

**Citibank v Pagan**

2025 NY Slip Op 33113(U)

July 14, 2025

Supreme Court, Kings County

Docket Number: Index No. 516009/19

Judge: Carolyn Mazzu Genovesi

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP-5, 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, on **JUL 14 2025**

P R E S E N T:

HON. CAROLYN MAZZU GENOVESI,

Index No.: 516009/19

\_\_\_\_\_ x  
CITIBANK,

MS # 1

Plaintiff,

**DECISION AND ORDER**

-against-

RICHARD PAGAN et al,

Defendant,  
\_\_\_\_\_ x

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion:

Papers	Numbered
Motion (MS 1)	<u>1</u>
Opposition	<u>2</u>
Reply	<u>3</u>

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

Defendant moves for summary judgment in his favor, dismissing Plaintiff's claims as time-barred and discharging the lien. Plaintiff opposes.

It is undisputed that a prior action was filed in 2011 against Defendant's already-deceased mother. That action was dismissed as a nullity in January 2019. It nonetheless served as an acceleration of the loan (*Wilson 3 Corp v Deutsche Bank National Trust Company*, 219 AD3d 870 [2d Dept 2023]; *Deutsche Bank v Rivera*, 200 AD3d 1006 [2d Dept 2021]), and began the running of the six-year statute of limitations (*US Bank Trust, N.A. v Aorta*, 167 AD3d 807 [2d Dept 2018]; CPLR 213[4]). Though Plaintiff is correct that the prior action was marked stayed for four years, that was following a conference as no RJI was filed – and thereafter the stay was automatically lifted when the RJI was filed in 2017. The stay, thus, did not toll the statute of limitations.

Plaintiff argues that, in the absence of a notice of entry of the order dismissing the 2011 action, it could still have appealed the dismissal and, thus, that the instant action is timely pursuant to CPLR 205[a] and/or CPLR 205-a. However, as noted by Defendant, the six-month period began to run when the 2011 action was dismissed – rather than from the expiration of Plaintiff's time to appeal<sup>1</sup> (*Pi Ju Tang v St Francis Hospital*, 37 AD3d 690, 691 [2d Dept 2007]). The Appellate Division, Second Department has held that when a plaintiff was never served with notice of entry of a dismissal order, and does not appeal the dismissal order, the action is deemed terminated for the purpose of the tolling statute on the date of entry of the order (*Stein v. Davidow, Davidow, Siegel & Stern, LLP*, 186 AD3d 774, 775 [2d Dept 2020]).

“To maintain an equitable quiet title claim, a plaintiff must allege actual or constructive possession of the property and the existence of a removable cloud on the property, which is an apparent title, such as in a deed or other instrument, that is actually invalid or inoperative” (*Acocella v Wells Fargo Bank, NA*, 139 AD3d 647 [2d Dept 2016]). Defendant is the owner of real property upon which Plaintiff has a lien. As the statute of limitations has passed on the lien and it is thus unenforceable, judgment is granted in favor of the counterclaimant upon the quiet title counterclaim.

Defendant is correct that, as the prevailing party, he is entitled to attorneys' fees. Pursuant to RPL 282, “[w]henever a covenant contained in a mortgage on residential real property shall provide that ... the mortgagee may recover attorneys' fees and/or expenses incurred as the result of the failure of the mortgagor to perform any covenant or agreement contained in such mortgage ... there shall be implied in such mortgage a covenant by the mortgagee to pay to the mortgagor the reasonable attorneys' fees and/or expenses incurred by the mortgagor ... in the successful defense of any action or proceeding commenced by the mortgagee against the mortgagor arising out of the contract.” As it is undisputed that the mortgage provides for the award of attorneys' fees and as Defendant has successfully defended this action, he is entitled to reasonable attorneys' fees.

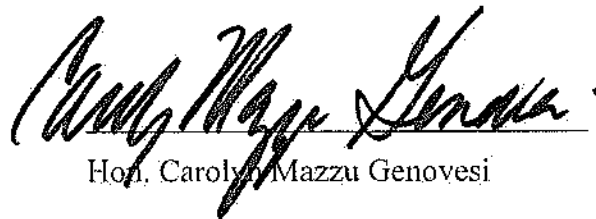
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<sup>1</sup> Had Plaintiff actually appealed as of right, the six months would not have begun until the termination of the appeal (*Lehman Bros. v Hughes Hubbard & Reed*, 92 NY2d 1014, 1016 [1998]; see also, *Andrea v Arnone, Hedin, Caskor, Kennedy & Drake, Architects & Landscape Architects, PC*, 5 NY3d 514, 519-20 [2005]).

In light of the foregoing, Defendant's motion is granted. Case dismissed. Defendant's counsel to settle on notice to Plaintiff a proposed order and an affirmation substantiating the requested attorneys' fees.

This constitutes the decision and order of the Court.

ENTER:



Hon. Carolyn Mazzu Genovesi