

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

D22887
O/cb

_____AD3d_____

Argued - March 19, 2009

A. GAIL PRUDENTI, P.J.
FRED T. SANTUCCI
ANITA R. FLORIO
ARIEL E. BELEN, JJ.

2008-04302

DECISION & ORDER

Hidir Yildiz, et al., appellants-respondents, v Vural Management Corp., respondent-appellant, et al., defendants.

(Index No. 21011/06)

Nicholas J. Damadeo, P.C., Huntington, N.Y., for appellants-respondents.

Steinberg, Fineo, Berger & Fischoff, P.C., Woodbury, N.Y. (Laurie Sayevich Horz of counsel), for respondent-appellant.

In an action to foreclose a mortgage, the plaintiffs appeal from so much of an order of the Supreme Court, Nassau County (Adams, J.), entered December 13, 2007, as denied their motion for summary judgment on the complaint, and the defendant Vural Management Corp. cross-appeals from so much of the same order as denied its cross motion pursuant to CPLR 3211 to dismiss the complaint insofar as asserted against it.

ORDERED that the order is affirmed, without costs or disbursements.

The plaintiffs demonstrated their prima facie entitlement to judgment as a matter of law by submitting proof of the existence of the mortgage, an unpaid note, and a default thereunder by the defendant Vural Management Corp. (hereinafter Vural) (*see NC Venture I, L.P., v Complete Analysis, Inc.*, 22 AD3d 540; *Fleet Natl. Bank v Olasov*, 16 AD3d 374). However, in opposition thereto, Vural raised triable issues of fact through its submission of evidence which, inter alia, consisted of an executed, although not notarized, satisfaction of the mortgage (*see JK Funding v*

April 28, 2009

Page 1.

YILDIZ v VURAL MANAGEMENT CORP.

Decara, Enters., 235 AD2d 785; *see also Marculescu v Ovanez*, 27 AD3d 701). Under these circumstances, the Supreme Court properly denied the plaintiffs' motion for summary judgment on the complaint (*see Alvarez v Prospect Hosp.*, 68 NY2d 320), and also properly denied Vural's cross motion to dismiss the complaint insofar as asserted against it.

The parties' remaining contentions are without merit or have been rendered academic in light of our determination.

PRUDENTI, P.J., SANTUCCI, FLORIO and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court