

Deutsche Bank, Natl. Trust Co. v Wong

2024 NY Slip Op 33194(U)

August 21, 2024

Supreme Court, Queens County

Docket Number: Index No. 704450/2018

Judge: Chereé A. Buggs

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: **HONORABLE CHEREÉ A. BUGGS**

IAS PART 30

Justice

Index No.:704450/2018

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DEUTSCHE BANK, NATIONAL TRUST COMPANY,
AS TRUSTEE FOR HSI ASSET SECURITIZATION
CORPORATION 2005-1 MORTGAGE PASS THROUGH
CERTIFICATES, SERIES 2005-OPT1,

Motion Date: 6/24/2024

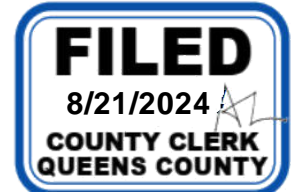
Motion Cal. No.: 8

Motion Sequence No.: 2

Plaintiff,

-against-

VICKI SUHYUN WONG, "JOHN DOE # 1" through
"JOH DOE # 12", the last twelve names being fictitious and
unkown to plaintiff, the persons or parties intended being
the tenants, occupant, persons or corporations, if any, having
or claiming an interest in or lien upon the Subject Property
described in the Complaint,



Defendants.

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The following efiled papers numbered 97-111 submitted and considered on this motion by Defendant Vicki Sunyun Wong (hereinafter "Wong") seeking an Order pursuant to Civil Practice Law and Rules (CPLR) §2221 (e), to renew the Court's order dated February 5, 2020 (NYSCEF Doc. No. 84), pursuant to CPLR § 2221(e) and/or as directed upon remittitur by the Second Department in its August 7, 2023 Decision and Order (NYSCEF Doc. No. 94); upon such renewal and/or consideration, summary judgment in favor of Wong pursuant to, inter alia, CPLR §§ 3212 and 214(3).

Motion Sequence 2

**Papers
Numbered**

Notice of Motion-Affirmation in Support-Affidavits-Exhibits.....	EF 97-106
Affirmation in Opposition-Affidavits-Exhibits.....	EF 107-109
Affirmation in Reply-Affidavits-Exhibits.....	EF 110-111

Relevant Factual and Procedural Background

This case arises from a foreclosure action concerning property located at 93-35 213th Street, Queens Village, New York. Wong executed a note secured by a mortgage on the property in August 2005. The mortgage was eventually assigned to Deutsche Bank National Trust Company (hereinafter Deutsche Bank), as Trustee for SI Asset Securitization Corporation Trust 2005-OPT, Mortgage-Pass-Through Certificates, Series 2005-OPT1.

On January 2, 2008, Deutsche Bank’s predecessor commenced a foreclosure action against Wong and other defendants (Index No.: 51/2008) (hereinafter as “2008 Action”). In the complaint, Deutsche Bank elected to accelerate the mortgage debt, thereby making the entire amount secured by the mortgage immediately due and payable. On July 26, 2012, the parties entered into a stipulation to voluntarily discontinue the 2008 Action. The stipulation, however, did not include any language expressly revoking the acceleration of the mortgage debt.

On March 23, 2018, Deutsche Bank commenced the current foreclosure action. Wong answered the complaint on June 16, 2018, asserting various affirmative defenses, including that the action was time-barred by the six-year statute of limitations under CPLR § 213(4). She also counterclaimed under RPAPL § 1501(4) to cancel and discharge the mortgage.

Subsequently, the defendants moved for summary judgment, arguing that the action was time-barred, given that more than six years had passed since the acceleration of the mortgage debt in January 2008. Deutsche Bank cross-moved for summary judgment, arguing that the statute of limitations had not expired because the 2008 action had been voluntarily discontinued, which, in its view, effectively revoked the acceleration of the debt.

By decision and Order dated July 2, 2020, this Court granted the defendants’ motion for summary judgment, dismissed Deutsche Bank’s complaint as time-barred, and granted the defendant’s counterclaim under RPAPL § 1501(4) to cancel and discharge the mortgage. This Court also denied Deutsche Bank’s cross-motion for summary judgment.

On appeal, the Appellate Division, Second Department, reversed the undersigned’s July 2, 2020 order and remitted the matter for further proceedings to consider the constitutionality and application of the Foreclosure Abuse Prevention Act (“FAPA”), which had been enacted on

December 30, 2022 (*see Deutsche Bank Nat'l Trust Co. v Wong*, 218 AD3d 742, 193 N.Y.S.3d 243 [2d Dept 2023]). FAPA was enacted to address issues related to foreclosure actions and specifically targeted practices that allowed lenders to unilaterally reset the statute of limitations through voluntary discontinuances and other similar acts.

Following the remittal, Wong moved to renew and reargue the court's July 2, 2020, decision in light of FAPA, arguing that the new law applied retroactively and that Deutsche Bank's foreclosure action was, therefore, time-barred. Wong contended that FAPA explicitly prevented Deutsche Bank from relying on the voluntary discontinuance of the 2008 action to reset or extend the statute of limitations.

Deutsche Bank opposed Wong's motion, arguing that FAPA should not be applied retroactively and that doing so would violate the Due Process Clause and the Contract Clause of the United States Constitution. Deutsche Bank maintained that the voluntary discontinuance of the 2008 action effectively revoked the acceleration of the debt, making the current foreclosure action timely.

Law and Application

CPLR §2221(e) provides:

(e) A motion for leave to renew:

1. shall be identified specifically as such;
2. 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; and
3. shall contain reasonable justification for the failure to present such facts on the prior motion.

Under CPLR §2221(e), a motion for leave to renew or reargue must be based on new facts not previously offered, a change in the law, or a demonstration that the Court overlooked or misapprehended the relevant facts or law (*see Ditech Fin. LLC v Naidu*, 82 Misc 3d 452, 455 [Sup Ct, Queens County 2023]). Deutsche Bank seeks to renew and reargue the Court's July 2, 2020, order based on its interpretation of the statute of limitations and the retroactive application of FAPA. Wong, conversely, argues that the recent enactment of FAPA necessitates a dismissal of the action.

Statute of Limitations and FAPA

The statute of limitations for a mortgage foreclosure action in New York is six years from the date the mortgage debt was accelerated (*see CPLR § 213[4]*). When a mortgage debt is accelerated, the statute of limitations begins to run on the entire debt, rendering the entire balance

due immediately (*see HSBC Bank USA, N.A. v Corrales*, 224 AD3d 816, 818 [2d Dept 2024]; *U.S. Bank N.A. v Simon*, 216 AD3d 1041, 1042 [2d Dept 2023]).

In the instant case, the mortgage debt was accelerated when Deutsche Bank's predecessor commenced the 2008 action on January 2, 2008. The statute of limitations, therefore, began to run on that date. This Court finds that Deutsche Bank's attempt to rely on the July 28, 2015, de-acceleration letter to reset the statute of limitations is unavailing in light of the enactment of FAPA, which explicitly addresses and prohibits such unilateral acts by lenders.

FAPA, or the Foreclosure Abuse Prevention Act (L 2022, ch 821, § 8 [eff Dec. 30, 2022]), was enacted to clarify and codify existing law, specifically targeting practices that allowed lenders to manipulate the statute of limitations through unilateral acts, such as discontinuing a foreclosure action to reset the statute of limitations. FAPA amended several sections of the CPLR, including CPLR 203(h), CPLR 213(4), and CPLR 3217(e), to prevent such abuses (2022 McKinney's Sess Law News of NY, ch 821, sec. 10).

Under CPLR 213(4), as amended by the recently enacted FAPA, a lender is estopped from asserting that a debt was not validly accelerated if the statute of limitations defense is raised unless the prior action was dismissed based on an express judicial determination that the instrument was not validly accelerated (CPLR 213[4][a]). Additionally, CPLR 3217(e) provides that the voluntary discontinuance of a foreclosure action does not toll, extend, or reset the statute of limitations unless expressly prescribed by statute.

Moreover, the Second Department has consistently rules that under the new FAPA, voluntary discontinuance of pervious foreclosure actions did not "in form or effect, waive, postpone, cancel, toll, extend, revive or reset the limitations period to commence an action and to interpose a claim, unless expressly prescribed by statute" (*see CPLR 3217(e); CIT Bank, N.A. v Byers*, 220 AD3d 673, 674-75 [2d Dept 2023]; citing *GMAT Legal Tit. Tr. 2014-1 v Kator*, 213 AD3d 915, 917 [2d Dept 2023]). Similarly, in *US Bank N.A. as Trustee to Wachovia Bank, N.A. v Williams*, 80 Misc 3d 258, 265 [Sup Ct, Putnam County 2023], the Court ruled that "the law within the Second Department was that a lender's unilateral discontinuance of a prior foreclosure action was, by itself, insufficient to revoke acceleration and reset the statute of limitations to running with respect to each missed installment payment".

In the present case, Deutsche Bank's predecessor in interest elected to accelerate the mortgage debt in 2008, and the statute of limitations expired six years later, in 2014. The subsequent issuance of a de-acceleration letter in 2015 and the voluntary discontinuance of the 2008 Action did not revive or reset the statute of limitations under FAPA. Consequently, the present foreclosure action, commenced in 2018, is time-barred under CPLR 213(4).

Retroactivity and Constitutionality of FAPA

Deutsche Bank challenges the retroactive application of FAPA, arguing that it violates the Due Process Clause, the Takings Clause and the Contract Clause of the United States Constitution. However, New York courts have consistently upheld the retroactive application of FAPA, finding it constitutional and remedial in nature (*see Bank of NY Mellon v Stewart*, 216 AD3d 720, 723 [2d Dept 2023]; *Weininger v. Deutsche Bank National Trust Company*, 2024 N.Y. Slip Op. 50644(U) [Sup Ct, Westchester County 2024]; *Bayview Loan Servicing, LLC v Dalal*, 2023 NY Slip Op 23277 [Sup Ct, Bronx County 2023]; *HSBC Bank USA, N.A. v IPA Asset Mgmt., LLC*, 79 Misc3d 821, 825-26 [Sup Ct, Suffolk County 2023]).

To establish a violation of the Contract Clause, there must be a substantial impairment of a contractual right (*see Consumers Union of U.S., Inc. v State*, 5 NY3d 327 [2005]). “[A]s Plaintiff’s right to revoke acceleration, [resetting the statute of limitations], is not found in the mortgage contract, and implying same into the contract would directly contravene the law of contracts, the election of remedies doctrine, CPLR § 201 and GOL § 17-105, Plaintiff’s arguments that the retroactive application of FAPA violates the Contracts Clause are unavailing” (*see Ditech Fin. LLC v Naidu*, 82 Misc 3d 452, 461 [Sup Ct, Queens County 2023]; *see also Weininger v. Deutsche Bank National Trust Company*, 2024 N.Y. Slip Op. 50644(U) [Sup Ct, Westchester County 2024]). Here, similar to *Ditech*, Deutsche Bank fails to demonstrate any contractual right to unilaterally decelerate the loan or reset the statute of limitations. The terms of the mortgage contract did not provide for such a right, and therefore, no substantial impairment occurred.

Regarding Deutsche Bank’s arguments that FAPA violates their procedural due process, this Court finds that Deutsche Bank failed to establish that they were “deprived of a protected interest” (*see Id* at 465, 468). As stated above, the language of the mortgage contract at hand did not provide Deutsche Bank with a contractual right to unilaterally decelerate the loan or reset the six year statute of limitations set by CPLR 213(4). “Because no vested property right has been impaired, let alone that was constitutionally protected, the Court here need not reach the second part of the inquiry, which is “what process was due.” (*see Id* at 467, 468). Further, “[t]o comport with the requirements of due process, retroactive application of a newly enacted provision must be supported by ‘a legitimate legislative purpose furthered by rational means’” (*see U.S. Bank Tr., N.A. as Tr. for LSF9 Master Participation Tr. v Miele*, 80 Misc 3d 839, 852 [Sup Ct, Westchester County 2023]; citing *Am. Economy Ins. Co. v State*, 30 NY3d 136, 157 [2017]; *Gen. Motors Corp. v Romein*, 503 US 181, 191, 112 S Ct 1105, 1112, 117 L Ed 2d 328 [1992]). Here, it is well established that FAPA’s retroactive application serves a legitimate legislative purpose using rational means, furthering the protection of homeowners from abusive litigation practices by lenders (*see Id.* at 852, 855; *see also Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal*, 35 NY3d 332, 375 [2020]; *Bayview Loan Servicing, LLC v Dalal*, 80 Misc 3d 1100, 1106 [Sup Ct, Bronx County 2023]; *HSBC Bank USA, N.A. v Besharat*, 80 Misc 3d 269, 282 [Sup Ct, Putnam County 2023]). The presumption of constitutionality is strong, and this Court finds that Deutsche Bank has not met the burden of demonstrating that FAPA is unconstitutional and violates their procedural due process beyond a reasonable doubt.

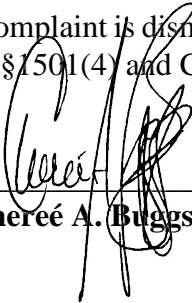
Next, Deutsche Bank’s argument that FAPA violates the Takings Clause of the U.S. Constitution is similarly without merit. It is well settled that “[t]he threshold step in any Takings Clause analysis is to determine whether a vested property interest has been identified” (*see Ditech Fin. LLC v Naidu*, 82 Misc 3d461, 464 [Sup Ct, Queens County 2023]; *see also Weininger v. Deutsche Bank National Trust Company*, 2024 N.Y. Slip Op. 50644(U) [Sup Ct, Westchester County 2024]). As there is no vested property right being impaired here, this Court finds that Deutsche Bank failed to sustain its “heavy burden of overcoming the presumption of constitutionality that attaches to the regulation and of proving every element of [its takings objection] beyond a reasonable doubt” (*see Id* at 464; citing *de St. Aubin v Flacke*, 68 NY2d 66, 76 [1986]). Accordingly, it is hereby

ORDERED, that Defendant Wong’s motion to renew is granted;

ORDERED, Defendant’s motion for summary judgment to dismiss is granted and Plaintiff’s cross-motion is denied; and it is further,

ORDERED, that Plaintiff Deutsche Bank’s complaint is dismissed with prejudice, and the mortgage is discharged of record pursuant to RPAPL §1501(4) and CPLR 213(4).

Dated: August 21, 2024



Hon. Chereé A. Buggs, JSC

