

**Supreme Court of the State of New York**  
**Appellate Division, First Judicial Department**

Webber, J.P., Mendez, Rodriguez, Michael, JJ.

6480	THE BANK OF NEW YORK MELLON, formerly known as THE BANK OF NEW YORK, etc., Plaintiff-Respondent,	Index No. 850163/14 Case No. 2024-06531
------	--	--

-against-

ADAM P10TCH, LLC,  
Defendant-Appellant,

BOARD OF MANAGERS OF THE OCTOVIA  
CONDOMINIUM et al.,  
Defendants.

---

Rosenberg Fortuna & Laitman, LLP, Garden City (Christopher Villanti of counsel), for appellant.

Akerman LLP, New York (Ashley M. Slater of counsel), for respondent.

---

Order, Supreme Court, New York County (Francis A. Kahn, III, J.), entered on or about September 23, 2024, which denied defendant's CPLR 2221 motion seeking to vacate the judgment of foreclosure and sale based on a change in the law, unanimously reversed, on the law, with costs, and the matter remanded for consideration of defendant's motion based on the Foreclosure Abuse Prevention Act (FAPA).

On July 9, 2009, plaintiff brought an action to foreclose upon a mortgage. On August 13, 2012, defendant Adam P1otch, LLC, acquired the property, subject to the mortgage, at a condominium lien foreclosure sale. On March 19, 2014, while the 2009 action was pending, plaintiff brought this action to foreclose upon the same mortgage.

The court granted plaintiff a judgment of foreclosure and sale on October 29, 2020. Defendant moved pursuant to CPLR 2221 to vacate the judgment based on FAPA.

The court should not have determined that the motion was untimely. Generally, a CPLR 2221 motion based upon a change in the law must be made prior to the entry of a final judgment or before the time to appeal has fully expired (*see Wilmington Trust N.A. v Fife*, 212 AD3d 550, 550 [1st Dept 2023]). However, following the Court of Appeals' decision in *Article 13 LLC v Ponce De Leon Fed. Bank* (–NY3d–, 2025 NY Slip Op 06536 [2025]), this Court held that “the only way to effectuate the retroactive application of FAPA after a judgment has been entered and the time to appeal has expired, is by filing a motion to renew before the sale is conducted” (*21st Mtge. Corp. v Lin*, 246 AD3d 648, 649 [1st Dept 2026]). Defendant followed this precise process.

Accordingly, this matter is remanded for further proceedings, including consideration of the parties' arguments concerning whether retroactive application of FAPA would violate the Takings and Due Process Clauses (*id.*; *see HSBC Bank USA, N.A. v Gifford*, 224 AD3d 447, 452-453 [1st Dept 2024]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 28, 2026



Susanna Molina Rojas  
Clerk of the Court