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

Citibank, N.A. v. Cabello

2026 NY Slip Op 02818 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2026) · No. 2024-00017, 2024-00019, 2024-00053 · Decided May 6, 2026

SUMMARY

The Appellate Division, Second Department reversed orders granting Citibank leave to renew and granting relief on its alternative equitable-lien foreclosure claim. The court held that the equitable-lien claim was barred by the six-year statute of limitations because it accrued no later than March 2008 and was not asserted until March 2019. The court reinstated the relevant portions of the October 12, 2022 order and denied Citibank's renewal motion.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Linda Christopher, J.; Lillian Wan, J.; Janice A. Taylor, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	May 6, 2026
DOCKET	2024-00017, 2024-00019, 2024-00053
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendants appealed from three orders of the Supreme Court, Nassau County, which granted Citibank leave to renew, granted summary judgment on its alternative equitable-lien cause of action, struck defendants' amended answer and counterclaim, declared an equitable lien, and referred the matter to a referee.
STANDARD OF REVIEW	Questions of law appearing on the face of the record may be reached for the first time on appeal when they could not have been avoided had they been raised at the proper juncture. The court reviewed the orders for legal error.
PRECEDENTIAL VALUE	Published intermediate appellate decision; precedential under New York law, subject to revision because the source states that the decision

	is uncorrected.
PARTIES	Antonette Cabello, Rodolfo A. Cabello v. Citibank, N.A.

TOPICS

foreclosure · mortgages · statute of limitations · summary judgment · appellate procedure

PRACTICE AREAS

real estate law · foreclosure · civil procedure · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether Citibank's motion for leave to renew was timely when made before entry of a final judgment.
2. Whether the alternative cause of action to foreclose an equitable lien was barred by the statute of limitations.
3. Whether the statute-of-limitations issue could be reached for the first time on appeal.

HOLDINGS

1. A motion for leave to renew made before entry of a final judgment in the action was timely.
2. Citibank's alternative cause of action to foreclose an equitable lien was barred by the six-year statute of limitations under CPLR 213(4).
3. The court could reach the statute-of-limitations issue for the first time on appeal because it was a question of law appearing on the face of the record and could not have been avoided if raised at the proper juncture.

KEY QUOTATIONS

> *"A cause of action seeking to establish a lien pursuant to the doctrine of equitable mortgage or the doctrine of equitable subrogation is governed by a six-year statute of limitations"* ([*3])

> *"when the subject note and mortgage were made"* ([*3])

FACTUAL BACKGROUND

In December 2001, Antonette and Rodolfo Cabello executed a note secured by a mortgage on real property in Long Beach. They later borrowed additional sums secured by additional mortgages that were consolidated into a single lien through Consolidation, Extension, and Modification Agreements. An allegedly erroneous satisfaction of the consolidated mortgage was recorded in February or March 2008, and Citibank, as assignee, commenced the action in March 2019 asserting an alternative cause of action to foreclose an equitable lien.

PROCEDURAL HISTORY

Citibank commenced an action in March 2019 seeking to expunge an allegedly erroneous mortgage satisfaction, foreclose a consolidated mortgage, or alternatively foreclose an equitable lien. The Supreme Court denied

Citibank's initial motion and granted defendants summary judgment on the first two causes of action, while deeming their challenge to the equitable-lien cause premature. After the Supreme Court relied on this Court's then-existing decision in Bank of Am., N.A. v. Kessler to find the 90-day notices defective, Citibank moved for renewal based on the Court of Appeals' subsequent reversal in Kessler. The Supreme Court granted renewal and ruled for Citibank; the Appellate Division reversed and reinstated the October 12, 2022 order granting defendants summary judgment, because the equitable-lien cause of action was time-barred.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The orders dated December 12, 2023, were reversed insofar as appealed from. Citibank's motion for leave to renew and its opposition to defendants' cross-motion were denied, and the portions of the October 12, 2022 order denying Citibank's motion and granting defendants' cross-motion were reinstated.

CASES CITED

- U.S. Bank N.A. v. Hirschman, 240 AD3d 725, 726
- Dinallo v. DAL Elec., 60 AD3d 620, 621
- Glicksman v. Board of Educ./Cent. School Bd. of Comsewogue Union Free School Dist., 278 AD2d 364, 365-366
- Opalinski v. City of New York, 205 AD3d 917, 919
- Olim Realty v. Lanaj Home Furnishings, 65 AD3d 1318, 1320
- Deltoro v. Arya, 305 AD2d 628, 628-629
- Deutsche Bank Natl. Trust Co. v. Weinfeld, 227 AD3d 662, 663
- Wells Fargo Bank, N.A. v. Green, 227 AD3d 842, 843
- Wells Fargo Bank, N.A. v. Burke, 155 AD3d 668, 670
- Bank of Am., N.A. v. Kessler, 202 AD3d 10; 39 NY3d 317