

Bank of New York Mellon v Miller

2016 NY Slip Op 31144(U)

June 14, 2016

Supreme Court, New York County

Docket Number: 850163/2014

Judge: Kelly A. O'Neill Levy

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 19

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THE Bank OF NEW YORK MELLON F/K/A THE BANK OF
NEW YORK AS TRUSTEE FOR THE CERTIFICATE
HOLDERS CWALT, INC. ALTERNATIVE LOAN TRUST
2005-60T1 MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-60T1,

Plaintiff,

Index No. 850163/2014

-against-

R. TARA MILLER AS EXECUTOR OF THE ESTATE
OF DAVID MILLER, ADAM PLOTCH, LLC, BOARD
OF MANAGERS OF THE OCTAVIA CONDOMINIUM,
CRIMINAL COURT OF THE CITY OF NEW YORK,
NEW YORK CITY DEPARTMENT OF FINANCE,
NEW YORK CITY ENVIRONMENTAL CONTROL
BOARD, NEW YORK CITY PARKING VIOLATIONS
BUREAU, NEW YORK CITY TRANSIT ADJUDICATION
BUREAU, NEW YORK COUNTY CLERK, NEW YORK
PRESBYTERIAN HOSPITAL, PEOPLE OF THE STATE
OF NEW YORK, UNITED STATES OF AMERICA ACTING
THROUGH THE IRS, WELLS FARGO BANK, N.A.
SUCCESSOR BY MERGER TO WACHOVIA BANK,
NATIONAL ASSOCIATION, WORKERS
COMPENSATION BOARD OF NEW YORK STATE,

JOHN DOE (being fictitious, the names
unknown to Plaintiff intended to be
tenants, occupants, persons or
corporations having or claiming an
interest in or lien upon the property
described in the complaint or their
heirs at law, distributees, executors
administrators, trustees, guardians,
assignees, creditors or successors),

Defendants.

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Kelly O'Neill Levy, J.:

Defendant Adam Plotch LLC moves for leave to reargue or
renew the order of this court, dated October 16, 2015, in which

plaintiff The Bank of New York Mellon f/k/a The Bank of New York as trustee for the Certificate holders CWALT, Inc., Alternative Loan Trust 2005-60T1's motion for summary judgment in this action for foreclosure was granted, and defendant's cross motion for partial summary judgment dismissing the action, or for leave to amend its answer, was denied.

A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include matters of fact not offered on the prior motion" CPLR 2221 (d) (2); *Ahmed v Pannone*, 116 AD3d 802, 805 (2d Dept 2014). It is "not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided" *McGill v Goldman*, 261 AD2d 593, 594 (2d Dept 1999). "Nor does reargument serve to provide a party an opportunity to advance arguments different from those tendered on the original application." *Foley v Roche*, 68 AD2d 558, 567-568 (1st Dept 1979).

Both at oral argument and in its brief, defendant goes deeper into arguments it previously offered with new cases and emphasizing points it did not address as fully as it might have done on the prior motions. Defendant had the opportunity to raise these cases and arguments previously, and cannot do so now. Further, the defendant has not convinced this court, even with

the new cases and explanations it provides in support of the motion, that it overlooked or misapprehended any matters of fact or law in the previous decision. Therefore, the motion as one to reargue is denied.

Plaintiff has not made out a case for renewal. A motion to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" CPLR 2221 (e) (2); see *Gonzalez v County of Westchester*, 55 AD3d 873, 873 (2d Dept 2008). A motion to renew "is intended to direct the court's attention to new or additional facts which, although in existence at the time the original motion was made, were unknown to the movant and were, therefore, not brought to the court's attention." *Rancho Santa Fe Assn. v Dolan-King*, 36 AD3d 460, 461 (1st Dept 2007).

The fact that plaintiff has not appealed the order of Justice Kenney is not a new fact, and is, in any event, irrelevant. That court's order was the applicable law at the time the prior motions were made, whether or not it was being appealed.

The fact that BOM is holding the proceeds of the first foreclosure sale is also not a new fact sufficient to support a motion to renew. The amount due on the mortgage will be assessed at the proper time as part of the foreclosure process.

Accordingly, it is

ORDERED that the motion for leave to renew and reargue the decision of October 16, 2015 is denied.

Date: June 14, 2016

ENTER:

Kelly O'Neill Levy

Kelly O'Neill Levy, A.J.S.C.

HON. KELLY O'NEILL LEVY
J.S.C.