

## Sovereign Immunity and the New York Statute of Limitations

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Patricia Reid (Defendant) obtained a mortgage from BAC Home Loans Servicing, L.P. (BAC) for certain real property located in Queens, New York. In March, 2010, BAC accelerated the debt and initiated a foreclosure action. The New York Supreme Court dismissed the foreclosure action on June 4, 2015, because BAC had failed to comply with multiple court orders. On July 20, 2018, BAC's successor-in-interest, Bank of America, N.A. (Plaintiff), commenced an action to foreclose on Defendant's mortgage.

Defendant brought an affirmative defense that such action was time barred because the statute of limitations had passed. Plaintiff filed a summary judgment motion to strike Defendant's affirmative defense. In its motion, Plaintiff argued that it is an assignee of the United States Department of Housing and Urban Development (HUD) and Federal Housing Administration (FHA), and that because it is an assignee of federal agencies, it is immune from New York's statute of limitations. The New York Supreme Court rejected Plaintiff's motion, and Plaintiff appealed to the New York Appellate Division, Second Department (the Court).

The Court held that "where a loan was insured by a federal agency, but no federal agency had the right to foreclose on the mortgage, the federal government's immunity does not apply to a lender seeking to foreclose." Therefore, Plaintiff was subject to NY CPLR § 213(4)'s 6-year statute of limitations for foreclosure actions.

In reaching its decision, the Court first determined when the statute of limitations began. The Court referenced *Bank of N.Y. Mellon v. Mor*, 201 AD3d 691, which held that "even if a mortgage is payable in installments, once a mortgage debt is accelerated, the entire amount is due and the statute of limitations begins to run on the entire debt." Thus, the statute of limitations began in March 2010, when BAC commenced the initial foreclosure action, and in accordance with NY CPLR § 213(4), expired March 2016. Therefore, Plaintiff had brought the foreclosure action after the statute of limitations had expired.

Since the action was brought after the statute of limitations had passed, the Court analyzed whether Plaintiff was exempt from NY CPLR § 213(4)'s statute of limitations. The Court rejected Plaintiff's arguments that (1) it was an assignee of a federal agency, and (2) that as an assignee, it was immune from statute of limitations. The reasoning presented by the Court was two-fold. First, the "the United States is not bound by a statute of limitations unless Congress has explicitly expressed one" and in this case, there is no federal statute of limitations for mortgage foreclosures brought by federal agencies. Therefore, the federal government is not immune from New York's mortgage foreclosure statute of limitations. Second, the Court distinguished between a loan that is held by a federal agency and a loan that is insured by a federal agency. In this case, the loan was merely insured by a federal agency and therefore HUD or FHA never had the right to foreclose on the property. Since a federal agency had no rights under the mortgage, Plaintiff was not an assignee of a federal agency, and therefore, even if the federal government had immunity from the mortgage foreclosure statute of limitations, Plaintiff was not subject to the federal government's protection.

Overall, this case solidified that a loan insured by the federal government does not provide the loan holder with the same protections as the federal government.