

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

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_____AD3d_____

Argued - April 24, 2008

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2007-06156

DECISION & ORDER

Thomas Leahy, appellant, v County Wide Home
Loans, Inc., et al., respondents.

(Index No. 8203/06)

Paul J. Margiotta, Bay Shore, N.Y., for appellant.

Zeichner Ellman & Krause, LLP, New York, N.Y. (Steven S. Rand of counsel), for
respondents.

In an action, inter alia, to recover damages for unjust enrichment and conversion, the
plaintiff appeals from an order of the Supreme Court, Suffolk County (Jones, J.), dated May 24,
2007, which granted the defendants' motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contention, the defendants' amended proof of claim for
post-petition tax escrow payment arrears in an underlying Bankruptcy Court proceeding was timely
filed (*see In re Woods*, 316 BR 522). The plaintiff did not object to the amended proof of claim and
it was deemed allowed as a matter of law (*see* 11 USC § 502[a]). Therefore, the uncontested
amended proof of claim, together with the plaintiff's discharge and the closing of the bankruptcy
proceeding, bars further litigation of the validity of the amount of the claim pursuant to the doctrine
of res judicata (*see EDP Med. Computer Sys., Inc. v United States*, 480 F3d 621, 624-625).

Accordingly, the Supreme Court properly determined that the defendants established
their entitlement to summary judgment by demonstrating that the amount paid by the plaintiff to

May 20, 2008

Page 1.

LEAHY v COUNTY WIDE HOME LOANS, INC.

discharge the defendants' mortgage lien upon the sale of the subject real property was correct. In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

The plaintiff's remaining contentions are without merit.

PRUDENTI, P.J., MILLER, CARNI and CHAMBERS, 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