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]
