

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

995

CA 13-02254

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND VALENTINO, JJ.

MIDFIRST BANK, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

GABRIEL B. STORTO, DEFENDANT-RESPONDENT,
ET AL., DEFENDANTS.

FRENKEL LAMBERT WEISS WEISMAN & GORDON, LLP, BAY SHORE (MICHELLE
MACCAGNANO OF COUNSEL), FOR PLAINTIFF-APPELLANT.

Appeal from an order and judgment (one paper) of the Supreme Court, Onondaga County (James P. Murphy, J.), entered May 30, 2013. The order and judgment denied the motion of plaintiff for leave to reargue a prior motion to vacate an order and judgment of dismissal.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: Although plaintiff has denominated the motion giving rise to the order and judgment on appeal as a motion to vacate the order and judgment of dismissal previously issued by Supreme Court, we conclude from the papers submitted in support of the motion that it was actually a motion for leave to reargue a prior motion to vacate the order and judgment of dismissal (see *Britt v Buffalo Mun. Hous. Auth.*, 115 AD3d 1252, 1252; *Cronin v Hudson Chelsea Assoc., LLC*, 68 AD3d 913, 913-914). "Although this second motion allegedly presented new legal arguments, no excuse was offered as to why these additional arguments could not have been presented in connection with [plaintiff's] earlier motion to vacate," the motion was in effect a motion for leave to reargue, and no appeal lies from an order denying such a motion (*Glowacki v Szatkowski*, 198 AD2d 264, 264-265). We therefore conclude that plaintiff's appeal must be dismissed (see CPLR 5701 [a] [2] [viii]; *Hilliard v Highland Hosp.*, 88 AD3d 1291, 1292-1293; *Cronin*, 68 AD3d at 914).

Entered: October 3, 2014

Frances E. Cafarell
Clerk of the Court