

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

D33441
W/prt

_____AD3d_____

Submitted - December 1, 2011

MARK C. DILLON, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
ROBERT J. MILLER, JJ.

2010-10446

DECISION & ORDER

JP Morgan Chase Bank, N.A., etc., respondent, v
Jon Edelson, et al., defendants; C-Con Corp.,
proposed intervenor-appellant.

(Index No. 20269/06)

Patricia Gillard, East Moriches, N.Y., for proposed intervenor-appellant.

Shapiro, DiCarlo & Barak, LLC, Rochester, N.Y. (Ellis M. Oster of counsel), for
respondent.

In an action, inter alia, to foreclose a mortgage, the proposed intervenor, C-Con Corp. appeals from an order of the Supreme Court, Suffolk County (Farneti, J.), dated September 22, 2010, which denied, as untimely, its motion pursuant to CPLR 1012(a) or, alternatively, pursuant to CPLR 1013, for leave to intervene in the action, and thereafter to vacate a judgment of foreclosure entered March 3, 2010, and pursuant to, inter alia, CPLR 3211(a)(3) and (10) to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

Intervention pursuant to either CPLR 1012 or CPLR 1013 requires a timely motion (*see* CPLR 1012, 1013; *T & V Constr. Corp. v Pratti*, 72 AD3d 1065; *Oparaji v Weston*, 293 AD2d 592, 593; *Rectory Realty Assoc. v Town of Southampton*, 151 AD2d 737). Here, the proposed intervenor, C-Con Corp. (hereinafter the appellant) moved, inter alia, pursuant to CPLR 1012 or, alternatively, CPLR 1013, for leave to intervene in this action for the purpose of, among other things, asserting a defense based on the plaintiff's alleged lack of standing to commence this foreclosure action. The appellant's motion was made almost four years after the plaintiff filed a notice of pendency in this action, almost two years after it acquired its interest in the subject premises, and

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months after the Supreme Court awarded a judgment of foreclosure and sale in this action. In view of the appellant's undue delay in seeking leave to intervene, the Supreme Court properly denied its motion as untimely (*see Carnrike v Youngs*, 70 AD3d 1146, 1147; *Oparaji v Weston*, 293 AD2d at 593; *Vacco v Herrera*, 247 AD2d 608; *RKH Holding Corp. v 207 Second Ave. Realty Corp.*, 236 AD2d 254, 255; *Greenpoint Sav. Bank v McMann Enters.*, 214 AD2d 647, 648; *Rectory Realty Assoc. v Town of Southampton*, 151 AD2d at 738).

In light of our determination, we need not reach the appellant's remaining contentions.

DILLON, J.P., FLORIO, CHAMBERS and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court