

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

D35893  
N/kmb

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

Argued - May 14, 2012

REINALDO E. RIVERA, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

2010-10795

DECISION & ORDER

Board of Managers of Marbury Club Condominium,  
respondent, v Marbury Corners, LLC, et al.,  
appellants.

(Index No. 29420/09)

Riker, Danzig, Scherer, Hyland & Perretti LLP, New York, N.Y. (Jonathan P. Vuotto and Thomas P. Sheridan of counsel), for appellants.

Hartman & Craven LLP, New York, N.Y. (Victor M. Metsch and Michael P. Regan of counsel), for respondent.

In an action, inter alia, for a judgment declaring that a certain promissory note and related documents are illegal, invalid, and/or otherwise unenforceable, the defendants appeal, as limited by their brief, from so much of an order and judgment (one paper) of the Supreme Court, Westchester County (Scheinkman, J.), dated September 22, 2010, as granted those branches of the plaintiff's motion which were for summary judgment declaring that the subject promissory note and related documents are illegal, invalid, and/or otherwise unenforceable and on the cause of action for injunctive relief, declared that the subject promissory note and related documents are illegal, invalid, and/or otherwise unenforceable, and awarded the plaintiff certain injunctive relief.

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

In opposition to the plaintiff's prima facie showing of entitlement to judgment as a matter of law, the defendants failed to raise a triable issue of fact (*see generally Alvarez v Prospect*

August 22, 2012

Page 1.

BOARD OF MANAGERS OF MARBURY CLUB  
CONDOMINIUM v MARBURY CORNERS, LLC

*Hosp.*, 68 NY2d 320). Contrary to the defendants' contention, the Supreme Court correctly determined that the subject promissory note was made in violation of Real Property Law § 339-jj(1) (see generally *Matter of Lloyd v Grella*, 83 NY2d 537, 545-546; *Matter of Heller*, 23 AD3d 61, 68, *affd* 6 NY3d 649) and that, under the circumstances of this case, the promissory note and related documents are unenforceable (see *R.A.C. Group, Inc. v Board of Educ. of City of N.Y.*, 21 AD3d 243, 248-249; *cf. Lloyd Capital Corp. v Pat Henchar, Inc.*, 80 NY2d 124, 127-129).

The defendants' remaining contentions are either without merit or improperly raised for the first time on appeal.

RIVERA, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court