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

D26395
C/prt

_____AD3d_____ Argued - February 5, 2010

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
PLUMMER E. LOTT, JJ.

2009-06911 DECISION & ORDER

Emigrant Mortgage Company, Inc., respondent, v
Barry Turk, et al., defendants, Carol Catusco Turk,
appellant.

(Index No. 19126/08)

Stim & Warmuth, P.C., Farmingville, N.Y. (Paula J. Warmuth of counsel), for appellant.

Deutsch & Schneider, LLP, Glendale, N.Y. (Doris Barkhordar of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Carol Catusco Turk appeals from an order of the Supreme Court, Suffolk County (Tanenbaum, J.), dated July 8, 2009, which denied her motion for leave to renew her opposition to that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against her, which had been granted in an order dated January 13, 2009.

ORDERED that the order dated July 8, 2009, is affirmed, with costs.

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" (CPLR 2221[e][2]) and "shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221[e][3]; *see Yunatanov v Stein*, 69 AD3d 708, 709; *Barnett v Smith,* 64 AD3d 669, 670). Here, the Supreme Court did not improvidently exercise its discretion in denying the appellant's motion for leave to renew her opposition to that branch of the plaintiff's motion which was for summary judgment on the

complaint insofar as asserted against her. The new facts, which were offered in support of a defense of usury, would not have changed the original determination, because the defense had no merit (*see Hicki v Choice Capital Corp.,* 264 AD2d 710, 711; *Miller Planning Corp. v Wells,* 253 AD2d 859, 859-860).

FISHER, J.P., ANGIOLILLO, LEVENTHAL and LOTT, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court