

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

D56022
T/htr

_____AD3d_____

Argued - Febraury 2, 2018

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
JEFFREY A. COHEN
ANGELA G. IANNACCI, JJ.

2016-04189

DECISION & ORDER

U.S. Bank, N.A., respondent, v Hakim Qurachi,
et al., defendants; Re-Cast Homes, Inc., nonparty-
appellant.

(Index No. 14921/09)

Philip L. Kamaras, Brooklyn, NY, for nonparty-appellant.

RAS Boriskin, LLC, Westbury, NY (Jason W. Creech and Jeremy D. Kaufman of
counsel), for respondent.

In an action to foreclose a mortgage, nonparty Re-Cast Homes, Inc., appeals from an
order of the Supreme Court, Kings County (Noach Dear, J.), dated December 15, 2015. The order,
insofar as appealed from, denied that branch of the motion of nonparty Re-Cast Homes, Inc., which
was to set aside a foreclosure sale of certain real property.

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

The plaintiff commenced this mortgage foreclosure action in June 2009. On October
23, 2014, a judgment of foreclosure and sale was entered in favor of the plaintiff. On June 11, 2015,
pursuant to the judgment, a referee conducted an auction sale of the subject property. Nonparty Re-
Cast Homes, Inc. (hereinafter Re-Cast), was the successful bidder at the auction. Thereafter, Re-Cast
moved, inter alia, to set aside the foreclosure sale on the ground that the plaintiff fraudulently
misrepresented the legal occupancy status of the property. The Supreme Court denied that branch
of the motion, and Re-Cast appeals.

The Supreme Court properly denied that branch of Re-Cast's motion which was to
set aside the foreclosure sale, as Re-Cast did not seek leave to intervene in the action (*see* CPLR

July 18, 2018

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1012[a][3]; *NYCTL 1996-1 Trust v King*, 304 AD2d 629). In addition, Re-Cast did not present any evidence of fraud, collusion, mistake, or misconduct in connection with the foreclosure sale that would warrant setting the sale aside (*see NYCTL 1998-1 Trust v Rodriguez*, 154 AD3d 865).

MASTRO, J.P., DILLON, COHEN and IANNACCI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court