

Moore St. Bldg. Corp. v Abbott Resource Servs. Co.

2026 NY Slip Op 30107(U)

January 5, 2026

Supreme Court, New York County

Docket Number: Index No. 151748/2024

Judge: Nicholas W. Moyné

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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MOORE STREET BUILDING CORP.

Plaintiff,

- v -

ABBOTT RESOURCE SERVICES COMPANY, ITS
SUCCESSORS AND/OR ASSIGNS,

Defendant.

INDEX NO. 151748/2024

MOTION DATE 07/15/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

In this action, the plaintiff Moore Street Building Corp. moves, pursuant to CPLR § 3212, for an order granting it summary judgment and a declaratory judgment vacating, expunging, and declaring null and void two mortgages recorded against the premises located at 42 North Moore Street, New York, NY (the "Property"). Defendant Abbot Resources Services Company ("Defendant" or "Abbott") cross-moves to dismiss the complaint and for summary judgment on its counterclaims for mortgage foreclosure.

Factual and Procedural Background

The Property is a six-story loft building owned by the plaintiff. It is currently encumbered by two mortgages now held by the defendant: (1) a First Mortgage dated May 1, 1986, in the original sum of \$900,000 (later reduced to \$600,000), and (2) a Second Mortgage dated April 1, 1993, in the sum of \$275,000.

The First Mortgage matured on March 1, 1994. The Second Mortgage matured on May 1, 1998. Furthermore, on March 12, 1998, the defendant's predecessor-in-interest sent a formal Acceleration Letter

demanding immediate payment of the full principal and interest for both mortgages. Consequently, the six-year statute of limitations to commence a foreclosure action under CPLR § 213(4) expired no later than March 12, 2004.

On August 2, 2001, the parties entered into a Joint Venture Agreement (JVA) for the purpose of converting the Property into condominiums. Paragraph 7 of the JVA provided that Abbott would not declare a default or commence foreclosure proceedings during the term of the venture. In a related action (*Moore Street Building Corp. v. Abbott Resource Services Company*, Index No. 650810/2014), the Court (Perry, J.) issued a judgment declaring the JVA dissolved retroactively as of March 13, 2014. This determination was unanimously affirmed by the Appellate Division, First Department (*see Moore Street Building Corp. v. Abbott Resources Services Company*, 233 AD3d 413 [1st Dept 2024]).

Legal Analysis

I. The Statute of Limitations and GOL § 17-105

The Defendant argues that the JVA constituted an agreement to toll the statute of limitations because it prohibited foreclosure during the venture's term. However, General Obligations Law (GOL) § 17-105(1) provides that a written promise to pay a mortgage debt, or a waiver of the statute of limitations, is effective to make the time limited for commencement of the action "run from the date of the waiver or promise." The Court of Appeals has held that GOL § 17-105 is the "sole statute governing the tolling or revival of the Statute of Limitations for an action to foreclose a mortgage." (*Batavia Townhouses, Ltd. v. Council of Churches Hous. Dev. Fund Co., Inc.*, 38 NY3d 467, 472 [2022]). Even if the JVA is construed as an extension, such an extension is legally limited to six years from the date of the agreement. As the JVA was executed on August 2, 2001, any resulting extension or tolling expired on August 2, 2007. Defendant did not interpose its foreclosure counterclaims until May 22, 2024, nearly seventeen years too late.

II. The Effect of Retroactive Dissolution

Even assuming *arguendo* that the JVA acted as a continuous stay of the statute of limitations until the venture ended, the defendant's claims remain time-barred. The court in the related action ruled that the JVA was dissolved as of March 13, 2014. Under New York law, the statute of limitations begins to run upon the termination of a joint venture (*see*

Eskenazi v Schapiro, 27 AD3d 312, 315 [1st Dept. 2006]). Therefore, the clock to foreclose began running no later than March 13, 2014, and expired on March 13, 2020.

III. Standing and the Defective Lost Note Affidavit

The plaintiff correctly argues that the defendant lacks standing to foreclose on the First Mortgage because it does not possess the original Note. Defendant relies on a Lost Note Affidavit that is unsigned, unnotarized, and lacks any factual details regarding when the search for the note occurred or how it was lost. Such a document is insufficient to establish standing as a matter of law (*see Deutsche Bank Natl. Trust Co. v Anderson*, 161 AD3d 1043, 1045 [2nd Dept. 2018]).

IV. Collateral Estoppel and Rent Payments

The defendant's reliance on Justice Perry's statement that "Abbott continues to hold the mortgages" is misplaced. That decision adjudicated the ownership of the mortgages as a JV asset but did not address their enforceability or timeliness, which are the issues currently before this Court. Furthermore, the defendant's claim that rent payments made through 2005 revived the debt is unsupported. For a payment to toll the statute of limitations, it must constitute an "absolute and unqualified acknowledgment by the debtor of more being due, from which a promise may be inferred to pay the remainder." (*Federal National Mortgage v. Jeanty*, 39 NY3d 951, 952 [2022]). Here, the payments were rent payments made by a third-party tenant (Triarch, Inc.), not the plaintiff and were made pursuant to lease obligations and the JVA, not the mortgages. Even if they were mortgage payments, the statute of limitations would have expired in 2011, making the 2024 claims untimely.

Conclusion

Plaintiff has demonstrated a prima facie entitlement to summary judgment by showing that the subject mortgages are time-barred under CPLR § 213(4). Defendant has failed to raise a triable issue of fact or provide a valid legal basis for tolling the statute of limitations beyond 2007 or, at the latest, 2020.

Accordingly, it is hereby:

ORDERED that Plaintiff's motion for summary judgment is granted in its entirety; and it is further

ADJUDGED and DECLARED that the First Mortgage (Reel 1072, Page 1006) and the Second Mortgage (Reel 1970, Page 645) recorded against 42 North Moore Street are unenforceable, null, void, and are hereby expunged of record; and it is further

ORDERED that Defendant’s cross-motion to dismiss and for summary judgment is denied.

This constitutes the decision and order of the Court.



1/5/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED				GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE