

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

D20798
W/kmg

_____AD3d_____

Argued - October 2, 2008

WILLIAM F. MASTRO, J.P.
STEVEN W. FISHER
WILLIAM E. McCARTHY
JOHN M. LEVENTHAL, JJ.

2007-07123

DECISION & ORDER

Nationscredit Financial Services Corporation, as
successor in interest to Equicredit Corporation of
NY, appellant, v Luis A. Turcios, et al., respondents,
et al., defendants.

(Index No. 00-12938)

The Law Offices of Alan Weinreb, PLLC (Stim & Warmuth, P.C., Farmingville, N.Y.
[Paula J. Warmuth], of counsel), for appellant.

Jeffrey M. Novick, Woodbury, N.Y. (Debra A. Kruper of counsel), for respondents.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the
Supreme Court, Suffolk County (R. Doyle, J.), dated July 17, 2007, which denied its motion to strike
the jury demand of the defendants Luis A. Turcios and Aurora Velasquez.

ORDERED that the order is reversed, on the law, with costs, and the motion is
granted.

The Supreme Court improperly denied the plaintiff's motion to strike a jury demand
filed by the defendant mortgagors Luis A. Turcios and Aurora Velasquez (hereinafter the defendants).
Where, as here, a defendant interposes a counterclaim of an equitable nature related to a cause of
action asserted in the complaint, the defendant thereby waives a jury trial on all causes of action,
whether legal or equitable in nature (*see Herbil Holding Co. v Mitrany*, 11 AD3d 430; *Goldberg v*
Goldberg, 173 AD2d 679, 681; *Seneca v Novaro*, 80 AD2d 909, 910; *Compact Electra Corp. v*

October 21, 2008

Page 1.

NATIONSCREDIT FINANCIAL SERVICES CORPORATION, as successor in interest to
EQUICREDIT CORPORATION OF NY v TURCIOS

Connell, 46 AD2d 649, 650; *Academy St. Realty Corp. v Young*, 25 AD2d 435). Accordingly, the Supreme Court should have granted the plaintiff's motion to strike the defendants' jury demand.

MASTRO, J.P., FISHER, McCARTHY and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court