

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

D13372
C/hu

_____AD3d_____

Argued - November 30, 2006

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2006-02060

DECISION & ORDER

335 Second Street Housing Corp., respondent, v
Fridal Enterprises, Inc., etc., appellant.

(Index No. 8401/05)

Profeta & Eisenstein, New York, N.Y. (Jethro M. Eisenstein of counsel), for
appellant.

Richard A. Klass, Brooklyn, N.Y., for respondent.

In an action, inter alia, to determine the rights and obligations of the parties pursuant to a mortgage extension agreement, the defendant appeals from an order of the Supreme Court, Kings County (Demarest, J.), dated January 6, 2006, which denied its motion for summary judgment dismissing the complaint and awarding judgment in its favor on its counterclaim, and granted the plaintiff's cross motion for summary judgment on the complaint and directed the defendant to issue a "pay-off letter" in the amount requested by the plaintiff.

ORDERED that the order is affirmed, with costs.

Contrary to the defendant's contention, the issue of equitable estoppel was properly before the court on these motions. Moreover, the Supreme Court correctly determined that the defendant engaged in a course of conduct over a period in excess of nine years whereby it affirmatively billed the plaintiff at an interest rate lower than that authorized by the parties' agreement, and acquiesced in the plaintiff's payments at that rate without complaint, objection, or the declaration of a default. Moreover, the evidence submitted on the motions established that the

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defendant's conduct induced the plaintiff's reasonable belief that the higher rate would not be imposed, and that the plaintiff relied upon that conduct to its detriment in refraining from seeking a more advantageous financing arrangement. Accordingly, the Supreme Court properly granted summary judgment to the plaintiff on the basis of equitable estoppel (*see generally Nassau Trust Co. v Montrose Concrete Prods. Corp.*, 56 NY2d 175; *Triple Cities Constr. Co. v Maryland Cas. Co.*, 4 NY2d 443; *First Union Natl. Bank v Tecklenburg*, 2 AD3d 575; *Karas v Wasserman*, 91 AD2d 812; *More Realty Corp. v Mootchnick*, 232 App Div 705).

MASTRO, J.P., FLORIO, FISHER and DILLON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

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