

NEW YORK COURT OF APPEALS

Everhome Mortgage Company v. Nuchem Aber

No. 85, New York Court of Appeals (November 17, 2022)

SUMMARY

In this foreclosure action, the New York Court of Appeals held that the statute of limitations began to run on April 30, 2009, when the mortgage debt was accelerated by the commencement of the first foreclosure action, even though that action was later dismissed without prejudice. The second foreclosure action, filed on June 24, 2015, was time-barred under CPLR 213(4) because it was commenced more than six years after acceleration. The court affirmed dismissal of the complaint and summary judgment on the counterclaim under RPAPL article 15, as the plaintiff failed to raise a factual issue regarding timeliness.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Acting Chief Judge Cannataro; Judge Rivera; Judge Garcia; Judge Wilson; Judge Singas; Judge Troutman
JURISDICTION	New York
DECIDED	November 17, 2022
DOCKET	85
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Appellate Division, Second Department, affirming the dismissal of the amended complaint as time-barred and granting summary judgment on defendant's counterclaim.
PRECEDENTIAL VALUE	Published
PARTIES	Everhome Mortgage Company v. Nuchem Aber et al.

TOPICS

- foreclosure
- statute of limitations
- civil procedure

PRACTICE AREAS

- Foreclosure
- Real Estate
- Litigation

QUESTIONS PRESENTED

1. Whether the statute of limitations began to run on April 30, 2009, when the first foreclosure action was commenced, and whether the second action commenced more than six years later was time-barred.

HOLDINGS

1. The statute of limitations began to run on April 30, 2009, when the first foreclosure action was commenced, and the second action commenced on June 24, 2015, was time-barred.

KEY QUOTATIONS

“In this foreclosure action, defendant Equity Recovery Corporation (Equity) established that the statute of limitations began to run on April 30, 2009, when plaintiff commenced the first action to foreclose the mortgage” (at 1)

“Plaintiff did not commence this second foreclosure action until June 24, 2015, more than six years after acceleration of the debt” (at 1)

FACTUAL BACKGROUND

Plaintiff Everhome Mortgage Company commenced a foreclosure action on April 30, 2009, which was dismissed without prejudice for failure to appear. Plaintiff commenced a second foreclosure action on June 24, 2015. Defendant Equity Recovery Corporation moved to dismiss the amended complaint as time-barred and for summary judgment on its counterclaim to cancel the mortgage.

PROCEDURAL HISTORY

Plaintiff commenced a first foreclosure action on April 30, 2009, which was dismissed without prejudice. Plaintiff commenced a second foreclosure action on June 24, 2015. Defendant Equity Recovery Corporation moved to dismiss as time-barred and for summary judgment. The Appellate Division affirmed the dismissal and summary judgment.

DISPOSITION

affirmed

CASES CITED

- *Albertina Realty Co. v Rosbro Realty Corp.*, 258 NY 472, 476 (1932)
- *Freedom Mortgage Corp. v Engel*, 37 NY3d 1, 22-23 (2021)

OPINION

PER CURIAM.

State of New York MEMORANDUM Court of Appeals This memorandum is uncorrected and subject to revision before publication in the New York Reports. No. 85 Everhome Mortgage

Company, Appellant, v. Nuchem Aber et al., Respondents, et al., Defendants. Mikelle V. Bliss, for appellant. Anthony R. Filosa, for respondents. MEMORANDUM: The Appellate Division order should be affirmed, with costs.

In this foreclosure action, defendant Equity Recovery Corporation (Equity) established that the statute of limitations began to run on April 30, 2009, when plaintiff commenced the first action to foreclose the mortgage (see *Albertina Realty Co. v Rosbro* -1- -2- No. 85 Realty Corp., 258 NY 472, 476 [1932]; *Freedom Mortgage Corp. v Engel*, 37 NY3d 1, 22- 23 [2021]).

That first action was dismissed without prejudice based on plaintiff's failure to appear for a court conference. Plaintiff did not commence this second foreclosure action until June 24, 2015, more than six years after acceleration of the debt (see CPLR 213 [4]).

We agree with the Appellate Division that plaintiff failed to raise an issue of fact in opposition to Equity's motion for, among other things, dismissal of the amended complaint as time-barred and for summary judgment on its counterclaim pursuant to RPAPL article 15 (195 AD3d 682, 689 [2d Dept 2021]). Order affirmed, with costs, in a memorandum. Acting Chief Judge Cannataro and Judges Rivera, Garcia, Wilson, Singas and Troutman concur.

Decided November 17, 2022 -2-