

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

D30723
O/ct

_____AD3d_____

Argued - March 15, 2011

REINALDO E. RIVERA, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2009-11595

DECISION & ORDER

Citimortgage, Inc., respondent, v
Isaac Brown, appellant.

(Index No. 4020/08)

Hanig & Schutzman, LLP, Poughkeepsie, N.Y. (Adrienne Odierna of counsel), for appellant.

Sweeney, Gallo, Reich & Bolz, LLP, Rego Park, N.Y. (Rashel M. Mehlman of counsel), for respondent.

In an action to foreclose a mortgage, the defendant appeals from an order of the Supreme Court, Orange County (Owen, J.), dated November 2, 2009, which denied his motion to vacate a judgment of foreclosure and sale of the same court dated January 14, 2009, entered upon his failure to appear or answer.

ORDERED that the order is affirmed, with costs.

A defendant seeking to vacate a default in appearing or answering must demonstrate a reasonable excuse for the default and a potentially meritorious defense to the action (*see* CPLR 5015[a][1]; *Development Strategies Co., LLC, Profit Sharing Plan v Astoria Equities, Inc.*, 71 AD3d 628; *U.S. Bank N.A. v Slavinski*, 78 AD3d 1167). Here, the Supreme Court properly determined that the defendant failed to establish a reasonable excuse for his failure to appear or answer. In any event, the defendant failed to demonstrate the existence of a potentially meritorious defense.

April 5, 2011

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The defendant's remaining contentions are either without merit or improperly raised for the first time on appeal. Accordingly, the defendant's motion to vacate the judgment of foreclosure and sale, entered upon his failure to appear or answer, was correctly denied.

RIVERA, J.P., CHAMBERS, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court