

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

D57075
M/htr

_____AD3d_____

Argued - May 14, 2018

RUTH C. BALKIN, J.P.
LEONARD B. AUSTIN
SYLVIA O. HINDS-RADIX
FRANCESCA E. CONNOLLY, JJ.

2015-11460

DECISION & ORDER

Excel Capital Group Corp., respondent, v 225 Ross
Street Realty, Inc., appellant, et al., defendants.

(Index No. 1732/14)

Andrew Citron, New York, NY, for appellant.

Berkman, Henoch, Peterson, Peddy & Fenchel, P.C., Garden City, NY (Bruce J.
Bergman of counsel), for respondent.

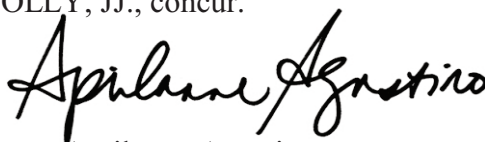
In an action to foreclose a mortgage, the defendant 225 Ross Street Realty, Inc., appeals from an order of the Supreme Court, Kings County (Lara J. Genovesi, J.), dated October 2, 2015. The order, insofar as appealed from, granted those branches of the plaintiff's motion which were for summary judgment on the complaint insofar as asserted against that defendant, to strike that defendant's answer, affirmative defenses, and counterclaims, and to appoint a referee to compute the amount due to the plaintiff.

ORDERED that the appeal is dismissed, with costs.

The appeal from the order dated October 2, 2015, must be dismissed because the right of direct appeal therefrom terminated with entry of the 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 judgment of foreclosure and sale (*see* CPLR 5501[a][1]; *Excel Capital Group Corp. v 225 Ross Street Realty, Inc.*, _____ AD3d _____ [Appellate Division Docket No. 2017-00596; decided herewith]).

BALKIN, J.P., AUSTIN, HINDS-RADIX and CONNOLLY, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court

October 31, 2018

EXCEL CAPITAL GROUP CORP. v 225 ROSS STREET REALTY, INC.