

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

1106

CA 16-00552

PRESENT: WHALEN, P.J., CENTRA, LINDLEY, NEMOYER, AND TROUTMAN, JJ.

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M&T BANK, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

RONALD R. BENJAMIN, ALSO KNOWN AS RONALD  
BENJAMIN, ALSO KNOWN AS RONALD R. BENJAMIN, ESQ.,  
DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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LAW OFFICE OF RONALD R. BENJAMIN, BINGHAMTON (MARY JANE MURPHY OF  
COUNSEL), FOR DEFENDANT-APPELLANT.

GETMAN & BIRYLA, LLP, BUFFALO (JOSEPH S. MONTAGNOLA OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (John M. Curran, J.), entered December 28, 2015. The judgment awarded plaintiff money damages.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: In this action by plaintiff lender to collect debts from defendant borrower, defendant appeals from a statement for judgment entered in favor of plaintiff. Upon our review of the judgment, we conclude that Supreme Court properly granted plaintiff's motion for summary judgment on the complaint and dismissal of defendant's counterclaim, and denied defendant's cross motion for, inter alia, leave to amend his answer and disclosure. We note with respect to the cross motion that defendant failed to support the request for leave to amend the answer with a copy of the "proposed amended . . . pleading clearly showing the changes or additions to be made" (CPLR 3025 [b]; see *Barry v Niagara Frontier Tr. Sys.*, 38 AD2d 878, 878). We further note that, in opposition to the motion and in support of that part of the cross motion seeking disclosure, defendant did not demonstrate that "facts essential to justify opposition" existed but could not then be stated because they were within the exclusive knowledge and possession of plaintiff (CPLR 3212 [f]; see *HSBC Bank USA, N.A. v Prime, L.L.C.*, 125 AD3d 1307, 1308).

With respect to the merits of plaintiff's motion, we agree with the court that the Term Note did not evidence a "home loan" within the meaning of the statute inasmuch as the debt was not "incurred by the borrower primarily for personal, family, or household purposes" (RPAPL

1304 [5] [a] [ii]). In any event, as noted by the court, this is not an action for foreclosure of a mortgage. Thus, the transaction is not subject to the notice and the judicial conference requirements of RPAPL 1304 and CPLR 3408 (a). Finally, we conclude that plaintiff demonstrated its entitlement to judgment as a matter of law with regard to defendant's allegation that he was the victim of predatory and deceptive lending practices by plaintiff, and defendant failed to raise a triable issue of fact (see generally *Zuckerman v City of New York*, 49 NY2d 557, 562).

Entered: December 23, 2016

Frances E. Cafarell  
Clerk of the Court