

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

D14802  
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Argued - February 23, 2007

ROBERT W. SCHMIDT, J.P.  
FRED T. SANTUCCI  
GABRIEL M. KRAUSMAN  
RUTH C. BALKIN, JJ.

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2005-11657

DECISION & ORDER

Alliance Funding Company, etc., respondent,  
v Svetlana Taboada, et al., defendants, New Jersey  
Mortgage and Investment Corp., appellant.

(Index No. 11347/01)

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Wingate, Kearney & Cullen, Brooklyn, N.Y. (Richard J. Cea of counsel), for  
appellant.

Peter T. Roach, Jericho, N.Y. (Scott A. Koltun and Jacob Ginsburg of counsel), for  
respondent.

In an action to foreclose a mortgage, the defendant New Jersey Mortgage and  
Investment Corp. appeals from an order of the Supreme Court, Suffolk County (Cohalan, J.), dated  
October 26, 2005, which, after a nonjury trial, determined that the plaintiff's mortgage has priority  
over its mortgage.

ORDERED that the order is affirmed, with costs.

New York has a "race-notice" recording statutory scheme whereby the mortgage  
recorded first by a mortgagee without notice of any other mortgages will maintain priority over such  
other mortgages (*see* Real Property Law § 291; *Roth v Porush*, 281 AD2d 612, 614; *Goldstein v*  
*Gold*, 106 AD2d 100, 101-102, *affd* 66 NY2d 624). In applying this principle, the Supreme Court

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correctly determined that the plaintiff's mortgage recorded on September 13, 1999, has priority over the defendant's mortgage recorded on February 25, 2000.

The defendant's remaining contentions are without merit.

SCHMIDT, J.P., SANTUCCI, KRAUSMAN and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer  
Clerk of the Court