

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

D12447
O/cb

_____AD3d_____

Argued - September 11, 2006

HOWARD MILLER, J.P.
GLORIA GOLDSTEIN
WILLIAM F. MASTRO
MARK C. DILLON, JJ.

2005-05586

DECISION & ORDER

Donna Lee H. Williams, etc., respondent, v
Goldy Feig, etc., appellant, et al., defendants.

(Index No. 335/02)

Melvin S. Hirshowitz, New York, N.Y. (Susan Adler of counsel), for appellant.

Brown Raysman Millstein Felder & Steiner, LLP, New York, N.Y. (Thomas K. Lindgren and Rafael J. Droz of counsel), for respondent.

In an action, inter alia, to foreclose a mortgage, the defendant Goldy Feig appeals from an order of the Supreme Court, Rockland County (Nelson, J.), dated May 10, 2005, which denied her motion for summary judgment dismissing the second amended complaint as time barred and as barred by the statute of frauds.

ORDERED that the order is affirmed, with costs.

The appellant met her initial burden of establishing her entitlement to judgment as a matter of law (*see Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1066; *Khagahn v Rye Town Park Comm.*, 8 AD3d 447) as to the statute of limitations and the statute of frauds. In opposition, however, the plaintiff submitted evidence sufficient to raise a triable issue of fact as to whether the appellant should be equitably estopped from asserting as defenses both the statute of limitations (*see Zumpano v Quinn*, 6 NY3d 666, 673; *Simcuski v Saeli*, 44 NY2d 442, 449) and the statute of frauds (*see generally McKinley v Hessen*, 202 NY 24, 29-30; *Greene v First Fed. Sav. and*

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Loan Assn. of Rochester, 122 AD2d 593, 594; *St. Paul Ind. Park v New York State Urban Dev. Corp.*, 63 AD2d 822, 823; *Fletcher v Manhattan Life Ins. Co.*, 197 App Div 484, 488).

MILLER, J.P., GOLDSTEIN, MASTRO and DILLON, 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