

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

D28604
C/prt

_____AD3d_____

Argued - September 16, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2010-01508

DECISION & ORDER

Deutsche Bank National Trust Company, etc.,
respondent, v Jerry Zlotoff, etc., et al., appellants,
et al., defendants.

(Index No. 25223/07)

Zinker & Herzberg, LLP, Smithtown, N.Y. (Jeffrey Herzberg of counsel), for appellants.

Steven J. Baum, P.C., Buffalo, N.Y. (Alicia Stillman of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Jerry Zlotoff and Rhonda Zlotoff appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Kent, J.), entered November 23, 2009, as denied that branch of their motion which was to vacate the judgment of foreclosure and sale and remit the matter to the referee for a computation hearing.

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

Contrary to the contention of the defendants Jerry Zlotoff and Rhonda Zlotoff (hereinafter together the Zlotoffs), under the circumstances of this case, the referee was not required to conduct a hearing prior to the issuance of his report to the Supreme Court, Suffolk County (*see Deutsche Bank Natl. Trust Co. v Jackson*, 68 AD3d 805).

Furthermore, the Zlotoffs had an opportunity to raise and submit proof as to all of the issues they now raise on this appeal to the Supreme Court. Thus, any error in failing to hold a hearing did not prejudice the Zlotoffs and does not require reversal (*see Sears v First Pioneer Farm*

October 12, 2010

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Credit, ACA, 46 AD3d 1282; *Jones v Jones*, 30 AD3d 741; *Federal Deposit Ins. Corp. v 65 Lenox Rd. Owners Corp.*, 270 AD2d 303; *Adelman v Fremd*, 234 AD2d 488; *Schultis v Woodstock Land Dev. Assoc.*, 195 AD2d 677; *cf. 243 West 98th Condominium v Schapiro*, 12 AD3d 591).

The Zlotoffs' remaining contentions are either without merit or improperly raised for the first time on appeal.

DILLON, J.P., FLORIO, ROMAN and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court