

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1295

CA 11-00701

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, LINDLEY, AND SCONIERS, JJ.

---

RICHARD N. AMES, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERT JAMES SHUTE, DEFENDANT-APPELLANT.

---

WOODRUFF LEE CARROLL, SYRACUSE, FOR DEFENDANT-APPELLANT.

RICHARD N. AMES, FAYETTEVILLE, PLAINTIFF-RESPONDENT PRO SE.

---

Appeal from a judgment of the Supreme Court, Onondaga County (Anthony J. Paris, J.), rendered June 8, 2010. The judgment, *inter alia*, confirmed the report of the Referee and ordered a foreclosure and sale.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: On appeal from a judgment of foreclosure and sale, defendant contends for the first time on appeal that, *inter alia*, the mortgage loan documents should be construed together with a joint venture agreement between plaintiff, defendant and a nonparty. Inasmuch as defendant failed to raise that contention at Supreme Court, it is not properly before us (*see Ciesinski v Town of Aurora*, 202 AD2d 984, 985). In any event, we have considered the merits of defendant's contentions that are raised for the first time on appeal and conclude that they are without merit.

Entered: December 30, 2011

Frances E. Cafarell  
Clerk of the Court