

**HSBC Bank USA, N.A. v Miller**

2025 NY Slip Op 34993(U)

December 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 504528/15

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 8<sup>th</sup> day of December, 2025.

P R E S E N T:

HON. CENCERIA P. EDWARDS,  
Justice.

-----X  
HSBC BANK USA, N.A., AS INDENTURE TRUSTEE  
FOR THE REGISTERED NOTEHOLDERS OF RENAISSANCE  
HOME EQUITY LOANN TRUST 2006-3,

Plaintiff,

- against -

Index No. 504528/15

LAURIE A. MILLER A/K/A LAURIE MILLER, UNITED STATES OF AMERICA and "JOHN DOE #1" to "JOHN DOE #10", the last 10 names being fictitious and unknown to plaintiff, the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgage premises described in the verified complaint,

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) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_

86-88, 90-97 103-105, 107-114  
103-105, 107-114 116  
118-119

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 315 Quincy Street in Brooklyn (Block 1803, 57) (Property), defendant Laurie A. Miller a/k/a Laurie Miller (Miller or Defendant) moves (in motion sequence [mot. seq.] two) for an order granting her summary judgment dismissing the complaint with prejudice, pursuant to CPLR 3212 (NYSCEF Doc No. 86).

Plaintiff HSBC Bank USA, N.A., as Indenture Trustee for the Registered Noteholders of Renaissance Home Equity Loan Trust 2006-3 (HSBC or Plaintiff) cross-moves (in mot. seq. three) for an order: (1) awarding it summary judgment against Defendant Miller, pursuant to CPLR 3212, and striking her answer; (2) granting it a default judgment against the remaining non-answering defendants; (3) appointing a referee to compute the sum due and owing to Plaintiff, pursuant to RPAPL § 1321; (4) amending the caption; and (5) denying Miller’s motion (NYSCEF Doc No. 103).

### **Background**

On April 16, 2015, HSBC commenced this foreclosure action by filing a summons, an unverified complaint and a notice of pendency against the Property. The complaint alleges that on or about June 29, 2006, Miller executed and delivered a \$400,000.00 promissory note in favor of Delta Funding Corp. (Delta Funding), which was secured by a mortgage encumbering the Property (*id.* at ¶¶ 2-3). The complaint alleges that Miller “failed to comply with the terms and provisions of said mortgage and said instrument secured by the mortgage, by failing to pay principal and interest and/or taxes, insurance premiums, escrows and/or other charges commencing with the September 1, 2008 payment . . .” and “Plaintiff has elected and hereby elects to declare immediately due and payable the entire unpaid balance of principal . . .” (*id.* at ¶¶ 8-9). Notably, the complaint erroneously alleges that “[n]o other action or proceeding has been commenced or maintained or is now pending at law or otherwise for the foreclosure of said mortgage or

for the recovery of said sum secured by said note ad mortgage or any part thereof” (*id.* at ¶ 15).

On June 4, 2015, Miller e-filed her May 27, 2015, verified answer to the complaint with a general denial (NYSCEF Doc No. 22 at 1). Miller asserted affirmative defenses, including lack of standing, failure to send a notice of default, failure to send two copies of the 90-day notice, as required by RPAPL § 1304 and expiration of the statute of limitations since:

“HSBC Bank USA previously filed a case against me with index No. 018710/2009. I do not believe that case was properly disposed of before they brought this new action against me.

“Furthermore, the current action was not brought within the six year statute of limitations as stated in NY CPLR § 213 (4) because the bank accelerated the debt prior to filing a previous lawsuit against me with index number 6871/2008” (*id.* at 3).

After issue was joined, discovery ensued. On May 25, 2016, the court issued a scheduling order for discovery and an August 25, 2016, deadline within which to respond to discovery. Defendant Miller served HSBC with discovery requests on July 25, 2016.

On August 25, 2016, rather than respond to Miller’s outstanding discovery demands, HSBC moved for summary judgment and to strike Miller’s answer, an order of reference and a default judgment (NYSCEF Doc No. 29). Miller opposed the motion on the grounds of: (1) lack of standing; (2) expiration of the statute of limitations based on HSBC’s commencement of two prior foreclosure actions in 2008 and 2009; (3) failure to comply with RPAPL § 1304; and (4) failure to send Miller a notice of default (NYSCEF

Doc No. 36). By a March 9, 2017, decision and order, the court (Dear, J.) denied HSBC's motion because "[i]ssues of fact remain as to Plaintiff's standing, mailing of the notices, and the timeliness of this action" (NYSCEF Doc No. 83).

***Miller's Summary Judgment Motion***

On February 6, 2020, after the completion of discovery, Miller moved for summary judgment dismissing the complaint based on the expiration of the statute of limitations (NYSCEF Doc No. 86). Miller submits an affidavit attesting that "I was sued by Plaintiff in a prior foreclosure suit in 2008, and again in 2009" (NYSCEF Doc No. 87 at ¶ 5). Defense counsel submits an affirmation asserting that on March 4, 2008, HSBC commenced a prior action against Miller to foreclose the subject mortgage under Kings County Index No. 6871/2008 (2008 Foreclosure Action) (NYSCEF Doc No. 88 at ¶ 5). Defense counsel submits a copy of HSBC's complaint in the 2008 Foreclosure Action, which specifically alleges that "plaintiff has duly elected and does hereby elect to call due the entire amount presently secured by the mortgage . . ." (NYSCEF Doc No. 92 at ¶ 7). Defense counsel asserts that HSBC voluntarily discontinued the 2008 Foreclosure Action on July 21, 2009 (NYSCEF Doc No. 88 at ¶ 6 and NYSCEF Doc No. 93). Defense counsel asserts that on July 24, 2009, HSBC commenced a second foreclosure action under Kings County index No. 18710/2009 (2009 Foreclosure Action), which was dismissed on September 26, 2013, as abandoned, pursuant to CPLR 3215 (c) (NYSCEF Doc No. 88 at ¶¶ 7-8 and NYSCEF Doc Nos. 94 and 95). Defense counsel notes that, in response to Miller's Request for Admissions (NYSCEF Doc No. 96), HSBC admitted that the filing of

the summons and complaint in the 2008 Foreclosure Action accelerated the amount due under the mortgage (NYSCEF Doc No. 88 at ¶¶ 9-10 and NYSCEF Doc No. 97 at 3).

Miller also submits a memorandum of law arguing that the Second Department in *Freedom Mortgage Corp. v Engel*, (163 AD3d 63 [2d Dept 2018]), held that plaintiff's voluntary discontinuance of a foreclosure action does not constitute an affirmative act to revoke plaintiff's election to accelerate the loan (NYSCEF Doc No. 89 at 4-5). Miller argues that "any claim that Plaintiff intended to revoke acceleration by discontinuing is refuted by the fact that Plaintiff filed a subsequent foreclosure action *three days* after filing the discontinuance" (*id.* at 5).

### ***HSBC's Opposition and Summary Judgment Cross-Motion***

On June 1, 2021, HSBC opposed Miller's motion and filed a second, successive cross-motion for summary judgment, an order of reference and a default judgment (NYSCEF Doc No. 103). HSBC submits a memorandum of law arguing that "[w]hat the Defendant does not take into account is that the Plaintiff Voluntarily Discontinued the 2008 Action thereby de-accelerating the loan" (NYSCEF Doc No. 106 at 9). HSBC relies on the Court of Appeals' decision in *Freedom Mortgage Corp. v Engel*, (37 NY3d 1 [2021]), which held that a noteholder's voluntary discontinuance constitutes an act of revocation of the acceleration of the loan. HSBC argues that "since the acceleration of the loan was effectively revoked, it was the action initiated on July 24, 2009 . . . that began the time for the statute of limitations to run" and "[t]he instant action was therefore timely as it was initiated prior to the six (6) year expiration from that date" (NYSCEF Doc No. 106 at 9).

HSBC argues that there are no material issues of fact and it has established its prima facie right to summary judgment against Miller, an order of reference and a default judgment without addressing the court's previously holding that "[i]ssues of fact remain as to Plaintiff's standing [and] mailing of the notices . . ." (*id.* at 3-4). HSBC briefly addresses its standing and the mailing of the notices when arguing that Miller's answer does not raise a triable issue of fact and should be stricken (*id.* at 4-8).

### 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]). “Acceleration occurs . . . by the commencement of a foreclosure action” and “[a] lender may revoke its election to accelerate the mortgage debt, but it must do so by an affirmative act of revocation occurring during the six-year statute of limitations period” (*Pennymac Corp. v Holcomb*, 198 AD3d 978, 980 [2d Dept 2021]).

Here, while HSBC specifically admits that its commencement of the 2008 Foreclosure Action on March 4, 2008, accelerated the mortgage debt (NYSCEF Doc No. 97 at 3), HSBC relies on the Court of Appeals’ decision in *Engel* to argue that the acceleration was revoked when it voluntarily discontinued the 2008 Foreclosure Action on July 21, 2009. In *Engel*, the Court of Appeals held, in relevant part, that:

“where acceleration occurred by virtue of the filing of a complaint in a foreclosure action, the noteholder’s voluntary discontinuance of that action constitutes an affirmative act of revocation of that acceleration as a matter of law, absent an express, contemporaneous statement to the contrary by the noteholder” (*Engel*, 37 NY3d at 32).

Importantly, the New York State Legislature subsequently enacted the Foreclosure Abuse Prevention Act (FAPA) in December 2022, which reversed the holding in *Engel*.

As the Second Department noted:

“FAPA had the effect of nullifying this particular holding in *Engel*. FAPA amended CPLR 3217, governing the voluntary discontinuance of an action, by adding a new paragraph (e), which provides that “[i]n any action on an instrument described under [CPLR 213 (4)], *the voluntary discontinuance of such action*, whether on motion, order, stipulation or by notice, *shall not, in form or effect, waive, postpone, cancel, toll, extend, revive or reset the limitations period* to commence an action and to interpose a claim, unless expressly prescribed by statute” (*GMAT Legal Title Tr. 2014-1 v Kator*, 213 AD3d 915, 917 [2d Dept 2023]; *see also HSBC Bank USA, Nat’l Ass’n v Islam*, 221 AD3d 672, 674 [2d Dept 2023] [emphasis added]).

Here, applying FAPA, HSBC’s discontinuance of the 2008 Foreclosure Action on July 21, 2009, did not de-accelerate the mortgage debt, or revive, or reset the statute of limitations and HSBC has failed to demonstrate that it ever de-accelerated the debt (*Anglestone Real Est. Venture Partners Corp. v Bank of New York Mellon*, 221 AD3d 943, 946 [2d Dept 2023] [under FAPA, “the voluntary discontinuances of the prior actions did not serve to revive or reset the statute of limitations”]). HSBC admits that the six-year statute of limitations began to run on March 4, 2008, when it accelerated the mortgage debt by commencing the 2008 Foreclosure Action. The six-year statute of limitations thus expired on March 4, 2014, *more than one year before* HSBC commenced the instant foreclosure action on April 16, 2015, and dismissal is warranted based on the expiration of the six-year statute of limitations. Consequently, HSBC’s cross-motion for summary

judgment, an order of reference and a default judgment against the non-answering defendants is denied as moot. Accordingly, it is hereby

**ORDERED** that Defendant Miller's summary judgment motion (mot. seq. two) is granted and the complaint is dismissed with prejudice as time-barred, pursuant to CPLR 3212; and it is further

**ORDERED** that HSBC's cross-motion (mot. seq. three) is denied as moot.

This constitutes the decision and order of the court.

E N T E R,



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Cenceria P. Edwards JSC, CPA