

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

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_____AD3d_____

Argued - June 21, 2012

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2011-08076

DECISION & ORDER

U.S. Bank National Association, etc., respondent, v
Marta Bisono, et al., defendants; Melina Fernandez,
et al., proposed intervenors-appellants.

(Index No. 16717/07)

Dorf & Nelson, LLP, Rye, N.Y. (Jonathan B. Nelson and Rod Biermann of counsel),
for proposed intervenors-appellants.

Hogan Lovells US, LLP, New York, N.Y. (David Dunn, Renee Garcia, and Jessica
L. Ellsworth of counsel), for respondent.

In an action to foreclose a mortgage, the proposed intervenors, Melina Fernandez and U.S. Bank, also known as U.S. Bank Home Mortgage, appeal from an order of the Supreme Court, Nassau County (Adams, J.), dated May 6, 2011, which denied their motion pursuant to CPLR 1012 for leave to intervene in the action, and thereafter, inter alia, to vacate a judgment of foreclosure of the same court entered July 14, 2008.

ORDERED that the order is affirmed, with costs.

Intervention pursuant to either CPLR 1012 or 1013 requires a timely motion (*see* CPLR 1012, 1013; *JP Morgan Chase Bank, N.A. v Edelson*, 90 AD3d 996, 996-997; *see also* Siegel, NY Prac § 183, at 312 [4th ed]). Here, the proposed intervenors moved pursuant to CPLR 1012 for leave to intervene in this action to foreclose a mortgage. The proposed intervenors' motion was made more than three and one-half years after the action was commenced and the notice of pendency was filed, more than two and one-half years after the judgment of foreclosure was entered, and at least one year after the proposed intervenor Melina Fernandez concededly had actual notice of the

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foreclosure action. In view of the proposed intervenors' undue delay in seeking leave to intervene, the Supreme Court properly denied their motion for that relief (see *JP Morgan Chase Bank, N.A. v Edelson*, 90 AD3d at 996-997; *T & V Constr. Corp. v Pratti*, 72 AD3d 1065, 1066; *Vacco v Herrera*, 247 AD2d 608, 608-609; *Rectory Realty Assoc. v Town of Southampton*, 151 AD2d 737, 737-738).

RIVERA, J.P., ENG, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court