

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

D33890
W/nl

_____AD3d_____

Argued - January 9, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
PLUMMER E. LOTT
SANDRA L. SGROI, JJ.

2011-01986
2011-01987

DECISION & ORDER

Bank of New York, etc., appellant-respondent,
v John Spadafora, et al., defendants, Lucy Spadafora,
respondent-appellant.

(Index No. 06-03395)

DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, White Plains, N.Y.
(Robert Hermann, Lee S. Wiederkehr, Jacob E. Amir, and Eliot Schuman of
counsel), for appellant-respondent.

McMahon, McCarthy & Verrelli, Bronx, N.Y. (Matthew J. McMahon of counsel),
for respondent-appellant.

In an action to foreclose a mortgage on certain real property, the plaintiff appeals from (1) a decision of the Supreme Court, Westchester County (Friedman, J.H.O.), dated February 12, 2010, made after a nonjury trial, and (2) so much of a judgment of the same court dated August 18, 2010, as, upon the decision, declared that a certain deed and the subject mortgage are null and void, and is in favor of the defendants and against it dismissing the complaint, and the defendant Lucy Spadafora cross-appeals (1) from the same decision, and (2), as limited by her brief, from so much of the same judgment as imposed an equitable lien against the subject property in favor of the plaintiff in the sum of \$328,796.97.

ORDERED that the appeal and cross appeal from the decision are dismissed, without costs or disbursements, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509, 509-510); and it is further,

ORDERED that the judgment is affirmed insofar as appealed and cross-appealed from, without costs or disbursements.

The plaintiff commenced the instant action against, amongst others, the defendant

February 7, 2012

Page 1.

John Spadafora (hereinafter John) seeking to foreclose a mortgage (hereinafter the subject mortgage) on certain real property allegedly owned by John (hereinafter the subject premises). Sometime thereafter, Lucy Spadafora (hereinafter Lucy), John's wife, was granted leave to intervene in the action as a party defendant, claiming that her signature was forged on the deed by which she allegedly had conveyed title to the subject premises to John (hereinafter the subject deed).

The Supreme Court conducted a nonjury trial, after which it issued a decision in which it explained its conclusion, inter alia, that Lucy's signature on the subject deed was forged, and that title to the subject premises remained with her, but that the plaintiff is entitled to an equitable lien against the subject premises.

Thereafter, the Supreme Court entered a judgment upon the decision in which it declared that both the subject deed and the subject mortgage on the premises are null and void, and dismissed the complaint. The plaintiff appeals from those portions of the judgment. The judgment also, inter alia, imposed an equitable lien against the subject premises in favor of the plaintiff in the sum of \$328,796.97. Lucy cross-appeals from that portion of the judgment.

Contrary to the plaintiff's contention, under the circumstances, the Supreme Court providently exercised its discretion in limiting the rebuttal testimony of the plaintiff's handwriting expert (see *Farrell v Gelwan*, 30 AD3d 563, 563-564; *American Linen Supply Co. v M.W.S. Enters.*, 6 AD3d 1079, 1081; *Gobbelet v Hit Cycle Corp.*, 121 AD2d 682, 683; cf. *Simpson v Bellew*, 161 AD2d 693, 698), and in refusing to allow two notaries public to testify as rebuttal witnesses (see *Farrell v Gelwan*, 30 AD3d at 563; see also *Hageman v Jacobson*, 202 AD2d 160, 161; *Kaminsky v Segura*, 4 Misc 3d 1019[A], 2004 NY Slip Op 50963[U][2004], *affd* 26 AD3d 188).

"In reviewing a trial court's findings of fact following a nonjury trial, this Court's authority is as broad as that of the trial court and includes the power to render the judgment it finds warranted by the facts, bearing in mind that due regard must be given to the trial judge who was in the position to assess the evidence and the credibility of the witnesses" (*D'Argenio v Ashland Bldg., LLC*, 78 AD3d 758, 758; see *Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *A. Montilli Plumbing & Heating Corp. v Valentino*, 90 AD3d 961, 961).

Here, the Supreme Court's determinations that the signature on the subject deed was forged, rendering it and the subject mortgage invalid (see *Bryant v Bryant*, 58 AD3d 496, 496; cf. *John Deere Ins. Co. v GBE/Alasia Corp.*, 57 AD3d 620, 622), and that the plaintiff is entitled to an equitable lien against the subject premises (see *King v Pelkofski*, 20 NY2d 326, 333; *Federal Natl. Mtge. Assn. v Woodbury*, 254 AD2d 182, 182; cf. *Crispino v Greenpoint Mtge. Corp.*, 304 AD2d 608, 609-610), are warranted by the facts. Thus, we decline to disturb those determinations.

RIVERA, J.P., ENG, LOTT and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court