

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

D56170
G/hu

_____AD3d_____

Argued - March 26, 2018

JOHN M. LEVENTHAL, J.P.
SANDRA L. SGROI
HECTOR D. LASALLE
VALERIE BRATHWAITE NELSON, JJ.

2014-10799

DECISION & ORDER

Catherine Kupperstock, respondent, v Arie Kupperstock,
etc., appellant.

(Index No. 29066/10)

Koss & Schonfeld, LLP, New York, NY (Simcha D. Schonfeld of counsel), for
appellant.

Windels, Marx, Lane & Mittendorf, LLP, New York, NY (Robert D. Mercurio of
counsel), for respondent.

In an action, inter alia, to cancel and discharge a mortgage, the defendant appeals
from an order of the Supreme Court, Queens County (Allan B. Weiss, J.), entered September 18,
2014. The order, insofar as appealed from, denied that branch of the defendant's motion which was
for summary judgment dismissing the complaint.

Motion by the plaintiff, inter alia, to dismiss the appeal on the ground that the right
of direct appeal therefrom terminated upon the entry of a judgment of the same court entered August
9, 2016. By decision and order on motion of this Court dated October 14, 2016, that branch of the
motion which is to dismiss the appeal from the order was held in abeyance and referred to the panel
of Justices hearing the appeals for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition
thereto, and upon the argument of the appeals, it is

ORDERED that the branch of the motion which is to dismiss the appeal from the
order is granted; and it is further,

July 25, 2018

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ORDERED that the appeal is dismissed, with costs.

The appeal from the order must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgment in the action entered August 9, 2016 (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal and cross appeal from the judgment (*see Kupperstock v Kupperstock*, _____ AD3d _____ [Appellate Division Docket No. 2016-09835; decided herewith]; *see also* CPLR 5501[a][1]; *Matter of Aho*, 39 NY2d at 248).

LEVENTHAL, J.P., SGROI, LASALLE and BRATHWAITE NELSON, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court