

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

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CA 16-00406

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

US BANK NATIONAL ASSOCIATION,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

PAUL SINAY, LINDA D. SINAY, LARRY GERAW AND
SHIRLEY L. MONTANA, DEFENDANTS-RESPONDENTS.

WOODS OVIATT GILMAN LLP, ROCHESTER (MICHAEL JABLONSKI 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 24, 2015. The order and judgment, among other things, denied plaintiff's motion seeking to vacate an order and judgment entered on August 27, 2013.

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

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 on August 27, 2013, in which Supreme Court sua sponte dismissed the complaint after plaintiff missed a deadline set forth in a scheduling order to file an application for an order of reference. Contrary to plaintiff's contention, the court did not abuse its discretion in denying the motion inasmuch as plaintiff's motion to vacate was brought approximately 19 months after the August 27, 2013 dismissal order (see generally *Nash v Port Auth. of N.Y. & N.J.*, 22 NY3d 220, 225-226).

Entered: February 3, 2017

Frances E. Cafarell
Clerk of the Court