

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

D32660
G/kmb

_____AD3d_____

Submitted - October 6, 2011

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2010-04273

DECISION & ORDER

HSBC Bank USA, NA, etc., respondent, v
Samuel Schwartz, appellant, et al., defendants.

(Index No. 12783/08)

Jeffrey Seigel, Hempstead, N.Y. (Michael Wigutow of counsel), for appellant.

Davidson Fink, LLP, Rochester, N.Y. (Larry T. Powell of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Samuel Schwartz appeals, as limited by his brief, from so much of an order of the Supreme Court, Nassau County (McCabe, J.), entered July 14, 2009, as granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against him and to dismiss his answer and counterclaims.

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

The Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the appellant and to dismiss his answer and counterclaims. The plaintiff established its prima facie entitlement to judgment as a matter of law by submitting a mortgage, an unpaid note, and an affidavit of its employee, who averred that she reviewed the relevant papers and attested to the appellant's default (*see JP Morgan Chase Bank, N.A. v Agnello*, 62 AD3d 662, 663; *Coppa v Fabozzi*, 5 AD3d 718; *EMC Mtge. Corp. v Riverdale Assoc.*, 291 AD2d 370). In opposition, the appellant failed to raise a triable issue of fact.

Contrary to the appellant's contention, he waived the defense of lack of standing, having failed to interpose an answer which asserted the defense or to file a timely pre-answer motion

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raising that defense (*see US Bank N.A. v Eaddy*, 79 AD3d 1022; *Wells Fargo Bank Minn., N.A. v Perez*, 70 AD3d 817, 817-818, *cert denied* _____ US _____, 131 S Ct 648; *Deutsche Bank Natl. Trust Co. v Jackson*, 68 AD3d 805; *Countrywide Home Loans, Inc. v Delphonse*, 64 AD3d 624, 625; *HSBC Bank, USA v Dammond*, 59 AD3d 679; *Wells Fargo Bank Minn., N.A. v Mastropaolo*, 42 AD3d 239, 244).

The appellant's remaining contention is without merit.

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court