

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

Decided and Entered: March 2, 2017

522969

DONALD H. McCORMACK,
Appellant,

v

MEMORANDUM AND ORDER

KEVIN P. MALONEY,
Respondent.

Calendar Date: January 17, 2017

Before: Peters, P.J., McCarthy, Egan Jr., Rose and Mulvey, JJ.

Noreen E. McCarthy, Keene Valley, for appellant.

James Brooks, Lake Placid, for respondent.

Mulvey, J.

Appeals (1) from an order of the County Court of Essex County (Meyer, J.), entered August 18, 2015, which granted defendant's motion to strike plaintiff's demand for a jury trial, and (2) from an order of said court, entered August 25, 2015, which denied plaintiff's motion for summary judgment.

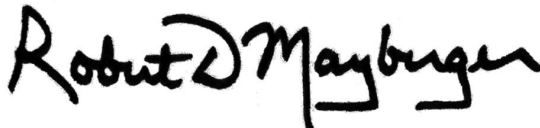
In 2010, plaintiff filed a summons and complaint seeking foreclosure of a mortgage given by defendant. A default judgment entered against defendant was later vacated and defendant was permitted to serve an answer with counterclaims. Both parties moved for summary judgment and County Court denied both motions, finding several issues of fact. Plaintiff filed a second motion for summary judgment, which was again denied. Plaintiff appeals from that order, as well as a prior order granting defendant's motion to strike plaintiff's demand for a jury trial.

While these appeals were pending, a nonjury trial was held resulting in a November 7, 2016 order in favor of plaintiff. "[T]he right to appeal from a nonfinal order terminates upon the entry of a final judgment" (State of New York v Joseph, 29 AD3d 1233, 1234 n [2006], lv denied 7 NY3d 711 [2006]; accord Matter of 1801 Sixth Ave., LLC v Empire Zone Designation Bd., 95 AD3d 1493, 1495 [2012], lv dismissed 20 NY3d 966 [2012]). "[A] 'final' order or judgment is one that disposes of all of the causes of action between the parties in the action or proceeding and leaves nothing for further judicial action apart from mere ministerial matters" (Burke v Crosson, 85 NY2d 10, 15 [1995]). The November 2016 order resolved all factual and legal issues between the parties and is the final order in this action (see id. at 15-16; Town of Coeymans v Malphrus, 252 AD2d 874, 875 [1998]). Further, because plaintiff prevailed at trial, he is no longer an aggrieved party (see CPLR 5511). Accordingly, the instant appeals must be dismissed (see e.g. Matter of Cobleskill Stone Prods., Inc. v Town of Schoharie, 126 AD3d 1094, 1095 n 2 [2015]; State of New York v Joseph, 29 AD3d at 1234 n).

Peters, P.J., McCarthy, Egan Jr. and Rose, JJ., concur.

ORDERED that the appeals are dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court