State of New York
Court of Appeals

Summaries are prepared based on the parties' briefs and are for background purposes only.

To be argued Thursday, October 16, 2025

Article 13 LLC v Lasalle National Bank (132 F4th 586 [Second Circuit]).
Court PASS Docket No. CTQ-2025-00001

A mortgage to finance the purchase of property usually provides that the owner of the property will pay the bank or mortgage company in installments and includes an "acceleration" clause—if the owner misses an installment payment, the mortgage company has the option to "accelerate" the loan and demand that the owner pay the entire balance of the debt. If a mortgage company commences an action to recover the entire balance of the debt, it has accelerated the loan. The mortgage company has six years from acceleration to seek to foreclose on the property—to take possession of the property that secures the debt. If the debt is accelerated and the six-year period expires, the owner of the property can commence an action to cancel and discharge a mortgage (RPAPL 1501 [4]).

In 2007, following missed installment payments on a mortgage for property in Brooklyn, a mortgage company commenced an action on the mortgage in state court against the property owner. The action was pending for ten years, and the mortgage company did not apply to foreclose the property. In 2017, the mortgage company, with the court's approval, voluntarily discontinued the action.

In 2020, the owner of the property filed this action in the United States District Court for the Eastern District of New York seeking a judgment cancelling and discharging the mortgage on the property. The owner said the requirements of RPAPL 1501(4) were met, because the six-year period to commence an action to foreclosure a mortgage began when the mortgage debt was accelerated – in 2007—and had expired. A successor mortgage company argued in defense that the 2007 action did not accelerate the mortgage because the prior mortgage company did not have standing to bring that action.

Before the District Court issued a decision, in 2021, the Court of Appeals held that if a mortgage company voluntarily discontinues a mortgage foreclosure action, it revokes the "acceleration" of the mortgage debt and resets the six-year period (*Freedom Mtge. Corp. v Engel,* 37 NY3d 1). In 2022, the District Court held that if the prior mortgage company that commenced the 2007 mortgage action did not have standing, the debt was not accelerated by that action. If so, the owner could not bring this action to discharge and cancel the mortgage.

Two days after the District Court's decision, the New York State legislature enacted the Foreclosure Abuse Prevention Act (FAPA). FAPA provides that in a RPAPL 1501(4) action to cancel and discharge a mortgage, a mortgage company cannot assert that a prior foreclosure action did not accelerate a debt unless the prior foreclosure action was dismissed based on an "expressed judicial determination, made upon a timely imposed defense" that the mortgage was not validly accelerated. FAPA took "effect immediately" and applied to actions where "a final judgment of foreclosure and sale has not been enforced."

Based on FAPA, the District Court reconsidered its decision and determined that the owner was entitled to a judgment canceling and discharging the mortgage because, under FAPA, the mortgage company's 2007 action accelerated the debt, the voluntary discontinuance of that action did not impact that acceleration, and the six-year period to seek foreclosure had expired.

On appeal, the Second Circuit certified two questions to the Court of Appeals: (1) "whether, or to what extent" does FAPA apply to foreclosure actions commenced before FAPA was enacted? and (2) whether FAPA's retroactive application "violates the right to substantive and procedural due process under the New York Constitution"?

The Attorney General has intervened in the action to defend the constitutionality of FAPA.

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VanDyke v U.S. Bank (235 AD3d 517 [AD1])
Court PASS Docket No. APL 2025-00100

A mortgage to finance the purchase of property usually provides that the owner of the property will pay the bank or mortgage company in installments and includes an "acceleration" clause—if the owner misses an installment payment, the mortgage company has the option to "accelerate" the loan and demand that the owner pay the entire balance of the debt. If a mortgage company commences an action to recover the entire balance of the debt, it has accelerated the loan. The mortgage company has six years from acceleration to seek to foreclose on the property—to take possession of the property that secures the debt. If the debt is accelerated and the six-year period expires, the owner of the property can commence an action to cancel and discharge a mortgage (RPAPL 1501 [4]).

In 2009, following missed installment payments on a mortgage for property in the Bronx, the bank commenced an action on the mortgage. In 2010, the bank sent the property owner a letter stating the mortgage was in default and identifying the full balance due on the mortgage. In 2019, a trial court held that an issue of fact existed whether the bank possessed the note when it commenced the action. In 2020, the Appellate Division affirmed the trial court order.

In March 2022, the parties stipulated to voluntarily discontinue the action. In April 2022, the property owner commenced this action to cancel and discharge the mortgage. The owner said the requirements of RPAPL 1501(4) were met because the six-year period to commence an action to foreclose on a mortgage began when the bank sent the 2010 letter.

On December 30, 2022, the New York State legislature enacted the Foreclosure Abuse Prevention Act (FAPA). FAPA provides that in a RPAPL 1501(4) action to cancel and discharge a mortgage, a bank cannot assert that a prior foreclosure action did not accelerate a debt unless the prior foreclosure action was dismissed based on an "expressed judicial determination, made upon a timely imposed defense" that the mortgage was not validly accelerated. FAPA took "effect immediately" and applied to actions where "a final judgment of foreclosure and sale has not been enforced."

The parties submitted supplemental argument to the trial court on FAPA. The property owner argued that, under FAPA, the 2009 action accelerated the debt, the voluntary discontinuance of that action did not impact that acceleration, and the six-year period to seek foreclosure had expired. The bank argued the 2019 and 2020 court orders and the 2022 stipulation in the action on the mortgage were express judicial determinations that the bank did not have standing. The bank also argued that FAPA could not be applied retroactively.

The trial court found there was no prior judicial determination on standing and awarded the property owner judgment discharging and canceling the mortgage. The Appellate Division affirmed, agreeing that there was no express judicial determination that the loan was not validly accelerated by the 2009 action. The court also held that FAPA applied "retroactively" to this case and applying FAPA would not violate the contracts clause of the Constitution nor unconstitutionally impair the bank's vest rights.

The Attorney General has intervened in the action to defend the constitutionality of FAPA.

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Ben-Dor v Alchemy Consultant (229 AD3d 405 [AD1])
Court PASS Docket No. APL-2024-00178

Gisele Ben-Dor banked at a New Jersey branch of JPMorgan Chase Bank. David Tate learned that Ms. Ben-Dor was interested in making investments. To defraud Ms. Ben-Dor, Mr. Tate opened a business checking account at a Chase branch in New Jersey, in the name of "Alchemy Consultant LLC." The Chase employee who opened the business account recorded the taxpayer identification number as "00-000000" and did not record Tate's personal identification. No corporate documentation for Alchemy was provided to Chase. These failures were in violation of Chase's anti-fraud procedures, including online materials stating that Chase would not open a business account without proper identification and business documentation.

At Mr. Tate's direction, Ms. Ben-Dor transferred $300,000 by wire transfer from her Chase account to the Alchemy Chase account. Mr. Tate emptied the Alchemy account and abandoned it. Realizing she had been defrauded, Ms. Ben-Dor contacted Chase, demanding a reversal of the wire transfer or other corrective action. Chase took no action, and Ms. Ben-Dor's money has not been returned.

Ms. Ben-Dor commenced this action against Tate and Chase to recover the $300,000. The complaint alleged negligence against the Bank under New Jersey law. The Bank argued that the complaint must be dismissed because it owed no duty of care to Ms. Ben-Dor. The trial court determined that Ms. Ben-Dor's complaint against the Bank could not be dismissed on its face because Chase owed its customer Ms. Ben-Dor a duty of care under New Jersey law to exercise due diligence before allowing Tate to open the Alchemy account.

The Appellate Division, in a 4-1 decision, agreed. Applying New Jersey law because the accounts were in New Jersey, the majority recounted that banks do not have a duty to protect depositors from the wrongful conduct of third parties with whom the bank has done business; however, a bank may have a duty of care where a "special relationship" exists and a duty of care "flows" from that relationship. The majority further concluded that a special relationship may be formed by agreement, undertaking or contact. Thus, the majority found that Ms. Ben-Dor's complaint "adequately pleaded that Chase assumed a duty to abide by the anti-fraud policies that it publicized." With Chase's duty to Ms. Ben-Dor to enforce its anti-fraud procedures, Ms. Ben-Dor has adequately pleaded a claim against Chase for negligence based on its alleged failure to abide by the safeguards when Tate opened the business account, the majority concluded.

The dissenting Justice, recognizing the "regrettable loss" of Ms. Ben-Dor's "money to a fraudster's scheme," disagreed, holding that no common law duty existed under New Jersey law from Chase to Ms. Ben-Dor.

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People v Jaylin Wiggins (225 AD3d 1305[AD4])
Court PASS Docket No. APL-2024-00059

On August 4, 2016, there were two separate shootings, approximately an hour apart, in the City of Buffalo. One shooting victim was fatally injured.

Jaylin Wiggins was indicted for crimes relating to both shootings, including murder, attempted murder, assault and criminal possession of a weapon.

At trial, Juror No. 5 raised concerns about a race-related comment made by other jurors during deliberations. The trial court asked Juror No 5 and another juror about the race-related comment; the People and Mr. Wiggins also questioned Juror No. 5 and another juror about the comment.

The trial court denied Mr. Wiggins' request for a mistrial. The jury convicted him of murder in the second degree, assault in the first degree and criminal possession of a weapon it the second degree.

On appeal, in a 3-2 decision, the Appellate Division affirmed. The majority held that "the record supports the conclusion that the procedure followed by the trial court appropriately ensured that 'defendant's right to an impartial verdict [was] properly balanced with the jury's right to adjudicate 'free from outside interference.'" "On the broader issue of whether jury deliberations were tainted by racial bias," the majority said the court, in a tactful and probing inquiry, evaluated the nature of what Juror No. 5 had reported and assessed its importance and bearing on the case.

The dissenting Justices were "unable to conclude on the record before us that the jury was not tainted by racial bias in their deliberations."