

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

D18630
O/hu

_____AD3d_____

Argued - February 7, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
WILLIAM E. McCARTHY
CHERYL E. CHAMBERS, JJ.

2007-00519
2007-00524

DECISION & ORDER

In the Matter of West Bushwick Urban Renewal
Area Phase 2, etc.
Jen Jen Garment, Inc., appellant; Maria Cho,
respondent, et al., defendant.

(Index No. 35057/04)

Yuen Rocanova Seltzer & Sverd, LLP, New York, N.Y. (Po W. Yuen and Steven Seltzer of counsel), and Yuen & Yuen, New York, N.Y., for appellant (one brief filed).

Goldstein, Goldstein, Rikon & Gottlieb, P.C., New York, N.Y. (Jonathan Houghton of counsel), for respondent.

In an eminent domain proceeding, the mortgagee, Jen Jen Garment, Inc., appeals (1), as limited by its brief, from so much of an order of the Supreme Court, Kings County (Gerges, J.), dated August 24, 2006, as granted Maria Cho's cross motion for a determination that the total amount she owed to it, inclusive of interest and penalties, was \$292,438.43, representing simple interest upon the outstanding balance of her mortgage held by it as of February 28, 2005, and denied that portion of its motion which, in effect, was for a determination that the total amount Cho owed to it was \$468,458.61, representing compound interest upon the same outstanding mortgage balance, and (2) from an order of the same court dated November 8, 2006.

ORDERED that the appeal from the order dated November 8, 2006, is dismissed as abandoned; and it is further,

April 1, 2008

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MATTER OF WEST BUSHWICK URBAN RENEWAL AREA PHASE 2

ORDERED that the order dated August 24, 2006, is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

As the appellant correctly concedes in its brief, the mortgage agreement and note at issue did not include a provision expressly authorizing it to compound interest. Under such circumstances, compound interest is not recoverable (*see Gutman v Savas*, 17 AD3d 278, 279; *DeFalco v Do*, 267 AD2d 193; *Rourke v Fred H. Thomas Assocs.*, 216 AD2d 717, 718).

The appellant has not raised any arguments regarding its appeal from the order dated November 8, 2006. Thus, its appeal from that order must be dismissed as abandoned (*see Tobacco v North Babylon Volunteer Fire Dept.*, 276 AD2d 551, 552; *Matter of Anonymous v Grievance Comm. for Second & Eleventh Judicial Dists. of State of New York*, 136 AD2d 344, 349).

The appellant's remaining contentions are not properly before this Court.

FISHER, J.P., MILLER, McCARTHY and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court