

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

D34040
H/kmb

_____AD3d_____

Argued - January 30, 2012

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

2011-02194

DECISION & ORDER

US Bank National Association, etc., respondent,
v Anthony A. Caronna, etc., et al., appellants.

(Index No. 6477/09)

Nichole E. Lee, P.C., Staten Island, N.Y., for appellants.

Hogan Lovells US LLP, New York, N.Y. (David Dunn, Victoria McKenney, Emily Deninger, and Chava Brandriss of counsel), for respondent.

In an action to foreclose a mortgage, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Nassau County (Adams, J.), entered January 5, 2011, as, upon granting that branch of their motion which was to vacate their default in appearing or answering the complaint, in effect, denied those branches of their motion which were to dismiss the complaint or, in the alternative, to vacate an order of reference dated September 23, 2009, and a judgment of foreclosure and sale dated July 21, 2010, based upon the plaintiff's failure to comply with the notice requirements of RPAPL 1304.

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

The Supreme Court properly, in effect, denied those branches of the defendants' motion which were to dismiss the complaint or, in the alternative, to vacate an order of reference dated September 23, 2009, and a judgment of foreclosure and sale dated July 21, 2010, based upon the plaintiff's failure to comply with the notice requirements of RPAPL 1304. Under the circumstances, it is not clear whether the mortgage at issue was subject to the requirements of RPAPL 1304 and, if so, whether the plaintiff failed to comply with the notice requirements of that statute (*see* RPAPL 1304; *cf. Aurora Loan Servs., LLC v Weisblum*, 85 AD3d 95, 103).

February 21, 2012

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The defendants' remaining contention is not properly before this Court as it is raised for the first time in their reply brief (*see Nationwide Insulation & Sales, Inc. v Nova Cas. Co.*, 74 AD3d 1297, 1299).

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court