOCHE, PERADOTTO, CARNI, AND GORSKI, JJ.

MORRIS E. RICHARDSON, DOING BUSINESS AS LATTA
ROAD NURSING HOME A, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

THOMAS G. BRYANT, DEFENDANT-RESPONDENT,
ET AL., DEFENDANT.

BANSBACH ZOGHLIN P.C., ROCHESTER (JOHN M. BANSBACH OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

Appeal from an order of the Supreme Court, Monroe County (William P. Polito, J.), entered April 10, 2008 in an action pursuant to Debtor and Creditor Law article 10. The order, inter alia, granted the cross motion of defendant Thomas G. Bryant for summary judgment dismissing the complaint against him.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action pursuant to Debtor and Creditor Law article 10 seeking to set aside conveyances that allegedly were, inter alia, "fraudulent as to plaintiff." Supreme Court properly granted the cross motion of Thomas G. Bryant (defendant) for summary judgment dismissing the complaint against him. Plaintiff alleges in the complaint that defendant was engaged in fraudulent transfers with defendant's father that rendered defendant's father unable to pay a future debt owed to plaintiff, but plaintiff has abandoned that allegation on appeal (see *Ciesinski v Town of Aurora*, 202 AD2d 984). Instead, plaintiff contends that the court erred in granting defendant's motion because there is an issue of fact whether defendant engaged in fraudulent transfers that rendered defendant's stepmother, rather than defendant's father, unable to pay her own future debt to plaintiff. We do not address that contention inasmuch as it is based on a cause of action not alleged in the complaint (see *Dominguez v Lafayette-Boynton Hous. Corp.*, 240 AD2d 310, 312-313).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court