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

D15400
Y/cb

_____AD3d_____ Submitted - May 1, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
ANITA R. FLORIO, JJ.

2006-05278 DECISION & ORDER

Michael R. Golding, respondent, v Lita D. G. Gottesman, appellant.

(Index No. 10599/03)

Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP, White Plains, N.Y. (Marc S. Oxman of counsel), for appellant.

Sanocki Newman & Turret, LLP, New York, N.Y. (David B. Turret of counsel), for respondent.

In an action to recover the proceeds of certain loans, the defendant appeals from a judgment of the Supreme Court, Westchester County (Colabella, J.), entered April 11, 2006, which, after a nonjury trial, is in favor of the plaintiff and against her in the principal sum of $194,065.47.

ORDERED that the judgment is affirmed, with costs.

"'Where, as here, a case is tried without a jury, our power to review the evidence is as broad as that of the trial court, bearing in mind . . . that due regard must be given to the decision of the Trial Judge who was in a position to assess the evidence and the credibility of the witnesses'" (*Tornheim v Kohn*, 31 AD3d 748, quoting, *Universal Leasing Servs. v Flushing Hae Kwan Rest.*, 169 AD2d 829, 830; *see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Kaywood Props. Ltd. v Glover*, 34 AD3d 645). The evidence established that the plaintiff made a series of loans to the defendant in order to save the defendant's house from foreclosure, first by a bank and then by the City of New Rochelle, that the defendant promised to repay the loans, and that the defendant failed to do so (*see Langenbach v Renna*, 255 AD2d 366; *see*

generally Wallach v Dryfoos, 140 App Div 438, 440). The defendant did not prove that the plaintiff's tender of money was a gift (*see Langenbach v Renna*, *supra*; *Matter of Carroll*, 100 AD2d 337, 338-339). Accordingly, the trial court's determination is supported by the record, and we find no reason to disturb it (*see Kahan v Sulaymanov*, 24 AD3d 612; *Bucci v Bucci*, 231 AD2d 665).

The defendant's remaining contentions are without merit.

MILLER, J.P., RITTER, SANTUCCI and FLORIO, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court