

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

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PRACTICE AREAS

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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]

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