

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

D18293  
C/kmg

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Argued - January 14, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. LIFSON  
DANIEL D. ANGIOLILLO  
RUTH C. BALKIN, JJ.

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2006-09990

DECISION & ORDER

NC Venture I, L.P., respondent, v  
Complete Analysis, Inc., defendant,  
Joseph E. Fiegoli, et al., appellants.

(Index No. 7179/04)

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Arthur S. Friedman, New York, N.Y., for appellants.

Bressler Amery & Ross, P.C., New York, N.Y. (David H. Pikus of counsel), for  
respondent.

In an action to recover on a promissory note, the defendants Joseph Fiegoli and Rosalie Fiegoli appeal, as limited by their brief, from so much of an order of the Supreme Court, Westchester County (Colabella, J.), entered October 2, 2006, as granted that branch of the plaintiffs' motion which was for summary judgment on the complaint insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the appellants' contention, the plaintiff was not required, pursuant to RPAPL 1301(3), to obtain leave of court prior to commencing this action to recover on the promissory note. At the time this action was commenced, the plaintiff's action to foreclose the mortgage had been dismissed and no judgment in favor of the plaintiff was entered in that action.

This Court reversed the order dismissing the action to foreclose the mortgage, and the complaint in that action was reinstated (*see NC Venture I, L.P. v Complete Analysis, Inc.*, 22 AD3d 540). Allowing the plaintiff to pursue this action on the note is not inconsistent with the purpose of

March 4, 2008

NC VENTURE I, L.P. v COMPLETE ANALYSIS, INC.

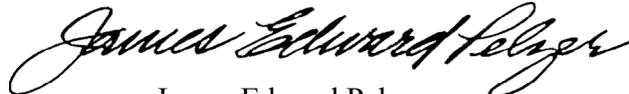
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RPAPL 1301(3), which is to protect the mortgagor from inappropriate, duplicative litigation to recover the same debt (*see Central Trust Co. v Dann*, 85 NY2d 767, 772). The property which was the subject of the mortgage foreclosure action has been sold at a tax sale (*see Lehman v Roseanne Invs. Corp.*, 106 AD2d 617, 618).

The plaintiff met its initial burden of establishing its prima facie entitlement to summary judgment in this action to recover on the promissory note and the appellants failed to meet their burden of coming forward with evidentiary proof demonstrating the existence of a triable issue of fact (*see European Am. Bank v Syosset Autorama*, 204 AD2d 266).

RIVERA, J.P., LIFSON, ANGIOLILLO and BALKIN, 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