

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

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_____AD3d_____

Argued - September 26, 2008

REINALDO E. RIVERA, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
JOHN M. LEVENTHAL, JJ.

2007-08287

DECISION & ORDER

Bank of New York, etc., respondent, v Rudolph
Stradford, et al., defendants; Southwest Capital
Investments, et al., nonparty-appellants.

(Index No. 28574/03)

Neil H. Greenberg & Associates, P.C., Westbury, N.Y. (Justin M. Reilly of counsel),
for nonparty-appellants.

Solomon & Siris, P.C., Uniondale, N.Y. (Stuart Siris of counsel), for respondent.

In an action to foreclose a mortgage, Southwest Capital Investments and Show
Homes, Inc., appeal from an order of the Supreme Court, Suffolk County (Whelan, J.), dated August
21, 2007, which denied their motion pursuant to CPLR 5015(a)(3) to vacate a judgment of
foreclosure and sale of the same court (Underwood, J.), entered September 23, 2004, upon the
default of their assignor in appearing, and for leave to interpose an answer.

ORDERED that the order is affirmed, with costs to the plaintiff.

The Supreme Court properly denied the nonparty-appellants' motion to vacate the
judgment of foreclosure and sale pursuant to CPLR 5015(a)(3), which provides that "[t]he court
which rendered a judgment or order may relieve a party from it upon such terms as may be just . . .
. . . upon the ground of . . . fraud, misrepresentation, or other misconduct of an adverse party."
Although there is no express time limit for seeking relief from a judgment pursuant to CPLR
5015(a)(3), a party is required to make the motion within a reasonable time (*see Aames Capital Corp.*
v Davidsohn, 24 AD3d 474, 475; *Miller v Lanzisera*, 273 AD2d 866, 868). Here, the appellants'

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delay of more than two years after entry of the judgment of foreclosure and sale in moving to vacate the judgment, despite their awareness of all relevant facts surrounding the issue, was unreasonable (*see Rizzo v St. Lawrence Univ.*, 24 AD3d 983, 984). In any event, the appellants failed to provide a reasonable excuse for the default, which is required when a CPLR 5015(a)(3) motion alleges intrinsic fraud, i.e., that the plaintiff's allegations are false (*see Bank of N.Y. v Lagakos*, 27 AD3d 678, 679; *Fischman v Gilmore*, 246 AD2d 508; *Morel v Clacherty*, 186 AD2d 638, 639). Furthermore, the appellants "offered nothing more than broad, unsubstantiated allegations of fraud on the part of [the] plaintiff" (*Aames Capital Corp. v Davidsohn*, 24 AD3d 474, 475 [internal quotation marks and citation omitted]).

RIVERA, J.P., SPOLZINO, FLORIO and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court