

**Wilmington Trust, NA v Baptiste**

2025 NY Slip Op 31810(U)

May 12, 2025

Supreme Court, Kings County

Docket Number: Index No. 515987/17

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 12 day of May, 2025.

P R E S E N T:

HON. CENCERIA EDWARDS,

Justice.

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WILMINGTON TRUST, NA, SUCCESSOR TRUSTEE TO CITIBANK, N.A., AS TRUSTEE F/B/O HOLDERS OF STRUCTURED ASSET MORTGAGE INVESTMENTS II INC., BEAR STEARNS ALT-A TRUST 2007-2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-2,

Plaintiff,

- against -

Index No. 515987/17

PAMELA BAPTISTE; JANELLE DEFREITAS; RICHARD J. MCCIORD, AS CHAPTER 7 TRUSTEE FOR THE ESTATE OF MAGGIE FAUSTIN; NEW YORK CITY ENVIRONMENTAL CONTROL BOARD; NEW YORK CITY PARKING VIOLATIONS BUREAU; NEW YORK CITY TRANSIT ADJUDICATION BUREAU; DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT; GATEWAY ONE LENDING & FINANCE LLC; WESTERN UNION FINANCIAL SERVICES and "JOHN DOE #1" through "JOHN DOE #10", the last ten names being fictitious and Unknown to the Plaintiff, the person or parties Intended being the persons or parties, if any, having or claiming an interest or lien upon the mortgage premises described in the Complaint,

Defendants.

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The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/Cross Motion and Affidavits (Affirmations) \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_

67-73 75, 77-122  
77-122 124-127  
124-127

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 122 East 59<sup>th</sup> Street in Brooklyn (Block 4706, Lot 55) (Property), defendant Pamela Baptiste (Baptiste or Defendant) moves (in motion sequence [mot. seq.] two) for an order: (1) granting her summary judgment dismissing the amended complaint with prejudice based on the statute of limitations, pursuant to CPLR 3212; (2) barring the Plaintiff from all claims to an estate, interest, lien or encumbrance of any sort in the Property, pursuant to RPAPL § 1501 (4); and (3) discharging the mortgage originally held by First Residential Mortgage services Corporation (First Residential) and recorded against the Property (NYSCEF Doc No. 67).

Plaintiff Wilmington Trust, NA, Successor Trustee to Citibank, N.A., as Trustee f/b/o Holders of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust 2007-2, Mortgage Pass-Through Certificates, Series 2007-2 (Wilmington or Plaintiff) cross-moves (in mot. seq. three) for an order: (1) pursuant to CPLR 3212, granting it summary judgment and striking the answer, setoffs and counterclaims interposed by Defendant Baptiste; (2) granting it an order of reference; and (3) amending the caption to substitute John Doe (Name Refused), Jane Doe (Name Refused) and Lorenzo Williamson, occupants of the Property, for “John Doe #1” through “John Doe #10”.<sup>1</sup>

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<sup>1</sup> Wilmington’s Notice of Cross-Motion erroneously states that Plaintiff seeks an order “granting summary judgment in favor of Defendants and dismissing the ‘First Amended Verified Complaint Pursuant to RPAPL 1501 et seq.’ . . .” (NYSCEF Doc No. 75). This error is deemed corrected, pursuant to CPLR 2001, since the nature of Wilmington’s cross-motion is properly identified in its cross-moving memorandum of law (NYSCEF Doc No. 76), and thus, there is no prejudice to the defense.

### Background

On August 16, 2017, about three years after a prior foreclosure action commenced by Citibank, N.A. (Citibank), Wilmington's predecessor, on August 27, 2007 (2007 Foreclosure Action),<sup>2</sup> was voluntarily discontinued by a June 26, 2014, order, Wilmington commenced this second action to foreclose the same mortgage encumbering the Property by e-filing a summons, a complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-2).

On June 7, 2018, Baptiste, the owner of the Property and the mortgagor, answered the complaint, denied the material allegations therein and asserted affirmative defenses and counterclaims, including a counterclaim to quiet title to the Property based on the expiration of the statute of limitations (NYSCEF Doc No. 41 at ¶ 38).

On July 10, 2018, after obtaining leave of court (NYSCEF Doc No. 43), Wilmington e-filed an amended complaint alleging that “[o]n or about December 26, 2006, Pamela Baptiste executed and delivered to First Residential . . . a note dated December 26, 2006 whereby [she] promised to pay the principal sum of \$536,000.00” which was secured by a mortgage encumbering her Property (NYSCEF Doc No. 45 at ¶¶ 2-3). The amended complaint further alleges that Baptiste “failed to comply with the terms, covenants and conditions of said note and mortgage by failing and omitting to pay, to the plaintiff, payments due on July 1, 2007 . . .” (*id.* at ¶ 10).

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<sup>2</sup> See *Citibank, N.A., as Trustee v Baptiste, et al*, Kings County index No. 32291/2007.

Notably, regarding the 2007 Foreclosure Action, the amended complaint alleges that “the debt was accelerated pursuant to a foreclosure action filed on August 27, 2007 under Index No. 32291/2007” and “[t]hereafter, the above referenced action was discontinued pursuant to a[n] Order granted on July 1, 2014” (*id.* at ¶¶ 11-12). The amended complaint alleges that “Plaintiff has since waived the payments that were due prior to January 1, 2012 and pursuant to the terms of the note and mortgage, the plaintiff has elected and does hereby elect to declare the entire principal balance to be due and owing” (*id.* at ¶ 13).

On July 19, 2018, Wilmington e-filed its response to Baptiste’s counterclaims (NYSCEF Doc No. 53).

***Defendant Baptiste’s Summary Judgment Motion***

On May 15, 2019, Baptiste moved for summary judgment dismissing the complaint with prejudice based on the expiration of the statute of limitations and granting her judgment on her first counterclaim, pursuant to RPAPL § 1501 (4), “barring the Plaintiff from all claim(s) to an estate, interest, lien or encumbrance of any sort, in the Property. . .” and discharging the mortgage (NYSCEF Doc No. 67).

Defense counsel asserts that “Plaintiff accelerated the loan by the filing of the Summons and Complaint in the 2007 Action” and thus, “the statute of limitations began to run on August 27, 2007, the date Plaintiff first filed a Summons and Complaint against Defendant and thereby exercised the acceleration clause of the mortgage agreement” (NYSCEF Doc No. 68 at ¶¶ 11 and 19). Defense counsel further asserts that Baptiste is

entitled to the cancellation and discharge of the mortgage, pursuant to RPAPL § 1501 (4) (*id.* at ¶¶ 26-29).

### ***Wilmington's Opposition and Cross-Motion***

On September 27, 2019, Wilmington opposed Baptiste's summary judgment motion and cross-moved for an order granting it summary judgment on the amended complaint, striking Baptiste's answer and counterclaims, granting it an order of reference and amending the caption.

Wilmington submits an affidavit from Daniel Maynes (Maynes), an officer of Select Portfolio Servicing, Inc. (SPS), the servicer of the mortgage and attorney-in-fact for Wilmington, pursuant to an August 20, 2013, Limited Power of Attorney (NYSCEF Doc No. 77 at ¶¶ 1 and 3 and NYSCEF Doc No. 78). Maynes attests that he makes the affidavit based on his review of SPS's business records, which include those of a prior servicer (NYSCEF Doc No. 77 at ¶¶ 4-6). Maynes submits copies of the note and mortgage and reiterates the allegations in the complaint regarding their execution (*id.* at ¶¶ 9-10).

Notably, Maynes admits that “[t]he Loan Records reflect that Defendant initially defaulted on her obligations under the Loan by failing to make the payment due on May 1, 2007” and “[a]s a result of this default, a prior foreclosure action (Kings County Index No.: 32291/2007) was commenced on July 29, 2007 . . .” (*id.* at ¶ 14). Maynes explains that “[d]uring the Prior [2007] Action, Defendant made payments pursuant to [a] Repayment Agreement, and those payments were applied to the installments due on May 1, 2007 and June 1, 2007, resulting in a due date of July 1, 2007” (*id.* at ¶ 16). Maynes asserts that “SPS

and Defendant made several attempts to resolve the delinquency through various loss mitigation options” without success (*id.* at ¶ 18). Maynes describes the parties’ efforts to consummate a short sale of the Property in 2014-2015 (*id.* at ¶¶ 19-35). Maynes then asserts that SPS sent 90-day notices and default notices to Pamela Baptiste at the Property in 2017 (*id.* at ¶¶ 39-43). Without referencing or submitting any particular business records or a payment history of the loan, Maynes generally attests that “[a]ccording to the Loan Records, there is presently due and owing to Plaintiff the principal sum of \$535,986.55, together with interest thereon from January 1, 2012” (*id.* at ¶ 44).

Wilmington also submits a memorandum of law arguing that “Defendant’s contentions concerning the statute of limitations are misplaced” because “[w]hile there was a prior action, that action was discontinued based [on] Defendant curing the underlying default” (NYSCEF Doc No. 76 at 2). Wilmington argues that “any acceleration resulting from the commencement of the Prior [2007] Action was revoked by the reinstatement of the Loan when Defendant cured the underlying May 1, 2007 default that was the basis for the commencement of the Prior [2007] Action” (*id.* at 7). Although the discontinuance occurred six years and ten months after the commencement of the 2007 Foreclosure Action, Wilmington argues that the statute of limitations was tolled for 525 days due to a bankruptcy stay (*id.* at 8).

Wilmington also argues that “RPAPL 1501 (4) requires a claimant to have an interest in the real property that is the subject of an action to secure the discharge and cancellation of a mortgage based on the expiration of the statute of limitations” (*id.* at 5).

Wilmington asserts that “Defendant lacks standing to quiet title pursuant to RPAPL Article 15 as she no longer has an interest in the subject property” because “[p]ursuant to a deed dated January 3, 2019 . . . Defendant conveyed title to the Subject Property to JC Group 2018, LLC” (*id.* at 2-3 and 5-6).

Wilmington also contends that Baptiste acknowledged the debt and “restarted” the statute of limitations when she was negotiating a potential short sale of the Property from 2013 through 2015 in settlement negotiations with SPS during the 2007 Foreclosure Action (*id.* at 9-11).

### ***Defendant Baptiste’s Opposition and Reply***

Defendant Baptiste, in opposition and in reply, submits an affidavit attesting that she is the owner of the Property and the mortgagor since “I transferred the property to an LLC which I own with my partner June Coakley [and] the name of the company is JC Group 2018, LLC” (NYSCEF Doc No. 125 at ¶ 6). Baptiste submits a copy of the LLC’s partnership agreement reflecting that she is one of two members who own the Property (NYSCEF Doc No. 127). Baptiste attests that “I also reside at the subject premises and have always resided at the premises” (NYSCEF Doc No. 125 at ¶ 7). As an owner and resident of the Property, Baptiste asserts that “I have a substantial interest in the Property and the outcome of this proceeding” (*id.* at ¶ 8).

Baptiste asserts that “I never entered into any [Repayment] agreement with Plaintiff [during the 2007 Foreclosure Action] that . . . reinstated the loan or brought the loan current in any way” (*id.* at ¶ 12). Baptiste also argues that Wilmington is not entitled to summary

judgment because she did not receive a default notice or a 90-day foreclosure notice prior to Wilmington's commencement of this action in August 2017 (*id.* at ¶¶ 17-21).

Defense counsel submits an affirmation asserting that Wilmington admitted in the amended complaint that the loan was accelerated in 2007 and Wilmington fails to submit any proof the Baptiste brought the loan current and reinstated the loan:

“Plaintiff already admitted that it accelerated the loan when it commenced the 2007 Action and there was never any subsequent reaffirmation of the note and mortgage that can unequivocally provide to the Court and Defendant that the default was cured and that this 2017 Action is a product of a new default. Curiously enough, the bank only discontinued in 2014 despite its argument that she made payments in 2007 somehow curing the 2007 default.

“Plaintiff also fails to submit any payment history to demonstrate that between 2007 and 2012 Defendant made payments on the loan in order to justify the Plaintiff to commence this foreclosure action and claim that a default took place in 2012.

“Simply put, Plaintiff is trying to find every possible way to get around the statute of limitations – which is clearly the subject of this litigation and is the central problem of this case. Plaintiff **cannot** argue, and should be estopped from arguing, that there was a ‘reinstatement’ of the loan – that is bald faced lie that is unsupported by any documentation to show that loan was truly reinstated by the Defendant” (NYSCEF Doc No. 124 at ¶¶ 11-13).

Defense counsel notes that the December 2007 Repayment Agreement relied upon by Wilmington is invalid because “Defendant affirms that she never signed any agreement nor did she make any payments to the lender” (*id.* at 17). Defense counsel also contends that Baptiste's letter requesting permission for a short sale “did not constitute an

unqualified acknowledgment of the debt sufficient to reset the statute of limitations” because “[a]ppellate Court precedent has already ruled that such loss mitigation applications do not constitute an acknowledgment by a mortgagor” (*id.* at ¶¶ 19-20). Finally, defense counsel asserts that “Plaintiff errs in its argument that [Baptiste] has no standing to quiet title” because “she is mortgagor and a member of the LLC, she has standing to raise statute of limitations as a defense and to quiet title on this time-barred mortgage” (*id.* at ¶ 23).

### Discussion

Summary judgment is a drastic remedy that deprives a litigant of his or her day in court and should, thus, only be employed when there is no doubt as to the absence of triable issues of material fact (*Kolivas v Kirchoff*, 14 AD3d 493 [2d Dept 2005]; *see also Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). “The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment, as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *see also Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If it is determined that the movant has made a prima facie showing of entitlement to summary judgment, “the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require

a trial of the action” (*Garnham & Han Real Estate Brokers v Oppenheimer*, 148 AD2d 493 [2d Dept 1989]).

A mortgage foreclosure action is subject to a six-year statute of limitations (*see* CPLR 213 [4]). “The statute of limitations in a mortgage foreclosure action begins to run six years from the due date for each unpaid installment or the time the mortgagee is entitled to demand full payment, or when the mortgage debt has been accelerated” (*Zinker v Makler*, 298 AD2d 516, 517 [2d Dept 2002]). “[O]nce a mortgage debt is accelerated, the entire amount is due and the Statute of Limitations begins to run on the entire debt” (*Nationstar Mortg., LLC v Weisblum*, 143 AD3d 866, 867 [2d Dept 2016] [internal quotations omitted]). “Acceleration occurs . . . by the commencement of a foreclosure action” and “[a] lender may revoke its election to accelerate the mortgage debt, but it must do so by an affirmative act of revocation occurring during the six-year statute of limitations period” (*Pennymac Corp. v Holcomb*, 198 AD3d 978, 980 [2d Dept 2021]).

The Foreclosure Abuse Prevention Act (FAPA), which was enacted in December 2022, during the pendency of this action, amended CPLR 3217 to add a new subsection (e), which provides that:

“[i]n any action [to foreclose a mortgage], the voluntary discontinuance of such action, *whether on motion*, order, stipulation or by notice, *shall 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” (emphasis added).

Under FAPA, the voluntary discontinuance of a prior foreclosure action does not de-accelerate the mortgage debt, or revive, or reset the statute of limitations (*Deutsche Bank*

*Nat'l Tr. Co. v Dagrín*, 233 AD3d 1065, 1067 [2d Dept 2024]). The Second Department has held that “the Legislature intended that FAPA be applied retroactively” (*id.*).

Applying FAPA here, the voluntary discontinuance of the 2007 Foreclosure Action did not serve to de-accelerate the mortgage debt, or revive, or reset the statute of limitations. The six-year statute of limitations began to run on August 27, 2007, when Citibank, Wilmington’s predecessor, admittedly accelerated the mortgage debt by commencing the 2007 Foreclosure Action. Even with a 525-day toll due to a bankruptcy stay, the statute of limitations admittedly expired on February 3, 2015 (NYSCEF Doc No. 76 at 8), *after* Citibank voluntarily discontinued the 2007 Foreclosure Action by motion and before Wilmington commenced this second foreclosure action in August 2017. While Wilmington claims that the mortgage loan was de-accelerated because Baptiste reinstated the loan, the court’s June 26, 2014, decision and order granting Citibank’s motion to voluntarily discontinue the 2007 Foreclosure Action merely “**ORDERED**, that this action is hereby discontinued, without costs to either party . . .” (NYSCEF Doc No. 121 at 2). Contrary to Wilmington’s and its counsel’s contentions, the documentary evidence in the record reflects that the 2007 Foreclosure Action was not settled or discontinued based on a reinstatement of the mortgage loan. Similarly unavailing is Wilmington’s claim that settlement discussions regarding a short sale and/or an unconsummated repayment agreement reset the statute of limitations.

Dismissal of this foreclosure action is warranted based on the expiration of the statute of limitations and Baptiste, the mortgagor who jointly owns the Property, is entitled

to a judgment quieting title to the Property and ordering that the subject mortgage loan is canceled and discharged, pursuant to RPAPL 1501 (4).

The court has considered Wilmington's remaining arguments and find them to be unavailing. Accordingly, it is hereby

**ORDERED** that Defendant Baptiste's motion (mot. seq. two) is granted to the extent that: (1) Baptiste is granted summary judgment dismissing the amended complaint with prejudice as time-barred, pursuant to CPLR 3212, and this action is dismissed with prejudice and the notice of pendency filed against the Property is vacated, and (2) Baptiste's counterclaim for a judgment declaring that the December 26, 2006, mortgage encumbering the Property recorded on January 29, 2007, under CRFN 2007000051619 in the Office of the City Register is null and void is granted, pursuant to RPAPL 1501 (4), and the mortgage shall be canceled, discharged and expunged from the Property records; and it is further

**ORDERED** that Wilmington's cross-motion (mot. seq. three) is denied as moot.

This constitutes the decision, order and judgment of the court.

E N T E R,



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J. S. C. Cenceria P. Edwards, CPA