

**US Bank v Karnaby**

2018 NY Slip Op 34577(U)

January 25, 2018

Supreme Court, Kings County

Docket Number: Index No. 513122/15

Judge: Noach Dear

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

*for* KINGS COUNTY CLERK  
FILED  
2018 JAN 31 AM 7:48

At an IAS Term, Part FRP-1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 25<sup>th</sup> day of January 2018.

P R E S E N T:

HON. NOACH DEAR,

J.S.C.

Index No.: 513122/15

\_\_\_\_\_ x

US BANK ,

Plaintiff,

**DECISION AND ORDER**

*-against-*

EDWARD A KARNABY et al,

Defendant,

\_\_\_\_\_ x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this

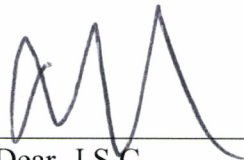
Motion:

<b>Papers</b>	<b>Numbered</b>
Motion	<u>1</u>
Opp	<u>2</u>
Reply	<u>3</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Defendants' motion to reargue is denied. As previously noted, "[w]here there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same, a court has broad discretion in determining whether an action should be dismissed pursuant to CPLR 3211(a)(4) on the ground that there is another action pending" (*Scottsdale Ins. Co. v. Indemnity Ins. Corp. RRG*, 110 A.D.3d 783, 784 [2d Dept 2013]). Where, as here, only the latter action was being prosecuted, the former was subsequently discontinued, and no prejudice has been asserted, this Court is disinclined to dismiss the pending action. Further, though RPAPL 1301(3) requires Plaintiff to seek leave of the Court prior to filing the instant action, such permission can seemingly be given retroactively, nunc pro tunc and this Court (to the extent that its previous opinion does not explicitly address the issue) elects to do so.

ENTER:

  
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Hon. Noach Dear, J.S.C.