

At an IAS Part FRP-5 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 4 day of March 2025

Present: Hon. Carolyn Mazzu Genovesi

-----X  
U.S. BANK NATIONAL ASSOCIATION AS  
LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6  
TITLE TRUST,

Plaintiff,

DECISION AND ORDER

-against-

Index No.: 525818/2019

Mot. Seq. 2 & 3

RONALD I. HORNE AKA RONALD IVELAW  
HORNE; PUBLIC ADMINISTRATOR OF KINGS  
COUNTY, AS ADMINISTRATOR OF THE ESTATE  
OF OVID SMALL; ELAINE SMALL AKA ELAINE  
MARQUES AS HEIR TO THE ESTATE OF OVID  
SMALL; SEIDEL SMALL AS HEIR TO THE ESTATE  
OF OVID SMALL; NEW YORK CITY DEPARTMENT  
OF HOUSING PRESERVATION & DEVELOPMENT;  
NEW YORK CITY ENVIRONMENTAL CONTROL  
BOARD; 363 E LLC; PEOPLE OF THE STATE OF  
NEW YORK; JOHN DOE (Those unknown tenants,  
occupants, persons or corporations or their heirs,  
disributees, executors, administrators, trustees,  
guardians, assignees, creditors or successors claiming  
an interest in the mortgaged premises),

Defendants,

-----X  
The following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF Numbered
Motion (MS # 2), Affirmation in Support, Exhibits	<u>61-68</u>
Cross-Motion (MS # 3), Affirmation in Support, Exhibits, Memorandum of Law in	<u>72-78-112</u>
Affirmation in Opposition to Cross-Motion and Further Support of Motion, Exhibits	<u>118-127</u>
Memorandum of Law in Reply	<u>128</u>

---

Upon the foregoing papers, Ronald Horne (“defendant”) moves for summary judgment dismissing this foreclosure action, as barred by the statute of limitations (MS #2). U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“plaintiff”) cross-moves for summary judgment against defendants Ronald I. Horne and Elaine Small a/k/a Elaine Marques as Heir to the Estate of Ovid Small; default judgment against non-appearing defendants; to appoint a Referee to compute the amount due to plaintiff; and to amend the caption to substitute named defendants for John and Jane Does (MS #3).

“An action to foreclose a mortgage is subject to a six-year statute of limitations.” *U.S. Bank Trust, N.A. v. Aorta*, 167 A.D.3d 807 (2d Dep’t 2018); *see* CPLR 213(4). “When a mortgage is payable in installments, which is the typical practice, an acceleration of the entire amount due begins the running of the statute of limitations on the entire debt.” *Wells Fargo Bank, N.A. v. Ritty*, 206 A.D.3d 862, 863 (2d Dep’t 2022) quoting *Deutsche Bank Trust Co. Ams. v. Marous*, 186 A.D.3d 669, 670 (2d Dep’t 2020). “Acceleration occurs, *inter alia*, by the commencement of a foreclosure action wherein the plaintiff elects in the complaint to call due the entire amount secured by the mortgage.” *GMAT Legal Title Trust 2014-1 v. Kator*, 213 A.D.3d 915, 916 (2d Dep’t 2023).

On April 26, 2012, the holder of the mortgage and plaintiff’s predecessor in interest, the Bank of New York Mellon Trust Summons Company, National Association as Grantor Trustee of the Protium Master Grantor Trust, commenced an action to foreclosure upon the subject mortgage on this action (Index No. 8741/2012). The 2012 action was dismissed by Justice Noach Dear, by Order dated July 13, 2016. Plaintiff’s loan servicer sent a letter, dated April 13, 2018, to defendants Ronald Horne and Ovid Small which purports to deaccelerate the subject mortgage.

Under the applicable law in 2018, a lender could unilaterally revoke the acceleration of a mortgage, “by an affirmative act of revocation occurring during the six-year statute of limitations

period subsequent to the initiation of the prior foreclosure action.” *NMNT Realty Corp. v. Knoxville 2012 Trust*, 151 A.D.3d 1068, 1069-1070 (2d Dep’t 2017). A deacceleration letter constituted an affirmative act sufficient to deaccelerate a mortgage. *Milone v. U.S. Bank N.A.*, 164 A.D.3d 145, 153-154 (2d Dep’t 2018). However, in 2022, the Legislature enacted the Foreclosure Abuse Prevention Act (“FAPA”), which amended CPLR 203 to add subdivision (h). CPLR 203(h) states in relevant part, “no party may, in form or effect, unilaterally waive, postpone, cancel, toll, revive, or reset the accrual thereof, or otherwise purport to effect a unilateral extension of the limitations period prescribed by law to commence an action and to interpose the claim, unless expressly prescribed by statute.”

This action was commenced by plaintiff filing the summons and complaint on November 25, 2019. Unless the deacceleration letter dated April 13, 2018, effectively deaccelerated the mortgage in question, the statute of limitations expired six years after the 2012 action was commenced, on April 26, 2018. Accordingly, if the deacceleration letter did not deaccelerate the mortgage, this action is untimely.

Contrary to plaintiff’s contention, in the Appellate Division, Second Department has held that that the statutory amendments enacted under FAPA apply retroactively. *See 97 Lyman Avenue, LLC v. MTGLQ Investors, L.P.*, 233 A.D.3d 1038, 1042 (2d Dep’t 2024); *Deutsche Bank National Trust Company v. Dagrín*, 233 A.D.3d 1065, 1067-1068 (2d Dep’t 2024). In *Dagrín*, even though the foreclosure action was commenced in 2018, like this action, before FAPA came into effect, the Second Department found FAPA to retroactively apply. Additionally, contrary to plaintiff’s argument, in *Dagrín*, the Second Department found the retroactive application of FAPA does not

violate the Due Process Clause, the Contracts Clause or the Takings Clauses of the United States Constitution. *Id* at 1069-1072.<sup>1</sup>

The only distinction between this case and *Dagrin* is that in this case the plaintiff sought to deaccelerate the mortgage by a letter, while the plaintiff in *Dagrin* attempted to deaccelerate the mortgage by voluntarily discontinuing a prior foreclosure action. The Court finds this distinction without difference. In assessing whether a legislative act violates the Contracts Clause, the Second Department examined, among other issues, whether FAPA's statutory amendments had a substantial impairment on the parties' contractual rights. *Id* at 1070; *See General Motors Corp. v. Romein*, 503 U.S. 181, 186 (1992) In doing so, the Second Department noted that when the *Dagrin* action was commenced, the law about deaccelerating a mortgage via voluntary discontinuance "remained somewhat unsettled." *Dagrin* at 1070. It could be argued that the law surrounding deacceleration via a letter was settled, when this action was commenced in 2018. However, in 2018, the Second Department decided *Milone v. U.S. Bank, Supra*, and imposed an addition requirement on deaccelerating an action via letter, namely that deacceleration letters must be clear and unambiguous. Thus, in 2018, when this action was commenced, the law pertaining to deacceleration letters was also in flux and FAPA's statutory amendments therefore do not have a substantial impairment on plaintiff's rights under the mortgage. Accordingly, this Court finds this action barred by the statute of limitation. Defendant's motion for summary judgment (MS # 2) is GRANTED and the complaint is DISMISSED.

In light of the dismissal of this matter, plaintiff's cross-motion (MS #3) is DENIED. For the foregoing reasons, it is

---

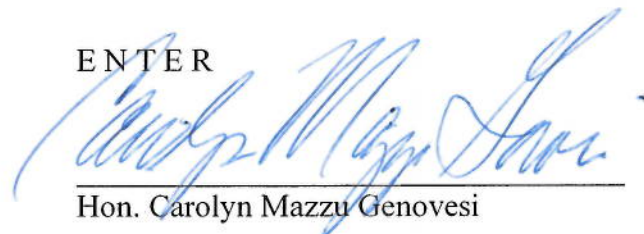
<sup>1</sup>Plaintiff also maintains that the retroactive application of FAPA violates the Takings Clause of the New York State Constitution, (Art. 1, 7[a]). However, the elements of an unconstitutional taking are the same under the New York State and United States Constitutions. *See Dagrin* at 1070; *American Economy Ins. Co. v. State*, 30 N.Y.3d 136, 155-156 (2017).

ORDERED that defendant's motion for summary judgment (MS # 2) is GRANTED and the complaint is DISMISSED; and it is further

ORDERED that plaintiff's cross-motion (MS #3) is DENIED in all respects.

This constitutes the Decision and Order of the Court.

ENTER

A handwritten signature in blue ink, appearing to read "Carolyn Mazzu Genovesi", is written over a horizontal line.

Hon. Carolyn Mazzu Genovesi