

<b>American Home Mtge. Corp. v MJR Equity Corp.</b>
2008 NY Slip Op 31601(U)
June 2, 2008
Supreme Court, New York County
Docket Number: 0602540/2005
Judge: Barbara Kapnick
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PRESENT: **HON. BARBARA R. KAPNICK**

PART 12

Justice

Index Number : 602540/2005  
**AMERICAN HOME MORTGAGE**  
 vs.  
**MJR EQUITY**  
 SEQUENCE NUMBER : 001  
 SUMMARY JUDGMENT

INDEX NO. 602540/05  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. 001  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION**

**FILED**  
 JUN 11 2008  
 COUNTY CLERK'S OFFICE  
 NEW YORK

**RECEIVED**  
 JUN 9 2008  
 MOTION SUPPORT  
 OFFICE

*MDAT*

Dated: 6/2/08

*[Signature]*

**BARBARA R. KAPNICK** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

*6-10-08  
cc*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 12

-----X  
AMERICAN HOME MORTGAGE CORP. d/b/a  
AMERICAN BROKERS CONDUIT,

Plaintiff,

DECISION/ORDER  
Index No. 602540/05  
Motion Seq. No. 001

-against-

MJR EQUITY CORP.,

Defendant.

-----X  
MJR EQUITY CORP.,

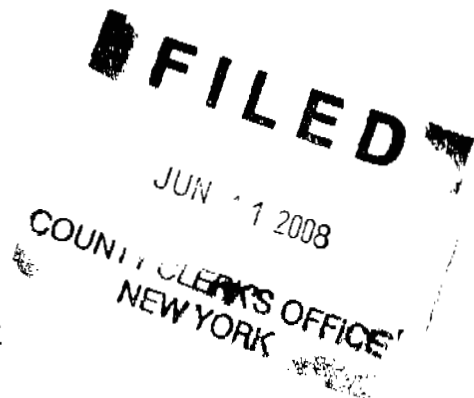
Third-Party Plaintiff,

- against -

ROBERT MOJICA,

Third-Party Defendant.

-----X  
BARBARA R. KAPNICK, J.:



This action arises out of five loan application packages which were submitted by defendant/third-party plaintiff MJR Equity Corp. ("MJR Equity"), a full-service mortgage broker, to plaintiff American Home Mortgage Corp. d/b/a American Brokers Conduit ("American Home"),<sup>1</sup> pursuant to a Mortgage Broker Loan Application Package Submission Agreement ("Submission Agreement") entered into between them on February 3, 2004.

As a private residential mortgage conduit, it was, among other things, American Home's business to acquire residential mortgage

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<sup>1</sup> Plaintiff is currently in bankruptcy.

loan application packages from loan originators, convert the mortgages into securities, and sell the securities to investors in the secondary mortgage market.

Plaintiff seeks to recover damages for breach of contract, and a judgment declaring that:

(a) MJR Equity submitted Application Packages to American Home that were not complete, accurate, true, correct and genuine in all material respects; and

(b) by reason of the Submission Agreement between the parties, MJR Equity is obligated to indemnify American Home for all losses, damages, costs or expenses resulting from the failure of MJR Equity, its directors, officers, agents, or employees to comply with the representations, warranties and covenants contained in the Submission Agreement, as well as the inaccuracy of any such representations, warranties or covenants.

Plaintiff now moves for summary judgment, arguing specifically as to the application on behalf of Kinte F. Gibson for the purchase of property located at 316 Milford Street in Brooklyn (the "Milford property")<sup>2</sup>, that MJR did not take the loan application or process

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<sup>2</sup> Plaintiff represents that since the filing of the Complaint, the properties securing the other four loans have been sold at no loss to American Home, and thus plaintiff is making no claim for damages from these four loans.

the application itself, but simply purchased an already-completed application package from third-party defendant Robert Mojica, who was at no time employed by MJR and was not supervised by MJR in processing the application. According to plaintiff, the application for the Milford property bore the forged signature of MJR's president, Michael Grodner.

Plaintiff further claims that the application package was riddled with false statements, including misrepresentations about Mr. Gibson's intention to make a downpayment on his purchase of the Milford property and the identity of the property's actual owner.

In addition, plaintiff claims that the certificate of title included in the application package is also false because it represented that title to the Milford property had been vested in Abraham Valentin, the seller, by a deed dated August 7, 2000, when, in fact, title was vested in Mr. Valentin only on October 14, 2004, the same date of the loan closing. Plaintiff alleges that the 'sham' title certificate disguised the fact that the property was being 'flipped' and overvalued.

Plaintiff further claims that on October 14, 2004, in reliance on these misrepresentations, it funded first-lien and second-lien residential mortgage loans secured by the Milford property in the

total amount of \$440,000. The principal balance of the first-lien loan was \$308,000.00, and the principal balance of the second-lien loan was \$132,000.00. Mr. Gibson made two payments on the loans and then defaulted on the remainder of his scheduled monthly payments.

American Home initially commenced a foreclosure action on this property, but ultimately, in an effort to mitigate its losses, received \$353,745.00 through a 'short sale' of the property. Plaintiff claims that it incurred additional losses in acquiring and liquidating the property.<sup>3</sup>

MJR, however, contends that it complied with the terms of the Submission Agreement by providing a complete loan package with appropriate documentation for review, including the credit report of the purchaser, a certified appraisal which evidenced that the property was "improved acceptable real estate, as such is defined in the loan specific program", and a title report completed by a New York title company.

Under the agreement, MJR agreed "to indemnify and hold [American Home] free and harmless from any and all loss, damage,

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<sup>3</sup> According to plaintiff, its total realized loss on the loans, including its expenses in connection with the foreclosure proceedings, was \$121,451.17, plus reasonable attorneys' fees and costs incurred in connection with this lawsuit.

cost, or expense resulting or alleged to have resulted from the failure of Mortgage Broker, its directors, officers, employees or agents to process Application Packages in a manner and timeframe that is in accordance with generally prudent mortgage brokering standards."

Defendant contends that there was no indication or proof of fraud that MJR was or should have been aware of, and that plaintiff has failed to establish that the damages were caused by any breach on defendant's part, rather than the actions of the borrower.

In support of its position, defendant has submitted an Affidavit from Michael Grodner, past president of MJR, in which he represents that the use of loan officers, whether independent of a brokerage company (as in the case of the third-party defendant) or as an employee, "is an integral part of the mortgage business."

He further claims that "[i]t is accepted practice in the industry to accept the completed loan package from a loan officer as complete and truthful" and that "[n]o further investigation is warranted." According to Mr. Grodner,

[a] review of the complete file on Mr. Kinte Gibson reveals no indication that the borrower would default on the loan. The complete file also possesses no information which would lead a prudent mortgage broker to questions it's [sic.] contents."

However, the Submission Agreement specifically provides as follows:

Mortgage Broker represents, warrants and covenants to [American Home] that in connection with each Application Package as of the date it submits the Application Package to [American Home] and as of the date that the Mortgage Loan is closed:

\* \* \*

- e. Mortgage Broker took the loan application and fully processed the Application Package itself.

Based on the papers submitted and the oral argument held on the record on April 2, 2008, this Court finds that defendant failed to take the loan agreement and fully process the Application Package "itself". Accordingly, defendant breached its contract with plaintiff. Plaintiff's motion for summary judgment on the Milford property is, therefore, granted.

The issue of the amount of damages owing to plaintiff in connection with the Milford property, including costs, expenses and attorneys' fees is referred to a Special Referee to hear and report or, upon stipulation of counsel, to hear and determine.

Upon service of a copy of this order with notice of entry, the Special Referee Clerk shall place this matter on the Part 50R calendar for referral to a Special Referee.

This constitutes the decision and order of this Court.

Dated: June 2, 2008

  
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Barbara R. Kapnick  
J.S.C.

**BARBARA R. KAPNICK**  
J.S.C.

**FILED**  
JUN 11 2008  
COUNTY CLERK'S OFFICE  
NEW YORK