

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

D31428
O/prt

_____AD3d_____

Argued - May 5, 2011

JOSEPH COVELLO, J.P.
CHERYL E. CHAMBERS
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2010-07574

DECISION & ORDER

Gilda Morreale, plaintiff, v Alan Morreale, etc.,
appellant, et al., defendants; William Esposito,
et al., intervenors-respondents.

(Index No. 17899/09)

Azam & Hertz, LLP, Jackson Heights, N.Y. (Gerald M. Hertz of counsel), for
appellant.

Wilk Auslander, LLP, New York, N.Y. (Pamela L. Kleinberg of counsel), for
intervenors-respondents.

In an action to foreclose a mortgage on real property, the defendant Alan Morreale
appeals from an order of the Supreme Court, Nassau County (Cozzens, J.), dated July 8, 2010, which
denied his motion, in effect, to vacate so much of a prior order of the same court dated March 31,
2010, as stayed the action.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to foreclose a mortgage on real property allegedly
owned by the defendant Alan Morreale (hereinafter the defendant). However, the defendant's
ownership of the subject real property was simultaneously contested in a related Surrogate's Court
proceeding involving some of the same parties. The Supreme Court stayed the action pending
resolution of the related Surrogate's Court proceeding. Prior to the resolution of the Surrogate's
Court proceeding, the defendant moved, in effect, to vacate the stay of the foreclosure action. The
Supreme Court denied the defendant's motion. We affirm.

May 24, 2011

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“Except where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just” (CPLR 2201). “[A] court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources” (*Zonghetti v Jeromack*, 150 AD2d 561, 563; *see Matter of Tenenbaum*, 81 AD3d 738, 739). Under the circumstances of this case, it was not an improvident exercise of discretion for the Supreme Court to deny the defendant’s motion, in effect, to vacate the stay of the foreclosure action (*see CPLR 2201; Matter of Tenenbaum*, 81 AD3d at 739; *El Greco Inc. v Cohn*, 139 AD2d 615, 616-617; *see also Peluso v Red Rose Rest., Inc.*, 78 AD3d 802, 803; *Zonghetti v Jeromack*, 150 AD2d at 563; *cf. Winters Bros. Recycling Corp. v H.B. Millwork, Inc.*, 72 AD3d 942, 942-943; *Islam v Katz Realty Co.*, 296 AD2d 566, 567).

COVELLO, J.P., CHAMBERS, LOTT and MILLER, 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