CADWALADER

An Update on Our Practice

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Firmly Fixated With Allonges

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In a recent decision by the Supreme Court of the State of New York in Kings County (the Court)[1], HSBC Bank USA, N.A. (the Plaintiff) initiated a mortgage foreclosure action against Jack and Sabah Srugo (collectively, the Defendant). The Plaintiff moved for summary judgment, and the Defendant cross-moved to dismiss, arguing that the action was barred by the statute of limitations. The Court denied the Plaintiff's summary judgment motion, concluding that the Plaintiff did not have standing to commence the action because it did not prove that the allonge was firmly affixed to the note as required by statute. The Court also held that the action was timely commenced and thus rejected the Defendant's claim that the statute of limitations had expired under the Foreclosure Abuse Protection Act (FAPA).

Standing in a Foreclosure Action:

In a foreclosure action, the plaintiff must establish its prima facie case through the production of the mortgage, the unpaid note and evidence of default.[2] Further, the plaintiff must demonstrate standing by evidencing possession of the subject note, either endorsed in blank or with a firmly affixed allonge endorsed in blank at the commencement of the action. If the endorsement is on an allonge, the plaintiff must show that the allonge is so firmly affixed to the note "as to become a part thereof," as required by UCC 3-202(2).

The original holder of the note was HSBC Mortgage Corporation (USA), a different entity than the Plaintiff, so an allonge was required to show the transfer to the current lender. The note in question contained an endorsement in blank, but the Plaintiff failed to submit evidence demonstrating the allonge was firmly affixed to the note. Since, without evidence that the allonge was firmly affixed to the note, the Plaintiff failed to demonstrate it had a stake in the note and standing in the foreclosure action, the Court denied its summary judgment motion.

FAPA Statute of Limitations:

The Defendant cross-moved to dismiss the complaint as time barred on the ground that the statute of limitations had expired, relying on FAPA. FAPA acts as a protective measure in foreclosure actions (typically for borrowers), warranting that there will be no "unilateral extension of the limitations period" by the lenders or other parties and sticking to a strict limitations period.[3] A foreclosure action is subject to a six-year statute of limitations period, which begins running upon acceleration of the entire amount due when such mortgage is payable in installments[4], and such acceleration occurs when the plaintiff files the summons and complaint with the clerk of the court.[5]

Here, the Plaintiff brought another action to foreclose the same mortgage on November 3, 2014 (Index No. 510266/2014), which was dismissed for failure to prosecute. The current action commenced on November 3, 2020, exactly six years after the original action was brought. The Court denied the Defendant's reliance on the FAPA, since the action was commenced within the six-year statute of limitations.

[1] *HSBC Bank USA, N.A. v. Srugo*, 2025 NY Slip Op 50144(U) (Sup Ct, Kings County 2025).

[2] *Deutsche Bank Natl. Tr. Co. v. Bowens*, 181 A.D.3d 871, 873 (2d Dep't 2020).

[3] New York Laws, Civil Practice Laws and Rules, § 203(h).

[4] *Deutsche Bank Trust Co. Ams. v. Marous*, 186 A.D.3d 669, 670 (2d Dep't 2020).

[5] *U.S. Bank Trust, N.A. v. Aorta*, 167 A.D.3d 807 (2d Dep't 2018); *see* CPLR 213(4).