APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

HSBC Bank USA, N.A. v. IPA Asset Mgt., LLC

2026 NY Slip Op 02252 · No. 2023-05462 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, affirmed dismissal of a mortgage foreclosure action as time-barred under CPLR 3211(a)(5). The court held that the mortgage debt was accelerated in two prior foreclosure actions and that voluntary discontinuances did not reset the statute of limitations under the Foreclosure Abuse Prevention Act. The court also rejected challenges to FAPA's retroactive application based on due process, takings, and Contract Clause principles.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Helen Voutsinas, J.; Lillian Wan, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2023-05462
DISPOSITION	affirmed
PROCEDURAL POSTURE	In a mortgage-foreclosure action, the plaintiff appealed from an order granting the nonborrower property owner's CPLR 3211(a)(5) motion to dismiss the complaint as time-barred.
STANDARD OF REVIEW	On a CPLR 3211(a)(5) motion based on expiration of the statute of limitations, the defendant must establish prima facie that the limitations period expired; the burden then shifts to the plaintiff to raise a question of fact concerning tolling, inapplicability, or timely commencement.
PRECEDENTIAL VALUE	published
PARTIES	HSBC Bank USA, N.A. v. IPA Asset Management, LLC

TOPICS

foreclosure | statute of limitations | motions to dismiss | statutory interpretation | constitutional law

PRACTICE AREAS

mortgage foreclosure | civil procedure | statute of limitations | appellate procedure | constitutional law

QUESTIONS PRESENTED

1. Whether the foreclosure action was barred by New York's six-year statute of limitations after HSBC accelerated the mortgage debt in its prior foreclosure complaints.
2. Whether HSBC's voluntary discontinuances of the prior foreclosure actions revoked or reset the prior acceleration under the Foreclosure Abuse Prevention Act.
3. Whether retroactive application of the Foreclosure Abuse Prevention Act violated due process, constituted an unconstitutional taking, or violated the Contract Clause.

HOLDINGS

1. The action was time-barred because the mortgage debt was accelerated in the 2008 and 2012 foreclosure complaints, causing the six-year limitations period to run on the entire debt, and the present action was commenced more than six years later.
2. A mortgagee's voluntary discontinuance of a foreclosure action does not revoke a prior acceleration or reset the statute of limitations.
3. Retroactive application of the Foreclosure Abuse Prevention Act was not unconstitutional on due-process, takings, or Contract Clause grounds.

KEY QUOTATIONS

> *“"Where the mortgage debt is accelerated, the entire balance of the debt accrues and the statute of limitations begins to run on the entire debt"”* ([*2])

> *“"no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset"”* ([*2])

FACTUAL BACKGROUND

In August 2006, Nancy Kaye executed a $301,750 note secured by a mortgage on property in Coram. HSBC commenced foreclosure actions in 2008 and 2012, and in each complaint elected to call the entire mortgage debt due. The 2008 judgment of foreclosure and sale was vacated and that action was discontinued; the 2012 action was later voluntarily discontinued. HSBC commenced the present foreclosure action in December 2022 against IPA Asset Management, LLC, a nonborrower property owner.

PROCEDURAL HISTORY

The plaintiff commenced foreclosure actions in 2008 and 2012 after accelerating the mortgage debt. The 2008 action resulted in a judgment of foreclosure and sale that was later vacated, and the action was discontinued; the 2012 action was also voluntarily discontinued. The plaintiff commenced the present action in December 2022, and the Supreme Court, Suffolk County, dismissed the claims against IPA Asset Management, LLC as time-barred. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- HSBC Bank USA v. Lem, 236 AD3d 762, 763-764
- U.S. Bank N.A. v. Medianik, 223 AD3d 935, 937-938
- FV-1, Inc. v. Palaguachi, 234 AD3d 818, 821-822
- Van Dyke v. U.S. Bank, Natl. Assn., 2025 NY Slip Op 06537, *5
- Article 13 LLC v. Ponce De Leon Fed. Bank, 2025 NY Slip Op 06536, *2-3
- Deutsche Bank Natl. Trust Co. v. Dagrin, 233 AD3d 1065, 1071

OPINION

PER CURIAM.

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The order granted the motion of the defendant IPA Asset Management, LLC, pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against it.</p> <p>ORDERED that the order is affirmed, with costs.</p> <p>In August 2006, Nancy Kaye (hereinafter the borrower) executed a note in the amount of $301,750 in favor of People's Choice Home Loan, Inc. The note was secured by a mortgage on certain real property located in Coram.</p> <p>In July 2008, the plaintiff commenced an action (hereinafter the 2008 action) against the borrower, among others, to foreclose the mortgage.

In September 2010, a judgment of foreclosure and sale was entered in favor of the plaintiff. In July 2011, the plaintiff moved to discontinue the 2008 action and vacate the judgment of foreclosure and sale. In August 2011, the judgment of foreclosure and sale was vacated and the 2008 action was discontinued.</p> <p>In July 2012, the plaintiff commenced a second action (hereinafter the 2012 action) against the borrower, among others, to foreclose the mortgage.

In June 2017, the plaintiff moved to discontinue the 2012 action. In July 2017, the 2012 action was discontinued.</p> <p>In December 2022, the plaintiff commenced this action against the defendant IPA Asset Management LLC (hereinafter the defendant), as a nonborrower property owner, among others, to foreclose the mortgage.

In February 2023, the defendant moved pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against it as time-barred. In an order dated May 16, 2023, the Supreme Court granted the defendant's motion.

The plaintiff appeals.</p> <p>"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(5) on the ground that the statute of limitations has expired, the moving defendant must establish, prima facie, that the time in which to commence the action has expired" (<i>HSBC Bank USA v Lem</i>, 236 AD3d 762, 763 [*2][internal quotation marks omitted]).

"If the defendant satisfies this 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" (<i>id. </i>at 763-764 [internal quotation marks omitted]).</p> <p>An action to foreclose a mortgage is governed by a six-year statute of limitations (<i>see</i> CPLR 213[4]; <i>U.S.

Bank N.A. v Medianik</i>, 223 AD3d 935, 937). "Where the mortgage debt is accelerated, the entire balance of the debt accrues and the statute of limitations begins to run on the entire debt" (<i>HSBC Bank USA v Lem</i>, 236 AD3d at 764).

Here, it is undisputed that the plaintiff elected to call due the entire balance of the mortgage debt in the complaint in the 2008 action and in the 2012 action and that the instant foreclosure action was commenced more than six years later (<i>see</i> <i>FV-1, Inc. v Palaguachi</i>, 234 AD3d 818, 821; <i>U.S. Bank N.A. v Medianik</i>, 223 AD3d at 938).</p> <p>Nevertheless, the plaintiff contends that the voluntary discontinuances of the prior actions served to revoke its prior acceleration of the mortgage debt.

The plaintiff's contention is foreclosed by the Foreclosure Abuse Prevention Act (FAPA). As relevant here, CPLR 203(h) provides that once a cause of action to foreclose a mortgage has accrued, "no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset" the accrual or running of the statute of limitations. This includes a mortgagee's voluntary discontinuance of a foreclosure action (<i>see</i> CPLR 3217[e]; <i>U.S.

Bank N.A. v Medianik</i>, 223 AD3d at 938). Thus, contrary to the plaintiff's contention, the statute of limitations was not reset by the voluntary discontinuances of the prior actions (<i>see</i> <i>FV-1, Inc. v Palaguachi</i>, 234 AD3d at 821-822).</p> <p>The plaintiff's contention that FAPA should not be applied retroactively is without merit (<i>see Van Dyke v U.S. Bank, Natl.

Assn.</i>, ______ NY3d ______, ______, 2025 NY Slip Op 06537, *5; <i>Article 13 LLC v Ponce De Leon Fed. Bank</i>, ______ NY3d ______, ______, 2025 NY Slip Op 06536, *2-3). The plaintiff's contentions that retroactive application of FAPA violates due process, amounts to an unconstitutional taking, and violates the Contract Clause of the United States Constitution are without merit (<i>see</i> <i>Van Dyke v U.S. Bank, Natl.

Assn.</i>, ______ NY3d at ______, 2025 NY Slip Op 06537, *5; <i>Article 13 LLC v Ponce De Leon Fed. Bank</i>, ______ NY3d at ______, 2025 NY Slip Op 06536, *2-3; <i>Deutsche Bank Natl. Trust Co. v Dagrin</i>, 233 AD3d 1065, 1071).</p> <p>Accordingly, the Supreme Court properly granted the defendant's motion pursuant to CPLR 3211(a)(5) to dismiss the complaint insofar as asserted against it as time-barred.</p> <p>BARROS, J.P., WARHIT, VOUTSINAS and WAN, JJ., concur.</p> <p>ENTER:</p> <p>Darrell M. Joseph</p> <p>Clerk of the Court</p> </div> <div> <footer> <div> <p>Court Decisions</p> All Court Decisions Official Reports Service Bound Volumes Decision Search </div> <div> <p>Resources</p> RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index </div> <div> <p>About</p> About the Law Reporting Bureau About our Operations Contact Us Twitter </div> <div> <p>Quick Contact Info</p> <p>17 Lodge Street</p> <p>Albany, NY 12207</p> <p>Phone: (518) 453-6900</p> </div> </footer> </div> <div> <p>Links to or from other sites do not signify endorsement or relationship with them.</p> </div> </div>