

Habitat for Humanity of Long Is., Inc. v Douglas
2026 NY Slip Op 31965(U)
May 4, 2026
Supreme Court, Nassau County
Docket Number: Index No. 623254/2024
Judge: Carolyn Mazzu Genovesi
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. CAROLYN MAZZU GENOVESI PART 35

Acting Justice

-----X

INDEX NO. 623254/2024

HABITAT FOR HUMANITY OF LONG ISLAND, INC.,

Plaintiff,

MOTION SEQ. NO. 001

- v -

PAMELA DOUGLAS, JOHN DOE, JANE DOE,

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

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

In an action to foreclose a motion, defendant Pamela A. Douglas and non-party Kinetic Holdings LLC (collectively “movants”) move for summary judgment dismissing the complaint as time-barred; to discharge the mortgage; and to cancel the Notice of Pendency, inter alia (MS # 1). It is undisputed that non-party Kinetic Holdings LLC acquired the mortgaged property from defendant Pamela A. Douglas during the pendency of this action.

Contrary to plaintiff’s contention, non-party Kinetic Holdings LLC has standing to raise the statute of limitations as a defense to this action. CPLR 1018 provides “[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.” Moreover, even in the absence of formal substitution, Kinetic Holdings LLC, “as the defendant's successor in interest to the property, was entitled to continue to defend the action in the defendant's name.” *Wells Fargo Bank, N.A. v. Robinson–John*, 220 A.D.3d 974, 976 (2d Dep’t 2023).

The movants allege that this action is time-barred because a prior action was commenced on October 26, 2007, which accelerated the loan. “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). “Acceleration occurs, *inter alia*, by the commencement of a foreclosure action wherein the plaintiff elects in the complaint to call due the entire amount secured by the mortgage.” *GMAT Legal Title Trust 2014–1 v. Kator*, 213 A.D.3d 915, 916 (2d Dep’t 2023). To succeed on this motion, the movants “must establish, *prima facie*, that the time in which to commence the action has expired.” *U.S. Bank N.A. v. Derissaint*, 193 A.D.3d 790, 791 (2d Dep’t 2021). If the movants satisfy their initial burden, “the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff actually commenced the action within the applicable limitations period.” *Id* quoting *Barry v. Cadman Towers, Inc.*, 136 A.D.3d 951, 952 (2d Dep’t 2016).

The statute of limitations expired on October 26, 2013, six years after the prior action was commenced. Since plaintiff brought this action on December 31, 2024, which is after October 26, 2013, the movants established that this action is time-barred.

Plaintiff alleges that an agreement between plaintiff and defendant Pamela A. Douglas, dated November 16, 2009, deaccelerated the loan. The Court notes that “General Obligations Law § 17-101 effectively revives a time-barred claim when the debtor has signed a writing which validly acknowledges the debt.” *Lynford v. Williams*, 34 A.D.3d 761, 762 (2d Dep’t 2006). Furthermore, under General Obligations Law § 17-105, “a promise to pay the mortgage debt, if made after the accrual of a right of action to foreclose the mortgage and made, either with or

without consideration, by the express terms of a writing signed by the party to be charged is effective, subject to any conditions expressed in the writing, to make the time limited for commencement of the action run from the date of the waiver or promise.” Pursuant to General Obligations Law § 17-107(1), “A payment on account of a mortgage indebtedness, or instalment thereof or interest thereon, which is effective to revive an action to recover such indebtedness, instalment or interest or to extend the time limited for such action, is also effective, between persons described in subdivision two of this section, to make the time limited for commencement of an action to foreclose the mortgage run from the date of payment...”

However, plaintiff fails to submit an authenticated or certified copy of the agreement it claims deaccelerated the loan. “[A] private document offered to prove the existence of a valid contract cannot be admitted into evidence unless its authenticity and genuineness are first properly established.” *Young v. Crescent Coffee, Inc.*, 222 A.D.3d 704, 705 (2d Dep’t 2023) quoting *Sherrod v. Mount Sinai St. Luke’s*, 204 AD3d 1053, 1055 (2d Dep’t 2022); see CPLR 4518. The Court further notes that plaintiff provides no evidence that the contract in question was created or kept in the normal course of plaintiff’s business. See *Bank of New York Mellon v. Gordon*, 171 A.D.3d 197 (2d Dep’t 2019). The Court therefore cannot consider the unauthenticated and uncertified agreement in opposition to this motion. Accordingly, plaintiff failed to meet its burden in opposing this motion. For the foregoing reasons, it is

ORDERED that the motion for summary judgment (MS # 1) is GRANTED, and this action is DISMISSED; and it is further

ORDERED that upon payment of the appropriate fees, the Clerk of the County of Nassau is directed to cancel of record the Notice of Pendency filed in this action on December 31, 2024,

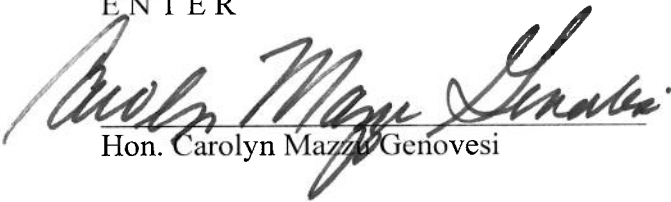
as against the premises commonly known as 1030 Prospect Avenue, Westbury, New York 11590 (Section 11, Block 124, Lot 41); and it is further

ORDERED that upon payment of the appropriate fees, the Clerk of Nassau County is hereby directed to cancel and discharge from its official records: (1) that Mortgage dated July 16, 2003, and recorded in the Office of the Clerk of Nassau County on August 22, 2003, in Liber Book M24775, at Pages 879 to 890, which was assigned by Assignment of Mortgage dated July 16, 2003, and recorded in the Office of the Clerk of Nassau County on August 22, 2003, in Liber Book M24775, at Pages 891 to 894; and (2) that Mortgage dated July 16, 2003, and recorded in the Office of the County Clerk of Nassau County on August 22, 2003, in Liber Book M24775, at Pages 3 895-906, which was assigned by Assignment of Mortgage dated July 16, 2003, and recorded in the Office of the Clerk of Nassau County on August 22, 2003, in Liber Book M24775, at Pages 907 to 910; being those same Mortgages encumbering the premises commonly known as 1030 Prospect Avenue, Westbury, New York 11590 (Section 11, Block 124, Lot 41).

This constitutes the Decision and Order of the Court.

ENTER

Date: 5/4/28


Hon. Carolyn Mazzeo Genovesi