

Emigrant Bank v Molinari
2026 NY Slip Op 30363(U)
January 13, 2026
Supreme Court, Kings County
Docket Number: Index No. 526966/2022
Judge: Menachem M. Mirocznik
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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 13th of January 2026

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

EMIGRANT BANK AS SUCCESSOR BY MERGER
TO EMIGRANT SAVINGS BANK -
BROOKLYN/QUEENS AS ASSIGNEE OF
EMIGRANT MORTGAGE COMPANY, INC.

Plaintiff,

-against-

PETER MOLINARI, AS HEIR AT LAW AND NEXT
OF KIN OF VINCENT MOLINARI, MICHAEL
MOLINARI, AS HEIR AT LAW AND NEXT OF KIN
OF VINCENT MOLINARI, GLORIA A. REMUSAT,
AS HEIR AT LAW AND NEXT OF KIN OF
VINCENT MOLINARI, MARIAN-LYN RIORDAN,
AS HEIR AT LAW AND NEXT OF KIN OF
VINCENT MOLINARI, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW
YORK STATE DEPARTMENT OF TAXATION AND
FINANCE, UNITED STATES OF AMERICA -
INTERNAL REVENUE SERVICE

Defendants.

Index No. 526966/2022

**Decision and Order
(Motion Seq. 5)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 96-98
Opposition Papers	NYSCEF Doc. 101
Reply Papers	NYSCEF Doc. 104-105

Upon the foregoing papers, the motion is determined in accordance with this Decision and Order as follows:

Procedural History

This action was commenced on September 15, 2022, seeking to foreclose a mortgage (the “mortgage”) executed by decedent Vincent Molinari (“decedent”) encumbering the property known as 1747 Stuart Street, Brooklyn, NY 11229 (the “property”). Decedent died on March 9, 2020 leaving four heirs, defendants Gloria A. Remusat (“Gloria”), Marian-Lyn Riordan (“Marian-Lyn”), Peter Molinari (“Peter”) and Michael Molinari (“Michael”).

On November 11, 2022, defendants Gloria and Marian-Lyn joined issue with the filing of

an answer that asserted various affirmative defenses.

On January 24, 2023, defendant Peter as an Administrator of the estate of decedent joined issue with the filing of an answer which asserted various affirmative defenses.

On April 2, 2024, plaintiff moved for summary judgment, to strike defendants Gloria, Marian-Lyn and Peter's answers, to appoint a referee to compute and to amend the caption.

Defendant Peter opposed the motion arguing that plaintiff failed to comply with RPAPL 1304, that summary judgment is premature prior to the completion of discovery and plaintiff's alleged failure to comply with defendant Peter's discovery demands.

Defendants Gloria and Marian-Lyn cross-moved for summary judgment dismissing the action due to plaintiff's alleged failure to demonstrate prima facie plaintiff has standing and default under the terms of the mortgage.

On June 17, 2025, the Court granted plaintiff's motion for summary judgment and denied defendants' cross-motion for summary judgment dismissing the action. The Court found that plaintiff established its standing, a default under the mortgage and that RPAPL 1304 was inapplicable given the decedent's death. On July 15, 2025, issued a long form order granting same and appointed a referee to compute.

Defendant Peter now moves for renewal and reargument contending the court overlooked or misapprehended that plaintiff did not have jurisdiction when they commenced the action due the alleged non-joinder of Caitlan Regan ("Regan") and Vincent Molinari ("Vincent") who may have had an interest in the property pursuant to a disputed will and that plaintiff allegedly breached an agreement for a short payoff. Defendant contends each are issues of fact precluding issuance of summary judgment. Defendant Peter also contends renewal is appropriate because a contract of sale was executed for the sale of the property and agreement was allegedly reached with plaintiff for a short payoff.

In opposition to the motion, plaintiff argues the motion is procedurally defective because defendant did not attach or reference the previous motion papers, that the court did not misapprehend the law or facts in reaching its determination, that Regan and Vincent are not necessary parties as they do not have an interest in the property and the issue is only raised for the first time on reargument, said information was previously available and is not new evidence. Plaintiff further argues that the alleged existence of a contract of sale is not a defense to summary judgment and that contrary to defendant's contentions there was no agreement for a short-payoff.

In reply, defendant Peter argues that he properly referenced the previous motion papers, that the mortgage was not in default because funds were allegedly held in escrow, there was a subsequent agreement that plaintiff breached and equitable principals bar plaintiff's recovery.

Discussion

"Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and 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" *Carrillo v PM Realty*

Group, 16 AD3d 611, 611 [2d Dept 2005]; See also *HSBC Bank USA, N.A. v Halls*, 98 AD3d 718 [2d Dept 2012]¹

“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” *Emigrant Bank v Kaufman*, 223 AD3d 650, 651-52 [2d Dept 2024][internal citations and quotation marks omitted]

A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination”. CPLR 2221[e][2]. “A clarification of the decisional law is a sufficient change in the law to support renewal”. *Dinallo v DAL Elec.*, 60 AD3d 620 [2d Dept 2009]; See also *U.S. Bank N.A. v Mongru*, 241 AD3d 970 [2d Dept 2025]

“A motion for leave to renew must be “based upon new facts which were not offered on the prior motion [or proceeding] that would change the prior determination,” and the party seeking renewal must provide a “reasonable justification for [his or her] failure to present such facts on the prior motion [or proceeding]” *Matter of Korman v Bellmore Pub. Schools*, 62 AD3d 882, 884 [2d Dept 2009]; *Barnett v Smith*, 64 AD3d 669, 670 [2d Dept 2009][“A motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination” (CPLR 2221[e] [2]) and “shall contain reasonable justification for the failure to present such facts on the prior motion”]; *Shapiro v State*, 259 AD2d 753, 753 [2d Dept 1999][“Leave to renew should be denied unless the moving party offers a reasonable excuse as to why the additional facts were not submitted on the original application.”]

“A motion for “renewal ‘is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation.” *O'Dell v Caswell*, 12 AD3d 492 [2d Dept 2004]; *Byun Sik Chu v Kerrigan*, 154 AD3d 731, 732 [2d Dept 2017][“a motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation.”]

Here, the Court did not overlook or misapprehend the facts or law in rendering its previous determination and the alleged new facts are insufficient to support renewal.

First, the arguments presented on the instant motion were not raised in connection with the previous motion and therefore may not be raised for the first time on reargument. Second, even had the arguments been raised the same would not have altered the outcome. Defendant has not established that Regan and Vincent are necessary parties, appears to concede that such contentions have been mooted and failed to substantiate the existence of the purported short payoff agreement or the alleged contract of sale. Lastly, the execution of a contract of sale is not a defense to summary judgment and the existence of the alleged facts purportedly supporting renewal were known to defendant at the time of the previous motion and therefore cannot support renewal.

¹The instant motion was referred to this Court after the Hon. Carolyn Mazzu Genovesi transferred to the Supreme Court Nassau County. For purposes of CPLR 2221[a] the underlying issue of forum shopping is thus not present herein.

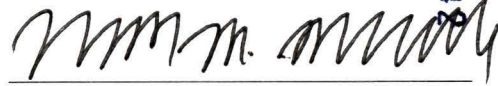
Therefore, defendant's motion is denied in its entirety.

Accordingly, it is hereby

ORDERED, that defendant's motion is DENIED in its entirety.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

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KINGS COUNTY CLERK
FILED