

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

D33772
O/ct

_____AD3d_____

Argued - December 13, 2011

ANITA R. FLORIO, J.P.
ARIEL E. BELEN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2011-02831

DECISION & ORDER

Nationscredit Financial Services Corp., etc., appellant,
v Philip Atherley, et al., respondents, et al., defendants.

(Index No. 14557/07)

Zeichner Ellman & Krause, LLP, New York, N.Y. (Steven S. Rand of counsel),
for appellant.

Kenneth S. Pelsinger, P.C., Levittown, N.Y., for respondents.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Nassau County (Adams, J.), entered December 14, 2010, which granted those branches of the motion of the defendant Philip Atherley which were to vacate the judgment of foreclosure and sale entered on that defendant's default in answering the complaint, and to dismiss the complaint pursuant to CPLR 3211(a)(3), (7), and (8).

ORDERED that the order is modified, on the law, by deleting the provision thereof granting that branch of the motion of the defendant Philip Atherley which was to dismiss the complaint pursuant to CPLR 3211(a)(3), (7), and (8), and substituting therefor a provision denying that branch of the motion; as modified, the order is affirmed, without costs or disbursements.

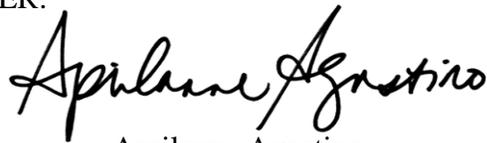
Under the unique circumstances of this case, and given the unresolved questions as to the validity of the subject mortgage, the defendant Philip Atherley (hereinafter the defendant) was entitled to vacatur of the judgment of foreclosure and sale entered on his default "in the interests of substantial justice" (*Goldman v Cotter*, 10 AD3d 289, 293; *see Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68; *Ladd v Stevenson*, 112 NY 325, 332; *Katz v Marra*, 74 AD3d 888). In particular,

we note that the documentary evidence raises significant issues as to whether the mortgage was fraudulently procured. However, the defendant failed to establish his entitlement to dismissal of the complaint under any of the CPLR 3211(a) grounds he asserted (*see* CPLR 3211[a][3], [7], [8]; *see generally* *Leon v Martinez*, 84 NY2d 83; *Tikvah Enterp. v Neuman*, 80 AD3d 748).

The plaintiff's remaining contentions are without merit or need not be reached in light of our determination.

FLORIO, J.P., BELEN, ROMAN and SGROI, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court