

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

D29655  
H/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - December 21, 2010

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
L. PRISCILLA HALL  
LEONARD B. AUSTIN, JJ.

---

2010-00451

DECISION & ORDER

Intervest National Bank, respondent, v  
Ashburton 70, LLC, et al., appellants,  
et al., defendant.

(Index No. 25988/08)

---

Ginsberg & Wolf, P.C., New York, N.Y. (Dov Medinets of counsel), for appellants  
and defendant Henry Knopf.

Einig & Bush, LLP, New York, N.Y. (Michael R. Bush and Dan M. Rice of counsel),  
for respondent.

In an action to foreclose a mortgage, the defendants Ashburton 70, LLC, and 166 Broadway, LLC, appeal, as limited by their brief, from so much of an order of the Supreme Court, Westchester County (Loehr, J.), entered December 8, 2009, as denied those branches of the defendants' motion which were pursuant to CPLR 317 to vacate so much of a judgment of foreclosure and sale of the same court entered June 7, 2009, upon the defendants' default in appearing or answering the complaint, as was in favor of the plaintiff and against them, and to set aside the foreclosure sale.

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

The appellants failed to demonstrate the existence of a potentially meritorious defense to this action. Accordingly, the Supreme Court properly denied that branch of the defendants' motion which was pursuant to CPLR 317 to vacate so much of the judgment of foreclosure and sale as was in favor of the plaintiff and against the appellants (*see 393 Lefferts Partners, LLC v New York Ave. at Lefferts, LLC*, 68 AD3d 976, 976-977).

August 16, 2011

INTERVEST NATIONAL BANK v ASHBURTON 70, LLC

Page 1.

The Supreme Court also properly denied that branch of the defendants' motion which was to set aside the foreclosure sale. A court may exercise its equitable powers to set aside a foreclosure sale only where fraud, collusion, mistake, or misconduct casts suspicion on the fairness of the sale (*see Debcon Fin. Servs., Inc. v 83-17 Broadway Corp.*, 61 AD3d 712, 713). Here, the appellants failed to establish the presence of any of these elements. Moreover, the Supreme Court properly determined that the price at which the appellants' properties were sold was not so low as to shock the conscience of the court (*see Guardian Loan Co. v Early*, 47 NY2d 515, 521).

The defendants' remaining contentions are either without merit or not properly before this Court.

ANGIOLILLO, J.P., DICKERSON, HALL and AUSTIN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court