

20-1179 (L)
Papapietro v. Litton Loan Servicing, LP, et al.

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of May, two thousand twenty-two.

PRESENT:

BARRINGTON D. PARKER,
JOSEPH F. BIANCO,
MYRNA PÉREZ,

Circuit Judges.

ANTHONY PAPAPIETRO,

Plaintiff-Appellant,

v.

LITTON LOAN SERVICING, LP, OCWEN
LOAN SERVICING, LLC, POPULAR
MORTGAGE SERVICING, INC.

*Defendants-Appellees.**

20-1179 (L)
20-2807 (Con)

FOR PLAINTIFF-APPELLANT:

RALPH P. FRANCO, JR., Rosenberg Law Firm,
Brooklyn, NY.

FOR DEFENDANTS-APPELLEES:

BRETT L. MESSINGER, (Brian J. Slipakoff, *on
the brief*), Duane Morris LLP, New York,

* The Clerk of Court is respectfully directed to amend the caption as set forth above.

NY, *for* Litton Loan Servicing, LP, and
Ocwen Loan Servicing, LLC.

MARTIN EISENBERG, Law Offices of Martin
Eisenberg, White Plains, NY, *for* Popular
Mortgage Servicing, Inc.

Consolidated appeals from multiple judgments and orders of the United States District Court for the Eastern District of New York (Townes, *J.*; Kuntz, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment and order of the district court are **AFFIRMED**.

In the lead appeal, plaintiff-appellant Anthony Papapietro—who submitted his brief *pro se* but was represented by counsel at oral argument—appeals the district court’s judgment in favor of defendants-appellees, several mortgage servicing companies; on his claims that they violated state and federal law by, *inter alia*, assessing improper fees, charging Papapietro’s escrow account for homeowner’s insurance which he already paid, and not providing a loan modification. In granting summary judgment to defendants-appellees, the district court concluded that most of Papapietro’s claims were time-barred and that his remaining claims were meritless. In the consolidated appeal, Papapietro appeals the district court’s order denying reconsideration. We assume the parties’ familiarity with the underlying facts and procedural history, to which we refer only as necessary to explain our decision to affirm.

We review a grant of summary judgment *de novo*, *Sousa v. Marquez*, 702 F.3d 124, 127 (2d Cir. 2012), and a denial of reconsideration for abuse of discretion, *Gomez v. City of New York*, 805 F.3d 419, 423 (2d Cir. 2015) (*per curiam*). “A district court is said to abuse its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the

evidence, or renders a decision that cannot be located within the range of permissible decisions.”

Id. (internal quotation marks and alteration omitted).

Upon review of the record and relevant case law, we conclude that the district court’s grant of summary judgment was correct and that its denial of reconsideration was not an abuse of discretion. We affirm for substantially the same reasons stated by the district court in its orders dated November 10, 2014, March 31, 2020, and August 6, 2020.¹

We have considered all of Papapietro’s arguments and find them without merit. Accordingly, we **AFFIRM** the district court’s judgment and order denying reconsideration.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

The image shows a handwritten signature in cursive that reads "Catherine O'Hagan Wolfe". To the left of the signature is a circular seal. The seal contains the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with two small stars on either side of the center text.

¹ With respect to Papapietro’s claim under Section 2609(a) of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2609(a), we conclude that any challenge to the district court’s dismissal of that claim has been waived on appeal because Papapietro has failed to address the district court’s reasoning in connection with its holding that there is no private right of action to bring such a claim, nor does he provide any citations to authorities or parts of the record to support his conclusory reference to Section 2609(a). *See* Fed. R. App. P. 28(a)(8)(A); *Gerstenbluth v. Credit Suisse Sec. (USA) LLC*, 728 F.3d 139, 142 n.4 (2d Cir. 2013) (holding challenge on appeal waived where *pro se* litigant only mentioned the substance of the district court’s ruling “obliquely and in passing”); *accord Terry v. Incorporated Village of Patchogue*, 826 F.3d 631, 632–33 (2d Cir. 2016). Thus, we need not (and do not) address the district court’s conclusion that no private cause of action exists under Section 2609(a).

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of June, two thousand twenty-two.

Anthony Papapietro,

Plaintiff-Appellant

v.

Litton Loan Servicing, LP, Ocwen Loan Servicing, LLC,
Popular Mortgage Servicing Inc.,

Defendants-Appellees.

ORDER

Docket Nos: 20-1179(L)
20-2807 (Con)

Appellant, Anthony Papapietro, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk




UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ANTHONY PAPAPIETRO,

Plaintiff,

v.

LITTON LOAN SERVICING, LP and
OCWEN LOAN SERVICING, LLC,

Defendants/Cross-Claim Plaintiffs;

v.

POPULAR MORTGAGE SERVICING, INC.,

Cross-Claim Defendant.
-----X

ORDER
13-CV-2433 (WFK)(ST)

WILLIAM F. KUNTZ, II, United States District Judge:

On March 31, 2020, the Court granted summary judgment in favor of Defendants on all claims. ECF No. 73. On April 8, 2020, Plaintiff filed a notice of appeal to the Second Circuit regarding that decision. ECF No. 75. Subsequently, without action by this Court or the Second Circuit, Plaintiff filed a motion for reconsideration, stating he “is simply trying to expand on the facts that were already presented, which the Court may not have understood or overlooked.” ECF No. 77 at 2. Plaintiff seeks relief under Fed. R. Civ. P. 59 and 60(b)(3). As an initial matter, to the extent Plaintiff seeks relief under Rule 59, his request is untimely and denied. *See* Fed. R. Civ. P. 59(b). The Court will therefore treat this motion as a Rule 60(b) motion. *See Lora v. O’Heaney*, 602 F.3d 106, 111 (2d Cir. 2010) (“An untimely motion for reconsideration is treated as a Rule 60(b) motion.”).

Relief under Rule 60(b)(3) is only warranted in the event of “fraud . . . , misrepresentation, or misconduct by an opposing party.” The party seeking relief from the

judgment bears the burden of demonstrating relief is warranted. *Reese v. Bahash*, 574 F. App'x 21, 23 (2d Cir. 2014). "A motion for relief from judgment is generally not favored and is properly granted only upon a showing of exceptional circumstances." *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370, 391 (2d Cir. 2011). Plaintiff has failed to meet this burden here. Plaintiff concedes "the facts and circumstances surrounding this matter were presented" to the Court in the motion for summary judgment. ECF No. 77 at 2. Absent any additional facts, the Court fails to identify an "exceptional circumstance" warranting relief.

Accordingly, Plaintiff's motion is DENIED.

SO ORDERED.

s/ WFK

HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: August 6, 2020
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ANTHONY PAPAPIETRO,

Plaintiff,

JUDGMENT
13-CV-2433 (WFK)(ST)

v.

LITTON LOAN SERVICING, LP and
OCWEN LOAN SERVICING, LLC,

Defendants/Cross-Claim Plaintiffs;

v.

POPULAR MORTGAGE SERVICING, INC,

Cross-Claim Defendant.

----- X

A Decision and Order of Honorable William F. Kuntz II, United States District Judge,
having been filed on March 31, 2020, granting Defendant's motion for summary judgment; it is
ORDERED and ADJUDGED that Defendant's motion for summary judgment is granted.

Dated: Brooklyn, NY
March 31, 2020

Douglas C. Palmer
Clerk of Court

By: /s/Jalitzia Poveda
Deputy Clerk