

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

D35423  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 13, 2012

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
LEONARD B. AUSTIN  
JEFFREY A. COHEN, JJ.

2010-05766  
2010-10993

DECISION & ORDER

Aurora Bank, FSB, formerly known as  
Lehman Brothers Bank, FSB, appellant,  
v AFAFB, Inc., et al., defendants, 89 Pine  
Hollow Road Realty Corp., et al., respondents.

(Index No. 20187/09)

DelBello Donnellan Weingarten Wise & Wiederkehr, White Plains, N.Y. (Frank J. Haupe! and Michael J. Schwarz of counsel), for appellant.

Robert L. Dougherty, Garden City, N.Y., for respondents.

In an action to foreclose a mortgage, the plaintiff appeals from (1) an order of the Supreme Court, Nassau County (Woodard, J.), dated April 29, 2010, which granted that branch of the motion of the defendants 89 Pine Hollow Road Realty Corp. and Gasper Chiarenza, as co-administrator of the estate of Frank Pettineo, which was pursuant to CPLR 1003 to dismiss the complaint and denied its cross motion, inter alia, for leave to amend the complaint, and (2) a judgment of the same court dated September 28, 2010, which, upon the order, inter alia, dismissed the complaint and vacated the notice of pendency.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

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

June 27, 2012

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AURORA BANK, FSB, formerly known as  
LEHMAN BROTHERS BANK, FSB v AFAFB, INC.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

The Supreme Court dismissed this foreclosure action on the ground that the plaintiff's mortgage was vacated and extinguished in a related case (*see 89 Pine Hollow Road Realty Corp. v American Tax Fund, Foothill*, \_\_\_\_\_AD3d\_\_\_\_\_ [decided herewith]). In the related appeals, we affirm stated portions of the judgment of the Supreme Court dated September 28, 2010, which, inter alia, extinguished the plaintiff's mortgage interest (*id.*). Thus, we affirm the judgment herein dismissing the complaint and vacating the notice of pendency.

ANGIOLILLO, J.P., DICKERSON, AUSTIN and COHEN, 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