

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D29118
C/prt

_____AD3d_____

Submitted - November 4, 2010

MARK C. DILLON, J.P.
FRED T. SANTUCCI
THOMAS A. DICKERSON
CHERYL E. CHAMBERS, JJ.

2009-07700

DECISION & ORDER

Countrywide Home Loans Servicing, LP, etc.,
respondent, v Linda Albert, appellant, et al.,
defendants.

(Index No. 3029/07)

Linda Albert, Mahopac, N.Y., appellant pro se.

Steven J. Baum, P.C., Buffalo, N.Y. (Timothy P. Seibold of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Linda Albert appeals from so much of an order of the Supreme Court, Putnam County (O'Rourke, J.), dated July 1, 2009, as denied her motion, in effect, for leave to renew and reargue that branch of her motion which was to vacate a judgment of foreclosure and sale dated October 10, 2008.

ORDERED that the appeal from so much of the order as denied that branch of the defendant Linda Albert's motion which was, in effect, for leave to reargue is dismissed, as no appeal lies from the denial of a motion for leave to reargue; and it is further,

ORDERED that the order is affirmed insofar as reviewed; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

"A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination, and shall contain reasonable justification for the failure to present such facts on the prior motion" (*Marrero v Crystal Nails*, _____AD3d_____, 2010 NY Slip Op 07517 [2d Dept 2010]; see CPLR 2221[e]; *Williams v Nassau County Med. Ctr.*, 37 AD3d 594, 594). Here, that branch of the defendant Linda Albert's motion which was, in effect, for leave to renew was properly denied, as the allegedly "new facts" offered would not have changed the prior determination (see CPLR 2221[e][2]).

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The parties' remaining contentions are not properly before this Court.

DILLON, J.P., SANTUCCI, DICKERSON and CHAMBERS, JJ., concur.

2009-07700

DECISION & ORDER ON MOTION

Countrywide Home Loans Servicing, LLP, etc.,
respondent, v Linda Albert, appellant, et al.,
defendants.

(Index No. 3029/07)

Motion by the respondent to dismiss an appeal from an order of the Supreme Court, Putnam County, dated July 1, 2009, on the ground that no appeal lies from an order denying reargument. By decision and order on motion of this Court dated June 15, 2010, the motion was referred to the Justices hearing the appeal for determination upon the argument or submission of the appeal.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the submission of the appeal, it is,

ORDERED that the branch of the motion which is to dismiss the appeal from so much of the order as denied that branch of the appellant's motion which was, in effect, for leave to reargue is denied as academic in light of our determination of the appeal; and it is further,

ORDERED that the motion is otherwise denied.

DILLON, J.P., SANTUCCI, DICKERSON and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court