U.S. Bank N.A. v Speller
2026 NY Slip Op 32091(U)
June 17, 2026
Supreme Court, Putnam County
Docket Number: Index No. 500088/2022
Judge: Victor G. Grossman

SUPREME COURT – STATE OF NEW YORK
Present: HON. VICTOR G. GROSSMAN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

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U.S. BANK NATIONAL ASSOCIATION, etc.,

Plaintiff,

-against-

MICHAEL M. SPELLER, ELLEN M. FITZSIMMONS, et al.,

Defendants.

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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. 500088 / 2022
Mot. Seq. No. 14

INTERIM
DECISION AND ORDER

The following papers numbered 1 to 5 were read on Defendants' motion for renewal of this Court's prior Decision and Order dated October 31, 2023:

Order to Show Cause – Affirmation / Exhibits -- Memorandum 1-3

Affirmation in Opposition 4

Reply Affirmation 5

Upon the foregoing papers it is ORDERED that the motion is disposed of as follows:

Plaintiff U.S. Bank National Association (the "Bank") commenced this action in January 2022 to foreclose a mortgage on residential property owned by defendants Michael M. Speller and Ellen M. Fitzsimmons. The Defendants, answering, asserted *inter alia* that the Bank's claim was barred by the statute of limitations and counterclaimed under RPAPL Article 15 for cancellation and discharge of the mortgage. By prior Decision and Order dated October 31, 2023, the Court awarded summary judgment to the Bank on all issues except standing and dismissed the Defendants' statute of limitations defense. The Appellate Division, Second

Department subsequently determined that the Bank has satisfactorily demonstrated its standing to foreclose. *See, U.S Bank National Ass'n v. Speller,* 2026 N.Y. Slip Op 02866 (2d Dept. 2026).

THE DECISION AND ORDER OF OCTOBER 31, 2023

In ruling that the Bank's action had been timely commenced within the applicable limitations period, the Court held *inter alia* that:

- Upon the discontinuance of a 2009 foreclosure action on the same mortgage debt, the debt was validly de-accelerated pursuant to an agreement of the parties whereby the foreclosure action was discontinued and the Defendants' right to make monthly mortgage payments was reinstated.

- After a 2010 foreclosure action on the same debt was voluntarily discontinued in 2013, a new foreclosure action was timely commenced, within six years of the 2010 acceleration of the debt, in 2015.

- Although the 2015 action was dismissed for the Bank's failure to appear at a conference, the 2022 foreclosure action was thereafter timely commenced within the grace period afforded by CPLR §205(a).

- The Foreclosure Abuse Prevention Act ("FAPA") was not retroactively applicable to either (a) the discontinuance of the 2009 foreclosure action or (b) the commencement per CPLR §205(a) of the 2022 foreclosure action.

- Alternatively, FAPA's retroactive application to the discontinuance of the 2009 foreclosure action would violate the Contract Clause of the United States Constitution; and FAPA's retroactive application to the commencement per CPLR §205(a) of the 2022 action would violate the Due Process Clause of the United States Constitution.

(*See,* Decision and Order dated October 31, 2023)

THE MOTION FOR RENEWAL

"A motion for leave to renew 'shall…demonstrate that there has been a change in the law that would change the prior determination' (CPLR 2221[e][2]). 'A clarification of the decisional law is a sufficient change in the law to support renewal' (*U.S. Bank N.A. v. Hall-Davis,* 232 AD3d 696, 697 [2024]…)." *JP Morgan Chase Bank, N.A. v. Valencia,* 245 AD3d 917, 918 (2d Dept. 2026).

Defendants previously moved for renewal on the strength of the Second Department's decision in *Deutsche Bank National Trust Co. v. Dagrin,* 233 AD3d 1065 (2d Dept. 2024). In denying the motion, the Court wrote that since "*Dagrin* is patently distinguishable from the case at bar, it compels no modification of the conclusion reached by this Court in its October 31, 2023 Decision and Order that the Bank's January 2022 foreclosure action was timely commenced within the applicable statute of limitations." However, subsequent appellate authority has undermined the validity of the Court's October 31, 2023 holding that the key FAPA provisions at issue here – GOL §17-105 and CPLR §205-a – were not intended by the Legislature to be retroactive in application. Despite the Bank's procedural objections, that is sufficient to warrant renewal here pursuant to CPLR §2221(e)(2).

However, that does not end the analysis. While this Court *held* that GOL §17-105 and CPLR §205-a were not retroactive in application, it further opined in *dicta* that retroactive application of those statutes in the circumstances presented here would be constitutionally infirm. It did so without benefit of subsequent case authority upholding the constitutionality of FAPA's retroactive application. Defendants cite that authority in blunderbuss fashion with no meaningful analysis or application of the extant caselaw to the particular circumstances of this case; and Plaintiff has eschewed constitutional analysis altogether, relying instead on procedural objections.

Under the circumstances, the Court will not proceed further and render a holding on the question whether retroactive application of GOL §17-105 and CPLR §205-a is unconstitutional as applied to the circumstances presented without (1) advance notice to the Attorney General pursuant to CPLR §1012 and Executive Law §71, and (2) briefing from the parties.

It is therefore

ORDERED, that Defendants' motion for renewal is held in abeyance, and it is further

ORDERED, that Plaintiff is directed to give notice to the Attorney General pursuant to CPLR §1012(b)(1) and Executive Law §71 within ten (10) days of the date of this Order, and it is further

ORDERED, that on or before July 8, 2026, Plaintiff may make a supplemental submission on the question whether the retroactive application of GOL §17-105 and CPLR §205-a is unconstitutional as applied to the circumstances presented in this case, and it is further

ORDERED, that on or before July 22, 2026 Defendants may make a supplemental submission in reply, and it is further

ORDERED, that the return date of Defendant's motion is adjourned to July 24, 2026.

The foregoing constitutes the interim decision and order of the Court.

Dated: June 17, 2026
Carmel, New York

E N T E R

Victor G. Grossman

HON. VICTOR G. GROSSMAN, J.S.C.