

**TLOA Mtge., LLC v Charles**

2025 NY Slip Op 33233(U)

July 1, 2025

Supreme Court, Kings County

Docket Number: Index No. 508593/2022

Judge: Derefim B. Neckles

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FSMP 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 1st day of July, 2025.

P R E S E N T:

HON. DEREKIM B. NECKLES,  
Acting Justice.

-----X

TLOA MORTGAGE, LLC,

Plaintiff,

- against -

Index No. 508593/2022

MARK CHARLES; CITIBANK, N.A.; ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits Annexed (Mot. Seq. 2)	<u>79-87</u>
Notice of Motion/Affidavits Annexed (Mot. Seq. 3)	<u>89-91</u>
Opposition Affirmation to Motion (Mot. Seq. 2)	<u>97</u>
Opposition Affirmation to Motion (Mot. Seq. 3)	<u>99-101</u>
Reply Affirmation to Opposition (Mot. Seq. 3)	<u>104</u>

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 2) for an order (1) pursuant to CPLR 2221(e), granting plaintiff leave to renew its opposition to defendant's motion for summary judgment dismissing the action, and, upon renewal, denying the defendant's motion for summary judgment; or in the alternative (b) pursuant to CPLR § 2001, correcting plaintiff's omission of serving the New York State Attorney General with Plaintiff's opposition papers challenging the constitutionality of the Foreclosure Abuse Prevention Act ("FAPA") to this case.

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Defendant moves (under mot. see. 3) for an order (1) granting reargument of those branches of Mr. Charles' motion for summary judgment on his counterclaims to cancel and discharge the subject mortgage pursuant to RPAPL § 1501(4) and for an award of reasonable attorneys' fees pursuant to Real Property Law § 282, pursuant to CPLR 2221(d)(2); (2) cancelling and discharging the subject mortgage pursuant to RPAPL § 1501(4); and (3) awarding Mr. Charles reasonable attorneys' fees pursuant to Real Property Law § 282.

### *Background*

Plaintiff commenced the instant action on March 24, 2022, to foreclose on the mortgage encumbering the subject property located at 157A Hull Street, Brooklyn, New York. On September 1, 2023, defendant moved for summary judgment, dismissing the action as time-barred under the Foreclosure Abuse Prevention Act ("FAPA"). By order dated July 16, 2024, the court granted defendant's motion, rejecting plaintiff's opposition with constitutionality challenges because it did not provide notice to the Attorney General, pursuant to CPLR §1012(b)(1). Plaintiff now moves to renew to correct its prior procedural defect.

Defendant moves to also reargue his motion for summary judgment for the court to address his remaining counterclaims regarding attorney's fees and discharging the mortgage.

## *Discussion*

### I. Plaintiff's Motion to Renew

Pursuant to CPLR §2221(e)(2), a motion 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.” While it may be within the court's discretion to grant leave to renew upon facts known to the moving party at the time of the original motion (*see J.D. Structures v Waldbaum*, 282 AD2d 434, 436 [2001]; *Cronwall Equities v International Links Dev. Corp.*, 255 AD2d 354 [1998]), a motion for leave to renew “‘is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation’ ”(*Coccia v. Liotti*, 70 A.D.3d 747, 752–53 [2d Dept 2010]). “[Movant’s] ignorance of the law [does] not constitute a reasonable excuse” (*see Nunez v. Vill. of Rockville Ctr.*, 176 A.D.3d 1211, 1214 [2d Dept 2019]; *Bhargava v. City of New York*, 130 A.D.3d 819, 820 [2d Dept 2015])

Here, plaintiff asks the court to grant renewal because “it was unaware of the requirement that CPLR 1012(b)(1); Executive Law §71 required notice to the Attorney General,” and this omission should be treated as a reasonable excuse of law office failure. Accordingly, plaintiff fails to state a basis for renewal because plaintiff’s ignorance of the law is not a reasonable excuse, and a motion for leave to renew is not a second chance freely given to parties who have not exercised due diligence in their first motion.

## II. Defendant's Motion to Renew

Pursuant to CPLR §2221(d)(2), a motion for leave to reargue shall be based on matters of fact or law allegedly overlooked or misapprehended by the Court in determining the prior motion. Here, reargument is appropriate because the court did not address the branch of defendant's motion concerning attorney's fees and discharging the mortgage.

### a. Discharging the Mortgage

Pursuant to RPAPL §1501(4), a person having an estate or an interest in real property subject to a mortgage can seek to cancel and discharge of record that encumbrance where the period allowed by the applicable statute of limitations for the commencement of an action to foreclose the mortgage has expired, provided that the mortgagee or its successor was not in possession of the subject real property at the time the action to cancel and discharge of record the mortgage was commenced (*Ditmid Holdings, LLC v. JPMorgan Chase Bank, Nat'l Ass'n*, 180 A.D.3d 1002, 1003 [2d Dept 2020]).

Here, defendant has established that he is the current owner of the property, pursuant to the deed dated April 27, 2004, and the court dismissed the action as time-barred, pursuant to the order dated July 16, 2024. Accordingly, the subject mortgage is cancelled and discharged pursuant to RPAPL §1501(4).

### b. Attorney's Fees

Real Property Law § 282(1) provides that under certain circumstances, a mortgagor can recover from the mortgagee "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," and that "such fees and

expenses may be recovered as provided by law in an action commenced against the mortgagee or by way of counterclaim in any action or proceeding commenced by the mortgagee against the mortgagor.” *Heitner v. Cap. One, Nat’l Ass’n*, 226 A.D.3d 976, 979 [2d Dept 2024]).

Here, defendant mortgagor has established that he successfully defended this foreclosure action, by order dated July 16, 2024, which granted his motion for summary judgment and dismissed the action as time-barred. Defendant had also counterclaimed for an award of attorney’s fees in his answer to the complaint. Accordingly, defendant is entitled to reasonable costs and attorney’s fees for the successful defense of the action pursuant to RPL §282(1) (*21st Mtge. Corp. v. Nweke*, 165 A.D.3d 616 [2d Dept 2018]).

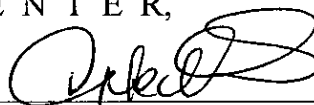
Based upon the foregoing, it is

**ORDERED** that plaintiff’s motion (mot. seq. 2) is denied in all respects; and it is further;

**ORDERED** that defendant’s motion (mot. seq. 3) is granted in all respects. Long form order to follow.

This constitutes the decision and order of the court.

E N T E R,



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

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