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_____AD3d_____ Argued - December 2, 2025

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

2022-03813 DECISION & ORDER

MTGLQ Investors, L.P., respondent, v
Jay Walker, appellant, et al., defendants.

(Index No. 715665/17)

Mobilization for Justice, Inc., New York, NY (Shivani Jacelon and Christopher Fasano of counsel), for appellant.

Knuckles, Komosinski & Manfro, LLP, Elmsford, NY (John E. Brigandi of counsel), for respondent.

In an action to foreclose a mortgage, the defendant Jay Walker appeals from an order of the Supreme Court, Queens County (Joseph J. Esposito, J.), entered April 27, 2022. The order, insofar as appealed from, granted those branches of the plaintiff's motion which were for summary judgment on the complaint insofar as asserted against the defendant Jay Walker and for an order of reference, and denied those branches of that defendant's cross-motion which were for summary judgment dismissing the complaint insofar as asserted against him as barred by the statute of limitations and on his counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, those branches of the plaintiff's motion which were for summary judgment on the complaint insofar as asserted against the defendant Jay Walker and for an order of reference are denied, and those branches of the defendant Jay Walker's cross-motion which were for summary judgment dismissing the complaint insofar as asserted against him as barred by the statute of limitations and on his counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage are granted.

In October 2006, the defendant Jay Walker (hereinafter the defendant) executed a note in the sum of $306,000 in favor of Countrywide Home Loans, Inc. (hereinafter Countrywide). The note was secured by a mortgage on certain real property located in Jamaica. By assignment of mortgage dated March 9, 2010, Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide, assigned the mortgage to BAC Home Loans Servicing (hereinafter BAC).

On May 20, 2010, BAC commenced an action (hereinafter the 2010 action) against the defendant, among others, to foreclose the mortgage. Thereafter, in an order dated January 14, 2014, the Supreme Court granted those branches of BAC's motion which were to discontinue the 2010 action and cancel the notice of pendency. The mortgage was later assigned to the plaintiff in this action, MTGLQ Investors, L.P.

On November 10, 2017, the plaintiff commenced this action against the defendant, among others, to foreclose the mortgage. The defendant interposed an answer in which he asserted various affirmative defenses, including that the action was barred by the statute of limitations, as well as a counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage.

In June 2021, the plaintiff moved, inter alia, for summary judgment on the complaint insofar as asserted against the defendant and for an order of reference. The defendant cross-moved, among other things, for summary judgment dismissing the complaint insofar as asserted against him as barred by the statute of limitations and on his counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage. The plaintiff opposed the cross-motion. In an order entered April 27, 2022, the Supreme Court, inter alia, granted those branches of the plaintiff's motion and denied those branches of the defendant's cross-motion. The defendant appeals.

An action to foreclose a mortgage is governed by a six-year statute of limitations (*see* CPLR 213[4]). "[E]ven if a mortgage is payable in installments, once a mortgage debt is accelerated, the entire amount is due and the statute of limitations begins to run on the entire debt" (*Bank of N.Y. Mellon v Mor*, 201 AD3d 691, 694; *see U.S. Bank N.A. v Medianik*, 223 AD3d 935, 937).

Pursuant to RPAPL 1501(4), a person having an estate or interest in real property subject to a mortgage may maintain an action to secure the cancellation and discharge of the encumbrance, and to adjudge the estate or interest free of it, if the applicable statute of limitations for commencing a foreclosure action has expired (*see U.S. Bank NA v Schaer*, 223 AD3d 928, 929).

Here, the six-year statute of limitations began to run in May 2010, when BAC, the plaintiff's predecessor in interest, commenced the 2010 action and elected in the complaint to call due the entire amount secured by the mortgage (*see Deutsche Bank Natl. Trust Co. v DiGiorgio*, 237 AD3d 899, 900; *U.S. Bank N.A. v Medianik*, 223 AD3d at 938). The instant action was commenced in November 2017, more than seven years after the commencement of the 2010 action. Pursuant to CPLR 3217, as amended by the Foreclosure Abuse Prevention Act (FAPA) (L 2022, ch 821, § 8), the voluntary discontinuance of the 2010 action did not serve to revive or reset the statute of limitations (*see* CPLR 3217[e]; *JPMorgan Chase Bank, N.A. v Turkov*, 242 AD3d 1069; *Wells Fargo Bank, N.A. v Edwards*, 231 AD3d 1189, 1193).

The plaintiff's contentions challenging FAPA's retroactive application and constitutionality under the United States and New York Constitutions 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; *Wells Fargo Bank, N.A. v Salko*, 241 AD3d 851; *Deutsche Bank Natl. Trust Co. v Dagrin*, 233 AD3d 1065, 1067-1071; *97 Lyman Ave., LLC v MTGLQ Invs., L.P.*, 233 AD3d 1038, 1043).

Accordingly, we reverse the order insofar as appealed from, deny those branches of the plaintiff's motion which were for summary judgment on the complaint insofar as asserted against the defendant and for an order of reference, and grant those branches of the defendant's cross-motion which were for summary judgment dismissing the complaint insofar as asserted against him as barred by the statute of limitations and on his counterclaim pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage.

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

ENTER:

Darrell M. Joseph
Clerk of the Court