

Santander Bank, N.A. v Spitzer

2025 NY Slip Op 35114(U)

December 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 515238/2025

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 29th of December 2025

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

Santander Bank, N.A. F/K/A Sovereign Bank, N.A.
F/K/A Sovereign Bank,

Plaintiff,

-against-

Shraga Spitzer, Board of Managers of the 40 Middleton Street Condominium, City of New York Environmental Control Board "JOHN DOE #1" through and including "JOHN DOE#25", the defendants last named in quotation marks being intended to designate tenants or occupants in possession of the herein described premises or portions thereof, if any there be, said names being fictitious, their true name being unknown to plaintiff,

Defendants.

Index No. 515238/2025

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

Papers	Numbered
Order to Show Cause	NYSCEF Doc. 70-87
Opposition Papers	NYSCEF Doc. 89-95

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

Procedural History

This action was commenced on May 7, 2025, seeking to foreclose a mortgage (the "mortgage") executed by defendant Shraga Spitzer (the "defendant") encumbering the property known as 40 Middleton Street, Unit 6A Brooklyn, NY 11206 (the "property").

On November 5, 2018, a previous foreclosure action was commenced seeking to foreclose the mortgage under Index No. 522209/2018. By order dated June 4, 2024, the previous foreclosure action was dismissed due to non-compliance with RPAPL 1306.

Defendant now moves by pre-answer motion to dismiss pursuant to CPLR 3211[a][5] contending that the first cause of action to foreclose the mortgage and second cause of action for reformation of the mortgage are barred by the statute of limitations. Defendant argues that this

action is time-barred because the mortgage debt was validly accelerated when Plaintiff commenced the previous foreclosure action on November 5, 2018, triggering the six-year statute of limitations which expired on November 5, 2024 rendering this action untimely. Defendant further argues that plaintiff's separate cause of action for reformation based on an alleged scrivener's error accrued at execution of the mortgage in 2008 and is independently time-barred and that the conclusory fraud allegations are insufficiently pled and also untimely.

Plaintiff opposes the motion that the limitations period was tolled for 228 days by the COVID-19 Executive Orders and when accounting for the tolls this action was timely commenced.

In reply, Defendant maintains that the COVID-19 Executive Orders do not save Plaintiff's claims because Plaintiff already had a foreclosure action pending during the tolling period.

Discussion

"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) on the ground that the statute of limitations has expired, the moving defendant must establish, prima facie, that the time in which to commence the action has expired." *Raymond James Bank v Guzzetti*, 240 AD3d 631 [2d Dept 2025]

"Where a defendant satisfies the initial burden of proof on a motion pursuant to CPLR 3211(a)(5), the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period." *Deutsche Bank Natl. Tr. Co. v Sylvestre*, 238 AD3d 980 [2d Dept 2025] [quotation marks omitted]

"An 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, a previous action was commenced on November 5, 2018, which accelerated the amounts due on the subject mortgage and this action was commenced more than six years later. Therefore, defendant established prima facie that plaintiff's first cause of action is untimely.

However, plaintiff is correct that the limitations period was tolled for 228 days.

"A toll suspends the running of the applicable statute of limitations for a finite time period, and the period of the toll is excluded from the calculation of the time in which a plaintiff may commence an action...Here, as a result of executive orders issued in response to the COVID-19 pandemic, the statute of limitations was tolled for the 228-day period between March 20, 2020, and November 3, 2020" *UMB Bank, N.A. v Janvier*, 242 AD3d 796 [2d Dept 2025][citations omitted] See also *Bank of NY Mellon v DeMatteis*, 222 AD3d 1 [2d Dept 2023][“Executive Order (A. Cuomo) No. 202.8 (9 NYCRR 8.202.8), which was signed by then-Governor Andrew Cuomo in response to the COVID-19 pandemic, constituted a toll of the filing deadlines applicable to

litigation in New York courts...This toll was extended through several subsequent executive orders, the last of which remained in effect until November 3, 2020.”]

Contrary to defendant’s contention, the fact that a previous action was pending during the relevant tolling period is irrelevant. “[A] toll operates to compensate a claimant for the shortening of the statutory period in which it must commence—or recommence—an action, irrespective of whether the stay has actually deprived the claimant of any opportunity to do so.” *Lubonty v U.S. Bank N.A.*, 34 NY3d 250, 256 [2019]; See also *UMB Bank, N.A. v Janvier*, 242 AD3d 796 [2d Dept 2025][applying the executive order toll despite a prior action being pending during the tolling period]

Therefore, defendant’s motion to dismiss plaintiff’s first cause of action to foreclose the mortgage is denied.

However, “[a] cause of action seeking reformation of an instrument on the ground of mistake ... 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.” *Bank of New York Mellon v MS Glob. Group, LLC*, 222 AD3d 821 [2d Dept 2023]

Here, the mortgage was executed on October 3, 2008, and this action was commenced more than 10 years after the statute of limitations expired. Therefore, defendant established prima facie that the second causes of action is untimely.

Contrary to plaintiff’s contentions the toll is insufficient to save the second cause of action.

To the extent plaintiff’s second cause of action sounds in the fraud, defendant is correct that plaintiff failed to state a cause of action and the same is any case untimely.

To state a claim for fraud, “the plaintiff must establish (1) that the defendant made material representations that were false, (2) that the defendant knew the representations were false and made them with the intent to deceive the plaintiff, (3) that the plaintiff justifiably relied on the defendant’s representations, and (4) that the plaintiff was injured as a result of the defendant’s representations” *Cash v Titan Fin. Services, Inc.*, 58 AD3d 785 [2d Dept 2009]

“A claim rooted in fraud must be pleaded with the requisite particularity under CPLR 3016(b).” *Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553 [2009]; *Weinstein v Levitin*, 208 AD3d 531 [2d Dept 2022][“Where a cause of action is based upon fraud, the circumstances constituting the alleged wrong must be stated in detail”]

Here, plaintiff does not allege that defendant made a material representation to plaintiff, let alone that it was false, that it was with the intent to deceive, or that plaintiff justifiably relied on same. Nor are the claims anything more than conclusory assertions and lack the requisite detail required by CPLR 3016[b]. Therefore, plaintiff failed to state a cause of action.

In any case, said cause of action is also time barred. “Pursuant to CPLR 213(8), the time within which the action must be commenced shall be the greater of six years from the date the

cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it. A cause of action based upon fraud accrues, for statute of limitations purposes, at the time the plaintiff possesses knowledge of facts from which the fraud could have been discovered with reasonable diligence” *Monteleone v Monteleone*, 162 AD3d 761, 762 [2d Dept 2018]

Here, the cause of action accrued when the subject mortgage was recorded on October 17, 2008, and plaintiff was on notice of, or should have discovered the defect at that time. Therefore, this action commenced on May 7, 2025, is untimely.

Accordingly, it is hereby,

ORDERED, that the motion is GRANTED to the extent that plaintiff’s second cause of action is DISMISSED and the motion is otherwise DENIED; and it is further

ORDERED, that defendant shall file his answer within thirty days of entry of this order.

This constitutes the decision and order of the Court.

ENTER:



Hon. Menachem M. Mirocznik, JSC

FILED
JAN 06 2026
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