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

D33158
G/kmb

_____AD3d_____ Argued - November 10, 2011

MARK C. DILLON, J.P.
DANIEL D. ANGIOLILLO
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2010-10312 DECISION & ORDER

Fred Adams, Jr., Inc., appellant, v Carriage House Farm, Inc., et al., defendants, Putnam County National Bank of Carmel, respondent (and a related action).

(Index Nos. 307/08, 4334/08)

Vergilis, Stenger, Roberts, Davis & Diamond, LLP, Wappingers Falls, N.Y. (Karen P. MacNish and Kenneth M. Stenger of counsel), for appellant.

Spain & Spain, P.C., Mahopac, N.Y. (William D. Spain, Jr., of counsel), for respondent.

In an action to foreclose a mechanic's lien and to recover misappropriated trust funds pursuant to Lien Law article 3-A, the plaintiff appeals, as limited by its brief, from so much of a judgment of the Supreme Court, Dutchess County (Brands, J.), dated September 15, 2010, as, upon a decision of the same court dated June 28, 2010, made after a nonjury trial, (1) determined that a construction loan mortgage in the sum of $57,000 held by the defendant Putnam County National Bank of Carmel had priority over its mechanic's lien in the sum of $137,879.50, and (2) failed to award a judgment pursuant to Lien Law article 3-A in its favor and against the defendant Putnam County National Bank of Carmel in the principal sum of $78,000, plus interest.

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

The Supreme Court properly determined that the plaintiff's mechanic's lien was subordinate to the construction loan mortgage held by the defendant Putnam County National Bank of Carmel (hereinafter PCNBC), as no evidence was submitted that the lender failed to comply with Lien Law § 22 (*see Nanuet Natl. Bank v Eckerson Terrace*, 47 NY2d 243; *Atlantic Bank of N.Y. v*

Forrest House Holding Co., 234 AD2d 491; *Howard Sav. Bank v Lefcon Partnership*, 209 AD2d 473).

Additionally, under the facts of this case, the Supreme Court properly determined that the plaintiff was not entitled to a money judgment in its favor and against PCNBC in the principal sum of $78,000, representing the amount of funds improperly released by PCNBC from the construction loan, and instead, properly reduced the amount of PCNBC's mortgage lien by that amount (*see* Lien Law § 77[3][a][ix]; *see generally Aspro Mech. Contr. v Fleet Bank*, 1 NY3d 324).

The plaintiff's remaining contention is without merit.

DILLON, J.P., ANGIOLILLO, FLORIO and DICKERSON, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court