

<b>Hudson City Sav. Bank v DePasquale</b>
2014 NY Slip Op 00091
Decided on January 8, 2014
Appellate Division, Second Department
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Decided on January 8, 2014

**SUPREME COURT OF THE STATE OF NEW YORK**  
**APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT**  
REINALDO E. RIVERA, J.P.  
RUTH C. BALKIN  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

2012-07096  
(Index No. 4091/11)

**[\*1]Hudson City Savings Bank, etc., appellant,**

**v**

**Neil H. DePasquale, et al., respondents, et al., defendants.**

Cohn & Roth, Mineola, N.Y. (William Roth and Michael J. Sweeney of counsel), for appellant.  
Clair & Gjertsen, Scarsdale, N.Y. (Ira S. Clair of counsel), for respondents.

DECISION & ORDER

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered May 22, 2012, which denied its motion for summary judgment and granted the cross motion of the defendants Neil H. DePasquale and Deborah L. DePasquale, in effect, for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

Contrary to the plaintiff's contentions, it failed to tender sufficient evidence demonstrating the absence of material issues as to its strict compliance with RPAPL 1304 (*see Aurora Loan Servs., LLC v Weisblum*, 85 AD3d 95, 105-106). As the plaintiff concedes, its notice to the homeowners required by RPAPL 1304 contained a factual inaccuracy. The plaintiff's failure to make a prima facie showing of strict compliance with RPAPL 1304 requires denial of its motion for summary judgment, regardless of the sufficiency of the opposing papers (*see Aurora Loan Servs., LLC v Weisblum*, 85 AD3d at 106; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Based on the same evidence, the defendants Neil H. DePasquale and Deborah L. DePasquale on their cross motion, in effect, for summary judgment, established their prima facie entitlement to judgment as a matter of law dismissing the complaint insofar as asserted against them. In opposition, the plaintiff failed to raise a triable issue of fact.

Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment and granted the DePasquales' cross motion for summary judgment dismissing the complaint insofar as asserted against them.

The plaintiff's remaining contention need not be reached in light of our determination.

RIVERA, J.P., BALKIN, HALL and SGROI, JJ., concur. [\*2]

ENTER:

Aprilanne Agostino

Clerk of the Court

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