

**Select Portfolio Servicing, Inc. v Janjua**

2026 NY Slip Op 31683(U)

April 16, 2026

Supreme Court, Nassau County

Docket Number: Index No. 609218/2022

Judge: Carolyn Mazzu Genovesi

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This opinion is uncorrected and not selected for official publication.

**XXX SUPREME COURT OF THE STATE OF NEW YORK  
NASSAU COUNTY**

**PRESENT: HON. CAROLYN MAZZU GENOVESI PART 35**

*Acting Justice*

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**INDEX NO. 609218/2022**

SELECT PORTFOLIO SERVICING, INC,

Plaintiff,

**MOTION SEQ. NO. 002 003**

- v -

LUBNA JANJUA, JPMORGAN CHASE BANK, N.A., ETR INC,  
JOHN DOE,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 93

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95

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

In an action to foreclose a mortgage, plaintiff moves for default judgment against all non-appearing defendants; and to amend the caption (MS # 2). Lubna Janjua (“defendant”) cross-moves for summary judgment dismissing the complaint as time-barred; for an award of reasonable attorneys’ fees; and to cancel the Notice of Pendency, *inter alia* (MS # 3).

“ ‘A defendant who seeks dismissal of a complaint on the ground that it is barred by the statute of limitations bears the initial burden of proving, prima facie, that the time in which to commence an action has expired. The burden then shifts to the plaintiff to present evidence raising a triable issue of fact as to whether the action falls within an exception to the statute of limitations’ or whether the statute of limitations has been tolled.” *Cammarato v. 16 Admiral Perry Plaza, LLC*, 216 A.D.3d 903, 904 (2d Dep’t 2023) quoting *Osborn v. DeChiara*, 165 A.D.3d 1270, 1271 (2d Dep’t 2018). “An action to foreclose a mortgage is subject to a six-year statute of limitations.”

*U.S. Bank Trust, N.A. v. Aorta*, 167 A.D.3d 807 (2d Dep’t 2018); *see* CPLR 213(4). “When a mortgage is payable in installments, which is the typical practice, an acceleration of the entire amount due begins the running of the statute of limitations on the entire debt.” *Wells Fargo Bank, N.A. v. Ruddy*, 206 A.D.3d 862, 863 (2d Dep’t 2022) quoting *Deutsche Bank Trust Co. Ams. v. Marous*, 186 A.D.3d 669, 670 (2d Dep’t 2020). “Where the acceleration is optional as here, some affirmative action must be taken to evince the note holder's election to accelerate.” *Capital One, N.A. v. Saglimbeni*, 170 A.D.3d 508, 508-509 (2d Dep’t 2019). “Affirmative action can be in the form of a letter.” *Id* at 509. “To be effective, the acceleration notice to the borrower must be clear and unequivocal.” *Capital One, N.A. v. Ludden*, 192 A.D.3d 752, 753 (2d Dep’t 2021) quoting *Milone v. U.S. Bank N.A.*, 164 A.D.3d 145, 152 (2d Dep’t 2018).

On July 7, 2014, plaintiff’s predecessor in interest, Ocwen Loan Servicing, LLC (“Ocwen”), sent defendant a mortgage statement, which states in relevant part, “[y]our loan has been accelerated and the accelerated amount is now due...” On February 10, 2016, Ocwen commenced an action to foreclose the subject mortgage (Index No. 001055/2016). By Stipulation, the parties discontinued the 2016 action. Plaintiff commenced a second action to foreclose the subject mortgage on June 11, 2019. By Order dated June 9, 2022, and entered on July 15, 2022, Justice David P. Sullivan discontinued the 2019 action. This action was commenced on July 14, 2022.

Ordinarily, the statute of limitations would have expired on July 7, 2020, six years after the date the mortgage was accelerated. However, the statute of limitations was tolled for an additional 228 days by Executive Orders promulgated by former Governor Andrew Cuomo in response to the COVID-19 pandemic. *See McLaughlin v. Snowlift, Inc.*, 214 A.D.3d 720, 721 (2d Dep’t 2023). The statute of limitations was therefore extended to February 20, 2021, which was a Saturday.

Since the statute of limitations expired on a Saturday, plaintiff's time to commence this action was extended to the next Monday, February 22, 2021, pursuant to General Construction Law § 25-a. This action is therefore time-barred, as it was commenced after February 22, 2021.

Plaintiff contends that defendant failed to meet its burden in admitting the mortgage statement into evidence. Plaintiff therefore claims that the mortgage was not accelerated until the 2016 action was commenced, on February 10, 2016. Since the statute of limitations was tolled for an additional 228 days by Executive Orders promulgated by former Governor Andrew Cuomo in response to the COVID-19 pandemic, plaintiff posits that this action was timely commenced. *See McLaughlin v. Snowlift, Inc.*, 214 A.D.3d 720, 721 (2d Dep't 2023). Plaintiff's contention is without merit. Defendant submits an Affirmation where she attests to receiving the statement with language that purports to accelerate the loan. Defendant further proffers the mortgage statement in question. Furthermore, the Court finds the language of the mortgage statement constitutes a clear and unequivocal intention to accelerate the mortgage. Accordingly, the Court finds that defendant demonstrated the statute of limitations expired before this action was commenced. In opposition to the cross-motion, plaintiff does not raise a question of fact.

Turning now to defendant's request for attorneys' fees, the Court finds that defendant is a prevailing party, for the purpose of RPAPL 282(1). *See U.S. Bank National Association v. Armand*, 220 A.D.3d 963, 967 (2d Dep't 2023). However, defendant did not meet its burden to establish an entitlement to attorneys' fees. "The attorney bears the burden of establishing the reasonable value of the services rendered, based upon a showing of the hours reasonably expended and the prevailing hourly rate for similar legal work in the community." *Neeman v. Smith*, 227 A.D.3d 818, 821 (2d Dep't 2024) quoting *Lancer Indem. Co. v. JKH Realty Group, LLC*, 127 A.D.3d 1035, 1036 (2d Dep't 2015). Here, defendant's counsel did not provide an affidavit of the services

rendered, a bill of costs, or proof of the prevailing rate. Accordingly, the branch of the cross-motion seeking attorneys' fees is denied.

In light of the Court's determination that this action is barred by the statute of limitations, plaintiff's motion is denied as moot. For the foregoing reasons, it is

ORDERED that plaintiff's motion (MS # 2) is denied as moot; and it is further

ORDERED that defendant's cross-motion (MS # 3) is granted to the extent that this action is dismissed as time-barred; the Notices of Pendency for this action, filed with the Clerk of Nassau County on July 5, 2022 and July 8, 2025, for the property known as 39 James Burrell Avenue, Hempstead, New York 11550 and by Section 34, Block 243, Lots 304 & 305 be marked cancelled and discharged of record; and the Nassau County Clerk is directed to do so upon the payment of proper fees, if any; and it is further

ORDERED that defendant's cross-motion (MS # 3) is denied in all other respects.

This constitutes the Decision and Order of the Court.

ENTER

Date: \_\_\_\_\_

4/16/26

  
Hon. Carolyn Mazzu Genovesi  
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