

Bank of NY Mellon v Dieudonne
2017 NY Slip Op 32982(U)
June 27, 2017
Supreme Court, Kings County
Docket Number: 51877/16
Judge: Noach Dear
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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 27th day of June 2017.

P R E S E N T:

HON. NOACH DEAR,

J.S.C.

Index No.: 518577/16

_____ x

BANK OF NY MELLON,

Plaintiff,

DECISION AND ORDER

-against-

ALICE J DIEUDONNE et al,

Defendant,

_____ x

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Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Moving Papers and Affidavits Annexed	<u>1</u>
Opposition	<u>2</u>
Cross	<u>3</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Defendant moves for dismissal, alleging that this action was filed beyond the statute of limitations. Plaintiff opposes.

"The law is well settled that with respect to a mortgage payable in installments, there are separate causes of action for each installment accrued, and the Statute of Limitations [begins] to run, on the date each installment [becomes] due unless the mortgage debt is accelerated. Once the mortgage debt is accelerated, the entire amount is due and the Statute of Limitations begins to run on the entire mortgage debt" (*Loiacono v. Goldberg*, 240 A.D.2d 476, 477 [2d Dept. 1997]). A "Notice of Default and Intent to Accelerate" dated 5/20/09 was (allegedly) sent by Litton Servicing, said notice provided that "[i]f you have not cured the default within forty-five (45) days of this notice, Litton will accelerate the maturity date of the Note and declare all outstanding amounts under the

NYSCEF DOC. NO. 45

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INDEX NO. 518577/2016

NYSCEF DOC. NO. 44

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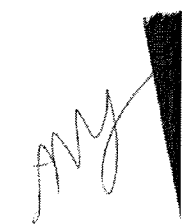
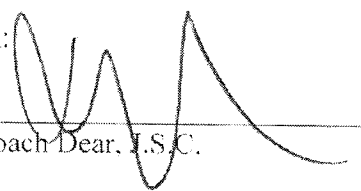
Note immediately due and payable.” This (arguably) accelerated the loan (see, for example, *Deutsche Bank Nat. Trust Co. v. Royal Blue Realty Holdings, Inc.*, 148 A.D.3d 529 [1st Dept 2017]). Even were that not an acceleration, Paragraph Fifth of the 2010 complaint explicitly accelerates the debt stating, “Plaintiff elects to call due the entire amount secured by the mortgage.” Thus, the statute of limitations began to run no later than 6/29/10 at the time of filing of the 2010 action (see, *Beneficial Homeowner Service Corp. v. Tovar*, 150 A.D.3d 657 [2d Dept 2017]; *Ward v. Walkley*, 143 A.D.2d 415, 417 [2d Dept.1988], quoting 55 Am. Jr. 2d, Mortgages § 387 [“a suit to foreclose a mortgage is notice of the most unequivocal character that the mortgagee wishes to avail himself of his option for acceleration”]) and the instant action was filed on 10/20/16, more than six years later.

Plaintiff ignores the 2009 letter and argues that the mortgage prevents the filing of suit from being an acceleration. That reading is clearly contrary to established precedents.

Motion to dismiss granted. Case dismissed. Notice of pendency to be vacated.

ENTER:

Hon. Noach Dear, J.S.C.



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