

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

1311

CA 17-00085

PRESENT: CENTRA, J.P., PERADOTTO, CARNI, DEJOSEPH, AND WINSLOW, JJ.

KEYBANK NATIONAL ASSOCIATION,
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

PHILIP SIMAO, DEFENDANT-APPELLANT,
ET AL., DEFENDANTS.
(APPEAL NO. 1.)

MCMAHON, KUBLICK & SMITH, P.C., SYRACUSE (JAN S. KUBLICK OF COUNSEL),
FOR DEFENDANT-APPELLANT.

FEIN, SUCH & CRANE, LLP, ROCHESTER, D.J. & J.A. CIRANDO, ESQS.,
SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from a judgment of the Supreme Court, Jefferson County (James P. McClusky, J.), entered October 5, 2016 in a foreclosure action. The judgment, among other things, directed the sale of the mortgaged premises.

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

Memorandum: In appeal No. 2, Philip Simao (defendant) purports to appeal from a decision of Supreme Court granting plaintiff's motion for a judgment of foreclosure and sale. Inasmuch as no appeal lies from a decision, that appeal is dismissed (see CPLR 5512 [a]; *Montanaro v Weichert*, 145 AD3d 1563, 1563 [4th Dept 2016]). In appeal No. 1, defendant appeals from the resulting judgment of foreclosure and sale. Defendant's sole contention on appeal is that the court should have denied plaintiff's motion because the referee appointed to ascertain and compute the amount due to plaintiff did not conduct a fact-finding hearing or provide notice of such a hearing to defendant. That contention, however, is improperly raised for the first time on appeal (see *Biro v Keen*, 153 AD3d 1571, 1572 [4th Dept 2017]; *Ciesinski v Town of Aurora*, 202 AD2d 984, 985 [4th Dept 1994]).

Entered: November 17, 2017

Mark W. Bennett
Clerk of the Court