

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

D31767
C/prt

_____AD3d_____

Submitted - May 27, 2011

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS
JEFFREY A. COHEN, JJ.

2010-06702

DECISION & ORDER

Capital One, N.A., etc., respondent, v Brooklyn
Flatiron, LLC, et al., appellants, et al., defendants.

(Index No. 3037/09)

Shapiro & Shapiro, LLP, Brooklyn, N.Y. (Saadia M. Shapiro, pro se, of counsel), for appellants.

Lazer, Aptheker, Rosella & Yedid, P.C., Melville, N.Y. (Joseph C. Savino of counsel), for respondent.

In a mortgage foreclosure action, the defendants Brooklyn Flatiron, LLC, and Saadia M. Shapiro appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Kurtz, J.), dated February 17, 2010, as granted the plaintiff's motion for summary judgment on the complaint insofar as asserted against them and to appoint a referee to compute the total sum due and owing to the plaintiff.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff, Capital One, N.A., established its prima facie entitlement to judgment as a matter of law against the defendants Brooklyn Flatiron, LLC, and Saadia M. Shapiro (hereinafter together the defendants), by submitting a mortgage, an unpaid note, and evidence of default (*see Fleet Natl. Bank v Olasov*, 16 AD3d 374; *Coppa v Fabozzi*, 5 AD3d 718). The burden then shifted to the

June 14, 2011

Page 1.

CAPITAL ONE, N.A. v BROOKLYN FLATIRON, LLC

defendants to raise a triable issue of fact. They failed to do so. Contrary to the defendants' contentions, the plaintiff proved it had standing to sue by tendering sufficient documentary evidence of its merger with the previous note and mortgage holder, North Fork Bank (*see Ladino v Bank of Am.*, 52 AD3d 571).

MASTRO, J.P., ANGIOLILLO, CHAMBERS and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court