

Stay Just a Little Bit Longer: Not Jackson Browne but the Statute of Limitations

July 29, 2024



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The Second Department recently held in *Trento 67, LLC v. OneWest Bank, N.A., et. al* that the FHA COVID-19 moratorium constituted a stay of foreclosures for federally-backed mortgages, and thus tolled the statute of limitations for foreclosure proceedings.

Thelma Miller (Borrower) executed a reverse mortgage in the amount of \$544,185.00 on February 9, 2007 in favor of First Lincoln Mortgage Corporation, and was a Federal Housing Administration (FHA) insured loan. Borrower died on February 28, 2013. The note and mortgage were thereafter assigned to OneWest Bank, N.A. (Defendant).

On March 18, 2020, HUD instituted a 60-day moratorium, enacted by a series of mortgagee letters, on foreclosure actions for mortgages that were insured by the FHA in response to the COVID-19 pandemic. Subsequently, the United States Congress passed the Coronavirus Aid, Relief and Economic Security Act (the CARES Act) on March 25, 2020. The CARES Act further prohibited servicers of federally backed mortgage loans from initiating and prosecuting foreclosure actions. The moratorium applied to all FHA insured mortgages, except those secured by abandoned or vacant properties. Ultimately, the moratorium was extended and remained in effect until July 31, 2021.

On June 10, 2021, Borrower's heirs (Plaintiff) commenced an action to discharge the reverse mortgage from the record, arguing that in accordance with RPAPL 1501(4), the statute of limitations had expired and Defendant no longer had the right to foreclose. On August 1, 2021, immediately after the moratorium was lifted, Defendant initiated an action to foreclose on the reverse mortgage.

Pursuant to NY CPLR 213(4), there is a six-year statute of limitations on foreclosure actions in New York. Therefore, the question before the Second Department was whether the statute of limitations for commencing a foreclosure action could be tolled by the FHA COVID-19 moratorium. The court held that the FHA COVID-19 moratorium tolled the statute of limitations, and therefore, the foreclosure action was timely.

The Second Department first determined when the statute of limitations began in order to determine whether Defendant had timely filed its action. Under NY CPLR 213(4), the statute of limitations for a foreclosure action begins on the date the debt is accelerated or otherwise due. Defendant had initiated its first foreclosure action against Borrower on April 4, 2014, which was subsequently dismissed because Borrower was "deceased at the time of commencement." However, the court also noted that the death of a borrower before the initiation of a foreclosure did not invalidate the lender's right to foreclose. Although the first foreclosure action was dismissed, the reverse mortgage was accelerated on April 4, 2014, and therefore, the statute of limitations began to run.

In support of its conclusion that the moratorium tolled the statute of limitations, the court noted that other trial courts in New York have held that the FHA COVID-19 moratorium constituted a stay in proceedings. Furthermore, Executive Order No. 202.8, issued by Governor Cuomo at the start of the pandemic, tolled the statute of limitations for foreclosures in New York. The trial court rulings and the executive order persuaded the court to hold that the moratorium was a clear stay on foreclosure proceedings.

The Second Department explained that "when the commencement of an action [is] stayed by the court or by statute, the toll suspends the running of the applicable statute of limitations and is excluded from the timeframe that plaintiff must commence an action within." Therefore, the statute of limitations began to run on April 4, 2014, but was paused between March 18, 2020, through July 31, 2021. Thus, the foreclosure was timely filed on August 1, 2021. Overall, this

case makes clear that the lender's right to foreclose on a property was not eliminated by the FHA COVID-19 moratorium.