

142 A.D.3d 867, 38 N.Y.S.3d 26, 2016 N.Y. Slip Op.
06153

****1** Aristalia Benitez, Plaintiff,

v

United Homes of New York, LLC, et al.,
Defendants. U.S. Bank, National Association,
Third-Party Plaintiff-Respondent, v ANM
Funding, LLC, et al., Third-Party Defendants, and
Lowenthal & Kofman et al., Third-Party
Defendants-Appellants.

Supreme Court, Appellate Division, First
Department, New York
1706, 309302/08, 83847/09
September 27, 2016

CITE TITLE AS: Benitez v United Homes of N.Y.,
LLC

HEADNOTE

Attorney and Client
Malpractice

Closing of Residential Real Estate Mortgage
Loan—Departure from Standard of Care

Furman Kornfeld & Brennan LLP, New York (A.
Michael Furman and Brandon H. Weinstein of counsel),
for appellants.

Moranu Karamouzis LLP, Rockville Centre (Siobhan E.
Moran and Andrew P. Karamouzis of counsel), for
respondent.

Order, Supreme Court, Bronx County (Howard H.
Sherman, J.), entered on or about April 17, 2015, which,
to the extent appealed from as limited by the briefs,
granted defendant/third-party plaintiff U.S. Bank,
National Association's (the bank) motion for partial
summary judgment on the issue of liability on its legal

malpractice claim against third-party defendants
Lowenthal & Kofman and Jerald Weinberger (together
the law firm), and denied the law firm's motion for
summary judgment dismissing that claim, unanimously
affirmed, without costs.

The bank made a prima facie showing that the law firm
departed from the standard of care in connection with the
closing of a residential real estate mortgage loan to
plaintiff by, among other things, failing to advise that the
subject property lacked a certificate of occupancy, failing
to advise of the risk of funding the loan under these
circumstances, and failing to confirm that plaintiff
contributed 3% of her own funds toward closing, a
condition of the loan (*see generally AmBase Corp. v
Davis Polk & Wardwell*, 8 NY3d 428, 434 [2007]). The
motion court properly considered the affidavit of the
bank's legal expert concerning the duty of care an
attorney owes to a mortgage-lender client (*see Suppiah v
Kalish*, 76 AD3d 829, 832 [1st Dept 2010], *appeal
withdrawn* 16 NY3d 796 [2011]; *Merlin Biomed Asset
Mgt., LLC v Wolf Block Schorr & Solis-Cohen LLP*, 23
AD3d 243 [1st Dept 2005]). The bank's closer, who was
responsible for ensuring that the closing documents were
in order, clearly had "knowledge of the facts" and
therefore was qualified to submit an affidavit in support
of the bank's summary judgment motion (CPLR 3212
[b]). The closer's lack of knowledge concerning the
underwriting process is irrelevant to the legal malpractice
claim.

In opposition, the law firm, which did not rebut the
expert's opinion with an expert opinion of its own, failed
to raise a triable issue of fact (*see Cosmetics Plus Group,
Ltd. v Traub*, 105 AD3d 134, 141 [1st Dept 2013], *lv
denied* 22 NY3d 855 [2013]).

We have considered the law firm's remaining arguments
and ***868** find them unavailing. Concur—Andrias, J.P.,
Richter, Gische and Kahn, JJ. [**Prior Case History: 2015
NY Slip Op 30794(U).**]

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