

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

D18451
C/prt

_____AD3d_____

Submitted - January 28, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2006-10453

DECISION & ORDER

HSBC Bank USA, N.A., etc., respondent,
v Bruno Decaudin, et al., defendants, Naida I.
Velazquez, etc., appellant.

(Index No. 11801/06)

Singleton and Singleton, Mount Kisco, N.Y. (Thomas J. Singleton of counsel), for appellant.

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, White Plains, N.Y. (Jacob E. Amir of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Naida I. Velazquez appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Smith, J.), dated September 25, 2006, as denied her motion pursuant to CPLR 3211(a)(1) to dismiss the complaint insofar as asserted against her.

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

A motion to dismiss pursuant to CPLR 3211(a)(1) may be granted only where “the documentary evidence that forms the basis of the defense [is] such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claims” (*Saxony Ice Co., Div. of Springfield Ice Co., Inc. v Ultimate Energy Rest. Corp.*, 27 AD3d 445, 446; see *Museum Trading Co. v Bantry*, 281 AD2d 524, 525). The documentary evidence submitted by the defendant Naida I. Velazquez was sufficient to demonstrate that the subject conveyance to the defendant Bruno Decaudin was unauthorized. The conveyance was made by one of the two attorneys-in-fact of

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Velazquez's mother, in disregard of the requirement set forth in the power of attorney that they "act together" (see *Unterberg v Elder*, 211 NY 499; General Obligations Law § 5-1501[3]; 1-11 Warren's Weed, New York Real Property, Attorney-in-Fact § 11.25 [5th ed.]). Nonetheless, an unauthorized conveyance may be ratified by the subsequent acts of the principal (see *Lipman v Vebeliunas*, 39 AD3d 488, 490; *Alexandru v Berritt*, 168 AD2d 472, 474; *Rende & Esposito Consultants v St. Augustine's R. C. Church*, 131 AD2d 740, 743; *Diocese of Buffalo v McCarthy*, 91 AD2d 213). Since the documentary evidence does not establish the absence of ratification, the motion was properly denied.

Velasquez's remaining contentions are without merit.

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court