

US Bank Trust N.A. v Chamorro
2026 NY Slip Op 31964(U)
May 12, 2026
Supreme Court, Suffolk County
Docket Number: Index No. 608592/2023
Judge: S. Betsy Heckman Torres
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INDEX NO.: 608592/2023

**SUPREME COURT – STATE OF NEW YORK
IAS PART 18 – SUFFOLK COUNTY**

PRESENT:

HON. S. BETSY HECKMAN TORRES, J.S.C.

MOTION DATE: Feb. 17, 2026
MOT. SEQ. NO.: 005 MD
006 MD

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US BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS OWNER
TRUSTEE FOR VRMTG ASSET TRUST,

Plaintiff,

-against-

FERNANDO CHAMORRO, et al,

Defendant(s).
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Upon the electronically filed documents listed on NYSCEF as #s 130-157 read on this motion(s) after due consideration, it is,

ORDERED that the pending motions have been consolidated for a determination herein; and it is further

ORDERED that the motion (005) by defendant seeking to dismiss the complaint insofar as asserted against him as time-barred is denied in its entirety; and it is further

ORDERED that the motion (006) by defendant brought on by order to show cause dated December 8, 2025, seeking, *inter alia*, to vacate the judgment of foreclosure and sale, and dismiss the complaint insofar as asserted against him as time-barred is denied in its entirety.

In 2010, the plaintiff’s predecessor in interest (hereinafter “the 2010 plaintiff”) commenced an action (hereinafter “the 2010 action”) against the defendant, and others, to foreclose a mortgage encumbering certain real property located in Commack (hereinafter “the subject property”). The 2010 plaintiff elected in the complaint “to call due the entire amount secured by the mortgage.” In 2015, the defendant entered into a loan modification agreement. Based on the agreement, the 2010 plaintiff moved to voluntarily discontinue the action. Thereafter,

the loan was modified by second modification agreement dated April 26, 2017 (hereinafter “the 2017 modification”).

In 2018, the plaintiff’s predecessor in interest (hereinafter, “the 2018 plaintiff”) commenced an action (hereinafter “the 2018 action”) against the defendant to foreclose the mortgage encumbering the subject property based on the defendant’s default in payment in 2017. The 2018 plaintiff thereafter moved to voluntarily discontinue the 2018 action. By order dated July 19, 2022, the motion was granted.

On April 4, 2023, the current plaintiff commenced this action against the defendant to foreclose the mortgage on the subject property due to the defendant’s default in payment in 2017. The defendant filed an answer in which he asserted that this action was barred by the statute of limitations, and a counterclaim for attorney’s fees. The plaintiff filed a reply to the defendant’s counterclaims. Thereafter, the plaintiff filed a motion seeking summary judgment on the complaint. The defendant filed a cross motion seeking summary judgment and dismissal of the complaint insofar as asserted against him claiming the plaintiff lacked standing to commence this action. The defendant did not raise any defense based on the statute of limitations. By order dated February 4, 2025, the plaintiff’s motion was granted, and the defendant’s cross motion was denied. The defendant subsequently filed a motion seeking leave to reargue. The defendant did not raise the statute of limitations as a defense but again limited his argument to a claim that the plaintiff lacked standing. By order dated August 18, 2025, the defendant’s motion was denied. In July 2025, the plaintiff moved to confirm the referee’s report and for a judgment of foreclosure and sale. The defendant did not oppose the motion. In an order and judgment of foreclosure and sale dated August 20, 2025, the court granted the plaintiff’s motion, confirmed the referee’s report, and directed the sale of the property.

The defendant’s motion (005) seeks, pursuant to CPLR 3211 (a) (5), to dismiss the complaint insofar as asserted against him as time barred. As relevant here, the defendant argues that the instant action is time-barred under the Foreclosure Abuse Prevention Act (*see* L 2022, ch 821 [hereinafter FAPA]), which went into effect in December 2022. The defendant claims that the 2017 modification did not reset the statute of limitations because it was “offered under a cloud of suspicion” and is unenforceable. The plaintiff opposes the defendant’s motion arguing that this action is timely because the 2017 modification reset the statute of limitations, among other things.

Thereafter, the defendant filed a motion by order to show cause (006) essentially making identical arguments made in his prior motion (005).

“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” (*Wells Fargo Bank, N.A. v. Burke*, 155 AD3d 668, 669, 64 NYS3d 228; *see, Deutsche Bank Natl. Trust Co. v. Pena*, 240 AD3d 475, 238 NYS3d 264). “The burden then shift[s] to the plaintiff to present admissible evidence establishing that the action was timely or to raise a question of fact as to whether the action was timely” (*U.S. Bank N.A. v.*

Martin, 144 AD3d 891, 892, 41 NYS3d 550). An action to foreclose a mortgage is governed by a six-year statute of limitations (*see* 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” (*Bank of N.Y. Mellon v. Mor*, 201 AD3d 691, 694, 162 NYS3d 64; *see, U.S. Bank N.A. v. Connor*, 204 AD3d 861, 862–863, 164 NYS3d 513). The entire mortgage debt will be deemed to have been accelerated, as relevant here, by the commencement of a mortgage foreclosure action in which the complaint *seeks* payment of the full outstanding loan balance (*see U.S. Bank N.A. v. Connor*, 204 AD3d at 863, 164 NYS3d 513).

Here, the defendant established, *prima facie*, that the six-year statute of limitations began to run in 2010 when the 2010 plaintiff commenced the 2010 action and elected in the complaint to call due the entire amount secured by the mortgage (*see HSBC Bank USA, N.A. v. Corrales*, 224 AD3d 816, 818, 206 NYS3d 330). The defendant further demonstrated that this action was commenced in 2023, more than six years later (*see U.S. Bank N.A. v. Simon*, 216 AD3d 1041, 1042–1043, 191 NYS3d 61).

However, in opposition, the plaintiff established that the 2010 acceleration was validly revoked through the execution of the 2017 modification, thereby causing the statute of limitations to reset. General Obligations Law § 17–105 (1) provides that “a [written] promise to pay [a] mortgage debt, if made after the accrual of a right of action to foreclose the mortgage ... make[s] the time limited for commencement of the action run from the date of the ... promise.” The 2017 loan modification acknowledged the mortgage debt and made an express promise to pay it, thereby satisfying the necessary writing requirements of General Obligations Law § 17–105 (1) to de-accelerate the loan and to reset the statute of limitations (*see* General Obligations Law § 17–105 [4]). Here, the instant action was timely commenced because it was commenced within six years of the 2017 modification.

In light of the foregoing, the court need not consider the plaintiff’s contention that that the defendant’s motions are untimely.

Accordingly, the defendant’s motions (005 and #006) seeking dismissal of the complaint as time-barred are both denied in their entirety.

Dated: May 12, 2026



HON. S. BETSY HECKMAN TORRES, J.S.C.