

Foreclosure Decision Limits Statute of Limitation Defense

On April 3, 2017 the Suffolk County Supreme Court granted Nationstar Mortgage LLC's motion for summary judgment to recover defaulted mortgage payments in a potentially trailblazing foreclosure decision. *Nationstar Mortgage LLC v. MacPherson*, 2017 NY Slip Op 27120 (Sup. Ct. Suff. Co. April 3, 2017). Defendant borrowed \$1,495,000.00 from Plaintiff lender, Nationstar Mortgage, LLC on July 25, 2006 and executed a note and mortgage. Defendant defaulted on the loan on or about July 1, 2007. Plaintiff's predecessor, Aurora Loan Services, LLC commenced an action on October 30, 2007. The 2007 matter was discontinued by the court on a routine clearing of the docket; a final determination was not obtained in the 2007 matter.

Thereafter, Plaintiff commenced another action to foreclose on the Note and Mortgage on September 17, 2014. Defendant answered the Complaint and asserted various affirmative defenses, including that the six year statute of limitations for enforcement of the agreement expired because the debt was purportedly accelerated by the commencement of the prior case. This affirmative defense was raised in response to Plaintiff's motion for summary judgment.

The Court recognized that as a general rule, a mortgage debt may be accelerated, and once such acceleration occurs, the statute of limitations begins to run on the entire debt. The form mortgage set out at NY Real Property Law § 258 (Schedule M) authorizes lenders to accelerate the repayment of a mortgage by requiring the borrower to pay the mortgage in full immediately when the borrower fails to pay periodic installments per the terms of the mortgage agreement. Based on prior case law in New York, typically, a lender filing a foreclosure complaint effectively constitutes an immediate acceleration of the mortgage immediately which starts the running of the statute of limitations.

Nationstar v. McPherson clarifies that the commencement of a foreclosure action triggers the running of the statute of limitations ONLY IF the mortgage agreement so provides. In this case, Nationwide was deemed not to have accelerated the loan because the mortgage agreement contained a provision that provides the borrower the right to have enforcement of the security instrument stopped any time before a judgment has been entered if the borrower rectifies the default. The provision explicitly states that if the

conditions in the agreement were fulfilled in curing the defaults, the agreement will “remain in full effect as if Immediate Payment in Full had never been required.”

Thus, the Court found that the “lender bargained away its right to demand payment in full simply upon a default in an installment payment or the commencement of an action and has afforded the borrower greater protections than that set forth in the statutory form of an acceleration clause under Real Property Law 258” In examining the express terms of the mortgage agreement it was found that the filing of a foreclosure action did not accelerate the loan; a judgment “triggers the acceleration in full of the entire mortgage debt.”

According to the holding in this case, lenders must be aware of whether the terms of their mortgage agreement limits the acceleration of the debt by requiring acceptance of payments up to the entry of a judgment