

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

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_____AD3d_____

Argued - January 5, 2007

WILLIAM F. MASTRO, J.P.
GABRIEL M. KRAUSMAN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2005-09609

DECISION & ORDER

Cendant Mortgage Corporation, respondent, v
James A. Packes, Jr., appellant.

(Index No. 392/02)

Joseph P. Garland, New York, N.Y., for appellant.

Certilman Balin Adler & Hyman, LLP, East Meadow, N.Y. (Candace Reid Gladston,
Natalie Rivkin, and Stacy Nigro of counsel), for respondent.

In an action to foreclose a mortgage, the defendant appeals from an order of the Supreme Court, Rockland County (Nelson, J.), dated September 3, 2005, which granted the plaintiff's motion for summary judgment dismissing the counterclaims.

ORDERED that the order is affirmed, with costs.

The plaintiff, Cendant Mortgage Corporation (hereinafter Cendant), as lender, extended a loan to the defendant in connection with the purchase of the subject property which was guaranteed by a mortgage on the subject property. Cendant commenced this action to foreclose the mortgage, and the defendant asserted various counterclaims alleging, in essence, that Cendant had procured an inaccurate appraisal on which the defendant relied in deciding to purchase the property. Cendant successfully moved for summary judgment dismissing the counterclaims. We affirm.

Cendant established, *prima facie*, its entitlement to judgment as a matter of law dismissing the counterclaims by showing that it owed the defendant no special duty of care on which justifiable reliance could have been placed (*see Kimmell v Schaefer*, 89 NY2d 257, 264; *see also*

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Cuomo v Mahopac Natl Bank, 5 AD3d 621, 622; *River Glen Assoc. v Merrill Lynch Credit Corp.*, 295 AD2d 274, 275), and by tendering documentary evidence that the defendant had specifically been advised to obtain a home inspection before purchasing the subject property (*see M & T Mtge. Corp. v Alleyne*, 7 AD3d 761, 762). In opposition, the defendant failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557).

MASTRO, J.P., KRAUSMAN, FISHER and LIFSON, 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