

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

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Submitted - June 21, 2012

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
PLUMMER E. LOTT  
ROBERT J. MILLER, JJ.

2011-08281

DECISION & ORDER

Vladimir Sudit, doing business as VS International,  
respondent, v Sara Roth, also known as Chaya Roth,  
et al., appellants, et al., defendants.

(Index No. 34598/08)

James Klatsky, New York, N.Y., for appellants.

Joseph J. Haspel, Goshen, N.Y., for respondent.

In an action to foreclose a mortgage, the defendants Sara Roth, also known as Chaya Roth, and Moshe Roth appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Schmidt, J.), dated April 14, 2011, as granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against them.

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

The plaintiff established its prima facie entitlement to judgment as a matter of law by producing a so-ordered stipulation setting forth the appellants' obligation arising from certain underlying mortgages and agreements, and proof of the appellants' default (*see Zanfini v Chandler*, 79 AD3d 1031, 1032). In opposition, the appellants failed to raise a triable issue of fact. Contrary to the appellants' contention, the stipulation did not constitute a novation, as it did not extinguish the appellants' prior obligations (*see Rockwood v Vicarious Visions, Inc.*, 44 AD3d 1229, 1230; *Albano v Alba Carting Co.*, 251 AD2d 273).

The appellants' remaining contention set forth in their reply brief is raised for the first

time on appeal and, thus, is not properly before this Court (*see Charles v Broad St. Dev., LLC*, 95 AD3d 814; *Torah v Dell Equity, LLC*, 90 AD3d 746, 747).

Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the appellants.

RIVERA, J.P., ENG, LOTT and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court