

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

D56286
M/hu

_____AD3d_____

Argued - April 2, 2018

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
SYLVIA O. HINDS-RADIX
LINDA CHRISTOPHER, JJ.

2016-12461

DECISION & ORDER

41st Road Properties, LLC, respondent, v Wang Real Property, LLC, et al., appellants, et al., defendants.

(Index No. 704061/14)

Wang Law Office, PLLC, Flushing, NY (Jean Wang of counsel), for appellants.

Aronauer & Yudell, LLP, New York, NY (Joseph Aronauer of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Wang Real Property, LLC, Roug Kang Wang, and Stella Wang appeal from an order of the Supreme Court, Queens County (Timothy J. Dufficy, J.), entered November 30, 2016. The order granted the plaintiff's motion to confirm a referee's report and for a judgment of foreclosure and sale, and denied those defendants' cross motion, inter alia, to disaffirm the referee's report.

Motion by the plaintiff to dismiss the appeal from the order entered November 30, 2016, on the ground that the right of direct appeal therefrom terminated upon entry of a judgment in this action. By decision and order on motion of this Court dated June 15, 2017, the motion was held in abeyance and referred to the panel of Justices hearing the appeal 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 appeal, it is

ORDERED that the motion to dismiss the appeal from the order entered November 30, 2016, is granted; and it is further,

August 1, 2018

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ORDERED that the appeal from the order entered November 30, 2016, is dismissed, with costs.

The appeal from the order entered November 30, 2016, should be dismissed because the right of direct appeal therefrom terminated with the entry of an order and judgment of foreclosure and sale in the action (*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 from the order and judgment of foreclosure and sale (*41st Road Props., LLC v Wang Real Prop., LLC*, _____ AD3d _____ [Appellate Division Docket No. 2016-09989; decided herewith]; *see CPLR 5501[a][1]; Matter of Aho*, 39 NY2d at 248).

BALKIN, J.P., LEVENTHAL, HINDS-RADIX and CHRISTOPHER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court