

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

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Submitted - May 18, 2018

SHERI S. ROMAN, J.P.
SANDRA L. SGROI
JOSEPH J. MALTESE
HECTOR D. LASALLE, JJ.

2017-02985

DECISION & ORDER

Nationstar Mortgage, LLC, respondent, v Frederick
Vordermeier, appellant, et al., defendants.

(Index No. 8342/12)

Lester & Associates, P.C., Garden City, NY (Gabriel R. Korniman of counsel), for
appellant.

Akerman LLP, New York, NY (Jordan M. Smith, Natsayi Mawere, and Ashley
Miller of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Frederick Vordermeier appeals from a judgment of foreclosure and sale of the Supreme Court, Nassau County (Thomas A. Adams, J.), entered December 15, 2016. The judgment of foreclosure and sale, upon, inter alia, an order of the same court entered July 9, 2015, among other things, granting that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the defendant Frederick Vordermeier, confirmed a referee's report and directed the sale of the subject premises.

ORDERED that the judgment of foreclosure and sale is affirmed, with costs.

The plaintiff commenced this action to foreclose a mortgage given by the defendant Frederick Vordermeier (hereinafter the defendant). After issue was joined, the plaintiff moved, inter alia, for summary judgment on the complaint insofar as asserted against the defendant. The motion was granted, and, in a subsequent order, the Supreme Court, in effect, upon reargument, adhered to that prior determination. The court thereafter entered a judgment of foreclosure and sale, which, inter alia, confirmed a referee's report and directed the sale of the subject premises. The defendant appeals from the judgment of foreclosure and sale.

October 10, 2018

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In support of its motion for summary judgment, the plaintiff established its prima facie entitlement to judgment as a matter of law. In opposition, the defendant failed to raise a triable issue of fact. Contrary to the defendant's contention, he waived the right to assert that the plaintiff's failure to perform a condition precedent set forth in the mortgage bars this foreclosure action, as this defense was never raised in the defendant's answer or in any motion by the defendant for leave to amend his answer (*see* CPLR 3015[a]; *First N. Mortgagee Corp. v Yatrakis*, 154 AD2d 433; *see also Tuscan/Lehigh Dairies, Inc. v Beyer Farms, Inc.*, 136 AD3d 799, 805; *Love v Rockwell's Intl. Enters., LLC*, 83 AD3d 914; *cf. Green Planet Servicing, LLC v Martin*, 141 AD3d 892). Consequently, we agree with the Supreme Court's determination granting that branch of the plaintiff's motion which was for summary judgment on the complaint insofar as asserted against the defendant.

Contrary to the defendant's further contention, the portion of the Referee's report which calculated the amount due on the mortgage was properly confirmed, since those findings have substantial support in the record (*see Wilshire Credit Corp. v 14 First St. Corp.*, 289 AD2d 229; *see also Flagstar Bank, F.S.B. v Konig*, 153 AD3d 790, 791).

The defendant's remaining contentions are without merit.

ROMAN, J.P., SGROI, MALTESE and LASALLE, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court