

2023 NY Slip Op 00876

OCWEN LOAN SERVICING, LLC, Appellant,

v.

EMMANUEL ANTOINE, ET AL., Defendants,

JOSEPH RAFAEL, LLC, Respondent.

2020-03477, Index No. 600238/15.

Appellate Division of the Supreme Court of New York, Second Department.

Decided February 15, 2023.

Appeal from an order of the Supreme Court, Suffolk County (Martha L. Luft, J.), dated March 2, 2020.

Robertson, Anschutz, Schneid, Crane & Partners, PLLC, Westbury, NY (Joseph F. Battista of counsel), for appellant.

Stim & Warmuth, P.C., Farmingville, NY (Glenn P. Warmuth of counsel), for respondent.

Before: Betsy Barros, J.P., Joseph J. Maltese, Deborah A. Dowling, Helen Voutsinas, JJ.

DECISION & ORDER

Motion by the respondent to dismiss the appeal on the ground that no appeal lies from an order entered upon the appellant's default. By decision and order on motion of this Court dated April 5, 2021, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Martha L. Luft, J.), dated March 2, 2020. The order, insofar as appealed from, granted the unopposed cross-motion of the defendant Joseph Rafael, LLC, pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against it as abandoned.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the motion to dismiss the appeal is granted; and it is further,

ORDERED that the appeal is dismissed; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

The plaintiff did not oppose the cross-motion of the defendant Joseph Rafael, LLC, pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against it as abandoned. As no appeal lies from an order entered upon the default of the appealing party (see CPLR 5511; *Lansky v Bate*, 132 AD3d 737, 737; *Marino v Termini*, 4 AD3d 342, 342), the appeal must be dismissed.

BARROS, J.P., MALTESE, DOWLING and VOUTSINAS, JJ., concur.

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