

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

D35833
Y/hu

_____AD3d_____

Submitted - June 18, 2012

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2011-10582

DECISION & ORDER

Estate of Agnes M. Broche, etc., appellant, v Maria
Tai, respondent.

(Index No. 5209/11)

Watson, Farley & Williams, LLP, New York, N.Y. (Neil A. Quartaro of counsel), for
appellant.

Thomas F. Farley, P.C., White Plains, N.Y., for respondent.

In an action to recover on a guarantee, commenced by motion for summary judgment
in lieu of complaint pursuant to CPLR 3213, the plaintiff appeals from an order of the Supreme
Court, Kings County (Vaughan, J.), dated October 19, 2011, which denied its motion for summary
judgment, and granted the defendant's cross motion for summary judgment dismissing the action.

ORDERED that the order is affirmed, with costs.

In order to recover on a guarantee, a plaintiff must establish that payment on the
underlying debt was due (*see Griffon V, LLC v 11 East 36th, LLC*, 90 AD3d 705, 706; *Superior Fid.
Assur., Ltd. v Schwartz*, 69 AD3d 924, 925). In support of her cross motion for summary judgment
dismissing the action, the defendant established, prima facie, that the underlying transaction was
timely canceled, and that payment pursuant to the underlying mortgage and note was not due. In
opposition, the plaintiff failed to raise a triable issue of fact. Thus, the defendant's cross motion for
summary judgment dismissing the action was properly granted and, for the same reason, the
plaintiff's motion for summary judgment in lieu of complaint was properly denied.

August 15, 2012

ESTATE OF BROCHE v TAI

Page 1.

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

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

ENTER:


Aprilanne Agostino
Clerk of the Court