

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

D25422
Y/kmg

_____AD3d_____

Argued - November 10, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2009-03124

DECISION & ORDER

Golden Age Mortgage Corporation, respondent,
v Argonne Enterprises, LLC, et al., appellants,
et al., defendants.

(Index No. 1822/06)

Maniatis Dimopoulos & Lombardo, LLP, Scarsdale, N.Y. (Constantine G. Dimopoulos of counsel), for appellants.

Robinowitz Cohlan Dubow & Doherty, LLP, White Plains, N.Y. (Bruce Minkoff of counsel), for respondent.

In an action to foreclose three mortgages, the defendants Argonne Enterprises, LLC, Anastasia Gianopoulos, a/k/a Ann Gianopoulos, and Anastasia Gianopoulos, a/k/a Stacy Gianopoulos, appeal, as limited by their brief, from so much of an order of the Supreme Court, Putnam County (O'Rourke, J.), dated February 17, 2009, as denied their motion, inter alia, to vacate a judgment of foreclosure and sale of the same court dated August 5, 2008, and to vacate and set aside the foreclosure sales held pursuant thereto on October 8, 2008.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Pursuant to CPLR 2003, “[a]t any time within one year after a sale made pursuant to a judgment or order, but not thereafter, the court, upon such terms as may be just, may set the sale aside for a failure to comply with the requirements of the civil practice law and rules as to the notice, time or manner of such sale, if a substantial right of a party was prejudiced by the defect” (*see Guardian Loan Co. v Early*, 47 NY2d 515, 520; *Mortgage Elec. Registration Sys., Inc. v Schotter*,

December 15, 2009

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50 AD3d 983, 984). Moreover, “[a] court has the inherent equitable power to ensure that a sale conducted pursuant to a judgment of foreclosure ‘is not made the instrument of injustice’” (*Alkaifi v Celestial Church of Christ Calvary Parish*, 24 AD3d 476, 477, quoting *Guardian Loan Co. v Early*, 47 NY2d at 520). Nonetheless, under the circumstances of this case, the Supreme Court did not improvidently exercise its discretion in declining to vacate a judgment of foreclosure and sale dated August 5, 2008, and in declining to vacate and set aside the foreclosure sales.

In light of our determination, we need not reach the plaintiff’s remaining contention.

FISHER, J.P., ANGIOLILLO, LOTT and SGROI, 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