

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

D18523
O/kmg

_____AD3d_____

Submitted - February 8, 2008

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-01156

DECISION & ORDER

Retirement Accounts, Inc., etc., et al., plaintiffs-respondents, v Pacst Realty, LLC, appellant, Edward F. Myers, etc., et al., defendants-respondents, et al., defendants.

(Index No. 33918/99)

Jay S. Markowitz, P.C., Kew Gardens, N.Y., for appellant.

Jason Chang, Brooklyn, N.Y., for plaintiffs-respondents, and Vittoria & Purdy, New York, N.Y. (John G. Lipsett of counsel), for defendants-respondents (one brief filed).

In an action to foreclose a mortgage, the defendant Pacst Realty, LLC, appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Ruditzky, J.), dated January 5, 2007, as, in effect, upon reargument, adhered to a prior determination in an order dated May 1, 2006, granting the plaintiffs' motion and the cross motion of the defendants-respondents to confirm a referee's report determining that the total sum due on a mortgage, as of March 17, 2005, was \$660,400, and confirming the referee's report.

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

Although the Supreme Court stated that the appellant's motion for leave to reargue was denied, the court, in fact, considered the merits of the underlying motion and cross motion and adhered to its original determination. Thus, contrary to the contention of the plaintiffs and the defendants-respondents, the order dated January 5, 2007, is appealable (*see Noble v Noble*, 43 AD3d 893; *Caccioppoli v Long Is. Jewish Med. Ctr.*, 271 AD2d 565, 566; *Sorg v Zoning Bd. of Appeals*, 248 AD2d 622).

March 25, 2008

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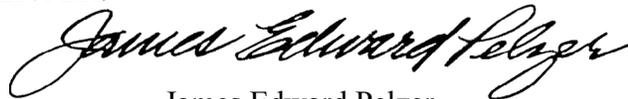
RETIREMENT ACCOUNTS, INC. v PACST REALTY, LLC

Generally, once a judgment is entered, the interest rate set forth in CPLR 5004 applies (see *Marine Mgt., Inc. v Seco Mgt., Inc.*, 176 AD2d 252, 253, *affd* 80 NY2d 886). However, where there is a clear, unambiguous, and unequivocal expression to pay an interest rate higher than the statutory interest rate until the judgment is satisfied, the contractual interest rate is the proper rate to be applied (see *C & M Air Sys. v Custom Land Dev. Group II*, 262 AD2d 440; *Banque Nationale De Paris v 1567 Broadway Ownership Assocs.*, 248 AD2d 154, 155; *ERHAL Holding Corp. v Rusin*, 229 AD2d 417, 419; *Marine Mgt., Inc. v Seco Mgt., Inc.*, 176 AD2d at 254, *affd* 80 NY2d 886). Here, as the Supreme Court correctly concluded, the mortgage note and agreement clearly, unambiguously, and unequivocally expressed that, in the event of default, the agreed-upon rate of interest, 24%, was to govern over the statutory rate of interest from that time through the entry of judgment up until actual satisfaction.

Contrary to the appellant's contention, there is no evidence that the plaintiffs engaged in inequitable or dilatory conduct that would preclude them from their entitlement to interest earned on the unpaid judgment (see *Bankers Trust Co. of Cal., N.A. v Brunson*, 40 AD3d 672; *Matter of Matra Bldg. v Kucker*, 19 AD3d 496; *Greenberg v Greenberg*, 269 AD2d 354, 355; *cf. ERHAL Holding Corp. v. Rusin*, 252 AD2d 473, 474).

MASTRO, J.P., COVELLO, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court