

SHORT-FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. PHYLLIS ORLIKOFF FLUG, IA Part 9
Justice

DEUTSCHE BANK NATIONAL TRUST CO., AS TRUSTEE FOR FIRST FRANKLIN MORTGAGE LOAN TRUST 2006-FF11,	Index Number..32721/09 Motion Date... 2/14/13 3/4/13
Plaintiff, -against-	Motion Cal. Number.....32, 27
EDWINA BROWN, LEROY SIMON, ET. AL.,	Sequence No... 4, 5
Defendants.	

The following papers numbered 1 to 8 read on this motion

Notice of Motion	1 - 2
Memorandum of Law	3
Affirmation in Opposition	4
Reply Affirmation	5
Notice of Motion	6 - 7
Affirmation in Opposition	8

Plaintiff moves *inter alia* for summary judgment. Defendant separately moves *inter alia* to dismiss the Complaint.

This is an action to foreclose a mortgage on the real property located at 95-12 111th Street, in the County of Queens, City and State of New York.

Pursuant to CPLR § 3216, a Court may dismiss a party's pleading for neglecting to prosecute or delaying the prosecution of an action provided that the party seeking to have a pleading dismissed under this subsection has served a written demand to resume prosecution of the action.

Defendant has established her entitlement to this relief by submitting *inter alia* a copy of a letter, dated August 13, 2012, demanding plaintiff file a note of issue within 90 days and proof that the letter was served on plaintiff via certified mail.

As such, to avoid dismissal, plaintiff must demonstrate a justifiable excuse for the delay and a good and meritorious cause of action. Plaintiff has failed to do so.

Plaintiff's claim that the delay in the action was caused by the need to change attorneys when plaintiff's former counsel discontinued the practice of law in November 2011 is without merit. Plaintiff's new attorneys were substituted as counsel on January 5, 2012, more than seven months prior to defendant's service of the written demand letter.

Plaintiff's claim that the delay in the action should be excused because it was caused by plaintiff's attempt to comply with Administrative Order 548/10 (as amended by AO 431/11) is likewise without merit.

AO 548/10 went into effect on October 20, 2010 and requires that an attorney for plaintiff in a residential foreclosure action certify the accuracy of the papers filed in support of the action by submitting an affirmation form the attorney that he or she communicated with a representative of the plaintiff and was informed that the representative personally reviewed plaintiff's documents and records relating to the case, reviewed the Summons and Complaint and all other papers filed in support of the foreclosure, and confirmed the accuracy of the court filings and the notarizations contained therein.

As AO 548/10 merely requires that attorneys certify that they have met a minimum standard of diligence, it does not provide plaintiff with a justifiable excuse for the delay.

Finally, plaintiff's claim that the action was delayed due to the need to complete a property inspection following Hurricane Sandy fails to provide a justifiable excuse for the failure to prosecute the action. Indeed, had plaintiff made any attempt to prosecute the action in the seven months after being substituted as counsel and prior to defendant's service of the demand letter, this would not even be an issue.

Accordingly, defendant's motion to dismiss is granted, in its entirety, and the action is dismissed as asserted against Edwina Brown. Plaintiff's motion is denied as moot.

November 7, 2013

J.S.C.