

Deutsche Bank Natl. Trust Co. v Fishbein

2025 NY Slip Op 34849(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 518159/2018

Judge: Menachem M. Mirocznik

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At IAS Part FRP5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 9th day of December 2025

PRESENT: HON. MENACHEM M. MIROCZNIK
JUSTICE OF THE SUPREME COURT

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE FOR LONG BEACH MORTGAGE
LOAN TRUST 2006-8,

Index No. 518159/2018

Plaintiff,

-against-

PAUL FISHBEIN; 3166 DEAN LLC; HENRY
FELDER DBA H F JUDGMENT RECOVERY; THE
BROOKLYN UNION GAS CO DBA NATIONAL
GRID NEW YORK; DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT; PARKER
YELLOWSTONE QUEENS LP; NEW YORK CITY
TRANSIT ADJUDICATION BUREAU; NEW YORK
CITY ENVIRONMENTAL CONTROL BOARD;
NEW YORK CITY PARKING VIOLATIONS
BUREAU; "JOHN DOES" and "JANE DOES", said
names being fictitious, parties intended being possible
tenants or occupants of premises, and corporations,
other entities or persons who claim, or may claim, a lien
against the premises,

**Decision and Order
(Motion Seq. 1)**

Defendants.

Papers	Numbered
Notice of Motion (Motion Seq. 1)	NYSCEF Doc. 52-82
Opposition Papers	NYSCEF Doc. 83-98
Reply Papers	NYSCEF Doc. 104

Upon the foregoing papers, the motion is determined in accordance with this Decision and Order as follows:

Procedural History

This action was commenced on September 7, 2018 seeking to foreclose a mortgage (the "mortgage") executed by defendant Pau Fishbein ("Fishbein") encumbering the premises known as 751 Monroe Street, Brooklyn, NY 11221 (the "property"). Title to the property is held by defendant 3166 Dean LLC ("Dean LLC" and together with Fishbein the "defendants")

On July 9, 2009, plaintiff commenced a foreclosure action seeking to foreclose the mortgage entitled *Deutsche Bank National Trust Company, as Trustee et al v. Paul Fishbein et al* under Index No 17178/2009 (“2009 Foreclosure Action”). It is undisputed that the complaint in the 2009 Foreclosure Action accelerated the mortgage and demanded all sums due under the mortgage. On May 27, 2013 the 2009 Foreclosure Action was discontinued.

On February 24, 2017, plaintiff commenced a foreclosure action seeking to foreclose the mortgage entitled *Deutsche Bank National Trust Company, as Trustee et al v. Paul Fishbein et al* under Index No 503823/2017 (“2017 Foreclosure Action”). On January 22, 2018, the 2017 Foreclosure Action was discontinued.

On October 23, 2018, defendants joined issue in this action with the filing of an answer asserting various affirmative defenses including non-compliance with RPAPL 1304 and that enforcement of the mortgage is barred by the statute of limitations.

Plaintiff moves for summary judgment and order of reference, to amend the caption to substitute certain John Doe defendants and for a default judgment.

Defendants oppose the motion contending that enforcement of the mortgage is barred by the statute of limitations and that plaintiff failed to establish compliance with RPAPL 1304.

In reply, plaintiff contends that this action is timely because the acceleration contained in the 2009 Foreclosure Action was revoked when it discontinued the 2009 Foreclosure Action and separately was revoked when plaintiff allegedly sent defendant Fishbein a revocation letter on December 29, 2014.

Discussion

“As we have stated frequently, the proponent of a summary judgment motion 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...Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers...Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986][citations omitted]; See also *Zuckerman v. New York*, 49 NY2d 557 [1980]

An action to foreclose a mortgage must be commenced within six years. CPLR §213(4). “[E]ven if a mortgage is payable in installments, once a mortgage debt is accelerated, the entire amount is due, and the Statute of Limitations begins to run on the entire debt...Acceleration occurs, inter alia, by the commencement of a foreclosure action.” *Deutsche Bank Natl. Tr. Co. v Adrian*, 157 AD3d 934 [2d Dept. 2018].

Here, as noted above, it is undisputed that the mortgage was accelerated with the commencement of the 2009 Foreclosure Action and this action was commenced more than six years since commencement of the 2009 Foreclosure Action. Therefore, defendant demonstrated prima facie that this action is untimely.

Plaintiff contends that the acceleration was revoked when the 2009 Foreclosure Action was discontinued, relying on the Court of Appeals holding in *Freedom Mtge. Corp. v Engel*, 37 NY3d 1 [2021] and its subsequent alleged mailing of a de-acceleration letter on December 29, 2014.

However, plaintiff's contentions are academic with the passage of the Foreclosure Abuse and Prevention Act ("FAPA")¹. See *U.S. Bank N.A. v Mongru*, 241 AD3d 970 [2d Dept 2025] *FV-I, Inc. v Samuels*, 240 AD3d 757 [2d Dept 2025]

In any case, the same is irrelevant. Several courts have already recognized an important distinction between a lender's right to revoke acceleration and the effect of such a revocation on the statute of limitations. See *US Bank N.A. v Williams*, 80 Misc 3d 258, 265-266 [Sup Ct, Putnam Cty. June 23, 2023]; *Ditech Fin. LLC v Naidu*, 82 Misc 3d 452, 455 [Sup Ct 2023] at 5 ["In any event, Plaintiff's ability to revoke the loan's acceleration remains unimpaired as FAPA did not disturb the Court of Appeal's opinion in *Engel*, which holds that absent a contemporaneous statement to the contrary, a discontinuance of a foreclosure will revoke a prior election to accelerate. Instead, FAPA merely addresses the effect of revoking acceleration as it pertains to the statute of limitations so as to reconcile with General Obligations Law § 17-105 and CPLR § 201]; See also the Senate Memo (*9) and well-reasoned positions advanced by Justice Smith and Justice Cohen. See FAPA, Bill Jacket, Opinion of Hon. Robert S. Smith, dated July 15, 2022; FAPA, Bill Jacket, "Why NY Foreclosure Abuse Prevention Act Should Pass," Hon. Jeffrey Cohen, dated April 29, 2022, *2 ["FAPA does not prohibit a lender from revoking its election to accelerate"], with which the Attorney General concurs. See *Williams*, supra at 265).

Thus, it can be said that FAPA allows for revocation of acceleration but the same simply does not impact the statute of limitations.

The Court notes that even prior to FAPA (post-Engel), GOL 17-105 was the sole mechanism to toll or revive a time barred claim in the context of a foreclosure action and FAPA's amendment to GOL 17-105 merely clarified it, notwithstanding FAPA's amendment to CPLR 203[h] or CPLR 3217[e]. See *Batavia Townhouses, Ltd. v Council of Churches Hous. Dev. Fund Co., Inc.*, 38 NY3d 467, 472 [2022] ["General Obligations Law § 17-105, by its express terms, is the sole statute governing the tolling or revival of the statute of limitations for an action to foreclose a mortgage."]

To the extent plaintiff would raise constitutional challenges to application of FAPA the same would be without merit having been rejected by all four Departments of the Appellant Division as well as the Court of Appeals. See *Art. 13 LLC v Ponce De Leon Fed. Bank*, 2025 NY Slip Op 06536 [Ct App Nov. 25, 2025]; *Van Dyke v U.S. Bank, N.A.*, 2025 NY Slip Op 06537 [Ct App Nov. 25, 2025]; *Bank of New York Mellon v Del Rio*, 233 AD3d 529 [1st Dept 2024]; *Bayview Loan Servicing, LLC v Dalal*, 232 AD3d 487 [1st Dept 2024], lv to appeal dismissed, 44 NY3d 986 [2025]; *Bank of New York Mellon as Tr. (CWALT 2007-24) v Bosboom*, 238 AD3d 504, 504 [1st Dept 2025]; *Wells Fargo Bank, N.A. v Salko*, 241 AD3d 851 [2d Dept 2025]; *Deutsche Bank*

¹ A "court is to apply the law in effect at the time it renders its decision... Although statutory amendments are presumed to have prospective application, when the Legislative Intent is clear, remedial legislation should be given retroactive effect in order to effectuate its beneficial purpose." *Ditech Fin. LLC v Naidu*, 82 Misc 3d 452, 456 [Sup Ct 2023] citing *Landgraf v USI Film Products*, 511 US 244 [1994]; See also *MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087 [2d Dept. 2023][applying FAPA sua sponte][Docket No. 2020-01680]

Natl. Tr. Co. v Dagrín, 233 AD3d 1065 [2d Dept 2024]; *U.S. Bank N.A. v Mongru*, 241 AD3d 970 [2d Dept 2025]; *U.S. Bank N.A. v Craft*, 240 AD3d 1140 [3d Dept 2025]; *Deutsche Bank Natl. Tr. Co. v Goldwasser*, 237 AD3d 1291 [3d Dept 2025]; *MCLP Asset Co., Inc. v Zaveri*, 2025 NY Slip Op 06403 [4th Dept Nov. 21, 2025]

Therefore, this action and enforcement of the mortgage are barred by the statute of limitations. The parties' remaining contentions need not be reached in light of the Court's determinations.

Accordingly, it is hereby

ORDERED, that plaintiff's motion is DENIED with PREJUDICE; and it is further

ORDERED, that the parties are directed to complete discovery and proceed to trial.

This constitutes the Decision and Order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

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KINGS COUNTY CLERK'S OFFICE