

LENDER REVOKED DEBT ACCELERATION BY DISCONTINUING FORECLOSURE ACTION; BORROWER'S SPOUSE WHO DID NOT SIGN NOTE NOT ENTITLED TO RPAPL 1304 NOTICE

The New York Supreme Court, Westchester County, recently held that a lender's foreclosure action was not barred by the statute of limitations because the lender affirmatively revoked the acceleration of a loan by discontinuing a prior foreclosure action, and also held that the borrower's wife, who signed the mortgage but not the note, was not entitled to a pre-foreclosure notice under RPAPL 1304. See Deutsche Bank Nat'l Tr. Co. as Tr. for IndyMac IMJA Mortg. Loan Tr. 2007-A2, Mortg. Pass-Through Certificates Series 2007-A2 v. Weininger, 2019 WL 3884569 (N.Y. Sup. Ct. Aug. 15, 2019). In the case, the plaintiff bank gave a \$875,000 loan to the defendant borrower in 2007, and the borrower and his wife executed a mortgage securing their residence. In May of 2010, they missed their monthly installment payment and defaulted on the loan. Plaintiff brought a foreclosure action in October 2010, but discontinued the action in August 2016. In March 2017, plaintiff brought this foreclosure action and later filed this motion for summary judgment. The borrower and his wife cross-moved for summary judgment, arguing (i) the action is untimely because it was not brought within six years of when plaintiff accelerated the debt (October 2010); and (ii) plaintiff did not comply with RPAPL 1304 because it did not send a timely pre-foreclosure letter to the borrower's wife.

The Court denied the homeowners' motion and granted plaintiff's. First, the Court found that the action was timely. Although plaintiff accelerated the debt in October 2010 when it brought the first action, it affirmatively revoked this acceleration in August 2016 when it filed its motion to discontinue that action and the Court granted the motion. Additionally, plaintiff agreed to a loan modification in 2014, which also revoked the acceleration. Second, the Court found that the borrower's wife was not entitled to notice under RPAPL 1304. RPAPL 1304 requires foreclosing lenders to provide pre-foreclosure notice to "the borrower." In this case, the borrower's wife executed the mortgage but did not execute the note. Although the Court acknowledged other cases in which courts found that spouses who sign only the mortgage were entitled to notice because the mortgages made them liable on the debt, the mortgage in this case expressly stated that anyone who does not sign the note "is not personally obligated to pay the Sums Secured[.]" Therefore, the wife was not a "borrower" and not entitled to notice.