

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

D22881
C/prt

_____AD3d_____

Argued - March 16, 2009

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2008-00349

DECISION & ORDER

Wells Fargo Bank, N.A., etc., respondent,
v Scott E. Webster, et al., appellants.

(Index No. 2742/06)

Scott E. Webster and Jean Allen Webster, Dugspur, VA, appellants pro se (one brief filed).

Steven J. Baum, P.C., Amherst, N.Y. (Kyle C. DiDone and Caren Samplin of counsel), for respondent.

In an action to foreclose a mortgage, the defendants appeal from a judgment of the Supreme Court, Putnam County (O'Rourke, J.), entered December 4, 2007, which, upon an amended order of the same court dated August 27, 2007, granting the plaintiff's motion for summary judgment, inter alia, upon confirming the referee's report, directed the foreclosure and sale of the subject property.

ORDERED that the judgment is affirmed, with costs.

“[I]n moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its case as a matter of law through the production of the mortgage, the unpaid note, and evidence of default” (*Republic Natl. Bank of N.Y. v O’Kane*, 308 AD2d 482, 482, quoting *Village Bank v Wild Oaks Holding*, 196 AD2d 812, 812; see *Aames Funding Corp. v Houston*, 44 AD3d 692, 693). Here, the plaintiff bank sustained its initial burden of demonstrating its entitlement to judgment as a matter of law by submitting proof of the existence of the note, mortgage, and consolidation agreement, and the defendants’ default in payment (see *Mahopac Natl. Bank v Baisley*, 244 AD2d 466, 467; *Home Sav. Bank v Schorr Bros. Dev. Corp.*, 213 AD2d 512, 512-513; *Zitel Corp. v Fonar Corp.*, 210 AD2d 221). The plaintiff established, on its motion for summary

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judgment, that the defendants took out two mortgages on the subject property which were consolidated to form a single lien in the amount of \$522,200, and that the defendants defaulted on their obligations under the note and mortgage. Accordingly, it was incumbent upon the defendants to demonstrate, by admissible evidence, the existence of a triable issue of fact as to a bona fide defense (*see State Bank of Albany v Fioravanti*, 51 NY2d 638, 647; *Naugatuck Sav. Bank v Gross*, 214 AD2d 549; *Zitel Corp. v Fonar Corp.*, 210 AD2d 221). The defendants failed to raise such a triable issue of fact. Accordingly, summary judgment was properly granted to the plaintiff.

The defendants' remaining contentions are without merit.

RIVERA, J.P., SPOLZINO, ANGIOLILLO and BALKIN, 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