

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

D26968
W/hu

_____AD3d_____

Argued - March 16, 2010

JOSEPH COVELLO, J.P.
ANITA R. FLORIO
HOWARD MILLER
RANDALL T. ENG, JJ.

2009-00618

DECISION & ORDER

National City Home Loan Services, Inc., respondent-appellant, v Odra N. Arango, et al., defendants, Effingham James, appellant-respondent.

(Index No. 24366/03)

Alaba A. Rufai, Jamaica, N.Y., for appellant-respondent.

Crowell & Moring LLP, New York, N.Y. (Timothy J. Fierst and Jamie C. Krapf of counsel), for respondent-appellant.

In an action to foreclose a mortgage, the defendant Effingham James appeals, as limited by his brief, from so much of an order of the Supreme Court, Queens County (Kelly, J.), entered November 25, 2008, as denied that branch of his motion which was for summary judgment dismissing the complaint insofar as asserted against him, and the plaintiff cross-appeals, as limited by its brief, from so much of the same order as, in effect, denied those branches of its cross motion which were, in effect, to dismiss the counterclaims of the defendant Effingham James pursuant to CPLR 3211(a)(7) or, in the alternative, for summary judgment dismissing those counterclaims.

ORDERED that the order is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

The Supreme Court properly denied that branch of the motion of the defendant Effingham James which was for summary judgment dismissing the complaint insofar as asserted against him, and properly denied that branch of the plaintiff's cross motion which was for summary judgment dismissing James's counterclaims. James and the plaintiff failed to demonstrate their

April 20, 2010

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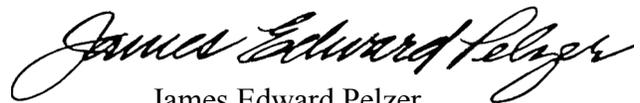
NATIONAL CITY HOME LOAN SERVICES, INC. v ARANGO

respective prima facie entitlements to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). The evidence they submitted in support of their respective motion and cross motion revealed the existence of triable issues of fact as to the validity of a deed that James executed conveying title to certain real property to the defendant Odra N. Arango, and as to the validity of the subject mortgage, which Arango executed in favor of the defendant FFFC, from now on First Franklin Financial Group (hereinafter FFFC), and which FFFC assigned to the plaintiff (*see GMAC Mtge. Corp. v Chan*, 56 AD3d 521, 522; *cf. Johnson v Melnikoff*, 65 AD3d 519, 520-521). That evidence also revealed the existence of a triable issue of fact as to whether FFFC and the plaintiff were bona fide encumbrancers for value (*see Real Property Law* § 266; *Maiorano v Garson*, 65 AD3d 1300, 1302).

The plaintiff's remaining contention is without merit.

COVELLO, J.P., FLORIO, MILLER and ENG, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court