

**Bayview Loan Servicing, LLC v Pollak**

2025 NY Slip Op 33123(U)

August 4, 2025

Supreme Court, Kings County

Docket Number: Index No. 514769/2015

Judge: Carolyn Mazzu Genovesi

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This opinion is uncorrected and not selected for official publication.

At an IAS 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 the 4 day of Aug 2025.

Present: Hon. Carolyn Mazzu Genovesi

-----X  
BAYVIEW LOAN SERVICING, LLC,

Plaintiff,

-against-

DECISION AND ORDER.

Index No.: 514769/2015

Mot. Seq. 6

ISRAEL POLLAK, WACHOVIA BANK,  
NATIONAL ASSOCIATION, CITY OF NEW  
YORK DEPARTMENT OF FINANCE PARKING  
VIOLATIONS BUREAU, CITY OF NEW YORK  
ENVIRONMENTAL CONTROL BOARD, JOHN  
DOE,

Defendants,

-----X  
The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF Numbered
Cross-Motion (MS # 6), Affirmation in Support	<u>123, 124</u>
Affirmation Opposition, Exhibit	<u>125-128</u>
Affirmation in Further Support	<u>129</u>

This is an action to foreclose a consolidated mortgage. By Order dated October 25, 2018 and entered November 15, 2018, Justice Lawrence Knipel granted Bayview Loan Servicing, LLC's ("plaintiff") motion for summary judgment and appointed a referee to compute the amount due to plaintiff and to determine whether the subject premises could be sold in parcels (MS #1). By Order dated June 6, 2019 and entered June 13, 2019, Justice Knipel granted re-argument and upon re-argument denied the motion for summary judgment (MS # 3). On January 14, 2025, plaintiff again moved for summary judgment (MS # 5). Israel Pollak ("defendant") cross-moved to toll interest and dismiss plaintiff's cause of action to reform the Consolidation, Extension, & Modification Agreement ("CEMA") as time-barred (MS # 6). By Order dated May 28, 2025 and

entered June 4, 2025, this Court denied plaintiff's motion for summary judgment (MS # 5), as it constituted a successive summary judgment motion. Defendant's cross-motion (MS # 6) is addressed herein.

"A foreclosure action is equitable in nature and triggers the equitable powers of the court." *Onewest Bank, FSB v. Kaur*, 172 A.D.3d 1392, 1393-1394 (2d Dep't 2019) quoting *Rajic v. Faust*, 165 A.D.3d 716, 717 (2d Dep't 2018). "In actions of an equitable nature, including foreclosure actions, 'the recovery of interest is within the court's discretion.'" *Wells Fargo Bank, N.A. v. Lee*, 208 A.D.3d 1384, 1386 (2d Dep't 2022) quoting *Deutsche Bank Natl. Trust Co. v. Ould-Khattari*, 201 A.D.3d 701, 703 (2d Dep't 2022). The exercise of this discretion is governed by the particular facts of the case, including whether a party engaged in wrongful conduct, prejudiced the other party, or engaged in lengthy unexplained delay in prosecuting the action. *Bank of New York Mellon v. George*, 186 A.D.3d 661, 664 (2d Dep't 2020).

In the instant case, plaintiff alleges that its prosecution of this action was delayed by drafting certain affidavits between June 13, 2019 and January 6, 2020. The Court finds plaintiff's explanation insufficient to excuse a nearly six-month delay. Plaintiff also claims its inactivity was caused by the COVID-19 pandemic. Specifically, plaintiff claims it could not take any action on this case between March 7, 2020, the date of the first COVID-related executive order (E.O. # 202) and January 28, 2022, the date a FEMA hold expired. This Court declines to toll interest during the COVID-19 period. Finally, plaintiff argues that internal delays from a new loan servicer and drafting more affidavits caused further delays. The Court considers the more than two-year period allegedly attributable to the loan servicer and drafting affidavits excessive. Interest is therefore tolled for the period between June 2019 and March 2020. Additionally, interest is tolled for the period between February 2022 and January 2025, when plaintiff's motion for summary judgment

(MS # 5) was filed. In sum, interest is tolled for a total of 32 months. *See Deutsche Bank National Trust Company v. Ould-Khattari*, 201 A.D.3d 701, 703 (2d Dep't 2022) (holding the Supreme Court should toll interest when plaintiff's delay is excessive).

Turning now to the branch of defendant's motion to dismiss the cause of action to reform the CEMA, "[a] cause of action seeking reformation of an instrument on the ground of mistake, including an alleged scrivener's error, is governed by the six-year statute of limitations pursuant to CPLR 213(6), which begins to run on the date the mistake was made." *Rely-On-Us, Inc. v. Torres*, 165 A.D.3d 719, 721 (2d Dep't 2018) quoting *Lopez v. Lopez*, 133 A.D.3d 722, 723 (2d Dep't 2015). The CEMA was executed on April 4, 2003, so the statute of limitation to reform the CEMA expired on April 4, 2009, before this action was commenced. In opposition, plaintiff claims that the statute of limitation is extended, because the alleged error in the CEMA was not discovered until September 2015. "[A] well-recognized exception exists as to one who is in possession of real property under an instrument of title, whereby the statute of limitations never begins to run against his [or her] right to reform that instrument until he [or she] has notice of a claim adverse to his [or hers] under the instrument, or until his [or her] possession is otherwise disturbed." *Lopez* at 723-724 quoting *Pulver v. Dougherty*, 58 A.D.3d 978, 979, (3d Dep't 2009) (internal quotation marks omitted). However, plaintiff provided no evidence of when it discovered the purported error and therefore cannot benefit from this exception of the statute of limitations. Accordingly, the branch of the cross-motion to dismiss the cause of action to reform the CEMA is granted. For the foregoing reasons, it is hereby

ORDERED that defendant's cross-motion is GRANTED (MS # 6); and it is further

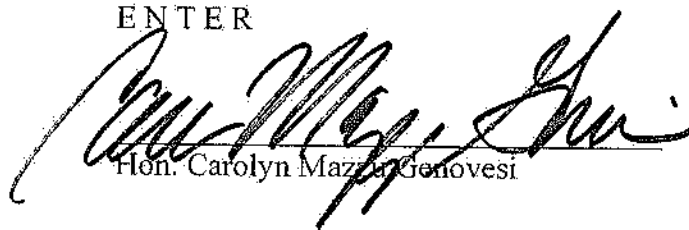
ORDERED that interest is tolled for a period of 32 months; and it is further

ORDERED that the cause of action to reform the CEMA is DISMISSED, as time barred.

Note of Issue shall be filed on or before October 6, 2025.

This constitutes the Decision and Order of the Court.

ENTER



Hon. Carolyn Mazza Genovesi