

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

D23174
G/kmg

_____AD3d_____

Argued - March 30, 2009

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2009-00532

DECISION & ORDER

Bank One National Association, f/k/a First
National Bank of Chicago, as Trustee, appellant,
v Michelle Napier Osorio, etc., et al., defendants;
Andres Ramos, intervenor-respondent.

(Index No. 7780/03)

Phillips Lytle LLP, New York, N.Y. (Keith M. Brandofino of counsel), for appellant.

Balfe & Holland, P.C., Melville, N.Y. (Kevin E. Balfe and Amy J. Zamir of counsel),
for intervenor-respondent.

In an action to foreclose a mortgage, the plaintiff appeals, as limited by its brief, from so much of an order and judgment (one paper) of the Supreme Court, Queens County (Schulman, J.), entered May 12, 2008, as granted the motion of Andres Ramos, inter alia, for reimbursement of costs and expenses incurred in connection with his purchase of the mortgaged property, and is in favor of Andres Ramos and against it in the sum of \$70,262.04.

ORDERED that the order and judgment is affirmed insofar as appealed from, with costs.

The plaintiff bank commenced this action to foreclose a mortgage on certain real property. A judgment of foreclosure and sale was granted on default, and the subject property was sold at auction. However, the judgment of foreclosure and sale was vacated and the sale set aside based on the plaintiff's failure to serve a necessary party (*see Bank One Natl. Assn. v Osorio*, 26 AD3d 452). The successful bidder at the sale, Andres Ramos, sought, inter alia, the return of his

May 12, 2009

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BANK ONE NATIONAL ASSOCIATION, f/k/a FIRST
NATIONAL BANK OF CHICAGO, AS TRUSTEE v OSORIO

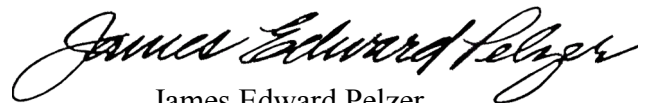
purchase money and reimbursement of costs and expenses. The plaintiff now appeals from so much of the order and judgment as awarded Ramos the sum of \$70,262.04 for reimbursement of costs and expenses. We affirm the order insofar as appealed from.

Contrary to the plaintiff's contention on appeal, the Supreme Court properly awarded Ramos reimbursement of costs and expenses after the judgment of foreclosure and sale was vacated and the sale set aside (*see Toole v Toole*, 112 NY 333; *cf. Lauder v Meserole*, 148 App Div 739; *Baldwin-Bellmore Fed. Sav. & Loan Assn. v Stellato*, 55 Misc 2d 1043; *Warren's Weed, New York Real Property, Judicial Sales § 75.36* [5th ed]; RPAPL 231[6]; CPLR 2003).

The plaintiff's remaining contentions are either not properly before this Court, improperly raised for the first time in its reply brief, or without merit.

RIVERA, J.P., COVELLO, DICKERSON and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court