

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CHEREÉ A. BUGGS IA Part 30  
Justice

BANC OF AMERICA FUNDING CORPORATION  
MORTGAGE PASS-THROUGH CERTIFICATES,  
SERIES 2006-4, U.S. BANK NATIONAL  
ASSOCIATION, AS TRUSTEE BY [PNC BNAK,  
NATIONAL ASSOCIATION AS SERVICER  
WITH DELEGATED AUTHORITY UNDER  
THE TRANSACTION DOCUMENTS],

Plaintiff

Motion Date April 25, 2018

Motion Seq. No. 4

-against-

DOE #10", the last 10 names being fictitious and unknown to plaintiff, the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in the verified complaint,

Defendants.

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The following efile papers numbered 118-147,152-178 fully submitted and considered on this motion by plaintiff seeking an Order for summary judgment, to appoint a referee and for related relief, and the cross-motion of defendant: seeking an order granting summary judgment based upon plaintiff's lack of standing, its repeated failure to make out a prima facie case by failing to offer proof of compliance with RPAPL §1304 and based upon the prohibition against successive summary judgment motions.

Papers  
Numbered

Notice of Motion-Affidavits - Exhibits .....EF 118-147  
 Cross-Motion-Affidavits-Exhibits.....EF 152-176  
 Affirmation in Opposition-Affidavits-Exhibits.....EF 177  
 Reply Affirmation-Affidavits-Exhibits.....EF 178

Upon the foregoing papers it is ordered that the motion is determined as follows:

In this foreclosure action, plaintiff seeks an Order for summary judgment, to appoint a referee and for related relief, and defendants move, seeking an order granting summary judgment based upon plaintiff's lack of standing, its repeated failure to make out a prima facie case by failing to offer proof of compliance with RPAPL §1304 and based upon the prohibition against successive summary judgment motions.

Plaintiff has made a motion for the same relief in two prior motions. Its motion for summary judgment and related relief was denied in part against defendants by Honorable Valerie Brathwaite Nelson in her Order dated December 16, 2016. Thereafter, plaintiff moved to reargue the decision of Justice Brathwaite Nelson on May 11, 2017 which was denied by the undersigned on July 11, 2017.

Successive motions for summary judgment generally are not entertained absent a demonstration of newly discovered evidence or other sufficient cause (*Tingling v C.I.N.H.R., Inc.*, 120 AD3d 570 [2d Dept 2014]; *Vinar v Litman*, 110 AD3d 867 [2d Dept 2013]); *Coccia v Liotti*, 101 AD3d 664 [2d Dept 2012]). A motion for leave to reargue is addressed to the sound discretion of the Supreme Court (*NYCTL 1998-1 Trust v Rodriguez*, 154 AD3d 865 [2d Dept 2017]; *HSBC Bank USA, N.A. v Halls*, 98 AD3d 718 [2d Dept 2012]). The denial of a motion to reargue is not appealable (*see Cronin v Hudson Chelsea Assocs., LLC*, 68 AD3d 913 [2d Dept 2009]; *Cunningham v Diers*, 14 AD3d 528 [2d Dept 2005]; *Syed v Fedor*, 302 AD2d 451 [2d Dept 2003]). Thus, this Court finds that the instant motion is another motion to reargue, or a motion to reargue a motion to reargue, which is not appropriate and it is denied.

Addressing next the merits of moving defendants cross-motion seeking an order granting them summary judgment based upon plaintiff's lack of standing, its repeated failure to make out a prima facie case by failing to offer proof of compliance with RPAPL §1304 and based upon the prohibition against successive summary judgment motions, the motion is also denied. Issues related to plaintiff's standing and RPAPL §1304 were addressed by Justice Brathwaite Nelson in her decision and Order dated December 16, 2016, and plaintiff's successive motion to reargue has been denied.

Therefore, the plaintiff's motion is denied and the cross-motion of defendants  
is also denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: June 6, 2018

  
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HON. CHEREÉ A. BUGGS, J.S.C.

