HSBC Bank USA, N.A. v Auclair
2026 NY Slip Op 32102(U)
June 22, 2026
Supreme Court, Suffolk County
Docket Number: Index No. 608270/2018
Judge: S. Betsy Heckman Torres
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INDEX NO.: **608270/2018**

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

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

MOTION DATE: April 1, 2026
MOT. SEQ. NO.: 006 - MD
007 - MG

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HSBC BANK USA, N.A.,

Plaintiff,

-against-

NICOLE AUCLAIR A/K/A NICOLE ELISE AUCLAIR, EDWARD BARNETS, CLERK OF THE SUFFOLK COUNTY TRAFFIC AND PARKING VIOLATIONS AGENCY, NEW YORK STATE COMMISSIONER OF TAXATION AND FINANCE, PEOPLE OF THE STATE OF NEW YORK, TARGET NATIONAL BANK, THE BIG M INC DBA MANDEE, JOHN DOES and JANE DOES, said names being fictitious, parties intended being possible tenants or occupants of premises and corporations, other entities or persons who have claim or may claim a lien against, or other interest in the premises,

Defendant(s).

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Upon the electronically filed documents listed on NYSCEF as #s 136 read on this motion(s) after due consideration, it is,

ORDERED that the motion (006) by the plaintiff seeking summary judgment, *inter alia*, is denied in its entirety: and it is further

ORDERED that the motion (007) by the defendant, Nicole Auclair a/k/a Nicole Elise Auclair (hereinafter "the defendant"), seeking, *inter alia*, an order, pursuant to CPLR 2221 (e), granting leave to renew her prior motion based on a change of law, and upon renewal, granting summary judgment and dismissing the complaint insofar as asserted against her as time barred is granted; and it is further

ORDERED that within 60 days of the date of this order the defendant shall submit a proposed order consistent with the court determination herein; and it is further

ORDERED that the plaintiff is directed to appear at an in-person conference on July 29, 2026, at 10 a.m. to address this action as to the remaining defendants; and it is further

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

In 2008, the plaintiff commenced an action (hereinafter "the 2008 action") against the defendant, among others, to foreclose a mortgage encumbering certain real property located in Medford (hereinafter "the subject property"). The plaintiff elected in the complaint "to call due the entire amount secured by the mortgage." The plaintiff thereafter moved to voluntarily discontinue the 2008 action. In an order (Baisley, J.) dated December 27, 2012, the court granted the plaintiff's motion.

In April 2018, the plaintiff commenced this action against the defendant, among others, to foreclose the mortgage on the subject property. The defendant filed an answer in which she asserted, among other things, that this action was barred by the statute of limitations.

In November 2018, the defendant moved, *inter alia*, for summary judgment and to dismiss this action as time barred. The plaintiff opposed the defendant's motion and cross-moved to extend its time to serve the defendant, among other things. By order (Heckman, J.) dated October 31, 2019, the defendant's motion was denied, and the plaintiff's cross-motion was denied.

In October 2023, the defendant moved for leave to renew her prior motion relying on the newly enacted Foreclosure Abuse Prevention Act (L 2022, ch 821; hereinafter "FAPA"). By order dated October 1, 2024, the court denied the defendant's motion in essence holding that FAPA is not to be applied retroactively.

The plaintiff now moves for, *inter alia*, summary judgment on the complaint. The defendant opposes the plaintiff's motion and cross-moves to renew her prior motion seeking, *inter alia*, summary judgment dismissing the complaint as time barred.

Initially it is noted that, contrary to the plaintiff's contention, "the law of the case doctrine does not prevent a proper motion for leave to renew under CPLR 2221" (*Spodek v. Neiss*, 200 AD3d 952, 957, 160 NYS3d 319).

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination" (CPLR 2221 [e] [2]). "Therefore, a motion for leave to renew is the appropriate vehicle for seeking relief from a prior order based on a change in the law" (*JPMorgan Chase Bank, N.A. v. Eze*, 232 AD3d 865, 866, 223 NYS3d 185 [alteration and internal quotation marks omitted]).

Here, the appellate courts have clarified FAPA since the court's prior order. The plaintiff's arguments challenging the retroactive application of FAPA are without merit (*see FV–1, Inc. v. Palaguachi*, 234 AD3d 818, 227 NYS3d 329; *Deutsche Bank Natl. Trust Co. v. Dagrin*, 233 AD3d 1065, 226 NYS3d 75; *97 Lyman Ave., LLC v. MTGLQ Invs., L.P.*, 233 AD3d 1038, 225 NYS3d 386). Moreover, the plaintiff's contention that FAPA violates the Due Process Clause of the United States and New York Constitutions and the Contracts Clause of the United States Constitution is without merit (*see FV–1, Inc. v. Palaguachi*, 234 AD3d 818, 227 NYS3d 329; *Deutsche Bank Natl. Trust Co. v. Dagrin*, 233 AD3d 1065, 226 NYS3d 75; *97 Lyman Ave., LLC v. MTGLQ Invs., L.P.*, 233 AD3d 1038, 225 NYS3d 386).

"An action to foreclose a mortgage is governed by a six-year statute of limitations" (*U.S. Bank N.A. v. Santos*, 218 AD3d 827, 828, 193 NYS3d 271; *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). "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).

Here, the defendant established, *prima facie*, that the six-year statute of limitations began to run in 2008 when the plaintiff commenced the 2008 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 2018, more than six years later (*see U.S. Bank N.A. v. Simon*, 216 AD3d 1041, 1042–1043, 191 NYS3d 61).

In opposition to the defendant's *prima facie* showing, the plaintiff failed to raise a triable issue of fact. The plaintiff's opposition is foreclosed by the FAPA. The plaintiff does not dispute that under FAPA, the plaintiff's voluntary discontinuance of the 2008 action did not revoke the acceleration of the loan or reset the statute of limitations (*see* CPLR 3217[e], 213[4]; *Deutsche Bank Natl. Trust Co. v. DiGiorgio*, 237 AD3d 899, 234 NYS3d 193).

Accordingly, the defendant's motion (007) seeking summary judgment dismissing the complaint insofar as asserted against her as time barred is granted. In light of this determination, the motion (006) by the plaintiff seeking, *inter alia,* summary judgment is denied in its entirety.

Dated: June 22, 2026

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