

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

D30219  
H/prt

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

Argued - February 7, 2011

REINALDO E. RIVERA, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL, JJ.

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2010-03292

DECISION & ORDER

Wells Fargo, etc., appellant, v Steven E. Tyson,  
et al., respondent, et al., defendants; Wells Fargo  
Bank, N.A., nonparty-appellant.

(Index No. 28042/07)

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Fein, Such & Crane, LLP, Chestnut Ridge, N.Y. (Gregg P. Tabakin and Samit G.  
Patel of counsel), for appellants.

Steven E. Tyson, Bellmore, N.Y., respondent pro se.

In an action to foreclose a mortgage, the plaintiff and nonparty Wells Fargo Bank, N.A., appeal from a judgment of the Supreme Court, Suffolk County (Spinner, J.), entered March 24, 2010, which, after a court conference, sua sponte, determined that the nonparty Wells Fargo Bank, N.A., was liable for trespass on the premises subject to the mortgage, and is in favor of the defendant Steven E. Tyson and against the nonparty Wells Fargo Bank, N.A., in the principal sum of \$155,092.

ORDERED that the appeal by the plaintiff is dismissed, as it is not aggrieved by the judgment (*see* CPLR 5511); and it is further,

ORDERED that the judgment is reversed, on the law, without costs or disbursements.

Wells Fargo Bank, N.A., was not a party to the action resulting in the judgment from which it appeals. Moreover, it had no notice of the action. Accordingly, the Supreme Court was not authorized to issue a judgment against it (*see Harris v Manhattan & Bronx Surface Tr. Operating*

*Auth.*, 222 AD2d 488; *Nowinski v City of New York*, 189 AD2d 674, 675; *Washington v Brookdale Hosp.*, 126 AD2d 719, 720; *Matter of Shleifman [Steinberg]*, 79 AD2d 587).

In light of our determination, we need not address Wells Fargo Bank, N.A.'s remaining contentions.

RIVERA, J.P., BALKIN, LEVENTHAL and HALL, 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