

Indymac Venture, LLC v Tibbett, LLC
2014 NY Slip Op 06888
Decided on October 14, 2014
Appellate Division, First Department
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Decided on October 14, 2014

Tom, J.P., Friedman, Acosta, DeGrasse, Gische, JJ.

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[*1] Indymac Venture, LLC, Plaintiff-Respondent,

v

**Tibbett, LLC, Defendant-Appellant, New York City Environmental Control Board, et al.,
Defendants.**

Rosenberg & Estis, P.C., New York (Michael E. Feinstein of counsel), for appellant.

Stim & Warmuth, P.C., Farmingville (Paula J. Warmuth of counsel), for respondent.

Orders, Supreme Court, Bronx County (Howard H. Sherman, J.), entered October 8, 2013, which, among other things, granted plaintiff's motion for summary judgment against defendant Tibbett, LLC on its claims for foreclosure of a mortgage on real property and for reform of the mortgage nunc pro tunc to describe the encumbered property as "Block 5827 Lot 1634, formerly part of Lot 1635 on the Tax Map of the City of New York," unanimously affirmed, with costs.

The documentary evidence submitted by plaintiff, including a copy of a mortgage and note

executed by defendant in June 2007, applications prepared by defendant stating an intention to subdivide the mortgaged property into two lots, and releases showing partial payment on the mortgage and release of the mortgage on one of the subdivided lots, shows that the unpaid portion of the mortgage encumbered the lot upon which plaintiff seeks to foreclose ([see generally \[*2\]71 Clinton St. Apts. LLC v 71 Clinton Inc., 114 AD3d 583, 584 \[1st Dept 2014\]](#)). Defendant's vague protests that the mortgage does not encumber this property are insufficient to raise a triable issue of fact.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 14, 2014

CLERK

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