

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

D18945
C/kmg

_____AD3d_____

Argued - March 24, 2008

PETER B. SKELOS, J.P.
MARK C. DILLON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2007-05757

DECISION & ORDER

James Mercaldo, plaintiff, v Luciano A. Navarro,
defendant, Deborah Navarro, intervenor-defendant-
respondent; Vincent Longobardi, et al.,
nonparty-appellants.

(Index No. 14549/91)

Joseph J. Haspel, Goshen, N.Y., for nonparty-appellants.

Caruso, Caruso & Branda, P.C., Brooklyn, N.Y. (Mark J. Caruso and Grace M. Borrino of counsel), for respondent.

In an action to foreclose a mortgage on the undivided one-half interest of certain real property owned by the defendant Luciano A. Navarro, nonparties Vincent Longobardi and Yitta Weiss, the purchasers at the foreclosure sale, appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated May 11, 2007, as granted those branches of Deborah Navarro's motion which were for leave to intervene, in effect, to vacate the default judgment obtained against her ex-husband, the defendant Luciano A. Navarro, to vacate the judgment of foreclosure and sale, revoke the public sale, and set aside the referee's deed conveying the defendant Luciano A. Navarro's interest in the property to them.

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

Contrary to the nonparty-appellants' contentions, Deborah Navarro (hereinafter Navarro) was a necessary party to the foreclosure action by virtue of her co-tenancy ownership interest in the property being foreclosed upon (*see Capital Resources Co. v Prewitt*, 266 AD2d 176, 176). The Supreme Court did not err in exercising its inherent powers of equity to grant Navarro

April 22, 2008

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leave to intervene, in effect, vacate the default judgment obtained against Navarro's ex-husband, to vacate the judgment of foreclosure and sale, revoke the public sale, and set aside the referee's deed (see *Guardian Loan Co. v Early*, 47 NY2d 515, 520-521; *Alkafi v Celestial Church of Christ Calvary Parish*, 24 AD3d 476, 477; *Fleet Fin. v Gillerson*, 277 AD2d 279).

SKELOS, J.P., DILLON, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court