

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1119

CA 14-00636

PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND VALENTINO, JJ.

CATTARAUGUS COUNTY BANK, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

COREY W. BROWN AND GREEN GABLE VILLAGE, LIMITED,
DEFENDANTS-RESPONDENTS.

GOODELL & RANKIN, JAMESTOWN (KIMBERLY M. THRUN OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

R. MICHAEL GOLDMAN, JAMESTOWN, FOR DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Chautauqua County (Deborah A. Chimes, J.), entered July 22, 2013. The order denied plaintiff's motion for summary judgment in lieu of complaint.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the motion is granted.

Memorandum: Plaintiff appeals from an order that denied its motion for summary judgment in lieu of complaint pursuant to CPLR 3213. We reverse. Plaintiff met its initial burden by submitting the promissory note, the unconditional guarantee of defendant Green Gable Village, Limited, and evidence of defendant Corey W. Brown's default on the note (*see Counsel Fin. Servs., LLC v David McQuade Leibowitz, P.C.*, 67 AD3d 1483, 1484; *LaMar v Vasile* [appeal No. 4], 49 AD3d 1218, 1219), and defendants failed to raise a triable issue of fact. Defendants' conclusory, unsubstantiated and irrelevant allegations that the promissory note was to be paid in full by the purchaser of the real property securing the note are insufficient to defeat the motion (*see generally Quadrant Mgt. Inc. v Hecker*, 102 AD3d 410, 410-411).

Entered: November 14, 2014

Frances E. Cafarell
Clerk of the Court