

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

D25391
H/kmg

_____AD3d_____

Argued - October 5, 2009

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
PLUMMER E. LOTT, JJ.

2008-09986

DECISION & ORDER

Eastern Savings Bank, FSB, respondent,
v Sayeh Sassouni, etc., et al., appellants,
et al., defendant.

(Index No. 16988/06)

Douglas Reda, Woodbury, N.Y., for appellants.

Kriss & Feuerstein, LLP, New York, N.Y. (Jerold C. Feuerstein and Jennifer A. Schwartz of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Sayeh Sassouni, etc., and Vahid Khorshad appeal from a judgment of the Supreme Court, Nassau County (Galasso, J.), entered October 7, 2008, which, upon an order of the same court entered September 23, 2008, inter alia, granting those branches of the plaintiff's motion which were for summary judgment on the complaint and to strike their answer, and upon confirming the report of a referee finding that the sum of \$2,890,954.21 was due upon a mortgage and promissory note, is in favor of the plaintiff and against them directing a foreclosure and sale of the subject property.

ORDERED that the judgment is affirmed, with costs.

The plaintiff met its initial burden of establishing its entitlement to judgment as a matter of law by producing the mortgage, the unpaid note, and evidence of default (*see Wells Fargo Bank, N.A. v Webster*, 61 AD3d 856, 856; *Ames Funding Corp. v Houston*, 44 AD3d 692, 693; *Republic Natl. Bank of N.Y. v O'Kane*, 308 AD2d 482, 482; *Village Bank v Wild Oaks Holding*, 196 AD2d 812, 812). Accordingly, it was incumbent on the appellants to produce evidentiary proof in

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admissible form sufficient to demonstrate 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; *Wells Fargo Bank, N.A. v Webster*, 61 AD3d at 856; *Aames Funding Corp. v Houston*, 44 AD3d at 693; *Republic Natl. Bank of N.Y. v O'Kane*, 308 AD2d at 482; *Village Bank v Wild Oaks Holding*, 196 AD2d at 812). The appellants failed to raise a triable issue of fact concerning their fraud defense, and evidence of an alleged oral modification of the applicable interest rate which contradicts an express term of the note is barred by the parol evidence rule (see *Siegel v Competition Imports*, 296 AD2d 540, 542; *Marine Midland Bank v Simpson Edson, Inc.*, 120 AD2d 709, 711). Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the complaint.

The appellants' remaining contentions are either without merit or not properly before this Court.

FISHER, J.P., COVELLO, DICKERSON and LOTT, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court