

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

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Submitted - February 26, 2018

ALAN D. SCHEINKMAN, P.J.
JEFFREY A. COHEN
COLLEEN D. DUFFY
ANGELA G. IANNACCI, JJ.

2016-02768

DECISION & ORDER

U.S. Bank, N.A., etc., plaintiff, v Sharin A. Hossain,
et al., respondents, et al., defendants; Wilmington
Trust, National Association, not in its individual
capacity but as Trustee for ARLP Securitization
Trust Series 2015, nonparty-appellant.

(Index No. 19750/10)

Jeffrey A. Kosterich, LLC, Tuckahoe, NY, for nonparty-appellant.

In an action to foreclose a mortgage, nonparty Wilmington Trust, National Association, not in its individual capacity but as Trustee for ARLP Securitization Trust Series 2015 appeals from an order of the Supreme Court, Queens County (Diccia T. Pineda-Kirwan, J.), entered October 9, 2012. The order, insofar as appealed from, denied those branches of the plaintiff's motion which were for summary judgment on the complaint insofar as asserted against the defendants Sharin A. Hossain and Mohammed Z. Hossain, to strike the affirmative defenses raised in their verified answer, and for an order of reference.

ORDERED that the appeal is dismissed, without costs or disbursements.

This action to foreclose a mortgage on residential real property was commenced by U.S. Bank, N.A., Trustee for Servertis Fund I Trust 2009-2 Certificates, Series 2009-2 (hereinafter the plaintiff). The plaintiff moved, inter alia, for summary judgment on the complaint insofar as asserted against the defendant mortgagors, to strike the affirmative defenses raised in their verified answer, and for an order of reference. Although the parties participated in settlement conferences mandated by CPLR 3408, the Supreme Court denied the motion based on, among other things, the

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plaintiff's failure to establish its compliance with that statute.

This appeal was taken by notice of appeal dated February 18, 2016, and served on February 19, 2016. The notice of appeal was signed by an attorney from a law firm which identified itself as the attorneys for "Plaintiff's assignee," the assignee being identified as Wilmington Trust, National Association, not in its individual capacity but as Trustee for ARLP Securitization Trust Series 2015 (hereinafter Wilmington Trust). The brief filed in support of the appeal by Wilmington Trust characterizes Wilmington Trust as "Nonparty-Appellant." According to the brief, the subject mortgage was assigned by the plaintiff to Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 2 (hereinafter Christiana Trust), by assignment dated April 19, 2016, and recorded on July 18, 2016. Further, the brief asserts that the mortgage was assigned by Christiana Trust to Wilmington Trust by assignment dated May 18, 2016, and recorded on June 23, 2016.

The appeal must be dismissed as, according to the information provided by the appellant, it was neither a party to the action nor an assignee of a party at the time the appeal was taken (*see* CPLR 5511).

SCHEINKMAN, P.J., COHEN, DUFFY and IANNACCI, JJ., concur.

ENTER:

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

Aprilanne Agostino
Clerk of the Court