

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FOURTH JUDICIAL DEPARTMENT

Citibank, N.A. v. Gifford

2025 NY Slip Op 07163 · No. 875 CA 24-01904 · Decided December 23, 2025

SUMMARY

The Appellate Division, Fourth Department dismissed defendants' appeal from an intermediate order in a residential mortgage foreclosure action. The court held that the right to appeal from the intermediate order terminated when a final judgment of foreclosure and sale was entered, noting that dismissal of the related appeal under 22 NYCRR 1250.10(a) may be vacated by motion within one year.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Judicial Department
WRITING FOR THE COURT	Lindley, J.P.; Curran, J.; Ogden, J.; Nowak, J.; Keane, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	December 23, 2025
DOCKET	875 CA 24-01904
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants appealed from an intermediate order in a residential mortgage-foreclosure action. The order denied defendants' cross-motion for summary judgment based on plaintiff's alleged lack of standing and granted plaintiff's motion seeking, among other relief, a judgment of foreclosure and sale.
PRECEDENTIAL VALUE	published
PARTIES	Thomas J. Gifford, also known as Thomas Jay Gifford, also known as Thomas Gifford, Marlene E. Gifford, also known as Marlene Gifford, also known as Marlene Lou Gifford v. Citibank, N.A., not in its individual capacity, but solely as trustee of NRZ Pass-Through Trust VI

TOPICS

final judgment rule

appellate procedure

foreclosure

mortgages

summary judgment

PRACTICE AREAS

civil procedure

appellate procedure

mortgage foreclosure

real estate litigation

QUESTIONS PRESENTED

1. Whether defendants' appeal from an intermediate order remained reviewable after entry of a final judgment of foreclosure and sale.
2. Whether the appeal had to be dismissed after defendants' separate appeal from the final judgment was dismissed by operation of 22 NYCRR 1250.10(a).

HOLDINGS

1. Entry of the final judgment terminated defendants' right to appeal from the intermediate order, requiring dismissal of the appeal.

KEY QUOTATIONS

“Inasmuch as the right to appeal from the intermediate order terminated with the entry of the final judgment, defendants' appeal from the intermediate order must be dismissed” ([*1])

FACTUAL BACKGROUND

This was a residential mortgage-foreclosure action brought by Citibank, acting solely as trustee of NRZ Pass-Through Trust VI. Defendants Thomas and Marlene Gifford challenged plaintiff's standing and sought summary judgment dismissing the complaint. The Supreme Court denied defendants' cross-motion and granted plaintiff's motion for a judgment of foreclosure and sale; a final judgment was later entered.

PROCEDURAL HISTORY

The Supreme Court, Herkimer County, entered the challenged order on May 2, 2024. A final judgment of foreclosure and sale was subsequently entered, and defendants' separate appeal from that judgment was dismissed by operation of 22 NYCRR 1250.10(a). The Fourth Department dismissed defendants' appeal from the intermediate order because entry of the final judgment terminated the right to appeal from that order.

DISPOSITION

dismissed

CASES CITED

- Matter of Aho, 39 NY2d 241, 248 [1976]
- Lakeview Loan Servicing, LLC v. Finn, 176 AD3d 1599, 1599 [4th Dept 2019]
- Norwest Mtge. v. Clifford, 271 AD2d 721, 721 [3d Dept 2000]

OPINION

PER CURIAM.

Citibank, N.A. v Gifford (2025 NY Slip Op 07163) Citibank, N.A. v Gifford 2025 NY Slip Op 07163 Decided on December 23, 2025 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 23, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: LINDLEY, J.P., CURRAN, OGDEN, NOWAK, AND KEANE, JJ. 875 CA 24-01904 [*1]CITIBANK, N.A., NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE OF NRZ PASS-THROUGH TRUST VI, PLAINTIFF-RESPONDENT, v THOMAS J. GIFFORD, ALSO KNOWN AS THOMAS JAY GIFFORD, ALSO KNOWN AS THOMAS GIFFORD, MARLENE E. GIFFORD, ALSO KNOWN AS MARLENE GIFFORD, ALSO KNOWN AS MARLENE LOU GIFFORD, DEFENDANTS-APPELLANTS, ET AL., DEFENDANTS.

LEGAL AID SOCIETY OF MID-NEW YORK, INC., UTICA (NICHOLAS J. TESINY OF COUNSEL), FOR DEFENDANTS-APPELLANTS. ROACH & LIN, P.C., SYOSSET (HANS H. AUGUSTIN OF COUNSEL), FOR PLAINTIFF-RESPONDENT. Appeal from an order of the Supreme Court, Herkimer County (Mark R. Rose, J.), entered May 2, 2024, in a mortgage foreclosure proceeding.

The order denied the cross-motion of defendants Thomas J. Gifford and Marlene E. Gifford for summary judgment and granted the motion of plaintiff for a judgment of foreclosure and sale. It is hereby ORDERED that said appeal is unanimously dismissed without costs. Memorandum: In this residential foreclosure action, defendants-appellants (defendants) appeal from an order that granted plaintiff's motion seeking, inter alia, a judgment of foreclosure and sale and denied defendants' cross-motion for summary judgment dismissing the complaint against them based on plaintiff's lack of standing.

We note that a final judgment of foreclosure and sale has been entered in this action. Although defendants appealed from the judgment, that appeal was previously dismissed by operation of 22 NYCRR 1250.10 (a). Inasmuch as the right to appeal from the intermediate order terminated with the entry of the final judgment, defendants' appeal from the intermediate order must be dismissed (see Matter of Aho, 39 NY2d 241, 248 [1976]; Lakeview Loan Servicing, LLC v Finn, 176 AD3d 1599, 1599 [4th Dept 2019]; Norwest Mtge. v Clifford, 271 AD2d 721, 721 [3d Dept 2000]).

We note that a dismissal pursuant to 22 NYCRR 1250.10 (a) may be vacated on motion; such a motion must be "made within one year of the date of the dismissal" (22 NYCRR 1250.10 [c]).
Entered: December 23, 2025 Ann Dillon Flynn Clerk of the Court

PER CURIAM.

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