

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

D29483
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_____AD3d_____

Submitted - November 30, 2010

REINALDO E. RIVERA, J.P.
MARK C. DILLON
DANIEL D. ANGIOLILLO
LEONARD B. AUSTIN, JJ.

2009-10018

DECISION & ORDER

US Bank National Association, etc., respondent, v
Shelley R. Eaddy, appellant, et al., defendants.

(Index No. 9898/07)

Thomas J. Minotti, P.C., Highland, N.Y., for appellant.

Hogan Lovells US, LLP, New York, N.Y. (Allison J. Schoenthal, Victoria McKenney, and Jessica L. Ellsworth of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Shelley R. Eaddy appeals from an order of the Supreme Court, Rockland County (Berliner, J.), dated September 9, 2009, which granted the plaintiff's motion, in effect, for summary judgment on the complaint.

ORDERED that the order 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 documentation evidencing the appellant's default in her payment obligations (*see Ferri v Ferri*, 71 AD3d 949; *Countrywide Home Loans, Inc. v Delphonse*, 64 AD3d 624, 625; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 241-242). In opposition, the appellant failed to raise a triable issue of fact. The appellant waived any defense based on the plaintiff's alleged lack of standing because she failed to interpose an answer asserting the defense or file a timely pre-answer motion raising that defense (*see Deutsche Bank Natl. Trust Co. v Jackson*, 68 AD3d 805; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d at 244).

December 21, 2010

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The appellant's remaining contentions either are improperly raised for the first time on appeal, are without merit, or have been rendered academic by our determination.

RIVERA, J.P., DILLON, ANGIOLILLO and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court