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

U.S. Bank Trust National Association v. Pluchino

2025 NY Slip Op 07330 · No. 2023-12022 · Decided December 24, 2025

SUMMARY

The Appellate Division, Second Department, affirmed an order dismissing a mortgage foreclosure action against Julie M. Pluchino as time-barred. The court held that the six-year statute of limitations began when Citibank commenced an earlier foreclosure action in 2014 and that the successor plaintiff could not use CPLR 205-a because it was not the original plaintiff or acting on its behalf. The court also rejected challenges to the retroactive application and constitutionality of the Foreclosure Abuse Prevention Act.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Hector D. LaSalle, P.J.; Valerie Brathwaite Nelson, J.; Deborah A. Dowling, J.; Lourdes M. Ventura, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 24, 2025
DOCKET	2023-12022
DISPOSITION	affirmed
PROCEDURAL POSTURE	In a mortgage-foreclosure action, the plaintiff appealed from an order denying its motion for summary judgment and granting the defendant's cross-motion for summary judgment dismissing the amended complaint as time-barred.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact; the Appellate Division reviewed whether the defendant established the statute-of-limitations defense prima facie and whether the plaintiff raised a triable issue in opposition.
PRECEDENTIAL VALUE	published

PARTIES	U.S. Bank Trust National Association v. Julie M. Pluchino

TOPICS

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

PRACTICE AREAS

mortgage foreclosure · civil procedure · appellate procedure · statute of limitations

QUESTIONS PRESENTED

1. Whether the 2022 foreclosure action was barred by New York's six-year statute of limitations because the mortgage debt was accelerated when Citibank commenced the 2014 foreclosure action.
2. Whether U.S. Bank Trust, as an assignee rather than the original plaintiff, could invoke the six-month savings provision in CPLR 205-a.
3. Whether the Foreclosure Abuse Prevention Act's retroactive application and constitutionality under the United States Constitution defeated the statute-of-limitations defense.

HOLDINGS

1. The foreclosure action was time-barred because the six-year limitations period began to run on the entire mortgage debt when Citibank commenced the 2014 foreclosure action, and U.S. Bank Trust commenced the new action more than six years later.
2. U.S. Bank Trust could not invoke CPLR 205-a because it was neither the original plaintiff in the prior action nor acting on behalf of the original plaintiff, Citibank.
3. The plaintiff's arguments challenging FAPA's retroactive application and constitutionality under the United States Constitution were without merit.

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])

> *"the original plaintiff . . . may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination"* ([*2])

FACTUAL BACKGROUND

Citibank commenced a mortgage-foreclosure action against Julie M. Pluchino and others in 2014, thereby accelerating the mortgage debt. That action was dismissed in 2021 because Citibank failed to demonstrate compliance with RPAPL 1304, and Citibank's appeal was later deemed dismissed. After the mortgage and note were assigned to U.S. Bank Trust, U.S. Bank commenced a new foreclosure action in August 2022, more than six years after the 2014 action.

PROCEDURAL HISTORY

Citibank commenced a foreclosure action in 2014. The Supreme Court dismissed that action in August 2021 for failure to establish compliance with RPAPL 1304, and Citibank's appeal was later deemed dismissed for failure to timely perfect it. After the mortgage and note were assigned to U.S. Bank Trust, U.S. Bank commenced a new foreclosure action in August 2022. The Supreme Court, Suffolk County, denied U.S. Bank's summary-judgment motion and granted Julie Pluchino's cross-motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- HSBC Bank USA v. Lem, 236 AD3d 762, 764-765
- Wilmington Trust Co. v. Yonkus, 224 AD3d 863, 864-865
- Deutsche Bank National Trust Co. v. Heitner, 226 AD3d 967, 968
- Johnson v. Cascade Funding Mortgage Trust 2017-1, 220 AD3d 929, 932
- Article 13 LLC v. Ponce De Leon Federal Bank, 2025 NY Slip Op 06536
- Van Dyke v. U.S. Bank, N.A., 2025 NY Slip Op 06537

OPINION

PER CURIAM.

U.S. Bank Trust N.A. v Pluchino (2025 NY Slip Op 07330) U.S. Bank Trust N.A. v Pluchino 2025 NY Slip Op 07330 Decided on December 24, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 24, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department HECTOR D. LASALLE, P.J. VALERIE BRATHWAITE NELSON DEBORAH A. DOWLING LOURDES M. VENTURA, JJ. 2023-12022 (Index No. 616732/22) [*1]U.S.

Bank Trust National Association, etc., appellant, v Paul Pluchino, et al., defendants, Julie M. Pluchino, respondent. Hinshaw & Culbertson LLP, New York, NY (Margaret J. Cascino and Alexandria Kaminiski of counsel), for appellant. Fred M. Schwartz, Smithtown, NY (Sara E. Levine of counsel), for respondent. DECISION & ORDER In an action to foreclose a mortgage, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Robert F. Quinlan, J.), dated November 27, 2023.

The order denied the plaintiff's motion, inter alia, for summary judgment on the amended complaint insofar as asserted against the defendant Julie M. Pluchino and granted that defendant's cross-motion for summary judgment dismissing the amended complaint insofar as asserted against her. ORDERED that the order is affirmed, with costs.

In 2014, nonparty Citibank, NA (hereinafter Citibank), commenced an action against the defendant Julie M. Pluchino (hereinafter the defendant), among others, to foreclose a mortgage on certain real property located in West Babylon (hereinafter the 2014 action).

In August 2021, the Supreme Court dismissed the 2014 foreclosure action based on Citibank's failure to demonstrate its compliance with RPAPL 1304 and, in turn, a condition precedent to foreclosure. Citibank appealed, and that appeal was subsequently deemed dismissed based on Citibank's failure to timely perfect its appeal. Subsequently, the mortgage and note were assigned to the plaintiff.

In August 2022, the plaintiff commenced this action against the defendant, among others, to foreclose the mortgage. The defendant interposed an answer, asserting a counterclaim and several affirmative defenses, including that this action was time-barred.

The plaintiff moved, inter alia, for summary judgment on the amended complaint insofar as asserted against the defendant. The defendant cross-moved for summary judgment dismissing the amended complaint insofar as asserted against her on the ground, among others, that the action was time-barred.

The Supreme Court denied the plaintiff's motion and granted the defendant's cross-motion. The plaintiff appeals. An action to foreclose a mortgage is governed by 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 entire debt" (HSBC Bank USA v Lem, 236 AD3d 762, [*2]764; see Wilmington Trust Co. v Yonkus, 224 AD3d 863, 864).

Here, the defendant demonstrated, prima facie, that the six-year statute of limitations (see CPLR 213[4]) began to run on the entire mortgage debt in 2014, when Citibank commenced the 2014 action against the defendant, and that this action was commenced more than six years later and is, therefore, time-barred (see Wilmington Trust Co. v Yonkus, 224 AD3d at 864).

In opposition, the plaintiff failed to raise a triable issue of fact as to whether the statute of limitations was tolled or otherwise inapplicable, or whether the plaintiff had actually commenced this action within the applicable limitations period (see id. at 864-865).

The plaintiff contends that this action was timely because it was commenced within the applicable six-month extension period afforded by CPLR 205(a). However, under the Foreclosure Abuse Prevention Act (FAPA) (L 2022, ch 821 [eff Dec. 30, 2022]), "the savings provision of CPLR 205(a) was replaced with CPLR 205-a in actions upon instruments described in CPLR 213(4)" (HSBC Bank USA v Lem, 236 AD3d at 764; see Deutsche Bank Natl.

Trust Co. v Heitner, 226 AD3d 967, 968). Pursuant to CPLR 205-a, where an action upon an instrument described under CPLR 213(4) is timely commenced and is not terminated on certain enumerated grounds, "the original plaintiff... may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced... and that service upon the original defendant is completed within such six-month period" (id. § 205-a[a]; see HSBC Bank USA v Lem, 236 AD3d at 764-765).

Here, the plaintiff is not the "original plaintiff" or acting on behalf of the original plaintiff, namely Citibank, which commenced the 2014 action, and thus the Supreme Court correctly concluded that the plaintiff cannot avail itself of CPLR 205-a (see CPLR 205-a[a][1]; Johnson v Cascade Funding Mtge. Trust 2017-1, 220 AD3d 929, 932).

The plaintiff's arguments challenging FAPA's retroactive application and constitutionality under the United States Constitution are without merit (see Article 13 LLC v Ponce De Leon Fed. Bank, ___NY3d___, 2025 NY Slip Op 06536; Van Dyke v U.S. Bank, N.A.,___NY3d___, 2025 NY Slip Op 06537).

The plaintiff's remaining contentions either are without merit or need not be reached in light of our determination. Accordingly, the Supreme Court properly granted the defendant's cross-motion for summary judgment dismissing the amended complaint insofar as asserted against her as time-barred, and denied the plaintiff's motion, inter alia, for summary judgment on the amended complaint insofar as asserted against the defendant.

LASALLE, P.J., BRATHWAITE NELSON, DOWLING and VENTURA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

PER CURIAM.

U.S. Bank Trust N.A. v Pluchino (2025 NY Slip Op 07330) U.S. Bank Trust N.A. v Pluchino 2025 NY Slip Op 07330 Decided on December 24, 2025 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on December 24, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department HECTOR D. LASALLE, P.J. VALERIE BRATHWAITE NELSON DEBORAH A. DOWLING LOURDES M. VENTURA, JJ. 2023-12022 (Index No. 616732/22) [*1]U.S.

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LASALLE, P.J., BRATHWAITE NELSON, DOWLING and VENTURA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court