SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

U.S. Bank, N.A. v. Gordon

2026 NY Slip Op 01174 (N.Y. Ct. App. 2026) · No. Appeal No. 5991; Case No. 2024-06874; Index No. 32441/17 · Decided March 3, 2026

SUMMARY

The Appellate Division, First Department, affirmed an order dismissing a mortgage foreclosure action and vacating the foreclosure judgment and sale. The court held that the action was barred by the statute of limitations and that a purported deacceleration letter could not reset or otherwise affect the limitations period under CPLR 203(h). The court rejected constitutional challenges to the Foreclosure Abuse Prevention Act, including substantive and procedural due process, Contracts Clause, and Takings Clause challenges.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Shulman, J.; Higgitt, J.; Rosado, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	March 3, 2026
DOCKET	Appeal No. 5991; Case No. 2024-06874; Index No. 32441/17
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, Bronx County, granting defendants Kirsten Gordon and Horace Gordon's motion to dismiss and to vacate the judgment of foreclosure and sale.
STANDARD OF REVIEW	The Appellate Division reviewed the lower court's dismissal and related order on appeal; the opinion does not state a separately labeled standard of review.
PRECEDENTIAL VALUE	Published opinion
PARTIES	U.S. Bank, National Association v. Kirsten Gordon, Horace Gordon

TOPICS

statute of limitations · foreclosure · appellate procedure · constitutional law · civil procedure

PRACTICE AREAS

foreclosure · civil procedure · constitutional law · appellate procedure

QUESTIONS PRESENTED

1. Whether a purported deacceleration letter could reset or otherwise affect the statute of limitations under CPLR 203(h).
2. Whether the retroactive application of CPLR 203(h), enacted as part of the Foreclosure Abuse Prevention Act, violated substantive or procedural due process.
3. Whether CPLR 203(h) and its retroactive application violated the Contracts Clause of the United States Constitution.
4. Whether the statute and its retroactive application effected an unconstitutional taking.

HOLDINGS

1. A deacceleration letter sent after the mortgage debt had been accelerated could not reset or otherwise affect the statute of limitations under CPLR 203(h).
2. The retroactive application of CPLR 203(h) does not violate substantive due process because the Foreclosure Abuse Prevention Act has a legitimate purpose and the retroactive application rationally advances those purposes.
3. The statutory restriction on deacceleration did not take away or impair a vested right because the right to deaccelerate was conditioned on whether the borrower had changed position in reliance on the lender's acceleration.
4. The enactment and retroactive application of CPLR 203(h) did not violate procedural due process, notwithstanding the absence of a grace period.
5. The plaintiff's Contracts Clause challenge to CPLR 203(h) and FAPA was unavailing.
6. CPLR 203(h) and FAPA did not effect an unconstitutional taking.

KEY QUOTATIONS

> *“Supreme Court correctly dismissed the action on the basis that it was barred by the applicable statute of limitations.”* ([*1])

> *“This tailoring of the legislation, along with "the strong public policy favoring finality, predictability, fairness and repose" and the "highly regulated landscape of foreclosure litigation," were sufficient to overcome plaintiff's contractual right to deaccelerate the loan, to the extent that the right existed”* ([*1])

FACTUAL BACKGROUND

On April 21, 2011, Aurora Loan Services, LLC, plaintiff's predecessor in interest, commenced a foreclosure action against the Gordons and declared that it elected to call due the entire amount secured by the mortgage. The court granted Aurora's motion to discontinue that action on January 15, 2016. On August 4, 2016, Nationstar

Mortgage LLC sent Horace Gordon a letter purporting to deaccelerate the loan. The present foreclosure action was dismissed as time-barred, and the foreclosure judgment and sale were vacated.

PROCEDURAL HISTORY

Aurora Loan Services, LLC, plaintiff's predecessor in interest, commenced a foreclosure action in 2011 after electing to accelerate the entire mortgage debt. The action was discontinued in 2016, after which a purported deacceleration letter was sent to the borrower. Supreme Court dismissed the present action as barred by the statute of limitations and vacated the foreclosure judgment and sale. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- Van Dyke v. U.S. Bank, N.A., 2025 NY Slip Op 06537
- Article 13 LLC v. Ponce De Leon Fed. Bank, 2025 NY Slip Op 06536
- Kilpatrick v. Germania Life Ins. Co., 183 NY 163, 168 [1905]
- Federal Natl. Mtge. Assn. v. Mebane, 208 AD2d 892, 894 [2d Dept 1994]
- Landgraf v. USI Film Products, 511 US 244, 269 [1994]
- Bank of N.Y. Mellon v. Del Rio, 233 AD3d 529, 532 [1st Dept 2024]
- Louisville Joint Stock Land Bank v. Radford, 295 US 555, 581-582 [1935]

OPINION

PER CURIAM.

U.S. Bank, N.A. v Gordon (2026 NY Slip Op 01174) U.S. Bank, N.A. v Gordon 2026 NY Slip Op 01174 Decided on March 03, 2026 Appellate Division, First 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 and Entered: March 03, 2026 Before: Webber, J.P., Shulman, Higgitt, Rosado, Hagler, JJ. Index No. 32441/17|Appeal No. 5991|Case No. 2024-06874| [*1]U.S.

Bank, National Association, Plaintiff-Appellant, v Kirsten Gordon et al., Defendants-Respondents, Bronx Supreme Court et al., Defendants. McCalla Raymer Leibert Pierce, LLP, New York (Harold L. Kofman of counsel), for appellant. Law office of Earl M. Williams, Mount Vernon (Earl M. Williams of counsel), for respondents. Order, Supreme Court, Bronx County (Naita A. Semaj, J.), entered on or about October 8, 2024, which, to the extent appealed from as limited by the briefs, granted defendants Kirsten Gordon and Horace Gordon's motion to dismiss and to vacate the judgment of foreclosure and sale, unanimously affirmed, with costs.

Supreme Court correctly dismissed the action on the basis that it was barred by the applicable statute of limitations. On April 21, 2011, plaintiff's predecessor in interest, Aurora Loan Services, LLC, (Aurora) brought an action to foreclose upon the Gordons' mortgage.

The complaint included a statement declaring that Aurora elected "to call due the entire amount secured by the mortgage." On January 15, 2016, the court granted Aurora's motion to discontinue. On August 4, 2016, nonparty Nationstar Mortgage LLC, which had by then been assigned the loan and for purposes of this appeal is assumed to have been the loan servicer for plaintiff, sent a letter to Horace Gordon deaccelerating the loan.

Contrary to plaintiff's contention otherwise, this letter could not have had the effect of resetting or otherwise affecting the statute of limitations (see CPLR 203[h]). We reject plaintiff's due process challenge to CPLR 203(h).

The statute does not violate substantive due process, as the Foreclosure Abuse Prevention Act (FAPA) (L 2022, ch 821), and CPLR 203(h) in particular, has a legitimate purpose and its retroactive application rationally advances those purposes (see Van Dyke v U.S. Bank, N.A., — NY3d &mdash, 2025 NY Slip Op 06537, *6 [2025]).

In addition, the legislation does not "take[] away or impair[] vested rights... in respect to transactions or considerations already past" (id. at *5, quoting Landgraf v USI Film Products, 511 US 244, 269 [1994]). Although the right to deaccelerate a loan has long been recognized (see Kilpatrick v Germania Life Ins. Co., 183 NY 163, 168 [1905]; Federal Natl.

Mtge. Assn. v Mebane, 208 AD2d 892, 894 [2d Dept 1994]), that right has always been conditioned on whether the borrower has changed its position based on the lender's election to accelerate (see Kilpatrick at 168; Mebane at 894).

Therefore this right does not constitute a vested right (see Article 13 LLC v Ponce De Leon Fed. Bank, — NY3d &mdash, 2025 NY Slip Op 06536, *5 [2025]). In addition, even if plaintiff's right to deaccelerate was a "protectible interest" that was impaired by CPLR 203(h), the legislature's rationale for the statute's retroactive application was sufficiently persuasive to be capable of impairing that interest (Article 13 LLC, — NY3d at &mdash, 2025 NY Slip Op 06536, *7).

The enactment and retroactive application of CPLR 203(h) also comported with procedural due process, notwithstanding the absence of any grace period (Van Dyke, 2025 NY Slip Op 06537, *7). Plaintiff's challenge based on the Contracts Clause of the United States Constitution is also unavailing.

First, plaintiff did not have an automatic contractual right to deaccelerate its mortgage, as defendants could have unilaterally rendered the acceleration irrevocable (see Kilpatrick, 183 NY at 168). Second, the legislature "sensibly tailored" the relevant provisions of FAPA to the specific litigation practices sought to be curbed. This tailoring of the legislation, along with "the strong public policy favoring finality, predictability, fairness and repose" and the "highly regulated landscape of foreclosure litigation," were sufficient to overcome plaintiff's contractual right to deaccelerate the loan, to the extent that the right existed (Van Dyke, 2025 NY Slip Op 06537, *8 [internal quotation marks omitted]).

Plaintiff's Takings Clause challenge is similarly unavailing. First, it was the six-year statute of limitations, and not FAPA itself, that extinguished plaintiff's interest in its mortgage (id. at *5). Thus, to the extent that FAPA took anything, it was not the mortgage itself, but the right to deaccelerate the loan.

Second, FAPA did not effect a "regulatory" taking because it did not "permanently deprive [the] plaintiff's mortgage of all value" (Bank of N.Y. Mellon v Del Rio, 233 AD3d 529, 532 [1st Dept 2024]). Indeed, FAPA did not alter the terms of the mortgage itself (cf. Louisville Joint Stock Land Bank v Radford, 295 US 555, 581-582 [1935]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 3, 2026

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