

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

D56070
G/htr

_____AD3d_____

Argued - March 20, 2018

MARK C. DILLON, J.P.
CHERYL E. CHAMBERS
JOSEPH J. MALTESE
BETSY BARROS, JJ.

2016-07932

DECISION & ORDER

Citigroup Global Markets Realty Corp., appellant,
v Charles F. LaGreca, et al., defendants, Claudette
LaGreca, etc., respondent.

(Index No. 131663/10)

Peter T. Roach & Associates, P.C., Syosset, NY (Michael C. Manniello of counsel),
for appellant.

Staten Island Legal Services, Staten Island, NY (Jennifer Lerman of counsel), for
respondent.

In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Richmond County (Judith N. McMahan, J.), dated May 2, 2016. The order denied the plaintiff's motion for an order of reference and to amend the caption, and granted that branch of the cross motion of the defendant Claudette LaGreca, sued herein as John Doe #1, which was to dismiss the complaint on the ground that the action was a legal nullity due to the death of the defendant Charles F. LaGreca.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to foreclose a mortgage against, among others, Charles F. LaGreca, the sole borrower, seeking a judicial sale of the property and a deficiency judgment against him. Since it is undisputed that Charles F. LaGreca died prior to commencement of the action, under the circumstances, the Supreme Court properly directed dismissal of the complaint on the ground that the action was a legal nullity (*compare Wendover Fin. Servs. v Ridgeway*, 93 AD3d 1156 and *Dime Sav. Bank of N.Y. v Luna*, 302 AD2d 558, with *HSBC Bank USA v Ungar Family Realty Corp.*, 111 AD3d 673; *see also US Bank N.A. v Cadeumag*, 147 AD3d

December 19, 2018

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881; *JPMorgan Chase Bank, N.A. v Rosemberg*, 90 AD3d 713, 714).

DILLON, J.P., CHAMBERS, MALTESE and BARROS, 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