

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

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CA 14-01845

PRESENT: CARNI, J.P., LINDLEY, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

CITIMORTGAGE, INC., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JESSICA L. PETRAGNANI, DEFENDANT-RESPONDENT,
ET AL., DEFENDANTS.

DAVIDSON FINK LLP, ROCHESTER (WILLIAM A. SANTMYER OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

Appeal from an order and judgment (one paper) of the Supreme Court, Onondaga County (James P. Murphy, J.), entered June 26, 2014. The order and judgment denied the motion of plaintiff to vacate an order and judgment of dismissal.

It is hereby ORDERED that the order and judgment so appealed from is unanimously reversed on the law without costs, the motion is granted, the order and judgment entered February 25, 2014 is vacated, and the complaint is reinstated.

Memorandum: In this mortgage foreclosure action, plaintiff appeals from an order and judgment that denied its motion seeking to vacate an order and judgment entered February 25, 2014, in which Supreme Court sua sponte dismissed the complaint after plaintiff missed by one week a deadline set forth in a scheduling order to file an application for an order of reference. We agree with plaintiff that the court erred in denying the motion. "The court erred in dismissing the complaint sua sponte inasmuch as '[u]se of the [sua sponte] power of dismissal must be restricted to the most extraordinary circumstances, and no such extraordinary circumstances are present in this case' " (*BAC Home Loans Servicing, LP v Maestri*, 134 AD3d 1593, ___). Although "a litigant cannot ignore court orders with impunity" (*Kihl v Pfeffer*, 94 NY2d 118, 123), we conclude that missing a single deadline by one week does not "warrant the court's exercise of its power to dismiss a complaint sua sponte" (*MidFirst Bank v Eddy*, 125 AD3d 1458, 1459; cf. *Andrea v Arnone, Hedin, Casker, Kennedy & Drake Architects & Landscape Architects, P.C. [Habiterra Assoc.]*, 5 NY3d 514, 521).

Entered: March 25, 2016

Frances E. Cafarell
Clerk of the Court