

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

D31788  
H/hu

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

Argued - May 31, 2011

MARK C. DILLON, J.P.  
JOHN M. LEVENTHAL  
L. PRISCILLA HALL  
PLUMMER E. LOTT, JJ.

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2010-08216

DECISION & ORDER

First Franklin Financial Corp., etc., respondent, v  
Linda Forrest, appellant.

(Index No. 2862/07)

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Lieb at Law, P.C., Center Moriches, N.Y. (Andrew M. Lieb of counsel), for  
appellant.

Locke Lord Bissell & Liddell LLP, New York, N.Y. (R. James De Rose III, and  
David I. Wax of counsel), for respondent.

In an action to foreclose a mortgage, the defendant appeals from an order of the  
Supreme Court, Nassau County (Adams, J.), entered June 29, 2010, which denied her motion, in  
effect, to vacate a judgment of foreclosure and sale of the same court (Martin, J.), entered January  
16, 2009, which was entered upon her default in answering the complaint.

ORDERED that the order is affirmed, with costs.

Under the circumstances of this case, the defendant has failed to demonstrate that the  
invocation of a court's inherent power to vacate a judgment in the interest of substantial justice is  
warranted (*see Woodson v Mendon Leasing Corp.*, 100 NY2d 62; *U.S. Bank N. A. v Slavinski*, 78  
AD3d 1167, 1168; *Katz v Marra*, 74 AD3d 888, 891).

The defendant's contention that the plaintiff waived any objection to the late service  
of her answer on the ground that the plaintiff did not reject the answer within the statutory time frame  
(*see CPLR 2101[f]*; *Celleri v Pabon*, 299 AD2d 385) is improperly raised for the first time on appeal,

June 21, 2011

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and, thus, is not properly before this Court.

The plaintiff's remaining contention is without merit.

DILLON, J.P., LEVENTHAL, HALL and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court