

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

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Submitted - November 9, 2012

WILLIAM F. MASTRO, J.P.  
DANIEL D. ANGIOLILLO  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

2011-09246

DECISION & ORDER

Onewest Bank, FSB, respondent, v Dina Martinez, et al.,  
appellants, et al., defendants.

(Index No. 34371/09)

Campos, Lazar & Martin, PLLC, West Islip, N.Y. (Richard G. Martin of counsel),  
for appellants.

Fein, Such & Crane, LLP, Chestnut Ridge, N.Y. (Michael S. Hanusek of counsel),  
for respondent.

In an action to foreclose a mortgage, the defendants Dina Martinez and Alnolfo Martinez appeal from an order of the Supreme Court, Suffolk County (Pastoressa, J.), dated July 5, 2011, which denied their motion pursuant to CPLR 5015, in effect, inter alia, to vacate a judgment of foreclosure and sale of the same court entered August 16, 2010, upon their default in appearing or answering the complaint, to set aside the foreclosure sale held pursuant thereto, and to vacate the referee's deed in foreclosure.

ORDERED that the order is affirmed, with costs.

The Supreme Court properly denied the appellants' motion pursuant to CPLR 5015, in effect, inter alia, to vacate a judgment of foreclosure and sale of the same court entered August 16, 2010, upon their default in appearing or answering the complaint, to set aside the foreclosure sale held pursuant thereto, and to vacate the referee's deed in foreclosure. As to those branches of the appellants' motion which were pursuant to CPLR 5015(a)(1), in effect, inter alia, to vacate the

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judgment of foreclosure and sale, the appellants failed to demonstrate a reasonable excuse for their default (*see U.S. Bank N.A. v Slavinski*, 78 AD3d 1167, 1167-1168; *Dorrer v Berry*, 37 AD3d 519, 520). As to those branches which were pursuant to CPLR 5015(a)(3), the appellants failed to establish that the plaintiff procured the judgment of foreclosure and sale by fraud, misrepresentation, or other misconduct (*see Wells Fargo Bank N.A. v Hornes*, 94 AD3d 755, 755).

MASTRO, J.P., ANGIOLILLO, SGROI and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court