

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

D29523
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_____AD3d_____

Argued - November 23, 2010

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2010-02789

DECISION & ORDER

Ronald Zanfina, appellant, v Garnette Shay Chandler,
et al., respondents, et al., defendants.

(Index No. 20464/08)

Jane M. Myers, P.C., Central Islip, N.Y. (James E. Robinson of counsel), for appellant.

James D. Reddy, P.C., Lindenhurst, N.Y., for respondent Garnette Shay Chandler.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Farneti, J.), entered February 17, 2010, which denied his motion for summary judgment on the issue of liability.

ORDERED that the order is affirmed, with costs to the respondent Garnette Shay Chandler.

“Entitlement to a judgment of foreclosure may be established, as a matter of law, where a mortgagee produces both the mortgage and unpaid note, together with evidence of the mortgagor’s default, thereby shifting the burden to the mortgagor to demonstrate, through both competent and admissible evidence, any defense which could raise a question of fact” (*HSBC Bank USA v Merrill*, 37 AD3d 899, 900; *see Household Fin. Realty Corp. of N.Y. v Winn*, 19 AD3d 545; *Sears Mtge. Corp. v Yaghobi*, 19 AD3d 402; *Ocwen Fed. Bank FSB v Miller*, 18 AD3d 527). Here, the plaintiff established his prima facie entitlement to judgment as a matter of law by submitting the mortgage, the unpaid note, and evidence of default. However, in opposition, the respondents raised triable issues of fact with respect to, inter alia, the validity of the mortgage and the alleged usurious

December 21, 2010

Page 1.

ZANFINI v CHANDLER

nature of the note (see *Freitas v Geddes Sav. & Loan Assn.*, 63 NY2d 254, 262; *Abir v Malky, Inc.*, 59 AD3d 646, 649; *Sudit v Schapiro*, 57 AD3d 968, 968-969; *Campaign v Barba*, 23 AD3d 327; *Hort v Devine*, 1 AD3d 266).

COVELLO, J.P., ANGIOLILLO, DICKERSON and BELEN, 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