

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

Benjamin v. LaSalle Bank, N.A.

2026 NY Slip Op 02094 · No. 2019-09843 · Decided April 8, 2026

SUMMARY

The Appellate Division, Second Department, reversed in part an order dismissing an RPAPL 1501(4) action seeking cancellation and discharge of a mortgage. The court held that U.S. Bank was not entitled to the six-month savings provision under CPLR 205-a because it was not the original foreclosure plaintiff and had not shown that it was acting on the original plaintiff's behalf; it also held that LaSalle Bank remained a proper party and that the plaintiffs were entitled to seek a default judgment against it. The court affirmed the portion of the order denying dismissal of claims asserted by the decedent.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers; Lillian Wan; James P. McCormack
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 8, 2026
DOCKET	2019-09843
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed, and U.S. Bank cross-appealed, from an order granting in part motions to dismiss an RPAPL 1501(4) mortgage-cancellation action and denying leave to enter a default judgment against LaSalle Bank.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint is liberally construed, its factual allegations are presumed true, and the plaintiff receives the benefit of every favorable inference; the issue is whether the alleged facts fit within any cognizable legal theory. Where evidentiary material is considered without converting the motion to summary judgment, the issue is whether the plaintiff has a cause of action. A motion for leave

	to enter a default judgment under CPLR 3215 requires proof of service, facts constituting a viable claim, and the defendant's default.
PRECEDENTIAL VALUE	Published and precedential Appellate Division decision
PARTIES	Chittra Benjamin, as administrator of the estate of David Benjamin v. LaSalle Bank, N.A., U.S. Bank, National Association

TOPICS

foreclosure mortgages statute of limitations motions to dismiss default judgment

PRACTICE AREAS

real estate mortgage foreclosure civil procedure appellate procedure remedies

QUESTIONS PRESENTED

1. Whether the Benjamins stated an RPAPL 1501(4) cause of action to cancel and discharge the mortgage after more than six years had elapsed since acceleration of the mortgage debt.
2. Whether U.S. Bank, as successor in interest to LaSalle, was entitled to the six-month savings provision under CPLR 205-a for a new foreclosure action.
3. Whether the retroactive application of the Foreclosure Abuse Prevention Act and CPLR 205-a violated due process.
4. Whether LaSalle was entitled to dismissal on the ground that it was no longer a proper party.
5. Whether the Benjamins established entitlement to leave to enter a default judgment against LaSalle under CPLR 3215.

HOLDINGS

1. The Benjamins stated a viable RPAPL 1501(4) cause of action because the mortgage debt was accelerated when LaSalle commenced the 2009 foreclosure action and demanded payment of the full balance, and more than six years had elapsed before the present action was commenced.
2. U.S. Bank was not entitled to invoke CPLR 205-a's six-month savings provision because it was not the original plaintiff in the 2009 action and did not plead or prove that it was acting on behalf of the original plaintiff.
3. U.S. Bank could not invoke CPLR 205-a for Chittra's claim because the foreclosure complaint against her had been dismissed pursuant to CPLR 3215, and the retroactive application of FAPA and CPLR 205-a did not violate federal or state due process.
4. LaSalle was not entitled to dismissal because the record, including LaSalle's prosecution of the 2009 foreclosure and its answer in the present action, contradicted its contention that it no longer existed or was not a proper party.

5. The Benjamins were entitled to leave to enter a default judgment against LaSalle because they submitted proof of service, facts establishing a viable cause of action, and LaSalle's default, while LaSalle failed to show either that it was not in default or that it had a reasonable excuse and potentially meritorious defense.

KEY QUOTATIONS

“Pursuant to RPAPL 1501(4), a person having an estate or interest in real property subject to a mortgage may maintain an action to secure the cancellation and discharge of the encumbrance, and to adjudge the estate or interest free of it, if the applicable statute of limitations for commencing a foreclosure action has expired” (at 2)

“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory” (at 3)

“To demonstrate 'the facts constituting the claim' the movant need only submit sufficient proof to enable a court to determine that 'a viable cause of action exists'” (at 4)

FACTUAL BACKGROUND

David and Chittra Benjamin executed a \$594,000 note and mortgage on residential property in South Ozone Park. LaSalle acquired the mortgage and commenced a foreclosure action in 2009, expressly declaring the full principal balance immediately due and payable. That foreclosure action was dismissed after the claim against Chittra was dismissed as abandoned, and the dismissal was affirmed in 2018. The Benjamins subsequently sought cancellation and discharge of the mortgage, while U.S. Bank, a successor assignee, argued that it could use the six-month savings provision to commence a new foreclosure action.

PROCEDURAL HISTORY

LaSalle commenced a mortgage-foreclosure action in 2009 and accelerated the debt by demanding the full balance. The foreclosure action was ultimately dismissed after the complaint against Chittra was dismissed as abandoned, and the dismissal was affirmed in 2018. The Benjamins then commenced this RPAPL 1501(4) action to cancel and discharge the mortgage. Supreme Court dismissed the claims against U.S. Bank insofar as asserted by Chittra, dismissed the claims against LaSalle, and denied the request for a default judgment against LaSalle. The Appellate Division reversed those portions and affirmed the portion denying dismissal of David Benjamin's claim against U.S. Bank.

DISPOSITION

reversed

CASES CITED

- 97 Lyman Ave., LLC v MTGLQ Invs., L.P., 233 AD3d 1038, 1041-1042

- Collins v Bank of N.Y. Mellon, 227 AD3d 948, 950-951
- Citibank, N.A. v Horan, 230 AD3d 1216, 1217
- Milone v US Bank N.A., 164 AD3d 145, 152
- Martinez v NYC Health & Hosps. Corp., 223 AD3d 731, 732
- Weill v East Sunset Park Realty, LLC, 101 AD3d 859, 859
- Nyari v Onefater, 171 AD3d 936, 937
- Truesource, LLC v Niemeyer, 223 AD3d 694, 695
- U.S. Bank N.A. v Coleman, 215 AD3d 780, 782
- Wells Fargo Bank, N.A. v Brandt, 230 AD3d 623, 625
- Deutsche Bank Natl. Trust Co. v Vista Holding, LLC, 239 AD3d 830
- Deutsche Bank Natl. Trust Co. v Feurtado, 241 AD3d 499, 501
- Deutsche Bank Natl. Trust Co. v Dagrín, 233 AD3d 1065, 1069
- U.S. Bank Trust, N.A. v Giangrande, 229 AD3d 834, 836
- Johnson v Cascade Funding Mtge. Trust 2017-1, 220 AD3d 929, 932
- LaSalle Bank N.A. v Benjamin, 164 AD3d 1223
- Pemberton v Montoya, 216 AD3d 988, 989-990
- Roy v 81E98th KH Gym, LLC, 142 AD3d 985, 985
- Fried v Jacob Holding, Inc., 110 AD3d 56, 59-60
- Atlantic Cas. Ins. Co. v RJNJ Servs., Inc., 89 AD3d 649, 651
- Guggenheimer v Ginzburg, 43 NY2d 268, 275

OPINION

Benjamin v. LaSalle Bank, N.A. 2026 NY Slip Op 02094

PER CURIAM.

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<p>2026 NY Slip Op 02094</p> <p>April 8, 2026</p> <p>Appellate Division, Second
Department</p> <p>Published by New York State Law Reporting Bureau pursuant to Judiciary
Law § 431.</p> <p>This decision is uncorrected and subject to revision before publication in the
Official Reports.</p> </div> <div> <p>Chittra Benjamin, etc., appellant-respondent,</p>
<p>v</p> <p>LaSalle Bank, N.A., respondent, U.S. Bank, National Association, etc., respondent-
appellant, et al., defendant. PM Law P.C., Forest Hills, NY (Pankaj Malik of counsel), for

appellant-respondent.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 8, 2026

2019-09843, (Index No. 715088/18)

Mark C. Dillon, J.P.

Cheryl E. Chambers

Lillian Wan

James P. McCormack, JJ.

McCalla Raymer Leibert Pierce, New York, NY (Sean Howland of counsel), for respondent-appellant.

[*1]

DECISION & ORDER

In an action pursuant to RPAPL 1501(4) to cancel and discharge of record a mortgage, the plaintiff appeals, and the defendant U.S. Bank, National Association cross-appeals, from an order of the Supreme Court, Queens County (Robert I. Caloras, J.), entered July 25, 2019. The order, insofar as appealed from, granted that branch of the motion of the defendant U.S. Bank, National Association which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it by the plaintiff, denied that branch of the cross-motion of the plaintiff and David Benjamin which was for leave to enter a default judgment against the defendant LaSalle Bank, N.A., and granted that branch of the cross-motion of the defendant LaSalle Bank, N.A., which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it. The order, insofar as cross-appealed from, denied that branch of the motion of the defendant U.S. Bank, National Association which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it by David Benjamin.

ORDERED that the order is reversed insofar as appealed from, on the law, that branch of the motion of the defendant U.S. Bank, National Association which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it by the plaintiff is denied, that branch of the cross-motion of the plaintiff and David Benjamin which was for leave to enter a default judgment against the defendant LaSalle Bank, N.A., is granted, and that branch of the cross-motion of the defendant LaSalle Bank, N.A., which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it is denied; and it is further,

ORDERED that the order is affirmed insofar as cross-appealed from; and it is further,

ORDERED that one bill of costs is awarded to the plaintiff payable by the defendants U.S. Bank, National Association and LaSalle Bank, N.A.

On May 25, 2007, David Benjamin (hereinafter the decedent) executed a note in the sum of \$594,000, which was secured by a mortgage executed by the decedent and the plaintiff, [*2]Chitra Benjamin (hereinafter Chitra and, together with the decedent, the Benjamins), on certain residential property located in South Ozone Park. In December 2008, the mortgage and note were assigned to LaSalle Bank, N.A. (hereinafter LaSalle).

On January 8, 2009, LaSalle commenced an action (hereinafter the 2009 action) against the Benjamins, among others, to foreclose the mortgage. The decedent interposed an answer, but Chitra did not. In a decision dated September 9, 2009, the Supreme Court, among other things, determined that LaSalle's motion, inter alia, for summary judgment on the complaint insofar as asserted against the decedent, to strike the decedent's answer, and for an order of reference should be granted. On September 17, 2014, LaSalle's successor in interest assigned the mortgage to U.S. Bank, National Association (hereinafter U.S. Bank). In an

order entered December 15, 2015 (hereinafter the December 2015 order), the court, among other things, vacated the decision dated September 9, 2009, in effect, granted that branch of the Benjamins' motion which was pursuant to CPLR 3215 to dismiss the complaint insofar as asserted against Chittra as abandoned, and thereupon, directed dismissal of the complaint in its entirety on the ground that Chittra was a necessary party. In a decision and order dated September 12, 2018, this Court affirmed the December 2015 order (*see LaSalle Bank N.A. v Benjamin*, 164 AD3d 1223).

On October 3, 2018, the Benjamins commenced this action against LaSalle pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage. LaSalle interposed an answer dated December 5, 2018. Thereafter, the Benjamins served a supplemental summons and amended verified complaint dated December 18, 2018, adding U.S. Bank and another party as defendants.

In January 2019, U.S. Bank moved pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it, arguing, inter alia, that it was entitled to the benefit of the six-month savings provision under CPLR 205(a) to commence a new mortgage foreclosure action. The Benjamins opposed the motion and cross-moved, among other things, for leave to enter a default judgment against LaSalle. Thereafter, LaSalle cross-moved, inter alia, pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it. The Benjamins opposed LaSalle's motion. In an order entered July 25, 2019, the Supreme Court, among other things, (1) granted that branch of U.S. Bank's motion which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it by Chittra, (2) denied that branch of U.S. Bank's motion which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it by the decedent, (3) denied that branch of the Benjamins' cross-motion which was for leave to enter a default judgment against LaSalle, and (4) granted that branch of LaSalle's cross-motion which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it. The Benjamins appealed, and U.S. Bank cross-appealed. During the pendency of the appeal, the decedent died, and Chittra, as administrator of the decedent's estate, was substituted for the decedent.

"Pursuant to RPAPL 1501(4), a person having an estate or interest in real property subject to a mortgage may maintain an action to secure the cancellation and discharge of the encumbrance, and to adjudge the estate or interest free of it, if the applicable statute of limitations for commencing a foreclosure action has expired" (*97 Lyman Ave., LLC v MTGLQ Invs., L.P.*, 233 AD3d 1038, 1041 [internal quotation marks omitted]; *see Collins v Bank of N.Y. Mellon*, 227 AD3d 948, 950). An action to foreclose a mortgage is subject to a six-year statute of limitations (*see CPLR 213[4]*). "Where the mortgage debt is accelerated, the entire balance of the debt accrues and the statute of limitations begins to run on the full amount due" (*Citibank, N.A. v Horan*, 230 AD3d 1216, 1217). An acceleration of a mortgage debt can occur "when a creditor commences an action to foreclose upon a note and mortgage and seeks, in the complaint, payment of the full balance due" (*Milone v US Bank N.A.*, 164 AD3d 145, 152; *see 97 Lyman Ave., LLC v MTGLQ Invs., L.P.*, 233 AD3d at 1041;

Citibank, N.A. v Horan, 230 AD3d at 1217; *Collins v Bank of N.Y. Mellon*, 227 AD3d at 950).

"On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the complaint is to be afforded a liberal construction, the facts alleged are *presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory" (*Martinez v NYC Health & Hosps. Corp.*, 223 AD3d 731, 732 [internal quotation marks omitted]; *see* *Weill v East Sunset Park Realty, LLC*, 101 AD3d 859, 859). "Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one, and unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal should not eventuate" (*Nyari v Onefater*, 171 AD3d 936, 937 [internal quotation marks omitted]; *see* *Truesource, LLC v Niemeyer*, 223 AD3d 694, 695).

Here, the 2009 action was commenced on January 8, 2009, and LaSalle elected in the complaint to "declare the balance of the principal indebtedness immediately due and payable." The 2009 action terminated on September 12, 2018, when this Court affirmed the December 2015 order directing dismissal of the 2009 action (*see* *U.S. Bank N.A. v Coleman*, 215 AD3d 780, 782). When this action pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage was commenced on October 3, 2018, more than six years had elapsed since the debt was accelerated. On February 7, 2019, within six months of the termination of the 2009 action, U.S. Bank commenced an action (hereinafter the 2019 action) against the Benjamins, and another defendant, inter alia, to foreclose the mortgage.

Contrary to U.S. Bank's contention, it is not entitled to the benefit of the six-month savings provision under CPLR 205(a) to commence a new mortgage foreclosure action, because the Foreclosure Abuse Prevention Act (FAPA) (L 2022, ch 821 [eff Dec 30, 2022]) replaced the savings provision of CPLR 205(a) with CPLR 205-a in actions upon instruments described in CPLR 213(4) (*see* *id.* § 205[c]; *Wells Fargo Bank, N.A. v Brandt*, 230 AD3d 623, 625). U.S. Bank's contentions that FAPA and, more specifically, CPLR 205-a do not apply retroactively are without merit (*see* *Deutsche Bank Natl. Trust Co. v Vista Holding, LLC*, 239 AD3d 830; *97 Lyman Ave., LLC v MTGLQ Invs., L.P.*, 233 AD3d at 1042). Contrary to U.S. Bank's contention, the retroactive application of FAPA does not violate the Due Process Clause of either the United States Constitution or the New York State Constitution (*see* *Deutsche Bank Natl. Trust Co. v Feurtado*, 241 AD3d 499; *Deutsche Bank Natl. Trust Co. v Dagrín*, 233 AD3d 1065, 1069; *97 Lyman Ave., LLC v MTGLQ Invs., L.P.*, 233 AD3d at 1039-1042).

As relevant here, under CPLR 205-a(a), "[i]f an action upon an instrument described under [CPLR 213(4)] is timely commenced and is terminated in any manner other than . . . a dismissal of the complaint for any form of neglect, including, but not limited to

those specified in [CPLR 3215], the original plaintiff, or, if the original plaintiff dies and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination" (*U.S. Bank Trust, N.A. v Giangrande*, 229 AD3d 834, 836 [internal quotation marks omitted]). Thus, under CPLR 205-a, a mortgage foreclosure plaintiff "may not take advantage of the six-month savings provision if the prior action was dismissed pursuant to CPLR 3215" (*Deutsche Bank Natl. Trust Co. v Feurtado*, 241 AD3d at 501). Additionally, CPLR 205-a(a)(1) provides that "a successor in interest or an assignee of the original plaintiff shall not be permitted to commence the new action, unless pleading and proving that such assignee is acting on behalf of the original plaintiff."

Here, U.S. Bank was not the original plaintiff in the 2009 action and it has neither pleaded nor proved that it is acting on behalf of the original plaintiff. Accordingly, U.S. Bank failed to demonstrate that it is entitled to the benefit of the six-month savings provision of CPLR 205-a to commence a new mortgage foreclosure action against either Chittra or the decedent (*see Johnson v Cascade Funding Mtge. Trust* 2017-1, 220 AD3d 929, 932).

Moreover, U.S. Bank is not entitled to the benefit of CPLR 205-a with respect to a cause of action to foreclose the mortgage insofar as asserted against Chittra for the additional reason that the complaint insofar as asserted against Chittra in the 2009 action was dismissed pursuant to [*4]CPLR 3215 (*see id.* § 205-a[a]; *Collins v Bank of N.Y. Mellon*, 227 AD3d at 951; *LaSalle Bank N.A. v Benjamin*, 164 AD3d 1223).

Accordingly, the Supreme Court properly denied that branch of U.S. Bank's motion which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it by the decedent. However, the court should have denied that branch of the motion which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it by Chittra (*see Collins v Bank of N.Y. Mellon*, 227 AD3d at 951; *see generally Guggenheimer v Ginzburg*, 43 NY2d 268, 275).

The Supreme Court should have denied that branch of LaSalle's cross-motion which was pursuant to CPLR 3211(a)(7) to dismiss the amended complaint insofar as asserted against it. LaSalle's contention that it was not a proper party to this action because it no longer existed after 2007 is contradicted by the record, including by LaSalle's own assertions in prosecuting the 2009 action to foreclose the mortgage (*see LaSalle Bank N.A. v Benjamin*, 164 AD3d 1223) and by the fact that LaSalle answered the original complaint in this action.

The Supreme Court should have granted that branch of the Benjamins' cross-motion which was for leave to enter a default judgment against LaSalle. On a motion pursuant to CPLR 3215 for leave to enter a default judgment, a plaintiff is required to submit proof of service of the summons and complaint, "proof of the facts constituting the claim," and proof of the defendant's default in answering or appearing (*id.* § 3215[f]; *see Pemberton v Montoya*, 216 AD3d 988, 989; *Roy v 81E98th KH Gym, LLC*, 142 AD3d 985, 985; *Fried v Jacob Holding, Inc.*, 110 AD3d 56, 59). "To demonstrate 'the facts constituting the

claim' the movant need only submit sufficient proof to enable a court to determine that 'a viable cause of action exists'" (*Fried v Jacob Holding, Inc.*, 110 AD3d at 59-60, quoting *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71; *see* *Roy v 81E98th KH Gym, LLC*, 142 AD3d at 985). A verified complaint "may be used as the affidavit of the facts constituting the claim" where it contains "evidentiary facts from one with personal knowledge" (*Pemberton v Montoya*, 216 AD3d at 990). Once the plaintiff has made such a showing, the defendant, in order to avoid entry of a default judgment, "must show either that there was no default, or that [the defendant] has a reasonable excuse for its delay and a potentially meritorious defense" (*Fried v Jacob Holding, Inc.*, 110 AD3d at 60; *see* *Atlantic Cas. Ins. Co. v RJNJ Servs., Inc.*, 89 AD3d 649, 651). Here, the Benjamins made the requisite showing and, in opposition, LaSalle failed to demonstrate either that there was no default or that it had a reasonable excuse for its delay and a potentially meritorious defense.

U.S. Bank's remaining contention is without merit.

DILLON, J.P., CHAMBERS, WAN and MCCORMACK, JJ., concur.

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