

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

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CA 15-01234

PRESENT: SMITH, J.P., CENTRA, DEJOSEPH, CURRAN, AND SCUDDER, JJ.

CITIMORTGAGE, INC., PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

KIP C. CARTER, SALLY ANN CARTER, ALSO KNOWN AS
SALLY ANN M. CARTER, DEFENDANTS-RESPONDENTS,
ET AL., DEFENDANTS.

DAVIDSON FINK LLP, ROCHESTER (LARRY T. POWELL OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

Appeal from an order and judgment (one paper) of the Supreme Court, Onondaga County (James P. Murphy, J.), entered June 18, 2014. The order and judgment dismissed the complaint.

It is hereby ORDERED that the order and judgment so appealed from is unanimously reversed on the law without costs and the complaint is reinstated.

Memorandum: In this mortgage foreclosure action, plaintiff appeals from an order and judgment, issued sua sponte, dismissing the complaint without prejudice based on plaintiff's failure to meet a single court-ordered deadline for filing a motion for a judgment of foreclosure. We reverse. Supreme Court erred in dismissing the complaint sua sponte "inasmuch as '[u]se of the [sua sponte] power of dismissal must be restricted to the most extraordinary circumstances' " (*BAC Home Loans Servicing, LP v Maestri*, 134 AD3d 1593, 1593), such as "a pattern of willful noncompliance with court-ordered deadlines," and no such extraordinary circumstances are reflected in the record before us (*Bank of Am., N.A. v Bah*, 95 AD3d 1150, 1152; see *NYCTL 2008-A Trust v Estate of Locksley Holas*, 93 AD3d 650, 651; *U.S. Bank, N.A. v Guichardo*, 90 AD3d 1032, 1033). "Although 'a litigant cannot ignore court orders with impunity' . . . , we conclude that missing a single deadline by one week does not 'warrant the court's exercise of its power to dismiss a complaint sua sponte' " (*Citimortgage, Inc. v Petraghani*, 137 AD3d 1688, ___).

Entered: June 10, 2016

Frances E. Cafarell
Clerk of the Court