

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

D30680  
G/prt

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

Submitted - March 8, 2011

JOSEPH COVELLO, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

---

2010-05124

DECISION & ORDER

Alberto Spinelli, et al., plaintiffs/counterclaim  
defendants, v Nikolla Ivezaj, et al., defendants/  
counterclaim plaintiffs-appellants, et al.,  
defendant, Adam Kaufman, additional  
counterclaim defendant-respondent.

(Index No. 24075/08)

---

Ben Paul Siino, White Plains, N.Y. (Michael Fuller Sirignano of counsel), for  
defendants/counterclaim plaintiffs-appellants.

Sokoloff Stern LLP, Westbury, N.Y. (Adam I. Kleinberg and Anthony F. Cardoso of  
counsel), for additional counterclaim defendant-respondent.

In an action to foreclose a mortgage, the defendants/counterclaim plaintiffs appeal  
from an order of the Supreme Court, Westchester County (Loehr, J.), entered April 8, 2010, which  
granted the motion of the additional counterclaim defendant Adam Kaufman for summary judgment  
dismissing the counterclaim insofar as asserted against him.

ORDERED that the order is affirmed, with costs.

Nikolla Ivezaj and Anto Ivezaj (hereinafter together the Ivezajs) purchased certain  
property from the plaintiffs after having allegedly been assured by the plaintiffs and Adam Kaufman,  
the Director of Planning for the Town of North Castle, that they could operate a limousine service  
on the subject property. As part of the transaction, the Ivezajs gave the plaintiffs a purchase money  
mortgage. According to Nikolla Ivezaj, the Planning Board of the Town of North Castle (hereinafter

April 5, 2011

Page 1.

the Planning Board) subsequently denied the Ivezajs' application to operate a limousine service on the subject property. After the plaintiffs commenced this action to foreclose on their purchase money mortgage, the Ivezajs asserted a counterclaim against the plaintiffs and Kaufman sounding in fraud.

The Supreme Court properly granted Kaufman's motion for summary judgment dismissing the counterclaim insofar as asserted against him. Kaufman made a prima facie showing of his entitlement to judgment as a matter of law by demonstrating that the Ivezajs' reliance on his alleged misrepresentation was unreasonable as a matter of law (*see East End Cement & Stone, Inc. v Carnevale*, 73 AD3d 974, 975; *Colasacco v Robert E. Lawrence Real Estate*, 68 AD3d 706, 708; *F.A.S.A. Constr. Corp. v Degenshein*, 47 AD3d 877, 879). The Ivezajs were represented by counsel in connection with their purchase of the subject property. The fact that the Ivezajs would need approval from the Planning Board, of which Kaufman was not a member, in order to operate a limousine service on the subject property, was a matter of public record. In opposition, the Ivezajs failed to raise a triable issue of fact.

In light of our determination, we need not reach Kaufman's remaining contention.

COVELLO, J.P., HALL, LOTT and COHEN, 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