Deutsche Bank Natl. Trust Co. v Curry
2026 NY Slip Op 32101(U)
June 25, 2026
Supreme Court, Suffolk County
Docket Number: Index No. 205572/2022
Judge: Thomas F. Whelan
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MEMO DECISION & ORDER

INDEX No 205572/2022

SUPREME COURT - STATE OF NEW YORK
IAS PART 33 - SUFFOLK COUNTY

PRESENT:

Hon. THOMAS F. WHELAN
Justice of the Supreme Court

AMENDED
MOTION DATE 3/20/26
Mot. Seq. # 003 - MD
Mot. Seq. # 004 - MG
CDISP Y X N

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR MORGAN STANLEY IXIS REAL ESTATE CAPITAL TRUST, 2006-1, Plaintiff,	DAVIDSON FINK LLP Attys for Plaintiff 400 Meridian Centre Blvd. Suite 200 Rochester NY 14618
-against-	
DEDRIC CURRY A/K/A DEDRIC L. CURRY; DANIELLE KOLDERMAN, Defendants.	KAITERIS & KAVANAGH, PLLC Attys. for Def. Dedric Curry 982 Montauk Highway, Suite 4 Bayport, NY 11705

Upon the following papers read on this motion for judgment of foreclosure and sale (#003) and cross motion to dismiss (#004) and all papers submitted in support and opposition thereto (NYSCEF Doc. Nos. 77-119), and this Court's Orders dated June 11, 2025 and January 16, 2026 respectively and Defendants' supplemental submission (NYSCEF Docs. 125 - 130), and there being no supplemental submission on behalf of the Plaintiff, it is

ORDERED that the plaintiff's motion for judgment of foreclosure and sale (#003) is denied; and it is further

ORDERED that cross-motion by the defendant Dedric Curry seeking an Order dismissing the action insofar as asserted against him as time-barred is granted; and it is further

ORDERED that the defendant shall serve a copy of this order with notice of entry upon the plaintiff and any other party entitled to notice.

This is an action for foreclosure on residential property located in Ridge. Currently before the Court are Plaintiff's motion (#003) for judgment of foreclosure and sale and defendant Dedric Curry's cross-motion (#004) to dismiss the complaint as time barred pursuant to the Foreclosure

Abuse and Prevention Act. The motions were adjourned pending appellate determination regarding the constitutionality of FAPA's retroactive application. In November 2025, the Court of Appeals issued Decisions in ***Article 13 LLC v. Ponce De Leon Fed. Bank,***— N.E.3d —, 2025 WL 3272351, 2025 NY Slip Op. 06536, and ***Van Dyke v. U.S. Bank, N.A.***,— N.E.3d —, 2025 WL 3272341, 2025 NY Slip Op. 06537, holding that FAPA applies retroactively and that such does not violate due process. The parties were provided an opportunity to submit supplemental briefs to address if and how such determinations apply herein. Although the plaintiff did not file a brief, Defendant Curry's submission was filed on March 19, 2026.

"An action to foreclose a mortgage is subject to a six-year statute of limitations" (***Ditech Fin., LLC v Connors***, 206 AD3d 694, 697, 170 NYS3d 560, 563 [2d Dept 2022]; *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" (*id.* [citations 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 AD3d 861, 863, 164 NYS3d 513 [2d Dept 2022]).

Here, Curry established that the six-year statute of limitations began to run in October 2012 when the plaintiff commenced the first foreclosure 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 [2d Dept 2024]). Curry further demonstrated that this action was commenced in November 2022, more than six years later (*see* ***U.S. Bank N.A. v. Simon***, 216 AD3d 1041, 1042–1043, 191 NYS3d 61 [2d Dept 2023]). Although the plaintiff relied upon the prior discontinuance and a de-acceleration letter as having revoked the prior acceleration – which was in accordance with case law at that time pursuant to the Court of Appeals' seminal decision in ***Freedom Mtge. Corp. v Engel*** (3 NY3d 1, 32, 146 NYS3d 542, 169 NE3d 912 [2021]) – the plaintiff's opposition is precluded by the retroactive application of FAPA.

Accordingly, Curry's cross-motion (#004) to dismiss the complaint insofar as asserted against him as time barred is granted (*see* ***Wilmington Sav. Fund Socy., FSB v Lozowski***, 245 AD3d 986, 988 [2d Dept 2026]). In light of the court's determination, the plaintiff's motion (#003) is denied in its entirety.

DATED: 6/25/26

THOMAS F. WHELAN, J.S.C.