

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

D34407
G/prt

_____AD3d_____

Submitted - January 23, 2012

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-05118

DECISION & ORDER

Capital One, N.A., etc., respondent, v Waterfront
Realty II, LLC, et al., appellants, et al., defendants.

(Index No. 8982/09)

Leo Fox, New York, N.Y., for appellants.

Lazer Aptheke Rosella & Yedid, P.C., Melville, N.Y. (Joseph C. Savino and
Maryam Parvaneh of counsel), for respondent.

In an action, inter alia, to foreclose a mortgage, the defendants Waterfront Realty II, LLC, Waterfront Realty Co., Isack Rosenberg, and Abraham Rosenberg appeal from an order of the Supreme Court, Kings County (Demarest, J.), dated March 11, 2011, which denied, without prejudice to renewal following the “submission” of certain issues to the United States Bankruptcy Court for the Eastern District of New York in a matter entitled *In Re Isack Rosenberg*, Case No. 09-46326, the plaintiff’s renewed motion, among other things, for summary judgment on the complaint and to appoint a referee to compute the amount due to it, and their cross motion for leave to serve and file an amended answer.

ORDERED that the appeal from so much of the order as denied the plaintiff’s renewed motion, among other things, for summary judgment on the complaint and to appoint a referee to compute the amount due to it is dismissed, as the appellants are not aggrieved by that portion of the order (*see* CPLR 5511); and it is further,

ORDERED that the order is affirmed insofar as reviewed; and it is further,

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ORDERED that one bill of costs is awarded to the plaintiff.

Under the circumstances of this case, the Supreme Court did not improvidently exercise its discretion in declining to determine the merits of the appellants' cross motion and, in effect, determining that prosecution of this matter should be stayed pending further proceedings in the United States Bankruptcy Court for the Eastern District of New York (*see Honkala v Lee E. Gibson Constr. Co., Inc.*, 41 AD3d 655, 656; *see also Certain Underwriters at Lloyd's London v Pneumo Abex Corp.*, 36 AD3d 441, 441; *cf. Rosenbaum v Dane & Murphy*, 189 AD2d 760, 761). Accordingly, the Supreme Court properly denied the appellants' cross motion without prejudice to renewal following the "submission" of certain issues to the bankruptcy court.

SKELOS, J.P., LEVENTHAL, LOTT and MILLER, JJ., concur.

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DECISION & ORDER ON MOTION

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Motion by the plaintiff to dismiss the appeal on the ground that it has been rendered academic. By decision and order on motion of this Court dated November 2, 2011, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the submission of the appeal, it is,

ORDERED that the plaintiff's motion to dismiss the appeal is denied.

SKELOS, J.P., LEVENTHAL, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

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