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| U.S. Bank N.A. v Speller |
| 2025 NY Slip Op 35223(U) |
| May 1, 2025 |
| Supreme Court, Putnam County |
| Docket Number: Index No. 500088/2022 |
| Judge: Victor G. Grossman |
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SUPREME COURT – STATE OF NEW YORK
Present: HON. VICTOR G. GROSSMAN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

-----X
U.S. BANK NATIONAL ASSOCIATION, etc.,

Plaintiff,

-against-

MICHAEL M. SPELLER, ELLEN M. FITZSIMMONS,
et al.,

Defendants.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. 500088 / 2022
Mot. Seq. No. 11

-----X **DECISION AND ORDER**

The following papers numbered 1 to 5 were read on Defendants’ motion for renewal and reargument of this Court’s prior Decision and Order dated October 31, 2023, and for reargument of this Court’s prior Decision and Order dated April 2, 2025 denying Defendants’ first motion for renewal of the October 31, 2023 Decision and Order:

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| Notice of Motion – Affidavit / Exhibits -- Memorandum | 1-3 |
| Affirmation in Opposition | 4 |
| Reply Affirmation | 5 |

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

The factual background and procedural history of this action have been set forth at length in prior decisions of this Court and will not be restated here. Familiarity with those decision is here presumed. Defendants move for renewal and reargument of this Court’s prior Decision and Order dated October 31, 2023, and for reargument of this Court’s prior Decision and Order dated April 2, 2025 denying Defendants’ first motion for renewal of the October 31, 2023 Decision

and Order. Upon renewal and reargument, Defendants seek an order reinstating their statute of limitations defense and their RPAPL 1501(4) counterclaim to discharge the Mortgage and cancel the notice of pendency. Defendants' motion is wholly without merit.

Defendants argue that Plaintiff's invocation of CPLR §205(a) was invalid because it was not upon the February 7, 2020 dismissal of the prior foreclosure action or upon the commencement of the present action the owner or holder of the Note and Mortgage; hence the present action is barred by the statute of limitations; therefore Defendants possess a valid cause of action per RPAPL Article 15 to cancel and discharge the mortgage.

A motion for reargument "may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some reason mistakenly arrived at its earlier decision." *Coke-Holmes v. Holsey Holdings, LLC*, 189 AD3d 1162, 1164 (2d Dept. 2020). *See, LaSalle Bank N.A. v. Lawrence*, 186 AD3d 1507, 1508 (2d Dept. 2020); *Marini v. Lombardo*, 17 AD3d 545, 546 (2d Dept. 2005); CPLR §2221(d)(2). While the determination to grant leave to reargue lies within the sound discretion of the court, 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." *Jaspar Holdings, LLC v. Gotham Trading Partners #1, LLC*, 186 AD3d 582, 584 (2d Dept. 2020). *See also, Flanagan v. Delaney*, 194 AD3d 694, 698 (2d Dept. 2021). Defendants have not demonstrated that the Court overlooked or misapprehended the facts or law or that it mistakenly arrived at its prior decisions, and they are not entitled via reargument to reargue issues previously decided or to present new arguments different from those originally presented.

As for renewal, Defendants move pursuant to CPLR §2221(e)(2) based on a purported "clarification" of the law which does not exist. In any event, Defendants misconstrue the Court's

August 14, 2024 Decision and Order. The Court therein dismissed Plaintiff's foreclosure action for lack of standing based on evidence of the transfer of the Note to "RSVT-REMIC20201" on May 7, 2020, *after* the February 7, 2020 dismissal. Defendants have never shown, nor has this Court ever held, that Plaintiff was not the owner or holder of the Note and Mortgage as of the February 7, 2020 dismissal of the prior foreclosure action. As for Plaintiff's lack of standing to commence the present action, Defendants' claim in that regard was fully addressed in the Court's prior Decision and Order dated April 2, 2025 denying Defendants' first motion for renewal:

In *Davis v. Wilmington Savings Fund Society, FSB*, 219 AD3d 798 (2d Dept. 2023), the Second Department wrote:

Pursuant to RPAPL 1501(4), "[w]here the period allowed by the applicable statute of limitation for the commencement of an action to foreclose a mortgage...has expired, any person having an estate or interest in the real property subject to such encumbrance may maintain an action against any other person or persons...to secure the cancellation and discharge of record of such encumbrance." However, "[b]ecause the expiration of the statute of limitations is an essential element of an action pursuant to RPAPL 1501(4), the existence of a pending foreclosure action precludes a RPAPL 1501(a) action." (*4 Stella Mgt., LLC v. Citimortgage, Inc.*, 204 AD3d 868, 869 [2022]). Further, an action is not considered terminated until appeals as of right have been exhausted (*see Malay v. City of Syracuse*, 25 NY3d 323, 328 [2015]; *Lehman Bros. v. Hughes Hubbard & Reed*, 92 NY2d 1014, 1016-1017 [1998]; *Deutsche Bank Natl. Trust Co. v. Gouin*, 194 AD3d 479, 480 [2021]).

Davis v. Wilmington Savings Fund Society, FSB, supra, 219 AD3d at 799.

Here, Defendants cannot presently establish the expiration of the statute of limitations on foreclosure -- an essential element of their RPAPL Article 15 claim -- first, because this Court's holding that the January 2022 foreclosure action was timely commenced within the applicable statute of limitations remains the law of the case; and second, because the January 2022 action though dismissed for the Bank's lack of standing nevertheless remains "pending" and has not been "terminated", since the Bank timely filed a notice of appeal from the dismissal and its appeals as of right have not been exhausted.

(Decision and Order dated April 2, 2025)

It is therefore

ORDERED, that Defendants' motion is in all respects denied, and Plaintiff is awarded motion costs pursuant to CPLR §8202 in the amount of One Hundred Dollars.

The foregoing constitutes the decision and order of the Court.

Dated: May 1, 2025
Carmel, New York

ENTER


HON. VICTOR G. GROSSMAN, J.S.C.