

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

Scarpulla, J.P., González, Rodriguez, Higgitt, Hagler, JJ.

7003	JOHN RUBINO et al., Plaintiffs-Respondents-Appellants,	Index No. 650001/22 Case No. 2025-04489
------	---	--

-against-

HSBC BANK USA, N.A., et al.,
Defendants-Appellants-Respondents.

Phillips Lytle LLP, Buffalo (Sean C. McPhee of counsel), for HSBC Bank USA, N.A. and HSBC Mortgage Corporation (USA), appellants-respondents.

Reed Smith LLP, New York (David G. Murphy of counsel), for PHH Mortgage Corporation, appellant-respondent.

Tusa PC, Southold (Joseph S. Tusa of counsel), for respondents-appellants.

Order, Supreme Court, New York County (Gerald Lebovits, J.), entered June 9, 2025, which, to the extent appealed from as limited by the briefs, denied defendants' motion to dismiss plaintiffs' claims for violations of Real Property Law § 275 and RPAPL 1921(1) and (4) as time-barred and plaintiffs' putative class action claims under RPAPL 1921(4) pursuant to CPLR 901(b), and granted their motion to dismiss plaintiffs' breach of contract claims and plaintiff Beverly Guity's statutory claims under Real Property Law § 275 and RPAPL 1921(1) based on her first mortgage loan, unanimously modified, on the law, to grant defendants' motion to dismiss the complaint as time-barred, and the appeal therefrom otherwise dismissed, without costs, as academic. The Clerk is directed to enter judgment dismissing the complaint.

The statute of limitations set forth in CPLR 214(2) applies to plaintiffs' statutory-based claims because they seek only to recover a statutory penalty, and the penalty would not exist but for Real Property Law § 275(1) and RPAPL 1921(1) (see *Whittenburg v Bank of Am., N.A.*, 2015 US Dist LEXIS 66019, 2015 WL 2330307 [SD NY, Mar. 24, 2015, No. 14 CV 947(VB)]; cf. *Matter of Key Bank of N.Y. v Del Norte*, 251 AD2d 740 [3d Dept 1998]). Plaintiffs' putative class action claims are also untimely and were not tolled under the *American Pipe* tolling rule (see *American Pipe & Constr. Co. v Utah*, 414 US 538 [1974]), as plaintiffs did not file individual lawsuits but rather a successive putative class action after their federal action was voluntarily dismissed (see *Chavez v Occidental Chem. Corp.*, 35 NY3d 492, 502, 503 n 7 [2020]). Plaintiffs' claims were also not tolled by filing—and then voluntarily dismissing—their own complaints (CPLR 205[a]). Accordingly, plaintiffs' claims should have been dismissed as time-barred under the appropriate three-year statute of limitations (see CPLR 214[2]).

The court properly dismissed plaintiffs' breach of contract claims as duplicative of their statutory claims in that they seek to hold defendants liable for the same purported wrongdoing and seek the same relief (see *Mañas v VMS Assoc., LLC*, 53 AD3d 451, 453-454 [1st Dept 2008]; see also *Demurjian v Demurjian*, 190 AD3d 410, 411 [1st Dept 2021]). In any event, because plaintiffs' breach of contract claims are embedded in statute and “imposed no separate or independent legal duties on defendant[s] beyond those already imposed by statute,” they would not establish a

longer statute of limitations to render plaintiffs' claims timely (*see Mindel v Phoenix Owners Corp.*, 17 AD3d 227, 228 [1st Dept 2005]).

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

ENTERED: June 30, 2026

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name "Susanna" being more prominent and the last name "Rojas" written in a slightly smaller, more compact script.

Susanna Molina Rojas
Clerk of the Court