

**Santander Bank, N.A. v Jefferson**

2023 NY Slip Op 34109(U)

November 20, 2023

Supreme Court, Suffolk County

Docket Number: Index No. 601493/2019

Judge: Christopher Modelewski

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SHORT FORM ORDER

INDEX NO. 601493/2019

**SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 17 - SUFFOLK COUNTY**

**PRESENT: Hon. CHRISTOPHER MODELEWSKI  
Justice of the Supreme Court**

**MOTION DATE: 06/12/2023 (005)  
MOTION DATE: 07/07/2023 (006)  
ADJ. DATE: 10/02/2023 (005 & 006)  
MOT. SEQ. 005-MD  
MOT. SEQ. 006-MD**

-----X  
SANTANDER BANK, N.A.,

Plaintiff,

- against -

ISAAC JEFFERSON; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; CLERK OF THE SUFFOLK COUNTY TRAFFIC & PARKING VIOLATIONS AGENCY; THE CHASE MANHATTAN BANK AS TRUSTEE OF IMC HOME EQUITY LOAN TRUST 1997-5 UNDER THE POOLING AND SERVICING AGREEMENT AND DATED AS OF SEPTEMBER 1, 1997; SUFFOLK COUNTY CLERK; DLJ CAPITAL MORTGAGE, INC.; "JOHN DOE #1" through and including "JOHN DOE #25", the defendants last named in quotation marks being intended to designate tenants or occupants in possession of the herein described premises or portions thereof, if any there be, said names being fictitious, their true name being unknown to plaintiff,

Defendants.  
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Upon the E-file document list numbered 95 to 99, 101 to 123, 126 to 134, and 136 to 137, read and considered on the motion by defendant Isaac Jefferson for an order pursuant to CPLR 2221 (e) granting leave to renew his prior motion for an order dismissing the complaint as time-barred, and upon renewal, vacating the order dated March 2, 2022, dismissing this action as time-barred, directing the Suffolk County Clerk to cancel and discharge the mortgage of record, and granting defendant an award of attorneys' fees pursuant to Real Property Law section 282 (1), and on the cross-motion by plaintiff for an order granting summary judgment, a default judgment against all non-appearing defendants, striking the affirmative defenses in the answer of defendant Isaac Jefferson, appointing a referee to compute the amounts alleged to be due and owing to plaintiff, and amending the caption; it is

**ORDERED** that the motion by defendant Isaac Jefferson for an order pursuant to CPLR 2221 (e) granting defendant leave to renew his prior motion for an order dismissing the complaint as time-barred, and upon renewal, vacating the order dated March 2, 2022, dismissing this action as time-barred, directing the Suffolk County Clerk to cancel and discharge the mortgage of record, and granting defendant an award of attorneys' fees pursuant to Real Property Law section 282 (1), is denied, for the reasons set forth herein; and it is further

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**ORDERED** that cross-motion by plaintiff for an order granting summary judgment, a default judgment against all non-appearing defendants, striking the affirmative defenses in the answer of defendant Isaac Jefferson, appointing a referee to compute the amounts alleged to be due and owing to plaintiff, and amending the caption, is denied, for the reasons set forth herein.

Familiarity with this matter is presumed, the facts having been fully set forth in this Court's prior order dated March 1, 2022 (the "prior order"). In the prior order, a motion by plaintiff Santander Bank, N.A. ("plaintiff") for summary judgment on the complaint insofar as asserted against defendant Isaac Jefferson ("defendant"), was granted in part and denied in part, and a motion by defendant for dismissal of the complaint was denied.

In rendering the prior determination, this Court, among other things, dismissed all of the affirmative defenses asserted in the answer of defendant with prejudice, except for the portion of the statute of limitations defense which asserts that plaintiff's recovery is limited to the six-year time period immediately preceding this action, and the defense asserting non-compliance with the 90-day notice requirements of section 1304 of the Real Property Actions and Proceedings Law ("RPAPL 1304"). As a result, plaintiff's motion for summary judgment was denied without prejudice to renewal within sixty (60) days from the entry date of the order.

Defendant now moves for a second time pursuant to CPLR 2221(e) for leave to renew his opposition to plaintiff's prior motion for summary judgment and for renewal of his prior motion seeking dismissal of the complaint.<sup>1</sup> Defendant's sole argument is that this action is time-barred under the Foreclosure Abuse and Prevention Act ("FAPA"), as more particularly codified as CPLR 213 (4)(a), discussed *infra*, and CPLR 3217 (e).<sup>2</sup> Defendant submits an attorney affirmation and various exhibits in support of his motion for leave to renew. Plaintiff cross-moves for summary judgment and submits a statement of material facts, an attorney affirmation, servicer affidavits, and various exhibits. Defendant opposes the motion and submits a counter-statement of material facts, an attorney affirmation, and various exhibits. Plaintiff replies.

Addressing first plaintiff's cross-motion, the prior order required plaintiff to renew its motion for summary judgment within sixty (60) days from the entry date of the order. The prior order was served with notice of entry by plaintiff's counsel on April 15, 2022. The present motion was filed on June 15, 2023 and therefore, is denied as untimely.

Turning next to defendant's motion, a motion for leave to renew is addressed to the sound discretion of the Court (*see Matter of Swingearn*, 59 AD3d 556, 873 NYS2d 165 [2d Dept 2009]). A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" (CPLR 2221 [e][2]; *see Gall v Colon-Sylvain*, 151 AD3d 701, 54 NYS3d 659 [2d Dept 2017]; *Detoni v McMinkens*, 147 AD3d 1018, 48 NYS3d 208 [2d Dept 2017] *Matter of Grande v City of NY*, 133 AD3d 752, 20 NYS3d 143 [2d Dept 2015]).

While counsel argue the constitutionality of FAPA and devote much of their submissions to whether FAPA should or should not be applied retroactively, the Court need not address those arguments. This Court found in the prior order that the two prior actions brought by Sovereign Bank, FSB ("Sovereign") did not

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<sup>1</sup>Defendant's prior motion for leave to renew was denied by order dated September 6, 2022.

<sup>2</sup>In limiting his arguments, it appears defendant has abandoned his RPAPL 1304 defense.

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result in an acceleration of the note, as the note had already been assigned to this plaintiff, Santander Bank, N.A., as of February 5, 2007, a date prior to the commencement of the two Sovereign actions. This Court also found in the prior order that none of the note assignments were made by or to Sovereign. Based upon the evidence, this Court ruled that the purported acceleration by Sovereign through the commencement of the two prior actions was a “nullity.” On his motion for leave to renew, defendant does not present any evidence to dispute these established facts nor does he propose any argument that refutes the facts established by this Court in the prior order.

The new CPLR 213 (4)(a) provides that in an action to foreclose a mortgage, “if the statute of limitations is raised as a defense, and if that defense is based on a claim that the instrument at issue was accelerated prior to, or by way of commencement of a prior action, a plaintiff shall be estopped from asserting that the instrument was not validly accelerated, unless the prior action was dismissed based upon an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated” (CPLR 213 [4][a]; *see also Reinman v Deutsche Bank Natl. Trust Co.*, 215 AD3d 704, 187 NYS3d 666 [2d Dept 2023]).

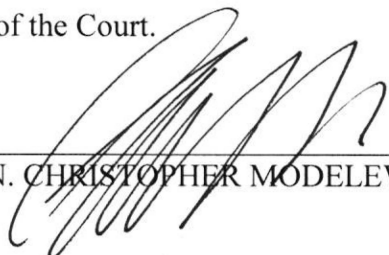
Prior to the enactment of FAPA, this Court made an express judicial determination, on defendant’s statute of limitations defense, that this foreclosure action was brought timely and that the commencement of the two prior actions did not result in an acceleration of the subject note, as Sovereign, the plaintiff therein, did not have possession of the note at commencement. Based upon the evidence before the Court on the prior motions, Sovereign never had standing to commence the prior two actions. Indeed, this Court expressly ruled that the purported acceleration of the note by Sovereign in commencing the two prior actions was a nullity. As such, the two prior actions were nullities. Thus, this Court properly ruled that the statute of limitations did not begin to run upon the commencement of either of the two prior actions. Under the unique facts presented herein, plaintiff is not estopped from asserting that the note was not validly accelerated, as this Court has concluded unequivocally that the note was not validly accelerated through the commencement of the two prior actions (*see e.g. U.S. Bank N.A. v Marrero*, \_\_\_ AD3d \_\_\_, \_\_\_ NYS3d \_\_\_, 2023 NY Slip Op. 05530, 2023 WL 7172548 [2d Dept November 1, 2023]; *Reinman v Deutsche Bank Natl. Trust Co.*, *supra*).

The decision rendered in *GMAT Legal Title Trust 2014-1 v Kator*, 213 AD3d 915, 184 NYS3d 805 (2d Dept 2023) (“*Kator*”), relied upon by defendant, is distinguishable in that the trial court in *Kator* found that the plaintiff failed to establish that its predecessor in interest lacked standing to commence the prior action (*id.* at 916, 184 NYS3d at 806). The opposite was found here.

As such, FAPA does not change this Court’s prior order and defendant’s motion is denied.

The foregoing constitutes the decision and Order of the Court.

Dated: November 20, 2023

  
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HON. CHRISTOPHER MODELEWSKI, J.S.C.

\_\_\_ FINAL DISPOSITION     X  NON-FINAL DISPOSITION