

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

D32354
H/prt

_____AD3d_____

Argued - September 9, 2011

WILLIAM F. MASTRO, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2010-08500

DECISION & ORDER

Rhinebeck Savings Bank, respondent, v Putnam
County Temple & Jewish Center, Inc., appellant,
et al., defendants.

(Index No. 1061/10)

Stein Riso Mantel, LLP, New York, N.Y. (Gerard A. Riso of counsel), for appellant.

Griffith Coogan Blose & Sulzer, P.C., Bronxville, N.Y. (Nancy V. O'Donnell of
counsel), and the Dorf Law Firm (Jonathan B. Nelson of counsel), for respondent
(one brief filed).

In an action to foreclose a mortgage, the defendant Putnam County Temple & Jewish Center, Inc., appeals from an order of the Supreme Court, Putnam County (Nicolai, J.), dated July 27, 2010, which denied its motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7), or, in the alternative, in effect, to stay all proceedings in the action pending resolution of a related action entitled *Putnam County Temple & Jewish Center, Inc. v Rhinebeck Savings Bank*, pending in the Supreme Court, Putnam County, under Index No. 98/2010.

ORDERED that the order is modified, on the law, by deleting the provision thereof denying that branch of the motion of the defendant Putnam County Temple & Jewish Center, Inc., which was, in effect, to stay all proceedings in the action pending resolution of a related action entitled *Putnam County Temple & Jewish Center, Inc. v Rhinebeck Savings Bank*, pending in the Supreme Court, Putnam County, under Index No. 98/2010, and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed, without costs or disbursements.

September 27, 2011

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RHINEBECK SAVINGS BANK v PUTNAM COUNTY TEMPLE & JEWISH CENTER, INC.

Prior to the commencement of the instant foreclosure action by Rhinebeck Savings Bank (hereinafter the bank) against, among others, Putnam County Temple & Jewish Center, Inc. (hereinafter the temple), the temple had commenced an action (hereinafter the companion action) against, among others, the bank alleging, inter alia, that the bank's mortgages on the temple's property were invalid. In light of this Court's determination on related appeals in the companion action to reinstate several causes of action asserted against the bank pertaining to the alleged invalidity of the mortgages (*see Putnam County Temple & Jewish Center, Inc. v Rhinebeck Savings Bank*, _____AD3d_____ [Appellate Division Docket Nos. 2010-08508 & 2010-09385; decided herewith]), the bank may not succeed in the instant foreclosure action if the temple succeeds in establishing that the bank's mortgages are invalid. Accordingly, the foreclosure action must be stayed pending resolution of the companion action (*see CPLR 3211[a][4]; Wargo v Jean*, 77 AD3d 919, 921; *National Mgt. Corp. v Adolphi*, 277 AD2d 553, 555).

The temple's remaining contentions are without merit.

MASTRO, J.P., BALKIN, CHAMBERS and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court