

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

D30639  
C/prt

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Submitted - February 7, 2011

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

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2010-00391

DECISION & ORDER

Bank of America, N.A., respondent, v Eliahu Tornheim,  
et al., appellants, et al., defendants.

(Index No. 5179/09)

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Bijal M. Jani, Pearl River, N.Y., for appellants.

Shapiro, DiCaro & Barak, LLP, Rochester, N.Y. (Ellis M. Oster of counsel), for  
respondent.

In an action to foreclose a mortgage, the defendants Eliahu Tornheim and Alisa  
Tornheim appeal from an order of the Supreme Court, Rockland County (Weiner, J.), dated October  
28, 2009, which denied their motion to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to foreclose a mortgage on the single-family home  
in which the defendants Eliahu Tornheim and Alisa Tornheim (hereinafter together the defendants)  
lived. The defendants moved to dismiss the complaint, arguing, inter alia, that there was a federal  
moratorium on mortgage foreclosure actions when the instant action was commenced, due to the  
passage of the “Helping Families Save Their Homes Act of 2009” (*see* Pub L 111-22, Div A, 123 US  
Stat 1632) (hereinafter the Helping Families Act). The Supreme Court denied the motion.

On May 20, 2009, President Obama signed into law the Helping Families Act (*see* Pub  
L 111-22, Div A 123 US Stat 1632). “The Helping Families Act led to a variety of new measures  
designed to reduce foreclosures, preserve home ownership, and fight the contraction of the real estate

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market” (*Robinson v Wells Fargo Bank, N.A.*, 2010 WL 2534192 \*5 [D Ariz 2010]).

Contrary to the defendants’ contention, the Helping Families Act did not create a moratorium on mortgage foreclosure actions. The “Sense of the Congress on foreclosure” provision relied on by the defendants to support their argument (*see* Pub L 111-22, Div A, § 401) is merely precatory and does not create an enforceable right (*see Lyng v Northwest Indian Cemetery Protective Assn.*, 485 US 439, 455; *Monahan v Dorchester Counseling Center, Inc.*, 961 F2d 987, 994-995; *Jian Li v Chertoff*, 2007 WL 4326784, 2007 US Dist LEXIS 90472, \*19 [ED NY 2007]).

Accordingly, the Supreme Court properly denied the defendants’ motion to dismiss the complaint.

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