

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

D30532
W/prt

_____AD3d_____

Argued - February 22, 2011

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
JOHN M. LEVENTHAL
ROBERT J. MILLER, JJ.

2010-00843

DECISION & ORDER

Garrison Special Opportunities Fund, L.P., respondent,
v Arthur Kill Hillside Development, LLC, et al.,
appellants, et al., defendants.

(Index No. 130174/09)

Mark D. Mermel, Great Neck, N.Y., for appellants.

Katten Muchin Rosenman LLP, New York, N.Y. (Matthew D. Parrott and James
Tampellini of counsel), for respondent.

In an action, inter alia, to foreclose a mortgage, the defendants Arthur Kill Hillside Development, LLC, LP Arthur Kill Development, LLC, LP Hillside Arthur Kill Development, LLC, YLPF Trust, and Yehuda Leib Puretz appeal, as limited by their brief, from so much of an order of the Supreme Court, Richmond County (Fusco, J.), dated December 2, 2009, as granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the defendants Arthur Kill Hillside Development, LLC, LP Arthur Kill Development, LLC, LP Hillside Arthur Kill Development, LLC, and Yehuda Leib Puretz.

ORDERED that the appeal by the defendant YLPF Trust is dismissed, without costs or disbursements, as that defendant is not aggrieved by the order appealed from (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed insofar as appealed from by the defendants

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Arthur Kill Hillside Development, LLC, LP Arthur Kill Development, LLC, LP Hillside Arthur Kill Development, LLC, and Yehuda Leib Poretz; and it is further,

ORDERED that one bill of costs is awarded to the respondent, payable by the defendants Arthur Kill Hillside Development, LLC, LP Arthur Kill Development, LLC, LP Hillside Arthur Kill Development, LLC, and Yehuda Leib Poretz.

The plaintiff commenced this action against, among others, the defendants Arthur Kill Hillside Development, LLC, LP Arthur Kill Development, LLC, and LP Hillside Arthur Kill Development, LLC (hereinafter collectively the borrowers), to foreclose a commercial mortgage and for related relief. The plaintiff subsequently moved for summary judgment on the complaint insofar as asserted against the borrowers and Yehuda Leib Poretz, the managing member of all three borrowers and guarantor of a mortgage loan made by the plaintiff to the borrowers (hereinafter collectively the appellants). The Supreme Court granted the plaintiff's motion.

“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 [borrowers'] default in [their] payment obligations” (*US Bank N.A. v Eaddy*, 79 AD3d 1022, 1022; see *Wells Fargo Bank Minn., N.A. v Perez*, 41 AD3d 590, 590; *Wolf v Citibank, N.A.*, 34 AD3d 574, 575). In opposition, the appellants failed to raise a triable issue of fact (see *US Bank N.A. v Eaddy*, 79 AD3d at 1022; *Citibank, N.A. v Herrera*, 64 AD3d 536, 536; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 242). Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the appellants.

We note that, to the extent that the appellants argue that the Supreme Court improperly awarded the plaintiff summary judgment on the complaint insofar as asserted against the defendants YLPF Trust and Richmond Mountainside Property, LLC, the order appealed from granted no such relief.

The appellants' remaining contentions are either improperly raised for the first time on appeal or without merit.

ANGIOLILLO, J.P., FLORIO, LEVENTHAL and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court