

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

D32939
W/mv

_____AD3d_____

Argued - October 6, 2011

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

2010-09325

DECISION & ORDER

Joyce Yabkow, respondent, v Milton Yabkow, et al.,
defendants, Bank of America, N.A., appellant.

(Index No. 13114/08)

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, White Plains, N.Y. (Constantine A. Despotakis of counsel), for appellant.

Schoeps & Specht, Nanuet, N.Y. (Michael B. Specht of counsel), for respondent.

In an action, inter alia, to recover damages for the negligent issuance of a loan, the defendant Bank of America, N.A., appeals from an order of the Supreme Court, Rockland County (Berliner, J.), entered August 20, 2010, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendant Bank of America, N.A., for summary judgment dismissing the complaint insofar as asserted against it is granted.

On October 17, 2000, the plaintiff executed a durable general power of attorney appointing her now former husband Milton Yabkow (hereinafter Yabkow) as her attorney-in-fact. The power of attorney expressly provided that a third party was entitled to rely on the document until that party had actual notice or knowledge of the revocation. Thereafter, unbeknownst to the plaintiff, Yabkow applied to the defendant Bank of America, N.A. (hereinafter the defendant Bank), for a home equity line of credit to be secured by a mortgage on marital property. His application was approved and, on April 13, 2006, he obtained a home equity credit line in the sum of \$192,700.

November 15, 2011

Page 1.

YABKOW v YABKOW

Approximately two years later, Yabkow left the plaintiff and allegedly took a portion of the loan money.

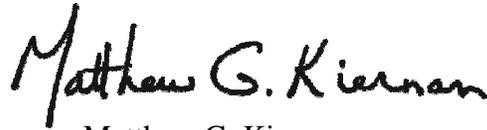
In a verified complaint filed on December 16, 2008, the plaintiff alleged that she had not been present at the closing and that she had not known of the home equity line of credit. She asserted that the defendant Bank “was negligent and failed to exercise due care in permitting Milton Yabkow to close on the Home Equity Loan in the absence of plaintiff and without plaintiff’s authorization.” The Supreme Court denied the defendant Bank’s motion for summary judgment dismissing the complaint insofar as asserted against it. We reverse.

The defendant Bank demonstrated, prima facie, that in granting Yabrow the loan, it relied on a valid durable power of attorney signed by the plaintiff which had never been revoked (*see Parr v Reiner*, 143 AD2d 427). In opposition to the defendant Bank’s prima facie showing, the plaintiff failed to raise a triable issue of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 563).

Accordingly, the Supreme Court should have granted the defendant Bank’s motion for summary judgment.

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN 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