

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

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_____AD3d_____

Argued - January 14, 2011

DANIEL D. ANGIOLILLO, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
JEFFREY A. COHEN, JJ.

2010-04365

DECISION & ORDER

Nori Mizuno, respondent-appellant, v Fischhoff &
Associates, et al., appellants-respondents.

(Index No. 15900/03)

Catalano Gallardo & Petropoulos, LLP, Jericho, N.Y. (Matthew K. Flanagan of
counsel), for appellants-respondents.

Joel J. Ziegler, P.C., Smithtown, N.Y., for respondent-appellant.

In an action, inter alia, to recover damages for legal malpractice, the defendants
appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Suffolk County
(Whelan, J.), entered March 25, 2010, as, upon a decision made after a nonjury trial, determined that
the plaintiff is entitled to 100% of the lost equity in the subject property and is in favor of the plaintiff
and against them in the principal sum of \$318,227.53, and the plaintiff cross-appeals from so much
of the same judgment as awarded prejudgment interest only from May 1, 2003.

ORDERED that the judgment is affirmed insofar as appealed from; and it is further,

ORDERED that judgment is reversed insofar as cross-appealed from, on the law, and
the matter is remitted to the Supreme Court, Suffolk County, for a new calculation and award of
prejudgment interest in accordance herewith, and for the entry of an appropriate amended judgment;
and it is further,

ORDERED that one bill of costs is awarded to the plaintiff.

March 8, 2011

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As a result of the defendants' legal malpractice, which is not contested on this appeal, the plaintiff's house was sold at a foreclosure sale on April 4, 2002. The plaintiff and his wife held title to the subject property as tenants by the entirety and were, thus, each seized of the whole property (*see Kahn v Kahn*, 43 NY2d 203, 206-207; *Stelz v Shreck*, 128 NY 263, 266; *Paterno v CYC, LLC*, 46 AD3d 788, 789). Since the plaintiff owned the entire property, the Supreme Court properly held that he was entitled to recover 100% of the lost equity in the property.

We agree with the plaintiff's contention that May 1, 2003, is not a "reasonable intermediate date" from which to calculate prejudgment interest (CPLR 5001[b]). Instead, we find that April 4, 2002, is a "single reasonable intermediate date" (CPLR 5001[b]) from which to calculate prejudgment interest on the damages awarded in this case. Accordingly, we remit the matter to the Supreme Court, Suffolk County, for a new calculation and award of prejudgment interest, and for the entry of an appropriate amended judgment.

ANGIOLILLO, J.P., HALL, ROMAN and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court