

<b>Emigrant Bank v Wang Real Prop., LLC</b>
2018 NY Slip Op 05574
Decided on August 1, 2018
Appellate Division, Second Department
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Decided on August 1, 2018 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department

RUTH C. BALKIN, J.P.

JOHN M. LEVENTHAL

SYLVIA O. HINDS-RADIX

LINDA CHRISTOPHER, JJ.

2016-05648

(Index No. 704061/14)

**[\*1]Emigrant Bank, formerly known as Emigrant Savings Bank, plaintiff,**

**v**

**Wang Real Property, LLC, et al., appellants, et al., defendants; 41st Road Properties, LLC, nonparty-respondent.**

Wang Law Office, PLLC, Flushing, NY (C. Jean Wang of counsel), for appellants.

Aronauer & Yudell, LLP, New York, NY (Joseph Aronauer of counsel), for nonparty-respondent.

In an action to foreclose a mortgage, the defendants Wang Real Property, LLC, Roug Kang Wang, and Stella Wang appeal from an order of the Supreme Court, Queens County (Timothy J. Dufficy, J.), entered May 18, 2016. The order granted the motion of nonparty 41st Road Properties, LLC, to substitute it as the plaintiff and to amend the caption accordingly, and denied those defendants' cross motion for leave to renew their prior cross motion for summary judgment dismissing the complaint insofar as asserted against them, which had been denied in orders of the same court entered May 11, 2015, and September 29, 2015, and to vacate the order entered September 29, 2015, which, inter alia, granted the plaintiff's motion, inter alia, for summary judgment on the complaint insofar as asserted against them and for an order of reference.

## DECISION & ORDER

Motion by nonparty 41st Road Properties, LLC, to dismiss the appeal from the order entered May 18, 2016, on the ground that the right of direct appeal therefrom terminated upon entry of a judgment in this action. By decision and order on motion of this Court dated June 15, 2017, the motion was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and no papers having been filed in opposition or in relation thereto, and upon the argument of the appeal, it is

ORDERED that the motion to dismiss the appeal from the order entered May 18, 2016, is granted; and it is further,

ORDERED that the appeal from the order entered May 18, 2016, is dismissed, with costs.

The appeal from the order entered May 18, 2016, should be dismissed because the right of direct appeal therefrom terminated with the entry of an order and judgment of foreclosure and sale in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the order and [\*2] judgment of foreclosure and sale (*41st Road Props., LLC v Wang Real Prop., LLC*, \_\_\_\_\_ AD3d \_\_\_\_\_ [Appellate Division Docket No. 2016-09989; decided herewith]; *see* CPLR 5501[a][1]; *Matter of Aho*, 39 NY2d at 248).

BALKIN, J.P., LEVENTHAL, HINDS-RADIX and CHRISTOPHER, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court

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