

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

1093

CA 14-00420

PRESENT: SMITH, J.P., PERADOTTO, CARNI, VALENTINO, AND WHALEN, JJ.

BAC HOME LOANS SERVICING LP, FORMERLY KNOWN AS
COUNTRYWIDE HOME LOANS SERVICING LP,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

JOHN FRANK AFFRONTI, DEFENDANT-RESPONDENT.

FRENKEL LAMBERT WEISS WEISMAN & GORDON, LLP, BAY SHORE (MICHELLE
MACCAGNANO OF COUNSEL), FOR PLAINTIFF-APPELLANT.

DONALD H. MICHALAK, FREDONIA, FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Supreme Court, Chautauqua County (Deborah A. Chimes, J.), entered May 22, 2013. The order, among other things, vacated a judgment of foreclosure and sale and dismissed the action.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: In October 2005, defendant borrowed money from plaintiff's predecessor in interest and secured the loan with a mortgage on residential property. In September 2009, plaintiff commenced this action seeking foreclosure on the property. By order granted in August 2010, Supreme Court appointed a referee and, in October 2010, the court granted a judgment of foreclosure and sale. In January 2013, plaintiff moved for ratification of the judgment of foreclosure and sale and of the order appointing a referee, and defendant opposed that motion. By order entered May 22, 2013 (May order), the court vacated the judgment of foreclosure and sale, as well as the order appointing the referee, and dismissed the action, and plaintiff now appeals from that order. By order entered June 27, 2013 (June order), the court—apparently sua sponte, inasmuch as there is no motion for renewal or reargument in the record—granted plaintiff's motion for ratification of the judgment of foreclosure and sale, as well as the order appointing the referee. We conclude that this appeal from the May order has been rendered moot by the court's issuance of the June order and therefore must be dismissed (see *Deering v State of New York*, 111 AD3d 1368, 1368; *Matter of Dye v Bernier*, 104 AD3d 1102, 1102). We also note that no aggrieved party appealed from the June order (see CPLR 5511; *Field v New York City Tr.*

Auth., 4 AD3d 389, 389).

Entered: January 2, 2015

Frances E. Cafarell
Clerk of the Court