

HSBC Bank USA, N.A. v Cadore

2025 NY Slip Op 32193(U)

June 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 505960/18

Judge: Cenceria P. Edwards

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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 16th day of June, 2025.

P R E S E N T:

HON. CENCERIA EDWARDS,

Justice.

-----X
HSBC BANK USA, N.A.,

Plaintiff,

- against -

Index No. 505960/18

MICHELLE CADORE, VERONICA CADORE, NEW YORK
CITY PARKING VIOLATIONS BUREAU, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU, NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD, PORTFOLIO
RECOVERY ASSOCIATES, L.L.C.,

JOHN DOE (Those unknown tenants, occupants,
persons or corporations or their heirs, distributes,
executors, administrator, trustees, guardians,
assignees, creditors or successors claiming an
interest on the mortgaged premises),

Defendants.

-----X
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) _____

91-92, 94-108 111-129
111-129 130-131

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 1279 East 103rd Street in Brooklyn (Block 8268, Lot 9) (Property), Plaintiff HSBC Bank USA, N.A. (HSBC or Plaintiff) moves (in motion sequence [mot. seq.] four) for an order: (1) granting it summary judgment, pursuant to CPLR 3212; (2) dismissing affirmative defenses asserted in the answer interposed by defendants Michelle

Cadore and Veronica Cadore (Cadore Defendants), pursuant to CPLR 3211 (b); (3) appointing a referee to determine the amount due and to ascertain whether the Property may be sold in parcels; (4) amending the caption to substitute “John Doe and “Jane Doe” in place of the John Doe defendant; and (5) granting a default judgment against the non-appearing defendants (NYSCEF Doc No. 91).

The Cadore Defendants cross-move (in mot. seq. five) for an order: (1) granting them summary judgment dismissing the complaint based on the statute of limitations, pursuant to CPLR 3212; (2) discharging the mortgage held by HSBC and recorded against the Property; (3) denying Plaintiff’s summary judgment motion; and (4) dismissing this action based upon Plaintiff’s noncompliance with RPAPL § 1304 (NYSCEF Doc No. 111).

Background

On March 26, 2018, more than four years after HSBC abandoned its prosecution of a 2009 foreclosure action that it commenced against Defendants on January 6, 2009,¹ HSBC commenced this second foreclosure action by filing a summons, an unverified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1 and 3). The 2018 complaint alleges that on or about January 20, 2006, Michelle Cadore executed and delivered a \$312,000.00 note in favor of HSBC, which was secured by a mortgage executed by Michelle and Veronica Cadore encumbering their Property (NYSCEF Doc No. 1 at ¶¶ 3-4). The complaint further alleges that “the Mortgagors, their successors, assigns and/or

¹ See *HSBC Bank USA, N.A. v Cadore, et al.*, Kings County index No. 227/2009 (2009 Foreclosure Action).

transferees, have failed to comply with the terms and conditions of said above named instrument[s] by failing or omitting to pay the installment which became due and payable as of April 1, 2012 and . . . each and every month thereafter, to the date hereof” (*id.* at ¶ 7).

On August 18, 2018, 31 days after the parties first appeared for mandatory settlement conferencing, pursuant to CPLR 3408, the Cadore Defendants served an answer to the complaint, which HSBC rejected as untimely (NYSCEF Doc No. 42).

On January 30, 2019, HSBC moved for summary judgment, an order of reference and a default judgment against the non-appearing defendants (NYSCEF Doc No. 45). On August 21, 2019, the Cadore Defendants cross-moved to compel acceptance of their untimely answer and for summary judgment dismissing HSBC’s complaint based upon the statute of limitations and discharging the mortgage recorded against the Property (NYSCEF Doc No. 67).

By a December 2, 2019, decision and order, the court (Dear, J.) granted the Cadore Defendants’ cross-motion only to the extent that acceptance of Defendants’ answer was compelled (NYSCEF Doc No. 86 at 2). Notably, the court denied HSBC’s summary judgment motion because there were issues of fact regarding HSBC’s de-acceleration of the mortgage debt:

“[w]ere the de-acceleration notice properly mailed – and Long states that it was done by an unnamed vendor pursuant to unspecified procedures – it would likely (in conjunction with the monthly statements) suffice to demonstrate deacceleration” (*id.*).

HSBC's Successive Summary Judgment Motion

On July 8, 2021, HSBC, once again, moved for summary judgment and an order striking the Cadore Defendants' answer, an order of reference and a default judgment against the non-appearing defendants (NYSCEF Doc No. 91). In an effort to dispose of the factual issues previously identified by the court regarding the sufficiency of HSBC's de-acceleration letter, HSBC's counsel submits an affirmation asserting that:

“[a]ny acceleration of the debt owed under the Note and Mortgage that may have occurred as a result of the commencement of the Prior [2009 Foreclosure] Action was revoked by virtue of the notices that were mailed to Defendants by HSBC's Bank's counsel in the Prior Action, Rosicki, Rosicki & Associates. Specifically, de-acceleration notices dated January 2, 2015 were sent to Defendants, via Certified Mail and First Class Mail, at the Premises and the mailing address associated with the Mortgage. . . .

“In addition to mailing the de-acceleration notices, monthly mortgage statements were mailed to Defendants to resume regular monthly installment payments. The statements sought only the past due balance owed under the Mortgage and not the full amount due under any prior acceleration. . . .” (NYSCEF Doc No. 92 at ¶¶ 10-11).

HSBC also submits a memorandum of law describing the de-acceleration letter sent by HSBC's former counsel (NYSCEF Doc No. 93 at 2-3).

The Cadore's Defendant Summary Judgment Cross-Motion

On September 1, 2022, the Cadore Defendants cross-moved for summary judgment dismissing the complaint based on the statute of limitations (NYSCEF Doc No. 111). Defense counsel submits an affirmation asserting that “[i]n accordance with well-settled

law, the statute of limitations began to run on January 6, 2009, the date Plaintiff first filed a Summons and Complaint against Defendant and thereby exercised the acceleration clause of the mortgage agreement” and “Plaintiff attaches to it’s a motion a letter from PHH dated January 2, 2015, purporting to de-accelerate the mortgage and note” which is “a ‘pretextual notice’, having zero substance behind it, and is simply meant to get around the statute of limitations” (NYSCEF Doc No. 112 at ¶¶ 34, 36 and 38).

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]). It is well settled that “[a]cceleration may occur, inter alia, by the commencement of a foreclosure action” (*Bayview Loan Servicing, LLC v Paniagua*, 207 AD3d 691, 692 [2d Dept 2022]; *see also Pennymac Corp. v Holcomb*, 198 AD3d 978, 980 [2d Dept 2021]).

The Foreclosure Abuse Prevention Act (FAPA), effective December 30, 2022, amended and codified new statutes, including CPLR 203 (h), which provides:

“Claim and action upon certain instruments. Once a cause of action upon an instrument described in subdivision four of section two hundred thirteen of this article has accrued, no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset the accrual thereof, or otherwise purport to effect a unilateral extension of the limitations period prescribed by law to commence an action and to interpose the claim, unless expressly prescribed by statute.”

Section 10 of FAPA provides that the new statutes are effective immediately and “shall apply to all [foreclosure] actions commenced on an instrument . . . in which a final judgment of foreclosure and sale has not been enforced.”

Here, the Cadore Defendants have made a prima facie showing of entitlement to summary judgment by showing that the six-year statute of limitations was triggered when the 2009 Foreclosure Action was commenced (*see, e.g., U.S. Bank, N.A. v Doura*, 204 AD3d 721, 723 [2d Dept 2022]). The Cadore Defendants further established that the instant action was commenced in 2018, more than six years later.

HSBC, in opposition, fails to raise a triable issue of fact and also cannot meet its burden on its own motion for summary judgment that this action is not time-barred. HSBC argues that, even if the 2009 Foreclosure Action triggered the statute of limitations, either PHH, the servicer, or HSBC's counsel, Rosicki, withdrew its acceleration by mailing a January 2, 2015 de-acceleration letter to the Cadore Defendants. Regardless of who sent the de-acceleration letter to the Cadore Defendants, such a letter is ineffective to re-set the statute of limitations under the new statutes.

HSBC's argument that the January 2, 2015, letter deaccelerated the mortgage debt is meritless. FAPA specifically provides that once a cause of action upon a mortgage has accrued, no party may unilaterally waive, cancel or "purport to effect a unilateral extension of the limitations period . . ." (CPLR 203 [h]). Therefore, the deacceleration letters, allegedly notifying the Cadore Defendants that HSBC was revoking any prior acceleration, do not operate to cancel or extend the statute of limitations; rather, the letters appear to be unilateral stipulations that are precluded under CPLR 203 (h) (*see Wilmington Trust, National Association v Farkas*, 232 AD3d 524 [1st Dept 2024]). Consequently, this action is time-barred. While dismissal of the complaint is warranted, the Cadore Defendants failed

to assert any counterclaims entitling them to a discharge of the subject mortgage.

Accordingly, it is hereby

ORDERED that HSBC's motion (mot. seq. four) is denied as moot; and it is further

ORDERED that the Cadore Defendants' summary judgment cross-motion is only granted to the extent that the complaint is dismissed with prejudice based on the statute of limitations; the cross-motion is denied to the extent that it seeks a discharge of the mortgage encumbering the Property.

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

E N T E R,



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