

**Grand Bank for Sav. v Araujo Familia, Inc.**

2010 NY Slip Op 33988(U)

April 6, 2010

Supreme Court, Suffolk County

Docket Number: 48937/09

Judge: Mark D. Cohen

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT - STATE OF NEW YORK  
IAS TERM, PART 28 SUFFOLK COUNTY**

PRESENT:

Honorable Mark D. Cohen

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GRAND BANK FOR SAVINGS, FSB PROFIT  
SHARING PLAN

Plaintiff

- against -

ARAUJO FAMILIA, INC., NEW YORK  
STATE DEPARTMENT OF TAXATION AND  
FINANCE, ET. AL.

Defendants

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Motion No: 01/Motd  
Submit Date: 04/06/10

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Upon the papers submitted (Notice of Motion, Opposition and Reply), it is hereby

ORDERED that the motion for summary judgment is denied without prejudice to renew after a conference; and it is further

ORDERED that a conference is scheduled for **Tuesday, May 11, 2010, at 9:30 a.m.**, to discuss the issues and possible resolution thereof.

The Plaintiff has established the existence of a valid mortgage and default on payment, which established its prima facie case on this motion for summary judgment. *Capstone Business Credit, LLC v. Imperia Family Realty, LLC*, 70 A.D.3d 882. However, the Defendant raises an issue of misrepresentation, in that the contract indicated that there were no pending proceedings or administrative challenges concerning the property. It appears that there was a pending reassessment of the property taxes, which did result in a three fold increase from \$9,866.10 to \$27,034.68.<sup>1</sup> Even assuming that there was no specific representation of the amount of taxes or such evidence would

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It appears to have been decreased after a challenge.

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be excluded by the “no oral representation” clause [see e.g. *Daly v. Kochanowicz* 67 A.D.3d 78], the notification of such pending review may raise an issue of fact as to whether there was a misrepresentation, whether such is a material misrepresentation or fraudulent, so as to be a defense to the claim. See *P.T. Bank Central Asia v. ABN AMRO Bank N.V.*, 301 A.D.2d 373; *Stahl Equities Corp. v. Prudential Bldg. Maintenance Corp.*, 95 A.D.2d 222.

The foregoing constitutes the Order of this Court.

Dated: April 6, 2010  
Riverhead, NY

  
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HON. MARK D. COHEN, J.S.C.