

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

D23998

T/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 5, 2009

ANITA R. FLORIO, J.P.  
HOWARD MILLER  
JOSEPH COVELLO  
LEONARD B. AUSTIN, JJ.

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2009-00220

DECISION & ORDER

Bayview Loan Servicing, LLC, respondent, v  
FM Realty Enterprises, LLC, appellant.

(Index No. 10649/08)

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Herbert L. Haas, Huntington, N.Y., for appellant.

Herzfeld & Rubin, P.C., New York, N.Y. (Arlene Eudora Lewis of counsel), for  
respondent.

In an action to foreclose a mortgage, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Molia, J.), dated October 3, 2008, as granted the plaintiff's motion for summary judgment on the issue of liability and to appoint a referee to compute the amount due the plaintiff.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the motion for summary judgment on the issue of liability and to appoint a referee to compute the amount due the plaintiff is denied.

The plaintiff made a prima facie showing of entitlement to judgment as a matter of law

July 21, 2009

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BAYVIEW LOAN SERVICING, LLC v FM REALTY ENTERPRISES, LLC

(see *Household Fin. Realty Corp. of N.Y. v Winn*, 19 AD3d 545; *Sears Mortgage Corp. v Yaghabi*, 19 AD3d 402; *Ocwen Fed. Bank FSB v Miller*, 18 AD3d 527; *U.S. Bank Trust N.A. Trustee v Butti*, 16 AD3d 408). However, in opposition, the defendant raised an issue of fact as to whether the plaintiff was the entity entitled to payment on the note and mortgage.

FLORIO, J.P., MILLER, COVELLO and AUSTIN, 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