

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

D55066  
C/tr

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - December 8, 2017

WILLIAM F. MASTRO, J.P.  
SHERI S. ROMAN  
SANDRA L. SGROI  
JEFFREY A. COHEN, JJ.

---

2015-07909

DECISION & ORDER

US Bank National Association, etc., respondent,  
v Ada Conroy, etc., et al., appellants, et al.,  
defendants.

(Index No. 1882/12)

---

Charles Fine, Farmingdale, NY (Kerry Lynch of counsel), for appellants.

Hogan Lovells US LLP, New York, NY (David Dunn, Chava Brandriss, Suzanne Novak, and Ryan Sirianni of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Ada Conroy, Michael T. Conroy, and John P. Conroy appeal from an order and judgment (one paper) of foreclosure and sale of the Supreme Court, Nassau County (Thomas A. Adams, J.), entered April 1, 2015, which, upon, in effect, the default of those defendants in answering the complaint and upon an order of reference of the same court entered April 10, 2014, inter alia, granted the plaintiff's motion for a judgment of foreclosure and sale and is in favor of the plaintiff and against them directing the sale of the subject property.

Motion by the plaintiff, inter alia, to dismiss the appeal on the ground that dismissal of a prior appeal for failure to perfect precludes consideration of the issues raised on this appeal pursuant to *Bray v Cox* (38 NY2d 350). By decision and order on motion of this Court dated March 8, 2016, that branch of the motion which is to dismiss the appeal was held in abeyance and referred to the panel of Justices hearing the appeal for determination upon the argument or submission thereof.

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

April 11, 2018

US BANK NATIONAL ASSOCIATION v CONROY

Page 1.

ORDERED that the branch of the motion which is to dismiss the appeal is granted; and it is further,

ORDERED that the appeal is dismissed, with costs.

In this action to foreclose a mortgage, the defendants Ada Conroy, Michael T. Conroy, and John P. Conroy (hereinafter collectively the defendants) previously appealed from an order entered April 11, 2014, which denied their cross motion, inter alia, to dismiss the complaint on the ground of lack of standing and to vacate their default in answering the complaint. That appeal was dismissed by decision and order on motion of this Court dated June 10, 2015, for failure to perfect (*see* NYCRR 670.8[e]). The defendants seek to raise the issues decided in the April 11, 2014, order on the present appeal. As a general rule, this Court does not consider an issue on a subsequent appeal which was raised or could have been raised in an earlier appeal which was dismissed for failure to perfect, although this Court has the inherent jurisdiction to do so (*see Rubeo v National Grange Mut. Ins. Co.*, 93 NY2d 750; *Bray v Cox*, 38 NY2d 350). We decline to exercise our discretion in this case.

MASTRO, J.P., ROMAN, SGROI and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court