

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

D16527  
X/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - September 25, 2007

REINALDO E. RIVERA, J.P.  
DAVID S. RITTER  
FRED T. SANTUCCI  
MARK C. DILLON, JJ.

2006-06866

DECISION & ORDER

Abdo H. Alkaifi, plaintiff-respondent, v Celestial Church of Christ Calvary Parish, appellant, et al., defendant; Martin Hoffman, intervenor-respondent.

(Index No. 17021/98)

Anthony C. Emengo, Holtsville, N.Y., for appellant.

Sweeney, Gallo, Reich & Bolz, LLP, Rego Park, N.Y. (Michael H. Reich of counsel),  
for plaintiff-respondent.

Michael F. Mongelli II, P.C., Flushing, N.Y. (Angelo M. Grasso of counsel), for  
intervenor-respondent.

In an action to foreclose a mortgage, the defendant Celestial Church of Christ Calvary Parish appeals from an order of the Supreme Court, Queens County (Agate, J.), dated May 19, 2006, which, upon remittitur from this court (*see Alkaifi v Celestial Church of Christ Calvary Parish*, 24 AD3d 476), after a hearing, denied those branches of its motion which were, in effect, to set aside a foreclosure sale conducted on February 8, 2002, and to vacate the referee's deed in foreclosure.

ORDERED that the order is affirmed, with one bill of costs payable to the plaintiff-respondent and the intervenor-respondent.

By order dated April 7, 2004, the Supreme Court denied the appellant's motion, *inter alia*, to vacate a judgment of foreclosure and sale dated June 5, 2000, in effect, to set aside a foreclosure sale conducted on February 8, 2002, and to vacate the referee's deed in foreclosure. In

October 9, 2007

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ALKAIFI v CELESTIAL CHURCH OF CHRIST CALVARY PARISH

*Alkafi v Celestial Church of Christ Calvary Parish* (24 AD3d 476), we modified the order and remitted the matter for a hearing to resolve disputed factual issues and for a new determination as to whether there exists a basis to set aside the foreclosure sale and to vacate the referee's deed in foreclosure. At the hearing, the appellant failed to demonstrate that the disputed factual issues should be resolved in its favor. Accordingly, the Supreme Court, upon remittitur, properly determined that there was no basis to set aside the foreclosure sale and the referee's deed in foreclosure.

RIVERA, J.P., RITTER, SANTUCCI and DILLON, JJ., concur.

ENTER:

  
James Edward Felger  
Clerk of the Court