

Deutsche Bank Natl. Trust Co. v Thomas
2026 NY Slip Op 30385(U)
January 16, 2026
Supreme Court, Kings County
Docket Number: Index No. 508399/18
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 16th day of January, 2026.

P R E S E N T:

HON. CENCERIA P. EDWARDS,

Justice.

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DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR FIRST FRANKLIN MORTGAGE LOAN TRUST 2006-FF8, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-FF8,

Plaintiff,

- against -

Index No. 508399/18

INGRID THOMAS, CHIBS ENTERPRISES, INC., PEOPLE OF THE STATE OF NEW YORK, NEW YORK CITY DEPARTMENT OF FINANCE, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST FRANKLIN A DIVISION OF NAT. CITY BANK OF IN, KEHINDE I. BELLO IF LIVING, AND IF HE/SHE BE DEAD, ANY AND ALL PERSONS UNKNOWN TO PLAINTIFF, CLAIMING, OR WHO MAY CLAIM TO HAVE AN INTEREST IN, OR GENERAL OR SPECIFIC LIEN UPON THE REAL PROPERTY DESCRIBED IN THIS ACTION; SUCH UNKNOWN PERSONS BEING HEREIN GENERALLY DESCRIBED AND INTENDED TO BE INCLUDED IN WIFE, WIDOW, HUSBAND, WIDOWER, HEIRS AT LAW, NEXT OF KIN, DESCENDENTS, EXECUTORS, ADMINISTRATORS, DEVISEES, LEGATEES, CREDITORS, TRUSTEES, COMMITTEES, LIENORS, AND ASSIGNEES OF SUCH DECEASED, ANY AND ALL PERSONS DERIVING INTEREST IN OR LIEN UPON, OR TITLE TO SAID REAL PROPERTY BY, THROUGH OR UNDER THEM, OR EITHER OF THEM, AND THEIR RESPECTIVE WIVES, WIDOWS, HUSBANDS, WIDOWERS, HEIRS AT LAW, NEXT OF KIN, DESCENDENTS, EXECUTORS, ADMINISTRATORS, DEVISEES, LEGATEES, CREDITORS, TRUSTEES, COMMITTEES, LIENORS, AND ASSIGNS, ALL OF WHOM AND HOSE NAMES, EXCEPT AS STATED, ARE UNKNOWN TO PLAINTIFF

IF LIVING, AND IF HE/SHE BE DEAD, ANY AND ALL PERSONS UNKNOWN TO PLAINTIFF, CLAIMING, OR WHO MAY CLAIM TO HAVE AN INTEREST IN, OR GENERAL OR SPECIFIC LIEN UPON THE REAL PROPERTY DESCRIBED IN THIS ACTION; SUCH UNKNOWN PERSONS BEING HEREIN GENERALLY DESCRIBED AND INTENDED TO BE INCLUDED IN WIFE, WIDOW, HUSBAND, WIDOWER, HEIRS AT LAW, NEXT OF KIN, DESCENDENTS, EXECUTORS, ADMINISTRATORS, DEVISEES, LEGATEES, CREDITORS, TRUSTEES, COMMITTEES, LIENORS, AND ASSIGNEES OF SUCH DECEASED, ANY AND ALL PERSONS DERIVING INTEREST IN OR LIEN UPON, OR TITLE TO SAID REAL PROPERTY BY, THROUGH OR UNDER THEM, OR EITHER OF THEM, AND THEIR RESPECTIVE WIVES, WIDOWS, HUSBANDS, WIDOWERS, HEIRS AT LAW, NEXT OF KIN, DESCENDENTS, EXECUTORS, ADMINISTRATORS, DEVISEES, LEGATEES, CREDITORS, TRUSTEES, COMMITTEES, LIENORS, AND ASSIGNS, ALL OF WHOM AND WHOSE NAMES, EXCEPT AS STATED, ARE UNKNOWN TO PLAINTIFF, NEW YORK CITY PARKING VIOLATIONS BUREAU, NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, BROOKLYN UNION GAS COMPANY, KAMELA PAYNE

JOHN DOE (Those unknown tenants, occupants, Persons or corporations or their heirs, distributees, executors, administrators, trustees, guardians, assignees, creditors, or successors claiming an interest in the mortgaged premises),

Defendants.

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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) _____

66, 68-92 127-130
93-96
102-106

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property at 342 Shepherd Avenue in Brooklyn (Block 3988, Lot 122) (Property), plaintiff Deutsche Bank National Trust Company, As Trustee for First Franklin Mortgage Loan Trust 2006-FF8, Mortgage Pass-Through Certificates, Series 2006-FF8 (Deutsche Bank or Plaintiff) cross-moves (in motion sequence [mot. seq.] three) for an order: (1) granting it summary judgment as against defendant Ingrid Thomas (Thomas or Defendant), pursuant to CPLR 3212, and dismissing the affirmative defenses in her answer; (2) granting it a default judgment against the remaining non-appearing defendants; (3) appointing a referee to compute the amounts due to Plaintiff, pursuant to RPAPL § 1321; and (4) amending the caption (NYSCEF Doc No. 66).

Defendant Thomas moves (in mot. seq. five) for an order, pursuant to CPLR 213 (4), CPLR 3211 (a) (5) and RPAPL § 1501, “dismissing the complaint and barring Plaintiff from all claim(s) in an estate, interest, lien or encumbrance of any sort” because the six year statute of limitations to commence a foreclosure action has expired and “for such other and further relief as this Court deems just and proper” (NYSCEF Doc No. 127).

Background

On April 25, 2018, *nine years and seven months after* a prior foreclosure action was commenced by Deutsche Bank on August 26, 2008 (2008 Foreclosure Action),¹ which

¹ See *Deutsche Bank National Trust Company, as Trustee for First Franklin Mortgage Loan Trust 2006-FF8, Asset-Backed Certificates, Series 2006-FF8 v Thomas, et al.*, Kings County index No. 24411/2008.

Deutsche Bank voluntarily discontinued pursuant to a September 18, 2012, stipulation (NYSCEF Doc No. 130), it commenced this action to foreclose the same mortgage by filing a summons, an unverified complaint and a notice of pendency against the Property (NYSCEF Doc Nos. 1-2).

On or about May 14, 2018, Thomas answered the complaint, denied knowledge or information sufficient to form a belief as to the allegations therein and asserted affirmative defenses, including the sixth affirmative defense based on the statute of limitations (NYSCEF Doc No. 71 at 3).

On February 7, 2019, after Deutsche Bank obtained leave to amend and other relief,² Deutsche Bank e-filed an amended complaint alleging that on or about March 31, 2006, Thomas executed and delivered a note in the principal amount of \$440,000.00, which was secured by a mortgage encumbering the Property (NYSCEF Doc No. 47 at ¶¶ 2-3). Allegedly, on September 21, 2007, Thomas transferred the Property to Chibs Enterprises, Inc. (Chibs) (*id.* at ¶ 5). The amended complaint alleges that “Thomas failed to comply with the conditions of the note and mortgage by not making the payment that was due on September 1, 2012 and subsequent payments” and demands “[j]udgment accelerating the maturity of the debt . . .” (*id.* at ¶ 6 and 4). Notably, the amended complaint alleges that “[n]o separate *pending* action was brought to recover any part of the mortgage debt . . .” (*id.* at ¶ 12 [emphasis added]).

² By a January 7, 2019, order, the court (Dear, J.) granting Deutsche Bank leave to amend its complaint and other relief, including service of process by publication (NYSCEF Doc No. 42).

On October 30, 2020, Thomas moved (in mot. seq. two) for summary judgment dismissing the amended complaint based on the expiration of the statute of limitations and for affirmative relief barring Deutsche Bank from “all claim(s) in an estate, interest, lien or encumbrance of any sort” pursuant to CPLR 3212, RPAPL § 1501 and CPLR 213 (4) (NYSCEF Doc No. 55). On March 8, 2023, Thomas’ summary judgment motion was administratively “marked off” the motion calendar by the clerk because defense counsel failed to appear on the return date of the motion.

On March 27, 2023, Thomas again moved (in mot. seq. four) for summary judgment dismissing the amended complaint based on the expiration of the statute of limitations and barring Deutsche Bank from “all claim(s) in an estate, interest, lien or encumbrance of any sort” pursuant to CPLR 3212, RPAPL § 1501, CPLR 213 (4) and the Foreclosure Abuse Prevention Act (FAPA) (NYSCEF Doc No. 108). On June 14, 2023, Thomas’ second summary judgment motion was administratively “marked off” the motion calendar by the clerk because defense counsel failed to appear on the return date of the motion.

Deutsche Bank’s Instant Summary Judgment Motion

Meanwhile, on June 10, 2021, Deutsche Bank cross-moved (in mot. seq. three) for summary judgment, an order dismissing Thomas’ affirmative defenses, an order of reference, an order granting it a default judgment against the non-appearing defendants and denying Thomas’ first summary judgment motion (NYSCEF Doc No. 66).

Deutsche Bank submitted a memorandum of law specifically asserting that “Plaintiff commenced a prior foreclosure action on August 26, 2008 . . . and voluntarily

discontinued the 2008 Foreclosure Action on September 18, 2012, [and thus] the acceleration was revoked” based on the Court of Appeals’ decision in *Freedom Mtge. Corp. v Engel*, (37 N.Y.3d 1, 32 [2021]) (*Engel*) (NYSCEF Doc No. 67 at 4-5). While Deutsche Bank concedes that its commencement of the 2008 Foreclosure Action on August 26, 2008, accelerated the mortgage debt, it argues that under the Court of Appeals’ holding in *Engel* “the acceleration was revoked when Plaintiff voluntarily discontinued the 2008 Foreclosure Action” (*id.* at 18-19). Deutsche Bank argues that Defendant Thomas’ sixth affirmative defense based on the statute of limitations should be dismissed because it lacks merit based on the Court of Appeals’ holding in *Engel* (*id.* at 16-19).

Deutsche Bank also submitted an attorney affirmation asserting that “[a] prior foreclosure action was commenced on or about August 26, 2008 . . . and was voluntarily discontinued on or about November 9, 2012” which was evidenced by the County Clerk’s minutes for the 2008 Foreclosure Action (NYSCEF Doc Nos. 68 at ¶ 12 and 78).

Thomas’ Opposition

Thomas, in opposition to Deutsche Bank’s motion, submitted an attorney affirmation asserting that “[t]here is no question that the mortgage was accelerated on June 26, 2008, when the first foreclosure action was filed: Index number 24411/08”, “[t]he first action was discontinued as per Stipulation dated September 18, 2012 . . .” and “[t]he second foreclosure action [was] commenced on April 24, 2018, *ten years after* the first action [was] commenced” (NYSCEF Doc No. 93 at ¶¶ 5-6 [emphasis added]). Defense counsel asserts that it is undisputed that Deutsche Bank accelerated the mortgage debt in its 2008

complaint, which Deutsche Bank admitted in a December 4, 2008 “Affidavit of Merit and Amount Due” from its agent, Bryan G. Kusich (Kusich), Vice President of Home Loan Services, Inc., a prior servicer of the mortgage loan and Deutsche Bank’s attorney-in-fact (*id.* at ¶ 9). Defense counsel submits the 2008 Kusich Affidavit, which attested that “the loan is now due for monthly payments commencing with the payment due on the 1st day of May, 2008” and “[b]ecause of said default, *Plaintiff elected to accelerate the loan*” (NYSCEF Doc No. 95 at ¶ 4 [emphasis added]).

Thomas’ Instant Dismissal Motion

On August 13, 2025, Thomas moved (in mot. seq. five) for an order, pursuant to CPLR 213 (4), CPLR 3211 (a) (5) and RPAPL § 1501, “dismissing the complaint and barring Plaintiff from all claim(s) in an estate, interest, lien or encumbrance of any sort” because the six year statute of limitations to commence a foreclosure action has expired (NYSCEF Doc No. 127).

Defense counsel submitted an affirmation asserting that Deutsche Bank commenced the 2008 Foreclosure Action on August 26, 2008, by filing the 2008 complaint in which Deutsche Bank “accelerated the mortgage and called all amounts due and payable” (NYSCEF Doc No. 128 at ¶ 7). Defense counsel specifically references Deutsche Bank’s complaint in the 2008 Foreclosure Action e-filed as NYSCEF Doc No. 61,³ in which

³ “Pursuant to CPLR 2214 (c), a party in an e-filed action may rely on e-filed papers and need not include those papers in its motion papers, but may make reference to them, giving the docket numbers on the e-filing system” (*Wydra v Brach*, 227 AD3d 727, 729 [2d Dept 2024] [internal quotation marks omitted])

Deutsche Bank alleges at paragraph five that “Plaintiff elects to call due the entire amount secured by the mortgage” (*id.*). Defense counsel argues that “[u]pon filing said [2008] foreclosure action the six-year statute of limitation under CPLR 213 (4) began to run on August 26, 2008, and expired on August 27, 2014” (*id.* at ¶ 8; *see also* ¶ 16). Defense counsel also asserts that “[o]n September 18, 2012, the 2008 foreclosure action was discontinued . . .” and submits a copy of the September 18, 2012, stipulation by which Deutsche Bank voluntarily discontinued the 2008 Foreclosure Action (*id.* at ¶ 9 and NYSCEF Doc No. 130).

Deutsche Bank’s Opposition

Deutsche Bank, in opposition to Thomas’ dismissal motion, submitted a memorandum of law arguing, as a preliminary matter, that Thomas’ prior summary judgment motions were “marked off” because defense counsel failed to appear, and thus, Thomas “should not be allowed to put yet another motion before the Court making the same argument and seeking the same relief” because courts disfavor successive motions (NYSCEF Doc No. 131 at 5 and 7).⁴

⁴ Thomas’ prior summary judgment motions were merely “marked off the calendar” based on defense counsel’s failure to appear in court on the return dates and *were not denied on default*. Under these circumstances, where there was no order issued on Thomas’ prior motions requiring a motion to vacate, and note of issue has not yet been filed, the court may entertain Defendant Thomas’ instant dismissal motion (*see Carrero v Pena*, 217 AD3d 915, 916 [2d Dept 2023] [holding that trial court should have granted plaintiff’s successive motion to restore action to active calendar, despite fact that plaintiff’s prior motion for same relief was marked off the calendar when plaintiff failed to appear in court on the return date of the motion]; *cf. Hobbins v N. Star Orthopedics, PLLC*, 148 AD3d 784, 787 [2d Dept 2017] [“Supreme Court providently exercised its discretion in granting the defendant’s motion to vacate so much of *the prior order* dated August

Regarding the merits of Thomas' dismissal motion, Deutsche Bank asserts that this action is not time-barred because its discontinuance of the 2008 Foreclosure Action constituted "an affirmative and timely act of revocation under the law *as it existed at the time of commencement*" and relies on the Court of Appeals' holding in *Engel* (*id.* at 5 and 9 [emphasis added]). Deutsche Bank argues, in a footnote, that "retroactive application of FAPA would violate Plaintiff's rights under the United States Constitution" (*id.* at fn.3).

Discussion

"On a motion to dismiss a cause of action pursuant to CPLR 3211 (a) (5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired" (*Hudson City Sav. Bank, FSB v Schoenfeld*, 172 AD3d 692, 693 [2d Dept 2019] [internal quotation marks omitted]). "The burden then shifts to the plaintiff to raise an issue of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether it actually commenced the action within the applicable limitations period" (*Plain v Vassar Bros. Hosp.*, 115 AD3d 922, 923 [2d Dept 2014] [internal quotation marks omitted]).

An action to foreclose a mortgage is subject to a six-year statute of limitation (CPLR 213 [4]; *MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087, 1088 [2d Dept 2023]). "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

14, 2013, as marked off the calendar, upon his failure to appear at the court, his motion to dismiss, and thereupon to restore the motion to the calendar"] [emphasis added]).

when the mortgage debt has been accelerated” (*Zinker v Makler*, 298 AD2d 516, 517 [2d Dept 2002] [emphasis added]). “[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” (*BHMPW Funding, LLC v Lloyd-Lewis*, 194 AD3d 780, 782 [2d Dept 2021]; *Nationstar Mortg., LLC v Weisblum*, 143 AD3d 866, 867 [2d Dept 2016]). “Acceleration occurs, inter alia, by the commencement of a foreclosure action wherein the holder of the note elects in the complaint to call due the entire amount secured by the mortgage” (*MTGLQ Invs., L.P. v Singh*, 216 AD3d 1087, 1088 [2d Dept 2023]). “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]).

FAPA, which was enacted in December 2022, during the pendency of this action, amended CPLR 3217 to add a new subsection (e), which provides that:

“[i]n any action [to foreclose a mortgage], the voluntary discontinuance of such action, whether on motion, order, *stipulation* or by notice, *shall not*, in form or effect, *wave, postpone, cancel, toll, extend, revive or reset the limitations period* to commence an action and to interpose a claim, unless expressly prescribed by statute” (emphasis added).

Thus, under FAPA, the voluntary discontinuance of a prior foreclosure action does not de-accelerate the mortgage debt, or revive, or reset the statute of limitations, as a matter of law (*Deutsche Bank Nat’l Tr. Co. v Dagrín*, 233 AD3d 1065, 1067 [2d Dept 2024]; *97 Lyman Ave., LLC v MTGLQ Invs., L.P.*, 233 AD3d 1038, 1041 [2d Dept 2024]). FAPA was

“intended to prevent lenders from using voluntary discontinuances to manipulate the statute of limitations and avoid the consequences of the time limits set by law” (*Wilmington Sav. Fund Soc’y, FSB as Tr. of Bosco Credit II Tr. Series 2010-1 v Sinclair*, 87 Misc 3d 813, 822 [Sup. Ct. Kings County 2025]).

Here, Defendant Thomas demonstrated, prima facie, that the six-year statute of limitations began to run on August 26, 2008, when Deutsche Bank commenced the 2008 Foreclosure Action and alleged in its 2008 complaint that it elected to call due the entire amount secured by the subject mortgage. Indeed, Deutsche Bank explicitly admits that it accelerated the mortgage debt when it commenced the 2008 Foreclosure Action. Defendant Thomas demonstrated that the instant foreclosure action was not commenced by Deutsche Bank until April 25, 2018, *nearly ten years after* Deutsche Bank’s 2008 acceleration of the mortgage debt. Defendant Thomas thus satisfied her prima facie burden of establishing that this foreclosure action was untimely, warranting dismissal of the amended complaint.

Deutsche Bank, in opposition, failed to raise an issue of fact as to whether the statute of limitations was tolled or was otherwise inapplicable. Deutsche Bank’s reliance on the Court of Appeals’ holding in *Engel* to argue that its voluntary discontinuance of the 2008 Foreclosure Action on September 18, 2012, revoked its 2008 acceleration of the mortgage debt is misplaced, since the Court of Appeals’ holding in *Engel* was overturned by FAPA. While relying on the holding in *Engel*, Deutsche Bank seemingly acknowledged that *Engel* was overturned and superseded by the Legislature when it explicitly referenced FAPA in its opposing memorandum of law.

Deutsche Bank's contention that FAPA is inapplicable here because it would be unconstitutional to apply FAPA retroactively is contrary to directly controlling case law. The Court of Appeals has held that "for all foreclosure actions as to which a final foreclosure sale had not been enforced prior to its effective date, including actions pending at the time of its effective date, FAPA unequivocally applies" (*Article 13 LLC v Ponce De Leon Fed. Bank*, ___ NY3d ___, 2025 WL 3272351, at *4-*7 [2025]). The Court of Appeals and the Second Department have held that FAPA applies retroactively and that such application of FAPA is constitutional (*id.*; *see also Van Dyke v. U.S. Bank, Nat'l Ass'n*, ___ NY3d ___, 2025 WL 3272341 [2025]; *U.S. Bank Tr. Nat'l Ass'n v Pluchino*, ___ AD3d ___, 2025 WL 3724458, at *2 [2d Dept 2025] [holding that "(t)he plaintiff's arguments challenging FAPA's retroactive application and constitutionality under the United States Constitution are without merit"]]).

Thomas has satisfied her burden of demonstrating that dismissal of this foreclosure action is warranted, pursuant to CPLR 3211 (a) (5), based on the expiration of the six-year statute of limitations. However, Thomas, who did not assert a counterclaim to quiet title to the Property in her answer (*see* NYSCEF Doc No. 71), is not entitled to the affirmative relief she seeks (i.e., an order declaring that Deutsche Bank is barred from all claims in an estate, interest, lien or encumbrance upon the Property, pursuant to RPAPL § 1501). Based on the foregoing, Deutsche Bank's summary judgment cross-motion has been rendered moot. Accordingly, it is hereby

ORDERED that Defendant Thomas' motion (mot. seq. five) is only granted to the extent that the amended complaint is dismissed with prejudice as time-barred by the six-year statute of limitations, pursuant to CPLR 3211 (a) (5); the motion is otherwise denied; and it is further

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

This constitutes the decision, order and judgment of the court.

E N T E R,



Hon. Cenceria P. Edwards, J.S.C., CPA