

Nationstar Mtge. LLC v Harriot

2025 NY Slip Op 32963(U)

July 21, 2025

Supreme Court, Kings County

Docket Number: Index No. 508172/13

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP1, 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 8th day of July, 2025.

P R E S E N T:

HON. CENCERIA P EDWARDS,
Justice.

-----X

NATIONSTAR MORTGAGE LLC,

Plaintiff,

-against-

Index No.: 508172/13
MS 13

CALVIN HARRIOT et al,

Defendant,

-----X

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and Affidavits (Affirmations)
Annexed _____

229-234

Opposing Affidavits (Affirmations) _____

237

Affidavits/ Affirmations in Reply _____

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 1001 East 85th Street in Brooklyn (Block 8037, Lot 36), Defendants Calvin Harriot and Rosamond Harriot move for reargument of motion sequences 10 and 11. Plaintiff opposes the requested relief.

Background Facts and Procedural History

Plaintiff Nationstar commenced the instant foreclosure action on December 20, 2013. Defendants timely answered through counsel, also filing an amended answer including additional affirmative defenses shortly thereafter. The matter was referred to the Foreclosure Settlement Conference Part but, when the parties could not reach an amicable resolution, the case was released on January 6, 2015.

On July 1, 2015, Plaintiff filed a motion for summary judgment. Defendants opposed and Plaintiff replied. By decision and order dated March 23, 2016¹, Plaintiff's motion was granted. The Court rejected Defendants arguments including their contention that Plaintiff lacked standing.

Plaintiff then sought judgment of foreclosure and sale. Defendants, now with new counsel, opposed and cross-moved for vacatur of the order of reference and dismissal of the action based upon an alleged lack of standing on the part of Plaintiff. Plaintiff opposed, arguing both law of the case and that it had demonstrated that it had standing to commence this action. Judgment of foreclosure and sale was granted and the cross-motion was denied by decision and order dated May 23, 2017, the Court noting that it had already ruled on the issue of standing in granting summary judgment.

Subsequent pro se motions to vacate by Defendants based largely upon allegations that Plaintiff lacked standing were denied (MS 4, 6, 7, 8)² and motions to extend time by Plaintiff were granted (MS 5, 9).

On February 28, 2020, Defendants' order to show cause (filed through their then-new counsel) [MS 10] seeking a preliminary injunction staying the (third scheduled) sale of the property and dismissal of the action based upon Plaintiff's alleged lack of standing was signed. Plaintiff opposed, noting that Defendants had already unsuccessfully challenged its standing seven times and law of the case and the finality of the judgment of foreclosure and sale barred

¹ The decision and order seemingly is only found in the County Clerk Minutes.

² In response to MS 8, Judge Dear noted that "[t]his Court has (repeatedly) found that Plaintiff has standing. The continued filing of motion [stet] asserting the contrary has not changed (and will not change) that."

revisiting the issue. Plaintiff also (again) asserted that it had demonstrated its standing. After Defendants replied, the courts were shut down due to the COVID pandemic.

Plaintiff subsequently filed another motion [MS 11] to extend time to conduct a foreclosure sale. Therein, counsel summarized the case history and noted that a CFPB hold and pandemic-related moratoria prevented it from auctioning the property during the period since the January 2020 order granting an extension of time to do so. Defendants, having again changed counsel, opposed noting that the motion lacked a word count certification and that Plaintiff failed to comply with RPAPL 1304 in light of the Second Departments decision in *Kessler*³. Defendants also alleged that Plaintiff misrepresented its mailing of the 90-day notices as it did not mention the vendor which appears to have been tasked to do so. Finally, Defendants argued that the affidavit relied upon for the grant of summary judgment would not be sufficient under recent precedents. In reply, Plaintiff provided the word count of the motion. It also reiterated that law of the case and finality of the judgment – it was long unappealable – prevented Defendant from raising defenses to the action. Finally, Plaintiff argued that there is no basis to vacate the judgment under CPLR 5015.

By decision and order dated August 16, 2022, this Court denied Defendants' motion and granted Plaintiff's finding, in relevant part that "the merits of the actions ... have already been thoroughly and finally litigated" and "as this case has been fully litigated and JFS has been issued, Defendants can no longer raise defenses (see, for example, *Long Island Sav. Bank, FSB v Mihalios*, 269 AD2d 502, 503 [2d Dept 2000])." The lack of a word count certification was deemed an insufficient basis to deny Plaintiff's motion, especially as the deficiency was remedied.

On November 25, 2022, Defendants filed the instant motion, seeking reargument of their motion to dismiss and Plaintiff's motion for an extension of time. This time, their papers focus solely on one of their RPAPL 1304 arguments – that the notices herein contain additional language in violation of *Kessler*. As such, they posit, the order of reference and judgment of foreclosure and sale must be vacated – whether upon reargument or renewal or in the interest of substantial justice pursuant to CPLR 5015 – and the action dismissed.

³ *Bank of America v Kessler*, 202 AD3d 10 [2d Dept 2021].

In opposition, Plaintiff argues that the Court misapprehended neither law nor fact in concluding that the judgment of foreclosure and sale could not and should not be disturbed. Plaintiff also notes that Defendants' underlying arguments are now moot as *Kessler* was reversed by the Court of Appeals.

Analysis

“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 any matters of fact not offered on the prior motion” (CPLR 2221[d][2]). “Motions for reargument are addressed to the sound discretion of the court that decided the original motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law” (*BNY Mellon v Mor*, 201 AD3d 691 [2d Dept 2022]). However, “[a] motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided or to present arguments different from those originally presented” (*Flanagan v Delaney*, 194 AD3d 694, 698 [2d Dept 2021]). Herein, Defendants merely reiterate the arguments made in their opposition to Plaintiff's motion to extend time. They do not address the basis for the denial of their prior motion. Indeed, the finality of the judgment prevented (and still prevents) them from raising arguments as to the merits of this action. Further, Plaintiff is correct that, as *Kessler* was reversed, Defendants' arguments thereunder are moot and meritless.

Conclusion

Accordingly, it is

ORDERED that Defendants' motion to reargue is denied in its entirety.

This constitutes the decision and order of the Court.

July 21, 2025

ENTER:



Hon. Cenceria P Edwards, J.S.C., CPA