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_____AD3d_____ Argued - December 2, 2025

FRANCESCA E. CONNOLLY, J.P.
VALERIE BRATHWAITE NELSON
BARRY E. WARHIT
ELENA GOLDBERG VELAZQUEZ, JJ.

2024-06862 DECISION & ORDER

Partners for Payment Relief DE IV, LLC, respondent,
v Blanca Aucapina, etc., et al., appellants, et al., defendant.

(Index No. 612857/22)

Rosenberg & Pratt-Hewitt, LLP, New York, NY (Lindsey A. Rosenberg and Nicole Aloise of counsel), for appellants.

Hinshaw & Culbertson LLP, New York, NY (Fernando C. Rivera-Maissonet and Schuyler B. Kraus of counsel), for respondent.

In an action to foreclose a mortgage, the defendants Blanca Aucapina, Jaime P. Aucapina, and Luis Aucapina appeal from an order of the Supreme Court, Suffolk County (Thomas F. Whelan, J.), dated March 19, 2024. The order denied those defendants' motion for summary judgment dismissing the complaint insofar as asserted against them as time-barred and on their counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the subject mortgage.

ORDERED that the order is reversed, on the law, with costs, and the motion of the defendants Blanca Aucapina, Jaime P. Aucapina, and Luis Aucapina for summary judgment dismissing the complaint insofar as asserted against them as time-barred and on their counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the subject mortgage is granted.

In December 2009, the plaintiff's predecessor in interest, Wells Fargo Bank (hereinafter Wells Fargo), commenced an action against the defendants Blanca Aucapina, Jaime P. Aucapina, and Luis Aucapina (hereinafter collectively the defendants), among others, to foreclose a mortgage on certain real property located in East Hampton (hereinafter the prior foreclosure action). In a decision and order dated April 28, 2021, this Court, inter alia, granted that branch of the defendants' cross-motion which was pursuant to CPLR 3215(c) to dismiss the complaint insofar as asserted against them as abandoned (*see Wells Fargo Bank v Aucapina*, 193 AD3d 1106).

In July 2022, the plaintiff commenced this action to foreclose the same mortgage.

The defendants interposed an answer in which they asserted several affirmative defenses, including that the action was barred by the statute of limitations, and a counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage. The defendants moved for summary judgment dismissing the complaint insofar as asserted against them as time-barred and on their counterclaim. The Supreme Court denied the motion. The defendants appeal.

An action to foreclose a mortgage is subject to a six-year statute of limitations (*see* CPLR 213[4]). Even if the mortgage is payable in installments, once the mortgage debt is accelerated, the entire amount is due and the statute of limitations begins to run on the entire debt (*see Pryce v U.S. Bank, N.A.*, 226 AD3d 711, 712; *Bush N Stuy Corp. v Bayview Loan Servicing, LLC*, 215 AD3d 916, 918).

Here, the defendants demonstrated, prima facie, that the six-year statute of limitations began to run on the entire mortgage debt in December 2009, when Wells Fargo commenced the prior foreclosure action and elected to call due the entire amount secured by the mortgage (*see Deutsche Bank Natl. Trust Co. v Vista Holding, LLC*, 239 AD3d 830, 832; *U.S. Bank Trust, N.A. v Giangrande*, 229 AD3d 834, 835). The defendants further established that this action was commenced in July 2022, more than six years later, and is, therefore, time-barred (*see U.S. Bank N.A. v Onuoha*, 216 AD3d 1069, 1072).

In opposition, the plaintiff, relying on the six-month extension of the statute of limitations afforded under CPLR 205(a), failed to raise a triable issue of fact as to whether the statute of limitations was tolled or otherwise inapplicable or whether the plaintiff had actually commenced this action within the applicable limitations period (*see id.*). Pursuant to the Foreclosure Abuse Prevention Act (FAPA) (L 2022, ch 821), because the prior foreclosure action was dismissed insofar as asserted against the defendants as abandoned pursuant to CPLR 3215(c), the plaintiff is not entitled to the benefit of the savings provision of CPLR 205(a) or 205-a (*see Pryce v U.S. Bank, N.A.*, 226 AD3d at 713; *U.S. Bank N.A. v Onuoha*, 216 AD3d at 1072-1073).

The plaintiff's arguments challenging the retroactive application and constitutionality of FAPA are without merit (*see Van Dyke v U.S. Bank, Natl. Assn.*, ___ NY3d ___, 2025 NY Slip Op 06537; *Article 13 LLC v Ponce De Leon Fed. Bank*, ___ NY3d ___, 2025 NY Slip Op 06536).

Accordingly, the Supreme Court should have granted the defendants' motion for summary judgment dismissing the complaint insofar as asserted against them as time-barred and on their counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage (*see U.S. Bank N.A. v Onuoha*, 216 AD3d at 1073).

The parties' remaining contentions either are without merit or need not be reached in light of our determination.

CONNOLLY, J.P., BRATHWAITE NELSON, WARHIT and GOLDBERG VELAZQUEZ, JJ., concur.

ENTER:

Darrell M. Joseph
Clerk of the Court