

# State of New York Court of Appeals

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To be argued Tuesday, January 5, 2021 (arguments begin at 2 pm)

- No. 1 Freedom Mortgage Corporation v Engel**
- No. 2 Ditech Financial, LLC v Naidu**
- No. 3 Vargas v Deutsche Bank National Trust Company**
- No. 4 Wells Fargo Bank, N.A. v Ferrato**

These cases arise from foreclosure actions brought by mortgage holders against defaulting borrowers. Panels of the Appellate Division, First and Second Departments, held in each case that the foreclosures were time-barred. The courts ruled that the six-year limitations period began to run on the entire mortgage balance when the lenders commenced prior foreclosure actions or issued a default letter, actions which accelerated the loans, and that the lenders' voluntary discontinuance of their prior actions did not revoke the loan accelerations that triggered the statute of limitations.

In Case Nos. 1, 2 and 4, lenders filed foreclosure actions that expressly accelerated the loan to make the entire balance due immediately, then discontinued those actions by stipulation after negotiating with the borrowers. They commenced their current foreclosure actions more than six years later and the borrowers moved to dismiss them as untimely. The Appellate Division granted the borrowers' motions and dismissed the actions. In Case No. 4, the First Department said Wells Fargo "failed to affirmatively revoke the acceleration of defendant's mortgage debt, as mere voluntary discontinuance of a foreclosure action is insufficient, in itself, to constitute an affirmative act of revocation." In Case No. 1, the Second Department noted that the stipulation which discontinued the prior foreclosure action "was silent on the issue of the revocation of the election to accelerate, and did not otherwise indicate that [Freedom Mortgage] would accept installment payments from the defendant."

In Case No. 3, a loan servicer sent Juan Vargas a letter in 2008 informing him that he was in default and that his mortgage "will accelerate" if he did not cure the default within 32 days. The servicer commenced a foreclosure action against him in 2009, four days before it received an assignment of the note and mortgage. Deutsche Bank, which was later assigned the mortgage, successfully moved in 2013 to discontinue the 2009 action in order to cure a problem with standing. In 2016, Vargas brought this action against Deutsche Bank to discharge the mortgage, contending his loan had been accelerated for more than six years and any new foreclosure action would be untimely. Supreme Court granted summary judgment to Vargas, declaring the mortgage unenforceable, and the First Department affirmed, ruling the 2008 default letter accelerated the mortgage and triggered the statute of limitations. It said the letter "informed [Vargas] that his debt 'will [be] accelerate[d]' and 'foreclosure proceedings will be initiated' if he failed to cure his default.... We have held that this language constitutes a clear and unequivocal intent to accelerate the loan balance and commence the statute of limitations on the entire mortgage debt." The bank argues that a "letter referring to a potential future event" does not accelerate a loan and, in any event, its discontinuance of the 2009 action "revoked any purported acceleration."

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