

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1409

CA 15-01024

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, WHALEN, AND DEJOSEPH, JJ.

WELLS FARGO BANK, N.A., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

LUKE BUFFENMYER, DEFENDANT-RESPONDENT,
AND HOME HEADQUARTERS, INC., DEFENDANT.

REED SMITH LLP, NEW YORK CITY (JOSEPH B. TEIG OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

Appeal from an order of the Supreme Court, Onondaga County (Deborah H. Karalunas, J.), dated October 1, 2014. The order denied plaintiff's motion to restore this action to the court's calender.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: In seeking to restore this foreclosure action to Supreme Court's calendar after it had been dismissed, plaintiff was required to "demonstrate a potentially meritorious cause of action, a reasonable excuse for the delay in prosecuting the action, a lack of intent to abandon the action, and a lack of prejudice to the defendants" (*Vaream v Corines*, 78 AD3d 933, 933). We agree with plaintiff that the order of reference and judgment of foreclosure and sale are sufficient to establish the merit of the action (see *GMAC Mtge., LLC v Alfred*, 2015 NY Slip Op 51621[U], *1 [Sup Ct, Albany County, 2015]). Plaintiff failed, however, to establish a reasonable excuse for its delay (see *Okun v Tanners*, 11 NY3d 762, 763; *Sang Seok Na v Greyhound Lines, Inc.*, 88 AD3d 980, 981), lack of intent to abandon the action, or lack of prejudice to defendants (see *Sierra R. v Jamaica Hosp. Med. Ctr.*, 101 AD3d 701, 703).

Entered: December 31, 2015

Frances E. Cafarell
Clerk of the Court