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COURT OF APPEALS  
STATE OF NEW YORK

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DITECH FINANCIAL LLC,

Appellant,

-against-

NO. 2

SANTHANA KUMAR NATARAJA NAIDU,

Respondent.

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20 Eagle Street  
Albany, New York  
January 5, 2021

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: The next appeal on this  
2 afternoon's calendar is appeal number 2, Ditech Financial  
3 v. Naidu.

4 MS. LIVORSI: Good afternoon, Your Honors. May  
5 it please the court, I'm Christina Livorsi, and I'm  
6 appearing on behalf of the appellant.

7 CHIEF JUDGE DIFIORE: Ms. Livorsi, would you like  
8 to reserve some rebuttal time?

9 MS. LIVORSI: Yes, three minutes for rebuttal,  
10 Your Honor.

11 CHIEF JUDGE DIFIORE: You may have three minutes.

12 MS. LIVORSI: Thank you.

13 Give the similarities between our case and those  
14 that were set forth in Freedom Mortgage, namely that both  
15 actions involve a stipulation of discontinuance, I'm just  
16 going to take a few moments of the court's time just to  
17 expand upon a few of the arguments that were made by  
18 Freedom Mortgage in their case and a few of the points that  
19 were raised by the court.

20 I first wanted to advocate for the court  
21 accepting a bright-line or creating a bright-line rule here  
22 that the timely filed stipulation of discontinuance, which  
23 was the case in our action, is sufficient to revoke or  
24 nullify - - - whichever language you would prefer to use -  
25 - - in and of itself, without any further language having



1 to be provided in the stipulation.

2 And to answer the court's question earlier, I  
3 don't believe that because the stipulation itself doesn't  
4 expressly say that we hereby revoke, that it's silent on  
5 this issue.

6 Albertina - - - this court, in Albertina, made  
7 very clear that the overt act was the filing of the summons  
8 and the complaint. And the converse of that, the overt act  
9 of revoking that acceleration, would be the discontinuance  
10 here, which was a stipulation agreed to by respondent,  
11 through counsel.

12 It follows that this makes a clear rule for the  
13 parties to proceed going forward.

14 The court had asked the question about whether or  
15 not, in addition to setting forth something in the  
16 stipulation or just filing the stipulation, why wouldn't  
17 the lender also provide a letter or some other notice  
18 expressly - - - again, expressly stating that the - - -  
19 that the acceleration had been revoked?

20 And the problem with that approach, and I think  
21 Mr. Sutherland touched upon that, is that this doesn't  
22 create a clear rule. It think it's going to provide more  
23 litigation; it's going to be a morass.

24 Was the - - - was the letter itself the - - -  
25 what was provided in the letter sufficient to put the



1 borrower on notice? Was the letter actually received by  
2 the borrower? We're going to have disputes over - - -

3 JUDGE FAHEY: Judge, can I ask a question here?

4 CHIEF JUDGE DIFIORE: Yes, Judge Fahey.

5 JUDGE FAHEY: Good afternoon. The Albertina  
6 question, I's' a 1932 Court of Appeals case, and in the  
7 midst of the Great Depression they said that you need an  
8 unequivocal overt act to accelerate the debt. We agree on  
9 that, right?

10 MS. LIVORSI: Yes.

11 JUDGE FAHEY: Okay. So why don't you need an  
12 unequivocal overt act to decelerate the debt?

13 MS. LIVORSI: I think that's what you have with  
14 the stipulation of discontinuance. And I think it meets  
15 the Albertina requirement - - -

16 JUDGE FAHEY: Well, no. So let me stop you  
17 there.

18 Unequivocal overt act, the way I understand the  
19 English language, is that's something that lays out clearly  
20 what you're doing. One accelerates; the other decelerates.  
21 So if it's good for the goose to - - - to require  
22 acceleration, why isn't it good for the gander to require  
23 an unequivocal overt act to decelerate?

24 MS. LIVORSI: Right. And going back to your  
25 point, I think the term "overt" as it's being talked about



1 in Albertina talks about something that's open and  
2 observable. And - - -

3 JUDGE FAHEY: Um-hum.

4 MS. LIVORSI: - - - by the filing, Albertina was  
5 talking about giving constructive notice to the parties by  
6 the filing of the summons and the complaint. And I think  
7 the same thing happens here by the converse taking place.

8 JUDGE FAHEY: Yeah, but - - - come on. I mean,  
9 overt is overt. You say it to the person. You say: this  
10 is the deal. You know, when we're doing this, we've got to  
11 do it unequivocally and overt; when we're accelerating  
12 debt, we've got to tell you we're accelerating the debt.

13 So when we're decelerating the debt, why  
14 shouldn't we have to tell you we're decelerating the debt?  
15 Because you can - - - you can accelerate the amount of  
16 money I've got to pay you, but I don't have to tell you  
17 that I'm decelerating it.

18 And forget about your pretextual analysis,  
19 whether it's for service reasons or - - -

20 MS. LIVORSI: Um-hum.

21 JUDGE FAHEY: - - - the statute of limitations.  
22 If you have the legal right to do that, you should be able  
23 to do that. The only question is: why shouldn't you just  
24 have to tell the party?

25 If you've got to tell them to do it, why don't



1           you tell them when you're not doing it?

2                   MS. LIVORSI: Because I think it's automatically  
3 implied. And I agree with Mr. Sutherland that at this  
4 point in time, in - - - when our stipulation - - -

5                   JUDGE FAHEY: So you're saying that this is an -  
6 - - so I'm clear, you're saying that this is an implicit  
7 rule?

8                   MS. LIVORSI: I do. I believe that - - -

9                   JUDGE FAHEY: Um-hum.

10                  MS. LIVORSI: - - - it is - - - even if it's not  
11 expressly stated, by the very nature of what a stipulation  
12 of discontinuance does, as talked about in Loeb v. Willis,  
13 it - - - it goes back and it annuls what has occurred in  
14 the proceeding. And the proceeding encompasses the  
15 commencement of the action, which is the act of  
16 accelerating the debt.

17                  JUDGE FAHEY: Thank you.

18                  MS. LIVORSI: Certainly.

19                  JUDGE STEIN: Judge, can I ask a question about  
20 that?

21                  CHIEF JUDGE DIFIORE: Judge Stein. Um-hum.

22                  JUDGE STEIN: So do you - - - are you saying that  
23 - - - as I read Albertina, it clearly didn't require  
24 specific notice to the borrower, because it said that the  
25 acceleration was effective upon the filing of the



1 complaint. And in - - - back in those days the borrower  
2 didn't get notice until it was served.

3 And so it - - - are you saying that there is a  
4 difference between an equivocal overt act and actual  
5 notice? Is what you're trying to do?

6 MS. LIVORSI: I do. I think that Albertina was  
7 talking more in the context of a constructive notice. They  
8 talk about if you - - - the second sentence after the  
9 discussion about an unequivocal overt act talks about that  
10 it disclosed the choice of the plaintiff and constituted  
11 notice to everyone.

12 And while I understand that maybe notice wasn't  
13 actually given, because it was a commencement by service,  
14 the filing actually constituted constructive notice. And  
15 typically there would have been a lis pendens also filed,  
16 which would have put everybody on notice as well.

17 So it's more a constructive - - -

18 JUDGE STEIN: I'm also - - -

19 MS. LIVORSI: - - - notice.

20 JUDGE STEIN: - - - I'm also a little bit  
21 concerned about your argument that under Loeb everything is  
22 annulled, including the revocation. Because I'm not really  
23 sure what other implications that might have for other - -  
24 - who knows - - - statutes, contracts, whatever.

25 MS. LIVORSI: Um-hum.



1 JUDGE STEIN: And I mean, would you agree that it  
2 doesn't need to annul it, it just need to revoke it?

3 MS. LIVORSI: Yes. At a minimum, it revokes it.  
4 And I would agree with that. And I think, in the end, it  
5 comes out to the same - - - the same end. It's - - - it  
6 reverts everything back to an installment contract where  
7 you could collect on each installment due and owing.

8 And I think that that lends the - - - it  
9 contradicts what the court was suggesting where maybe the  
10 lenders might be manipulating the statute of limitations,  
11 because that concept that we're going to be manipulating  
12 the statute of limitations really writes out of the  
13 contract the fact that it's an installment contract, and  
14 there's still a statute of limitations period, even if the  
15 statute of limitations period isn't running from an  
16 accelerated debt.

17 You're still going to be losing installment  
18 payments. It doesn't behoove the lenders to delay in any  
19 sort of way.

20 CHIEF JUDGE DIFIORE: Thank you, Ms. Livorsi.  
21 Counsel?

22 MS. LIVORSI: Thank you.

23 CHIEF JUDGE DIFIORE: Counsel?

24 MS. MEYER: Am I there? Okay.

25 CHIEF JUDGE DIFIORE: Yes.



1 MS. MEYER: May it please the court, I'm Holly  
2 Meyer, representing the respondent in this matter.

3 There's two major issues here, and the court's  
4 been addressing this for a little while now. Number one is  
5 nullification.

6 The concept is that the acceleration only  
7 occurred because we filed the complaint. That actually  
8 goes directly against our whole concept of filing suits.  
9 This court even stated that in order to have a cause of  
10 action you - - - the cause of action creates the right to  
11 sue.

12 And when you - - - the cause of action has to  
13 have all the material elements and facts have to have  
14 occurred in order to trigger that cause of action. That  
15 must occur prior to the right to - - - to suit. And then  
16 the right to suit, you then go ahead and file your  
17 complaint.

18 In the situation of what is the evidence of their  
19 intent to accelerate, can easily be found when they drafted  
20 and executed the complaint that specifically said that  
21 there was an acceleration, and the amount now due was the  
22 unpaid principal balance.

23 And I would note that the complaint was executed  
24 and affirmed by an attorney who affirms the truthfulness of  
25 those facts. And that was executed on July 27th, 2009.



1 JUDGE STEIN: Chief Judge, may I ask a question?

2 CHIEF JUDGE DIFIORE: Judge Stein.

3 JUDGE STEIN: Actually, I have two questions.

4 Again - - - and I guess this part of my theme here today is  
5 - - - I don't see where you made this argument in Supreme  
6 Court. But let's assume for the moment that you did. How  
7 would one know the moment in which the acceleration took  
8 place?

9 The acceleration, according to Albertina,  
10 requires an unequivocal overt act. Okay. So - - -

11 MS. MEYER: Yes.

12 JUDGE STEIN: - - - you know, maybe - - - I mean,  
13 maybe you're right that something had to be thought about  
14 and decided before the complaint got filed. But it just -  
15 - - I think it seems to me that you would be really  
16 creating a very ambiguous rule about when that statute of  
17 limitations of began to run.

18 MS. MEYER: Actually, under - - - you're looking  
19 for a definitive moment in time that you can say that  
20 evidences the time that they accelerated. Am I  
21 understanding the correct - - - question correctly?

22 JUDGE STEIN: Well, I - - - yes. I think that  
23 you know, you can make certain assumptions or you can look  
24 for that exact moment in time. And remember that the  
25 acceleration won't always be by commencing an action or by



1 filing a complaint.

2 MS. MEYER: Absolutely.

3 JUDGE STEIN: There may be other ways of doing  
4 it. So you know, we have to look at all of these.

5 So I guess my question is, is what is your rule -  
6 - - your proposed rule, in this regard?

7 MS. MEYER: Well, I did argue in the Appellate  
8 Division, I said that the overt act had to have become - -  
9 - come prior to the filing of the complaint. And we could  
10 directly go to the date that the complaint was executed as  
11 the facts being sworn to and affirmed.

12 That's a definitive date that is acknowledging  
13 that the plaintiff has accelerated. It's right there in  
14 black and white. There is no ambiguity, there's no  
15 question, there's nothing.

16 I would also note for the court that in the  
17 mortgage, it specifically states that the lender, if they  
18 accelerate and demand that I - - - and require I make  
19 immediate payment, they may bring an action. There is no  
20 requirement that they bring an action once they accelerate.

21 They can make that demand, as we've seen in other  
22 cases - - - demand can be made by notice. So the - - -  
23 wedding the two and marrying the two together so firmly,  
24 actually brings up the question, well, if acceleration  
25 doesn't occur until after you file suit, then how did you



1 have the right to sue in the first place?

2 JUDGE WILSON: Chief, if I might try?

3 CHIEF JUDGE DIFIORE: Yes.

4 JUDGE WILSON: I'm having a little trouble  
5 following your argument, for the following reason.

6 MS. MEYER: Yes.

7 JUDGE WILSON: If your point is that ordinarily a  
8 cause of action accrues for statute of limitations purposes  
9 the moment you have a right to sue, then the first time  
10 there's a default on the other conditions in the mortgage  
11 are met for - - - you know, there may be notice and cure  
12 provisions and so on - - - but once that's met, the cause  
13 of action on your theory begins to run even if the lender  
14 doesn't want to foreclose. And that six years starts  
15 running from that point, when the cause of action accrued.

16 I don't think that's the way that, you know,  
17 foreclosure law has worked for centuries.

18 MS. MEYER: Well, we're talking - - - I - - -  
19 with all due respect, I think we're also talking about the  
20 statute of limitations and how many in other areas of law  
21 do we find personal injury, medical malpractice cases,  
22 many, many different cases where we say, as soon as the  
23 action - - - the cause of action accrues, if you don't - -  
24 -

25 JUDGE WILSON: Yeah, so what I'm really asking



1 is, isn't the law different here because in a mortgage  
2 case, you have installment payments. And in essence, there  
3 is a new cause of action accruing every month that those  
4 payments are due?

5 So you don't have where you would say, okay, the  
6 first time that there's a default that meets the terms of  
7 the mortgage my six-year statute of limitations starts  
8 running on a foreclosure remedy. You don't - - - nobody  
9 says that.

10 It isn't until there is some affirmative decision  
11 made that the law says you then start to run the statute of  
12 limitations. You could have had a cause of action ten  
13 years ago and elected not to pursue it, and that - - - even  
14 though you have a cause of action in the medical  
15 malpractice area, in most other areas, yes, that starts  
16 your statute running, but in foreclosures it doesn't.  
17 Isn't that right?

18 MS. MEYER: Well, in the foreclosures, as Your  
19 Honor said, you have - - - the statute of limitations  
20 starts to run when payment is due. And when it is still  
21 under the installment agreement, each installment that is  
22 missed accrues another cause of action. The amount is due.

23 When you're talking about an acceleration, you're  
24 talking about, now, when the entire amount is due. And  
25 that is made by the acceleration.



1           And in order to have a court - - - like you can't  
2 bring an action for an installment payment that's due in  
3 2025 because it's not due yet. The same concept is - - -  
4 is utilized with my acceleration. If it has not been  
5 accelerated, it's not due. So therefore you don't have the  
6 factual grounds for a cause of action or a right to sue.

7           All I'm say - - - I'm not saying that they don't  
8 obtain the right to sue. Our position is, it's not  
9 married. So the concept that because the contr - - - the  
10 complaint ends the proceedings get nullified by the  
11 discontinuance, does not mean the facts that gave rise to  
12 the cause of action are nullified. They don't get erased  
13 from history.

14           JUDGE WILSON: But the facts that gave rise to  
15 the cause of action are not what triggers the statute of  
16 limitations running; isn't that right?

17           MS. MEYER: I apologize. I'm not understanding  
18 the question.

19           JUDGE WILSON: Sure. You might have facts that  
20 start - - - that could give you a cause of action to sue  
21 once there's a default. You might choose not to  
22 accelerate, and your statute of limitations hasn't yet  
23 started running.

24           MS. MEYER: Yes.

25           JUDGE WILSON: So it isn't the facts that gave



1 rise to a cause of action that - - - and therefore, whether  
2 you nullify the facts or not, doesn't make any difference  
3 to your argument.

4 MS. MEYER: Well, our position is that it's - - -  
5 the acceleration or the choice to accelerate is the fact.  
6 And that choice is evidenced by some definitive act. And  
7 if we're looking for a point in time, the first point in  
8 time, all you have to do is turn to the time that the  
9 complaint was executed. And once you have that  
10 determination, you see that the filing of the complaint is  
11 not married to the time that there was an acceleration.

12 JUDGE FEINMAN: Chief, if I may?

13 CHIEF JUDGE DIFIORE: Yes, Judge Feinman.

14 JUDGE FEINMAN: Changing subjects for a moment.

15 MS. MEYER: Yes.

16 JUDGE FEINMAN: I'm a little intrigued, because  
17 I'm not sure I quite followed your argument that automatic  
18 revocation through discontinuance is somehow unfair to the  
19 lenders. And I didn't know if you could - - -

20 MS. MEYER: In that - - - in that situation I was  
21 talking about lenders who choose - - - who don't want  
22 deceleration. There are cases - - - there are cases out  
23 there where a lender chooses to accelerate an installment  
24 agreement, and for whatever their choice, they don't want  
25 to revert back to the installment. They simply want to



1 keep the acceleration - - -

2 JUDGE FEINMAN: Well, couldn't they - - -  
3 couldn't they then, if that's the case, expressly state  
4 that they're not revoking the acceleration?

5 MS. MEYER: But then you can't do a - - - it's  
6 not a bright-line rule that that's an automatic, because it  
7 then becomes a choice again. And what we're doing now is  
8 we're putting the burden on the some - - - on somebody - -  
9 - on a lender who has validly accelerated. Now they have  
10 to take the steps not to decelerate instead of saying,  
11 well, if your intent is to decelerate, which we argue that  
12 there may not be, then that's a burden that shouldn't be  
13 there.

14 I would - - -

15 JUDGE RIVERA: Judge, I have a question, if I  
16 may?

17 CHIEF JUDGE DIFIORE: Yes.

18 JUDGE RIVERA: So you can just work through this  
19 analysis for me? I'm just trying to make some sense of  
20 this.

21 So you're a lender, you accelerate because  
22 there's been a default.

23 MS. MEYER: Yes.

24 JUDGE RIVERA: You've called it all due.

25 MS. MEYER: Um-hum.



1 JUDGE RIVERA: And then - - - and then you've  
2 chosen not to proceed with the foreclosure, right - - -  
3 discontinuance. You're saying that there might be lenders  
4 who nevertheless are still in the mode of acceleration - -  
5 -

6 MS. MEYER: Um-hum.

7 JUDGE RIVERA: - - - so they still want the full  
8 amount paid. Okay. So how - - - other than demanding it  
9 from a person who has been in default, hasn't paid, and  
10 things seem so dire that the lending institution went to  
11 court to try and get that full payment - - - I don't  
12 understand how they're in a difficult position.

13 Right? That you're saying they - - - they want  
14 to keep demanding that money. So don't they - - -

15 MS. MEYER: All right.

16 JUDGE RIVERA: - - - just go back to court,  
17 demanding the money. What am I missing?

18 MS. MEYER: But there's a gap there. And all the  
19 borrower has to do is meet them on the courthouse steps and  
20 give them the payment and - - - before they get a chance to  
21 - - -

22 JUDGE RIVERA: Well, the payment in full,  
23 correct? Because you're saying - - -

24 MS. MEYER: Right. An installment - - -

25 JUDGE RIVERA: - - - that's what they demanded.



1 MS. MEYER: - - - payment; pay the arrears. And  
2 now that the - - - not that lender is back to an  
3 installment contract.

4 JUDGE RIVERA: But can't they then just file - -  
5 - since it was decelerated. So accelerate, they got their  
6 installment, now they can accelerate? Are you saying that  
7 - - -

8 MS. MEYER: No, they've got - - - they've got  
9 their installment, so now it's not in default anymore, and  
10 they lose their rights to accelerate. It's something that  
11 they - - -

12 JUDGE FEINMAN: Until the next default.

13 MS. MEYER: Excuse me?

14 JUDGE FEINMAN: Until the next default.

15 MS. MEYER: If there is. But I would also,  
16 really quickly, note that this stipulation is contrary to  
17 any intents to revoke, because the plaintiff who wrote it  
18 was BAC and they specifically wrote that all claims of the  
19 plaintiff shall be dismissed without prejudice, meaning  
20 that all their claims would survive after the  
21 discontinuance.

22 And the claim here was that they accelerated and  
23 they were entitled to the entire unpaid principal balance.  
24 So simply saying that because we entered in a stip that  
25 there was no dis - - - there was no - - -



1 JUDGE RIVERA: So Judge, if I may ask? If I may  
2 ask?

3 CHIEF JUDGE DIFIORE: Yes.

4 JUDGE RIVERA: So I just want to understand, as I  
5 asked in the prior case, sort of the logical conclusion,  
6 the extension of this analysis. Does that mean - - - if we  
7 saw it your way, if we said look, it's got to be express in  
8 that discontinuance or there has to be some other express  
9 statement - - - let's just say it that way - - - and there  
10 isn't. Does that mean that the debtor could go around  
11 paying in installments, keeping their eye on the clock, and  
12 then when they hit year six, go into default, and say well,  
13 can't you demand any more money from me, because you're  
14 time barred?

15 What's fair in that?

16 MS. MEYER: Well, that's a hypothetical that I  
17 unfortunately haven't been able to find. What I usually  
18 find is homeowners actually want to get back into the  
19 groove. But what happens is that a borrower might lose  
20 their job for six months, they get back into work, they  
21 want to go ahead and start making payments again, but now  
22 they can't, because they don't have six months' worth of  
23 payments.

24 And then it takes another two years, if they get  
25 a modification, and now we're two years down the line, with



1 payment penalties and interest and everything else. And  
2 they're the ones that are behind the eight ball, where all  
3 they wanted to do in the first place was go ahead and pay  
4 their mortgage.

5 We're not looking at something where a borrower  
6 sets out to get something for free. What they're setting  
7 out to do is to have a home. The consequences of the  
8 inaction by a lender in waiting six years - - - in this  
9 case the bor - - - the lender who commenced the action  
10 waited five years without even filing an RJI, and then  
11 sought discontinuance.

12 I reviewed the statute of limitations knowing  
13 that my client - - - there was no stipulation in there  
14 about the revocation. And we agreed to give up his - - -  
15 whatever good position he may have had to litigate the case  
16 - - - we said no, we won't; but understanding that the  
17 statute of limitations is running; the bank will work with  
18 us.

19 They either are going to come back and we're  
20 going to litigate it again within the next year, or the  
21 bank's going to come to us and they're going to work with  
22 us. That was the understanding that the acceleration still  
23 was in play.

24 JUDGE RIVERA: So if I'm understanding your view,  
25 then - - - or your way of approaching this issue is that



1 that means there's six years for both sides, so that the  
2 debtor is not going to end up getting any better - - - more  
3 time in this; is that correct? If - - -

4 MS. MEYER: I - - -

5 JUDGE RIVERA: - - - if there's silence on this  
6 question of deceleration. So as you said and as I said,  
7 the clock is ticking.

8 MS. MEYER: Yes.

9 JUDGE RIVERA: And so the lender might say, well,  
10 you know, I'm getting pretty close to those six years; I  
11 know you keep saying you're going to try and pay, you're  
12 trying to pay, you're going through hard times, but I can't  
13 risk it; we're done.

14 MS. MEYER: Yes, I do agree that it should be on  
15 both sides. That's the contract.

16 CHIEF JUDGE DIFIORE: Thank you, counsel.

17 Counsel?

18 MS. LIVORSI: Thank you. I just wanted to touch  
19 upon a few points very briefly.

20 Judge Stein, you asked the question about how  
21 would we know what the time was of the acceleration - - -  
22 when the - - - when the debt was accelerated, if it's  
23 stemming from something other than the filing of the  
24 complaint.

25 And you wouldn't know. It creates perverse



1 situations; we're taking a look at a filed complaint and  
 2 then looking at the date of the signing. But what if you  
 3 start digging through a file and there's a complaint that  
 4 was signed, but the lender decided not to move forward with  
 5 the foreclosure action or - - - I think you're getting into  
 6 a morass of potential pitfalls and litigation if you - - -  
 7 if there is not a bright-line rule. And that bright-line  
 8 rule was expressly set forth in Albertina.

9 An unsigned complaint or a verified complaint  
 10 that wasn't filed doesn't give constructive notice to  
 11 anybody, as envisioned by Albertina.

12 The other part that I wanted to touch upon - - -

13 JUDGE RIVERA: Judge, if I may ask just a follow  
 14 up on what - - -

15 CHIEF JUDGE DIFIORE: Yes, Judge Rivera.

16 JUDGE RIVERA: - - - what was said? So but  
 17 you're not taking the position, counsel, that a lending  
 18 institution could accelerate in advance of filing? Right,  
 19 you could send a letter demanding and saying I am  
 20 accelerating with this letter?

21 MS. LIVORSI: Yes, if it complies, yes. You  
 22 could certainly accelerate in other ways. I think  
 23 commencement is just one of the ways in which you could  
 24 accelerate.

25 JUDGE RIVERA: So if a lender does that, do they



1 then have to put in writing - - - if they haven't filed - -  
2 - they come to some agreement with the debtor, do they then  
3 have to put something in writing saying we've decelerated -  
4 - - we've come to an agreement; we've decelerated? Do they  
5 have to do that?

6 MS. LIVORSI: I - - - are you suggesting if you  
7 accelerated by some other mechanism than the commencement  
8 of an action?

9 JUDGE RIVERA: Correct.

10 MS. LIVORSI: So I think that the - - - for all  
11 intents and purposes, the stipulation of discontinuance  
12 would still apply. Maybe it would - - - maybe it would be  
13 more clear if you've accelerated by a notice of default  
14 that you de-accelerate by some letter saying we no longer  
15 are accelerating by the way of our notice of default or the  
16 letter that we had sent you.

17 But that's not our situation here in our case.  
18 And in our case, we had the stipulation of discontinuance.  
19 There's no notice of default, even in the record.

20 JUDGE RIVERA: Well, let me ask you this. If you  
21 don't do that, if you don't put it express - - - in some  
22 express writing, right, but the debtor keeps paying  
23 installment payments and you accept them, is that then the  
24 equivalent of decelerating?

25 MS. LIVORSI: I'm not sure it would necessarily



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be a deceleration, but it would be some sort of an  
acknowledgement of the debt, in my view, that they're  
continuing to pay on the loan. So it would extend the  
statute of limitations period in that regard.

CHIEF JUDGE DIFIORE: Thank you, counsel.

MS. LIVORSI: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Ditech Financial LLC v. Santhana Kumar Nataraja Naidu, No. 2 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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