

Wilmington Trust, N.A. v Deosaran

2019 NY Slip Op 30206(U)

January 14, 2019

Supreme Court, Queens County

Docket Number: 710179/2018

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

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WILMINGTON TRUST, NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE OF
MFRA TRUST 2015-2,

Plaintiff,

- against -

Index No.: 710179/2018
Motion Date: 1/10/19
Motion No.: 64
Motion Seq.: 1

HEMCHANDRA DEOSARAN A/K/A HEMCHANDRA
DOESARAN, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, UNITED STATES OF
AMERICA O/B/O INTERNAL REVENUE
SERVICE,
"JOHN DOE" and "JANE DOE", said names
being fictitious, it being the
intention of Plaintiff to designate
any and all occupants of premises
being foreclosed herein,

Defendants.

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The following electronically filed documents read on this motion
by defendant HEMCHANDRA DEOSARAN A/K/A HEMCHANDRA DOESARAN
(defendant) for an Order dismissing the action pursuant to CPLR
3211(a)(5):

Table with 2 columns: Document Name and Papers Numbered. Rows include Notice of Motion-Affidavits-Exhibits, Affirmation in Opposition-Exhibits, and Reply Affirmation-Exhibits.

This foreclosure action pertains to property located at 111-
13 116th Street, South Ozone Park, NY 11420.

Initially, pursuant to the Stipulation dated October 4,
2018, the opposition to this motion was due on December 20, 2018.
Plaintiff did not file its opposition until January 2, 2018.

Although plaintiff's opposition was untimely filed, as the opposition was filed seven days before the return date and in this Court's discretion, the opposition will be considered herein.

On a motion pursuant to CPLR 3211(a)(5) to dismiss a complaint as barred by the applicable statute of limitations, the moving defendant must establish, prima facie, that the time in which to commence the action has expired (Kitty Jie Yuan v 2368 W. 12th St., LLC, 119 AD3d 674 [2d Dept. 2014]). An action to foreclose a mortgage is subject to a six-year statute of limitations (see CPLR 213[4]; U.S. Bank Nat. Ass'n v Barnett, 151 AD3d 791 [2d Dept. 2017]). Once a mortgage debt is accelerated, the entire amount becomes due, and the six-year statute of limitations begins to run (see CPLR 213[4]; EMC Mtge. Corp. v Patella, 279 AD2d 604 [2d Dept. 2001]; Federal Natl. Mtge. Ass'n v Mebane, 208 AD2d 892 [2d Dept. 1994]). However, the statute of limitations may begin anew where there is a written acknowledgment of the debt, containing nothing inconsistent with an intention on the part of the debtor to pay it (see General Obligations Law 17-101; Knoll v Datek Sec. Corp., 2 AD3d 594 [2d Dept. 2003]).

Here, defendant contends that the debt was accelerated upon commencement of the first action on July 20, 2009. Defendant argues, therefore, that the statute of limitations expired on July 20, 2015. Thus, this action, which was commenced on July 3, 2018, is barred by the statute of limitations pursuant to CPLR 213(4).

In opposition, plaintiff submits a copy of a letter dated April 10, 2013 wherein defendant acknowledges that he is indebted to plaintiff's servicer due to his default in monthly payments from March 1, 2009 through the date of the letter. Defendant executed the trial payment plan on April 25, 2013.


Here, defendant executed the trial payment plan on April 25, 2013. The letter contains an acknowledgment of the debt and contains nothing inconsistent with defendant's intention to pay it. Accordingly, the statute of limitations began anew on April 25, 2013. Therefore, this action is timely.

As this Court finds that the statute of limitations began anew due to the written acknowledgment of the debt, plaintiff's remaining arguments, including whether plaintiff is entitled to federal immunity from the statute of limitations and whether the prior action was capable of accelerating the debt, will not be addressed herein.

Accordingly, and for the above stated reasons, it is hereby

ORDERED, that defendant HEMCHANDRA DEOSARAN A/K/A HEMCHANDRA
DOESARAN's motion to dismiss is denied.

Dated: January 14, 2019
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.

FILED
JAN 29 2019
COUNTY CLERK
QUEENS COUNTY