

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

D32358  
Y/prt

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

Argued - September 8, 2011

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
JOHN M. LEVENTHAL  
SHERI S. ROMAN, JJ.

2010-05479

DECISION & ORDER

John Matone, et al., respondents, v Sycamore Realty Corp., et al., defendants, Joseph Mulle, appellant.

(Index No. 21270/03)

Damian J. Pietanza, Brooklyn, N.Y. (Thomas Torto of counsel), for appellant.

Caruso, Caruso & Branda, P.C., Brooklyn, N.Y. (Mark J. Caruso of counsel), for respondents.

In an action, inter alia, to discharge a mortgage, the defendant Joseph Mulle appeals, as limited by his brief, from so much of an order of the Supreme Court, Kings County (Lewis, J.), dated April 23, 2010, as granted the plaintiffs' motion to strike his answer and counterclaims, and directed discharge of the underlying mortgage lien against the subject property.

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

It is not an improvident exercise of discretion for a court to strike a party's pleading based upon a willful and contumacious failure to comply with discovery demands or orders (*see Rock City Sound, Inc. v Bashian & Farber, LLP*, 83 AD3d 685; *cf. Lomax v Rochdale Vil., Inc.*, 76 AD3d 999, 999; *Moray v City of Yonkers*, 76 AD3d 618, 619; *Cobenas v Ginsburg Dev. Cos. LLC*, 74 AD3d 1269, 1270). "Willful and contumacious conduct may be inferred from a party's repeated failure to comply with court-ordered discovery, coupled with inadequate explanations for the failures to comply" (*Friedman, Harfenist, Langer & Kraut v Rosenthal*, 79 AD3d 798, 800, quoting *Savin v Brooklyn Mar. Park Dev. Corp.*, 61 AD3d 954, 954-955), "or a failure to comply with court-ordered discovery over an extended period of time" (*Friedman, Harfenist, Langer & Kraut*

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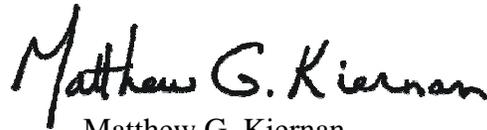
*v Rosenthal*, 79 AD3d at 800, quoting *Prappas v Papadatos*, 38 AD3d 871, 872; see *Russell v B&B Indus.*, 309 AD2d 914, 915; *Penafiel v Puretz*, 298 AD2d 446, 447).

The record reveals that the appellant failed over an extended period of time to comply with either the Supreme Court's preliminary conference order or the plaintiffs' notices for discovery, and that he never offered any explanation therefor. Under such circumstances, the Supreme Court was warranted in granting that branch of the plaintiff's motion which was to strike the appellant's answer. In addition, once the appellant's answer was stricken, the court properly concluded that the plaintiffs were entitled to the relief sought in the complaint, to wit, discharge of the subject mortgage lien (see *Beneficial Mtge. Corp. v Lawrence*, 5 AD3d 339; *Lavi v Lavi*, 256 AD2d 602; see also *Saberhagen v Sweeney*, 28 AD3d 737).

The appellant's remaining contentions are without merit.

RIVERA, J.P., FLORIO, LEVENTHAL and ROMAN, 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