

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

1318

CA 12-01228

PRESENT: SMITH, J.P., PERADOTTO, CARNI, SCONIERS, AND WHALEN, JJ.

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BANK OF NEW YORK MELLON, FORMERLY KNOWN AS  
BANK OF NEW YORK, AS TRUSTEE FOR THE  
CERTIFICATE HOLDERS CWALT, INC., ALTERNATIVE  
LOAN TRUST 2006-16 CB MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-16 CB,  
PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

JEAN WHITTY, ALSO KNOWN AS JEAN C. WHITTY,  
DEFENDANT-APPELLANT,  
ET AL., DEFENDANTS.

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RICHARD E. CLARK, PLLC, LIVERPOOL (RICHARD E. CLARK OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

BLANK ROME LLP, NEW YORK CITY (ADAM M. SWANSON OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County (John C. Cherundolo, A.J.), entered May 10, 2012. The order, among other things, granted the motion of defendant Jean Whitty, also known as Jean C. Whitty, to dismiss the complaint and dismissed the complaint without prejudice.

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

Memorandum: In this mortgage foreclosure action, Jean Whitty, also known as Jean C. Whitty (defendant), moved to dismiss the complaint with prejudice. Supreme Court granted that part of the motion to dismiss the complaint, but ordered that it be dismissed without prejudice. We affirm. Contrary to defendant's contention, we conclude under the circumstances presented here that the court did not abuse its discretion in dismissing the complaint without prejudice (*see generally Castillo v County of Suffolk*, 307 AD2d 305, 305). We have reviewed defendant's remaining contentions and conclude that they are either without merit or not preserved for our review.

Entered: December 28, 2012

Frances E. Cafarell  
Clerk of the Court