State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 20, 2019 527551

GMAT LEGAL TITLE TRUST 2014-1, U.S. BANK, NATIONAL ASSOCIATION, as Trustee,
Appellant,
v MEMORANDUM AND ORDER

ERIN WOOD,
Respondent,
et al.,
Defendant.

Calendar Date: April 22, 2019

Before: Egan Jr., J.P., Mulvey, Devine, Aarons and Rumsey, JJ.

Jeffrey A. Kosterich LLP, Tuckahoe (Michael Li of counsel), for appellant.

Gregory Kottmeier, Delhi, for respondent.

Egan Jr., J.P.

Appeal from an order of the Supreme Court (Northrup Jr., J.), entered March 14, 2018 in Delaware County, which denied plaintiff's motion for, among other things, reconsideration.

In August 2007, defendant Erin Wood (hereinafter defendant) executed a promissory note to borrow $196,910 from Security American Mortgage Company, Inc. that was secured by a mortgage executed in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter MERS), as nominee for Security

American Mortgage Company, Inc., on certain real property located in the Town of Hamden, Delaware County. Defendant defaulted on the loan in March 2008. MERS subsequently assigned the mortgage to Countrywide Home Loans Servicing, L.P. and, in February 2009, Countrywide commenced a foreclosure action against defendant based upon the default. In December 2013, Countrywide's successor-by-merger, Bank of America, N.A., moved to, among other things, discontinue the 2009 action, which motion Supreme Court (Lambert, J.) granted. The mortgage was ultimately assigned to plaintiff and, in December 2014, plaintiff commenced this foreclosure action. Defendant failed to answer or otherwise appear, and, in August 2015, Supreme Court granted plaintiff's motion for a default judgment and order of reference. In June 2016, Supreme Court also granted plaintiff's motion for a judgment of foreclosure and sale. Supreme Court, however, subsequently discovered that defendant had submitted a cross motion seeking to vacate the previously entered default and for leave to file and serve a late answer. In turn, in July 2016, Supreme Court issued an amended decision and order vacating the June 2016 judgment of foreclosure sale and granting defendant's cross motion to vacate the previously entered default and file and serve a late answer with affirmative defenses. Defendant thereafter filed an answer, asserting, among other affirmative defenses, that plaintiff's foreclosure action was barred by the statute of limitations.

Plaintiff moved to reargue Supreme Court's July 2016 order, contending, among other things, that Supreme Court misinterpreted the law with respect to defendant's statute of limitations defense because there was no acceleration of the loan following defendant's 2008 default. Although Supreme Court's subsequent February 2017 order purported to deny plaintiff's motion to reargue, it addressed the merits of the motion, concluding that plaintiff's action was time-barred because the loan had been accelerated more than six years prior to plaintiff's commencement of the foreclosure action; thus, Supreme Court effectively granted the motion to reargue and adhered to its prior decision (see e.g. Rodriguez v Jacoby & Meyers, LLP, 126 AD3d 1183, 1184 [2015], lv denied 25 NY3d 912 [2015]). Plaintiff did not file a notice of appeal with respect

to either the July 2016 order vacating defendant's default or the February 2017 order on its reargument motion. Instead, plaintiff filed another motion denominated as a "notice of motion for summary/default judgment, renewal and reargument of prior decision, and confirmation of order of reference." Defendant opposed the motion and Supreme Court (Northrup Jr., J.) denied same, determining that plaintiff's motion was essentially repetitive of its prior motion to reargue and "perilously close to being frivolous," and denied the motion in its entirety. Plaintiff appeals.

We affirm. Initially, with regard to that part of plaintiff's motion seeking to reargue, we note that no appeal lies from the denial of a motion to reargue (see Bank of N.Y. Mellon Trust Co., N.A. v Balash, 156 AD3d 1203, 1204 [2017]; Wells Fargo, N.A. v Levin, 101 AD3d 1519, 1520 [2012], lv dismissed 21 NY3d 887 [2013]). With respect to plaintiff's motion to renew, we agree with Supreme Court that plaintiff failed to satisfy the standard for renewal by coming forward with new facts or a change in law that would change the prior determination (see CPLR 2221 [e] [2]; Matter of St. Lawrence County Support Collection Unit v Bowman, 152 AD3d 899, 900 [2017], appeal dismissed 30 NY3d 1032 [2017]; Wells Fargo, N.A. v Levin, 101 AD3d at 1520-1521; Gonzalez v L'Oreal USA, Inc., 92 AD3d 1158, 1160 [2012], lv dismissed 19 NY3d 874 [2012]). Finally, to the extent that Supreme Court's February 2017 order constituted a final determination on the merits of defendant's statute of limitations defense, plaintiff's remedy at that point was to pursue a direct appeal from that order, which was appealable as of right (see CPLR 5701 [a] [2] [vi]; Rodriguez v Jacoby & Meyers, LLP, 126 AD3d at 1184). Plaintiff cannot now seek "to avoid the dire consequence of its failure to appeal the earlier order" by simply denominating its motion as one for summary judgment and attempting to have us consider the merits underlying Supreme Court's prior February 2017 order from which it did not appeal (MLB Indus. v Freedman & Son, 102 AD2d 928, 928 [1984]; see Van Aken v Lancaster Dev., 129 AD2d 913, 914 [1987]).

Mulvey, Devine, Aarons and Rumsey, JJ., concur.

ORDERED that the order is affirmed, with costs.

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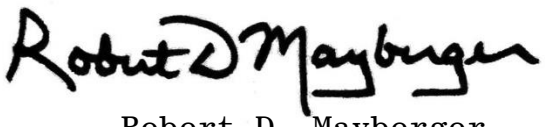

Robert D. Mayberger
Clerk of the Court