

**U.S. Bank Trust N.A. v 215 119th St., LLC**

2026 NY Slip Op 31332(U)

March 26, 2026

Supreme Court, Kings County

Docket Number: Index No. 522945/21

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At Comm Part 6, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 26th day of March, 2026.

P R E S E N T:

HON. GENINE D. EDWARDS,

Justice.

-----X  
U.S. BANK TRUST NATIONAL ASSOCIATION,  
NOT IN ITS INDIVIDUAL CAPACITY, BUT  
SOLELY AS TRUSTEE OF LSF11 MASTER  
PARTICIPATION TRUST,

Plaintiff,

-against-

215 19TH STREET, LLC, PEOPLE OF THE STATE OF  
NEW YORK, UNITED STATES OF AMERICA  
ACTING THROUGH THE IRS

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

Defendants.

-----X  
215 19" STREET, LLC,

Plaintiff,

-against-

U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF11  
MASTER PARTICIPATION TRUST,

Defendant.  
-----X

Index No. 522945/21  
(Action No. 1)

Index No. 515762/19  
(Action No. 2)

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion and Affirmation) Annexed ..... 105-106, 161-162, 123, 178  
Opposing Affirmations ..... 124, 158

Upon the foregoing papers, plaintiff U.S. Bank Trust National Association, not in its individual capacity, but solely as Trustee of LSF11 Master Participation Trust, moves (Motion Sequence [MS] # 3) for an order (1) lifting the stay of the instant foreclosure action (Action No. 1) granted by order dated July 24, 2023; (2) granting summary judgment to plaintiff and striking the affirmative defenses and dismissing the counterclaims raised in the answer of defendant 215 19th Street, LLC; (3) directing the entry of default judgment, pursuant to CPLR 3215, against all other nonanswering parties; (4) directing the appointment of a referee to compute; and (5) amending the caption of this action to delete “John Doe (said name being fictitious to represent unknown tenants/occupants of the subject property and any other party or entity of any kind, if any, having or claiming an interest or lien upon the mortgaged property)” as a named defendant. Defendant cross-moves (MS # 4) for an order (1) “consolidating” Action No. 1 with a prior action brought by defendant under subsection four of Real Property Actions and Proceedings Law [RPAPL] § 1501 to discharge and cancel the subject mortgage, entitled *215 19th Street, LLC v U.S. Bank Trust, N.A., as Trustee for LSF11 Master Participation Trust*, Kings County index No. 515762/19 (Action No. 2); (2) granting defendant summary judgment dismissing plaintiff’s complaint in Action No. 1; and (3) for a judgment under Action No. 2 declaring the subject mortgage null and void and discharging said mortgage on statute of limitations grounds.

Plaintiff commenced Action No. 1 to foreclose a mortgage encumbering the subject property at 215 19th Street in Brooklyn. The mortgage was executed on September 1, 2006 by borrower Steven Greco to secure a \$970,000 adjustable rate note in

favor of Impac Funding Corp. (Impac). The mortgage was recorded on October 4, 2006 in the name of Mortgage Electronic Registration Systems (MERS) as nominee for Impac. Greco conveyed the property to defendant, by deed dated October 19, 2018, and recorded November 1, 2018. According to the complaint, Greco failed to comply with the conditions of the note and mortgage by failing to make the payment due on October 1, 2015 or subsequent payments.

Previously, on December 16, 2008, plaintiff's predecessor IndyMac Bank (IndyMac) commenced a foreclosure action against Greco under Index No. 33551/08 (2008 Foreclosure Action). On August 2, 2013, the Court entered an order dismissing the 2008 Foreclosure Action and canceling the notice of pendency. On December 15, 2014, plaintiff's predecessor Bank of America, N.A. (BOA), the successor to IndyMac, sent a letter to Greco revoking the prior acceleration of the sums due under the note and mortgage. On March 29, 2016, Greco commenced an action under Index No. 504618/16 (2016 Quiet Title Action) seeking to quiet title to the subject property and discharge the subject mortgage on statute of limitations grounds. On May 3, 2016, the 2016 Quiet Title Action was removed to the United States District Court for the Eastern District of New York (EDNY). In a memorandum and order dated April 25, 2017, United States Magistrate Judge Roanne L. Mann granted BOA's motion for summary judgment dismissing Greco's quiet-title claims, finding that the subject loan was timely deaccelerated before the expiration of the six-year statute of limitations.

On July 18, 2019, defendant commenced Action No. 2 seeking to quiet title to the property and cancel and discharge the mortgage on statute of limitations grounds. On

February 4, 2020, the Court (Montelione, J.) issued an order granting defendant's motion for a default judgment. On July 24, 2023, the Court (Martin, J.) granted the plaintiff's cross-motion for a stay of proceedings in Action No. 1 pending determination of its motion to vacate in Action No. 2. By order, dated November 8, 2023, the Court (Montelione, J.) granted plaintiff's motion seeking, inter alia, to vacate the order granting a default judgment.

Following the commencement of Action No. 1 on September 9, 2021, defendant interposed an answer setting forth several affirmative defenses, including statute of limitations. Defendant contends that the subject limitations period accrued upon the acceleration of the mortgage through the commencement of the 2008 Foreclosure Action, and under the Foreclosure Abuse Prevention Act (FAPA), which was enacted in 2022 and retroactively applicable to the instant action, the December 15, 2014 letter from BOA may not be applied to revoke the acceleration.

### Discussion

As an initial matter, that part of plaintiff's motion to vacate the stay imposed by Justice Martin is granted.

"An action to foreclose a mortgage is governed by a six-year statute of limitations." *U.S. Bank N.A. v. Santos*, 218 A.D.3d 827, 193 N.Y.S.3d 271 (2d Dept. 2023); *see* CPLR 213 (4). "When a mortgage is payable in installments, separate causes of action accrue for each installment that is not paid[,] and the statute of limitations begins to run on the date each installment becomes due." *FV-1, Inc. v. Palaguachi*, 234 A.D.3d 818, 227 N.Y.S.3d 329 (2d Dept. 2025). However, "[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.” *Sarkar v. Deutsche Bank Trust Co. Ams.*, 225 A.D.3d 641, 207 N.Y.S.3d 96 (2d Dept. 2024) (internal quotation marks omitted). “An acceleration of a mortgage debt can occur when a creditor commences an action to foreclose upon a note and mortgage and seeks, in the complaint, payment of the full balance due.” *Wells Fargo Bank, N.A. v. Lefkowitz*, 171 A.D.3d 843, 97 N.Y.S.3d 696 (2d Dept. 2019) (internal quotation marks omitted). “The entire mortgage debt will be deemed to have been accelerated by, as relevant here, the commencement of a mortgage foreclosure action in which the complaint seeks payment of the full outstanding loan balance.” *U.S. Bank N.A. v. Connor*, 204 A.D.3d 861, 164 N.Y.S.3d 513 (2d Dept. 2022). “Under RPAPL 1501(4), a person with an estate or interest in real property subject to an encumbrance may maintain an action to secure the cancellation and discharge of the encumbrance, and to adjudge the estate or interest free of it, if the applicable statute of limitations for commencing a foreclosure action has expired.” *U.S. Bank N.A. v. Simon*, 216 A.D.3d 1041, 191 N.Y.S.3d 61 (2d Dept. 2023) (internal quotation marks omitted); *see* RPAPL 1501 (4).

Where common questions of fact or law exist, a motion pursuant to CPLR 602 (a) for consolidation or joinder should be granted, absent a showing of prejudice to a substantial right by the party opposing the motion. *See Disa Realty, Inc. v. Rao*, 198 A.D.3d 869, 156 N.Y.S.3d 300 (2d Dept. 2021); *Bruno v. Capetola*, 101 A.D.3d 785, 957 N.Y.S.2d 156 (2d Dept. 2012). “Consolidation [or joinder] is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense, and

prevent an injustice which would result from divergent decisions based on the same facts.” *Viafax Corp. v. Citicorp Leasing, Inc.*, 54 A.D.3d 846, 864 N.Y.S.2d 479 (2d Dept. 2008). “The determination of such a motion is addressed to the sound discretion of the trial court.” *Cromwell v. CRP 482 Riverdale Ave., LLC*, 163 A.D.3d 626, 80 N.Y.S.3d 423 (2d Dept. 2018). Here, Action Nos. 1 and 2 both involve the common question of whether plaintiff is precluded from enforcing the subject mortgage under the statute of limitations. Moreover, plaintiff has not demonstrated that joining the actions would prejudice a substantial right, nor do its papers address the merits of that part of defendant’s motion for consolidation/joinder.

Accordingly, that part of defendant’s cross-motion is granted to the extent that Action No. 1 is hereby joined with Action No. 2 for determination pursuant to CPLR 602 (a).

In this matter, the subject mortgage was accelerated, and the six-year statute of limitations began to run, upon the commencement of the 2008 Foreclosure Action. Under the applicable law in 2017, when the EDNY made its determination, a noteholder that had caused the six-year limitations period to foreclose a mortgage to accrue by electing to accelerate the debt could revoke the acceleration through a unilateral affirmative act of revocation occurring during the limitations period, such as by issuing a clear and unambiguous de-acceleration letter. *See U.S. Bank N.A. v. Livoti*, 209 A.D.3d 1054, 176 N.Y.S.3d 713 (2d Dept. 2022); *U.S. Bank N.A. v. Cox*, 203 A.D.3d 1206, 166 N.Y.S.3d 41 (2d Dept. 2022). However, in 2022, the Legislature enacted FAPA, which among other things amended CPLR 203 to add subdivision (h). CPLR 203 (h)

provides, in relevant part, that once a cause of action to foreclose a mortgage has accrued, no party may, in form or effect, unilaterally revive or reset the accrual thereof, or otherwise purport to effect a unilateral extension of the statute of limitations, such as through the issuance of the December 15, 2014 letter unilaterally revoking the acceleration of the subject mortgage. *See U.S. Bank Trust, N.A. v. Reizes*, 222 A.D.3d 907, 202 N.Y.S.3d 407 (2d Dept. 2023); *Anglestone Real Estate Venture Partners Corp. v. Bank of N.Y. Mellon*, 221 A.D.3d 943, 201 N.Y.S.3d 159 (2d Dept. 2023).

FAPA took effect immediately on its effective date of December 30, 2022 and is applicable to any action, such as the instant action, commenced on a mortgage in which a final judgment of foreclosure and sale has not been enforced (L. 2022, c. 821, § 10, eff. Dec. 30, 2022). It is well settled law that FAPA is to be applied retroactively. *See FV-1, Inc. v. Palaguachi*, 234 A.D.3d 818, 227 N.Y.S.3d 329 (2d Dept. 2025); *Deutsche Bank Natl. Trust Co. v. Dagrín*, 233 A.D.3d 1065, 226 N.Y.S.3d 75 (2d Dept. 2024); *97 Lyman Ave., LLC v. MTGLQ Invs., L.P.*, 233 A.D.3d 1038, 225 N.Y.S.3d 386 (2d Dept. 2024). Plaintiff's constitutional challenges to the retroactive application of FAPA, particularly CPLR 203 (h), are without merit. *See Van Dyke v. U.S. Bank, N.A.*, \_\_\_ A.D.3d \_\_\_, \_\_\_ N.Y.3d \_\_\_, 2025 N.Y. Slip Op. 06537 (2d Dept. 2025); *Deutsche Bank Natl. Trust Co. v. Dagrín*, 233 A.D.3d 1065, 226 N.Y.S.3d 75 (2d Dept. 2024); *97 Lyman Ave., LLC v. MTGLQ Invs., L.P.*, 233 A.D.3d 1038, 225 N.Y.S.3d 386 (2d Dept. 2024); *see also U.S. Bank, N.A. v. Gordon*, \_\_\_ A.D.3d \_\_\_, \_\_\_ N.Y.3d \_\_\_, 2026 N.Y. Slip Op. 01174 (1st Dept. 2026); *Bayview Loan Servicing, LLC v. Dalal*, 232 A.D.3d 487, 223 N.Y.S.3d 620 (1st Dept. 2024). Equally without merit is plaintiff's contention that the

EDNY decision must be given res judicata and/or collateral estoppel effect. *See Pennymac Corp. v. Khan*, 2024 N.Y. Slip Op. 31793[U] (Sup. Ct., Kings County 2024) (Index No. 523952/17); *see generally Matter of Meeqan S. v. Donald T.*, 64 N.Y.2d 751, 485 N.Y.S.2d 982 (1984) (“The earlier decision may be a conclusive adjudication of the petitioner’s rights, existing then; it cannot be an adjudication of rights thereafter conferred by law.”).

Because the six-year statute of limitations expired in 2014, Action No. 1, commenced in 2021, is untimely. As a result, those parts of defendant’s cross-motion for summary judgment dismissing the complaint in Action No. 1 and for a judgment in Action No. 2 declaring that the subject mortgage is null and void, discharging said mortgage of record pursuant to RPAPL 1501 (4) are granted.

In light of this disposition, the remaining parts of plaintiff’s motion for summary judgment and related relief in Action No. 1 are denied in all respects.

Accordingly, it is hereby

ORDERED that the branch of plaintiff’s motion (MS # 3) to vacate any pending stay imposed in Action No. 1 is granted, and any and all stays are hereby vacated, and it is further

ORDERED that the remaining branches of plaintiff’s motion (MS # 3) for summary judgment and related relief in Action No. 1 are denied in all respects, and it is further

ORDERED that the branch of defendant's cross-motion (MS # 4) to consolidate is granted to the extent that Action No. 1 is hereby joined with Action No. 2 as reflected in the caption of this order, and it is further

ORDERED that a copy of this order with notice of entry shall be served on the County Clerk, who is hereby directed to mark the records to reflect the joinder of actions, and it is further

ORDERED that the branch of defendant's cross-motion (MS # 4) for summary judgment dismissing the complaint in Action No. 1 is granted in all respects, and it is further

ORDERED that Action No. 1 is hereby dismissed in its entirety and without costs/disbursements, and it is further

ORDERED that the branch of defendant's cross-motion (MS # 4) for a declaratory judgment canceling and discharging the subject mortgage is granted, and it is further

DECLARED, ADJUDGED AND DECREED that the subject mortgage dated September 1, 2006 and recorded on October 4, 2006 under CRFN 2006000557356 is null and void under RPAPL 1501 (4), and it is further

ORDERED that the New York City Register, Kings County, is directed to cancel and discharge of record the subject mortgage, dated September 1, 2006 and recorded on October 4, 2006 under CRFN 2006000557356, as well as the assignments thereof, and to mark its records accordingly, and it is further

ORDERED that plaintiff and its successors/assigns are forever barred from asserting any claim to or interest in the premises by virtue of the canceled mortgage.

The foregoing constitutes the decision, order and judgment of the court.

ENTER,

Hon. Genine D. Edwards  
Administrative Judge

J. S. C.