

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

D21459
O/kmg

_____AD3d_____

Submitted - November 14, 2008

WILLIAM F. MASTRO, J.P.
ANITA R. FLORIO
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2007-05458

DECISION & ORDER

Harry's Nurses Registry, Inc., respondent, v
Jen Kuo Chen, defendant, Jing Chun Wu, appellant.

(Index No. 8220/90)

Jing Chun Wu, Long Island City, N.Y., appellant pro se.

In an action to foreclose a mortgage, the defendant Jing Chun Wu appeals from an order of the Supreme Court, Queens County (Rosengarten, J.), dated April 19, 2007, which denied her motion, inter alia, to enjoin the sale of the premises pursuant to a judgment of foreclosure and sale of the same court (Price, J.), dated May 1, 2000.

ORDERED that the appeal is dismissed, without costs or disbursements.

As a general rule, we do not consider any issue on a subsequent appeal that was raised, or could have been raised, on a prior appeal that was dismissed for failure to prosecute, although we have the inherent jurisdiction to do so (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750; *Bray v Cox*, 38 NY2d 350). As was the case on the appellant's prior appeal (*see Sabba v Jen Kuo Chen*, 12 AD3d 435), the issues that the appellant raises on this appeal could have been raised on her appeal from the judgment of foreclosure and sale dated May 1, 2000, which this Court dismissed for failure to prosecute by decision and order on motion dated September 11, 2002. "The dismissal of the prior appeal constituted an adjudication on the merits with respect to all issues that could have been reviewed therein," and we decline to review those issues on this appeal (*Gammal v La Casita Milta*, 278 AD2d 364, 364; *see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750; *Bray v Cox*, 38 NY2d 350).

MASTRO, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 16, 2008

HARRY'S NURSES REGISTRY, INC. v JEN KUO CHEN