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

Sperry Associates Federal Credit Union v. Kunjamma C. John

Sperry Assoc. Fed. Credit Union v. John, 2023 NY Slip Op 03880 (N.Y. Ct. App. 2023) · No. 2020-05326 · Decided July 19, 2023

SUMMARY

The Appellate Division, Second Department reversed an order dismissing a credit union's action as time-barred. The court held that, even assuming the debt had been accelerated by an earlier action, the plaintiff timely commenced the action under CPLR 205-a following termination of a prior action dismissed pursuant to CPLR 3211(a)(4). The court denied the defendant's motion for leave to reargue and reinstated the earlier order.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Cheryl E. Chambers, J.; Paul Wooten, J.; Helen Voutsinas, J.
JURISDICTION	New York
DECIDED	July 19, 2023
DOCKET	2020-05326
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order that granted defendant leave to reargue a motion to dismiss under CPLR 3211(a), vacated the prior order denying dismissal, and dismissed the complaint as time-barred.
STANDARD OF REVIEW	On a CPLR 3211(a)(5) statute-of-limitations motion, the defendant bears the initial burden of making a prima facie showing 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 appellate decision
PARTIES	Sperry Associates Federal Credit Union v. Kunjamma C. John

TOPICS

statute of limitations | motions to dismiss | civil procedure | appellate procedure | mortgages

PRACTICE AREAS

civil procedure | mortgage foreclosure | contract law | appellate procedure

QUESTIONS PRESENTED

1. Whether the defendant was entitled to reargue her motion to dismiss the complaint as barred by the six-year statute of limitations.
2. Whether CPLR 205-a permitted Sperry to commence the present action within six months after termination of the prior 2017 action, even though that action had been dismissed under CPLR 3211(a)(4).
3. Whether the alleged acceleration of the debt in the 2012 action rendered the present action untimely.

HOLDINGS

1. Even assuming that the 2012 action validly accelerated the debt under the March note, the present action was timely under CPLR 205-a because it was commenced within six months after termination of the 2017 action, arose from the same occurrence, and the 2017 action was not terminated for any reason enumerated in CPLR 205-a.
2. Williams v. Jian Chu Yu does not establish a general rule barring the six-month extension whenever a prior action was dismissed under CPLR 3211(a)(4); its holding was limited to the unique procedural circumstances of that case.
3. The court did not decide whether the 2012 action validly accelerated the debt under the March note; it assumed acceleration for purposes of analysis and held that CPLR 205-a nevertheless made the present action timely.

KEY QUOTATIONS

> "*With respect to a note payable in installments, there are separate causes of action for each installment accrued, and the statute of limitations begins to run on the date each installment becomes due and is defaulted upon, unless the debt is accelerated*" ([*3])

> "*Williams does not stand for the general proposition that a party whose case is dismissed under CPLR 3211(a)(4) does not get the benefit of a six-month extension pursuant to CPLR 205(a), or under the newly enacted CPLR 205-a.*" ([*4])

FACTUAL BACKGROUND

In February and March 2008, Kunjamma C. John obtained separate home equity lines of credit from Sperry, each secured by a mortgage on separate real property. The complaints in the prior actions alleged that John defaulted on the March note in April 2011, and Sperry later commenced the present action concerning that note in January 2019. The prior 2017 action concerning the March note was dismissed under CPLR 3211(a)(4), and the present action was commenced within six months of that dismissal.

PROCEDURAL HISTORY

Sperry commenced prior actions concerning indebtedness under two home equity lines of credit. The 2012 action was dismissed for lack of personal jurisdiction; the 2013 action concerning the March note was likewise dismissed for lack of personal jurisdiction; and the 2017 action concerning the March note was dismissed under CPLR 3211(a)(4) because the 2013 action was pending on appeal. Sperry commenced the present action in January 2019. The Supreme Court initially denied defendant's statute-of-limitations motion, but on reargument dismissed the complaint as untimely. The Appellate Division reversed, denied leave to reargue, and reinstated the October 3, 2019 order.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The branch of defendant's motion seeking leave to reargue is denied, and the October 3, 2019 order denying defendant's motion to dismiss is reinstated.

CASES CITED

- Morrison v Zaglool, 88 AD3d 856, 859
- Sce v Ach, 56 AD3d 457, 458
- EMC Mtge. Corp. v Patella, 279 AD2d 604, 605
- Lavin v Elmakiss, 302 AD2d 638, 639
- U.S. Bank N.A. v Gordon, 158 AD3d 832, 834-835
- Stewart v GDC Tower at Greystone, 138 AD3d 729, 729-730
- U.S. Bank N.A. v. DLJ Mtge. Capital, Inc., 33 NY3d 72, 78
- U.S. Bank N.A v Coleman, 215 AD3d 780, 782
- Malay v City of Syracuse, 25 NY3d 323, 329
- Williams v Jian Chu Yu, 207 AD2d 442, 443-444