

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

D35578
Y/kmb

_____AD3d_____

Argued - May 25, 2012

WILLIAM F. MASTRO, A.P.J.
DANIEL D. ANGIOLILLO
LEONARD B. AUSTIN
SANDRA L. SGROI, JJ.

2011-11857

DECISION & ORDER

Orit Kraus, respondent, v Daniel Mendelsohn,
appellant, et al., defendants.

(Index No. 3070/08)

Hass & Gottlieb, Scarsdale, N.Y. (Lawrence M. Gottlieb of counsel), for appellant.

Ezratty, Ezratty & Levine, LLP, Mineola, N.Y. (Richard J. Zimmerman of counsel),
for respondent.

In an action to foreclose a mortgage, the defendant Daniel Mendelsohn appeals from an order of the Supreme Court, Nassau County (Adams, J.), dated September 12, 2011, which denied his motion for summary judgment dismissing the complaint insofar as asserted against him.

ORDERED that the order is affirmed, with costs.

The defendant Daniel Mendelsohn is the owner of a single-family residence in Sea Cliff. In December 2006, Mendelsohn borrowed the sum of \$300,000 from the plaintiff and, in connection therewith, he executed both a “balloon note,” reflecting his \$300,000 indebtedness, and a mortgage on the Sea Cliff property, in favor of the plaintiff. Mendelsohn defaulted on the payment of the note, and the plaintiff commenced this action to foreclose the mortgage. Thereafter, Mendelsohn moved for summary judgment dismissing the complaint insofar as asserted against him arguing, inter alia, that the interest rate on the loan was usurious.

Mendelsohn failed to make a prima facie showing that the subject loan and the mortgage securing it were void as usurious (*see Emigrant Mtge. Co., Inc. v Turk*, 71 AD3d 722; *Hicki v Choice Capital Corp.*, 264 AD2d 710; *see also Koibong Li v Astoria Fed. Sav. & Loan Assn.*, 81 AD2d 857, 858). “[T]he defense of usury does not apply where . . . the terms of the mortgage and

note impose a rate of interest in excess of the statutory maximum only after default or maturity” (*Miller Planning Corp. v Wells*, 253 AD2d 859, 860). Further, Mendelsohn did not otherwise demonstrate that he was entitled to summary judgment dismissing the complaint.

Mendelsohn’s remaining contentions are without merit.

Accordingly, the motion for summary judgment was properly denied, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

MASTRO, A.P.J., ANGIOLILLO, AUSTIN and SGROI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court