

**Wells Fargo Bank, N.A. v Eitani**

2025 NY Slip Op 31786(U)

May 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 507424/2013

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-2 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, 11201 on the 4th day of February, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,  
Acting Justice.  
-----X

WELLS FARGO BANK, N.A.,  
  
Plaintiff,

- against -

Index No. 507424/2013

DORON EITANI; DAVID COHAN, ET AL,  
  
Defendants.  
-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed	<u>179-181</u>
Opposition Affirmation to Motion	<u>188-189</u>
Reply Affirmation to Opposition	<u>190-192</u>

Upon the foregoing papers in this proceeding, defendant moves (under mot. seq. 8) for an order granting defendant leave to renew the July 30, 2014 short form order, and upon renewal, dismissing the action under CPLR §§3211(a)(5) and/or 213(4).

***Background***

Plaintiff commenced this action on November 25, 2013 to foreclose on the subject mortgage encumbering the subject property located at 2920 Avenue N, Brooklyn, New York. Plaintiff's predecessor previously commenced a foreclosure action regarding this subject mortgage on November 16, 2005, under index number 35176/2005. Pursuant to an order dated August 1, 2013, the matter was dismissed as abandoned pursuant to CPLR

§3215(c). On January 6, 2014, defendant filed a pre-answer motion to dismiss the action as time-barred by the statute of limitations. By order dated July 30, 2014, the court denied defendant's motion to dismiss, finding that the instant action was properly commenced under the savings statute of CPLR §205(a), which allows a plaintiff to re-commence an action within 6 months of being dismissed. The court later granted plaintiff's motion for summary judgment on March 30, 2017.

Defendant now files the instant action to renew their pre-answer motion to dismiss based on the passage of the Foreclosure Abuse Prevention Act ("FAPA"), which amended CPLR §205(a) to not permit plaintiffs to benefit from the savings statute if the action was terminated for neglect.

#### *Discussion*

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 Dinallo v DAL Elec.*, 60 AD3d 620, 621 [2d Dept 2009]). FAPA presents a change in the law which is sufficient to support defendant's application pursuant to CPLR 2221 [e] [2] (*see Ditech Fin. LLC v Naidu*, 82 Misc 3d 452, 455 [Sup Ct, Queens County 2023]; *Bayview Loan Servicing, LLC v Dalal*, 80 Misc 3d 1100, 1103 [Sup Ct, Bronx County 2023]).

FAPA replaced the savings provision of CPLR 205 (a) with CPLR 205-a in actions, such as this, commenced upon instruments described in CPLR 213 (4) (*see* CPLR 205 [c]). CPLR 205-a (a) provides, in pertinent part:

“If an action upon an instrument described under [CPLR 213 (4)] is timely commenced and is terminated in any manner other than . . . a dismissal of the complaint for any form of neglect including, but not limited to those specified in . . . section thirty-two hundred fifteen. . . the original plaintiff . . . may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period.”

Because this action was dismissed as abandoned pursuant to CPLR §3215(c), CPLR 205-a by its terms cannot be used to revive the prior foreclosure action and extend the limitations period.

In opposition, plaintiff argues that FAPA cannot be applied retroactively, however section 10 of FAPA states that “[t]his act shall take effect immediately and shall apply to all actions commenced on an instrument described under [CPLR 213 (4)] in which a final judgment of foreclosure and sale has not been enforced,” in addition to several decisions from the Appellate Division, Second Department which applied CPLR 205-a retroactively (*see Deutsche Bank Natl. Trust Co. v Heitner*, 226 AD3d 967 [2d Dept 2024]; *Pryce v U.S. Bank N.A.*, 226 AD3d 711 [2d Dept 2024]; *U.S. Bank N.A. v Armand*, 220 AD3d 963 [2d Dept 2023]).

Accordingly, it is

**ORDERED** that defendant's motion to renew is granted, and upon renewal, this action is dismissed.

This constitutes the decision and order of the court.

E N T E R,

Dated: 5/9/25



HON. DEREFIM B. NECKLES  
A. J. S. C.

**HON. DEREFIM B. NECKLES  
A.J.S.C.**

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