

<b>Vargas v Deutsche Bank Natl.</b>
2017 NY Slip Op 33266(U)
October 12, 2017
Supreme Court, Bronx County
Docket Number: 0302647/2016
Judge: Julia I. Rodriguez
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NEW YORK SUPREME COURT - COUNTY OF BRONX

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PART 27

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

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VARGAS, JUAN

Index No. 0302647/2016

-against-

Hon. JULIA RODRIGUEZ,

DEUTSCHE BANK NATIONAL

Justice Supreme Court

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The following papers numbered 1 to \_\_\_\_\_ Read on this motion, **REARGUE/RENEW/RESETTLE/RECONSI**  
Noticed on **August 29 2017** and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

Motion is Respectfully Referred to:

Justice: \_\_\_\_\_

Dated: \_\_\_\_\_

As fully set forth in Decision and Order Granting Renewal annexed hereto: (1) Plaintiff's motion pursuant to CPLR 2221(e)(2) to renew this Court's Decision and Order dated April 5, 2017 is **granted**, and upon renewal, the April 5, 2017 Order is hereby **vacated and recalled**; (2) Defendant's underlying motion to dismiss the complaint, pursuant to CPLR 3211(a)(7), is **denied**; and (3) Plaintiff's underlying cross-motion for summary judgment is **granted**, and therefore it is

ORDERED, ADJUDGED AND DECREED that the Defendant and every person claiming thereunder are barred from all claims to an estate or interest superior to Plaintiff's interest in the subject property; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgage to 530 Coster Street, Bronx, New York 10474, Block 2768, Lot 376, County of Bronx, City and State of New York, dated May 9, 2005 and filed with the Office of the City Register of the City of New York on July 12, 2005 in CRFN#: 20050003888373 is unenforceable; and it is further

ORDERED, ADJUDGED AND DECREED that the subject property is free from any and all liens or encumbrances of any kind existing in favor of or claimed by the Defendant.

Dated: 10/12/2017

Hon. 2 [Signature]  
**JULIA RODRIGUEZ, J.S.C.**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX

-----X Index No. 302647/16

Juan Vargas,  
Plaintiff,

-against-

DECISION & ORDER  
GRANTING RENEWAL

Deutsche Bank National Trust Company,

Defendants.

Present:  
Hon. Julia I. Rodriguez  
Supreme Court Justice

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Recitation, as required by CPLR 2219(a), of the papers considered in review of plaintiff's motion to renew, pursuant to CPLR 2221(e)(2).

<u>Papers Submitted</u>	<u>Numbered</u>
Notice of Motion, Affirmation & Exhibits	1
Affirmation in Opposition & Exhibits	2
Reply Affirmation	3

Plaintiff's motion pursuant to CPLR 2221(e)(2) to renew this Court's Decision and Order dated April 5, 2017 ["the Order"], is **granted**, and upon renewal, the Order is hereby **vacated and recalled** and defendant's motion to dismiss the complaint, pursuant to CPLR 3211(a)(7), and plaintiff's cross-motion for summary judgment are decided as follows:

In the Order dated April 5, 2017 this Court found that a letter dated August 5, 2008 indicating that plaintiff's debt will be accelerated if he fails to cure his default within 32 days was "insufficient to establish as a matter of law that the mortgage debt was accelerated in September of 2008 rather than on January 16, 2009, when the foreclosure action was commenced by the filing of a summons and complaint." However, in *Deutsche Bank Nat. Trust Co. v. Royal Blue Realty Holdings, Inc.*, 148 A.D.3d 529, 48 N.Y.S.3d 597 (2017) (rendered after plaintiff's cross-motion was submitted), the First Department found that letters stating that a loan balance "will" be accelerated unless the debtor cures his defaults within 30 days provide "clear and unequivocal notice" that the loan balance "will" be accelerated at the end of that 30-day period, and that, therefore, the statute of limitations began to run on the entire mortgage debt at the end of that 30-day period. As such, the Court is constrained to find that, based upon the

language in the default letter, plaintiff's entire mortgage debt was accelerated in September of 2008 and the statute of limitations was commenced at that time. Accordingly, as plaintiff notes, the 2009 foreclosure action and subsequent discontinuance is of no moment.

In any event, defendant's own actions evidence that it did not consider the discontinuance of the January 2009 action in November 2013 to constitute a revocation of the acceleration of plaintiff's mortgage debt. Notably, in a letter to plaintiff's attorney dated July 8, 2014, defendant's attorney indicated that the total amount due on the mortgage debt, \$475,261.87, must be paid on or before August 1, 2014. Also, contrary to defendant's contention, the three payments made by plaintiff on April 4, 2016, May 3, 2016 and June 6, 2016, respectively, do not restart the statute of limitations. In order that part payment shall have the effect of tolling a time-limitation period, it must be shown that there was a payment of a portion of an admitted debt, made and accepted as such, accompanied by circumstances which amount to an absolute and unqualified acknowledgment by the debtor of more being due, from which a promise may be inferred to pay the remainder. *See Lew Morris Demolition Co., Inc. v. Board of Education of the City of New York*, 40 N.Y.2d 516, 355 N.E.2d 369 (1976); *Banco Do Brasil v. State of Antigua and Barbuda*, 268 A.D.2d 75, 707 N.Y.S.2d 151(1st Dept. 2000). Here, plaintiff did not enter into a loan modification agreement with defendant and there exists no other written acknowledgment by plaintiff of the outstanding mortgage debt. The court also notes that plaintiff made no payments to defendant after June 6, 2016. As such, the six-year period within which defendant could timely commence a foreclosure action has expired.

Based upon the foregoing, defendant's motion to dismiss the complaint, pursuant to CPLR 3211(a)(7), is **denied**. Plaintiff's cross-motion for summary judgment is **granted**, and it is hereby

ORDERED, ADJUDGED AND DECREED that the Defendant and every person claiming thereunder are barred from all claims to an estate or interest superior to Plaintiff's interest in the subject property; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgage to 530 Coster Street, Bronx, New York 10474, Block 2768, Lot 376, County of Bronx, City and State of New York,

dated May 9, 2005 and filed with the Office of the City Register of the City of New York on July 12, 2005 in CRFN#: 20050003888373 is unenforceable; and it is further

ORDERED, ADJUDGED AND DECREED that the subject property is free from any and all liens or encumbrances of any kind existing in favor of or claimed by the Defendant.

Dated: Bronx, New York  
October 12, 2017

  
\_\_\_\_\_  
Hon. Julia I. Rodriguez, J.S.C.