

SOL: Bleep Out of Luck or Statute of Limitations or Both

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In *HSBC Bank USA, N.A. v. Andrea Joy Nussinow*, the Supreme Court of the State of New York denied HSBC Bank's request to reform a residential mortgage and related foreclosure that included an incorrect legal description of the property, due to the expiration of the statute of limitations.

Nussinow owned two separate parcels of land, the first containing her primary residence and the second a vacant lot. In 2005, Nussinow obtained a residential mortgage that was intended to be secured by both parcels of land. Each parcel of land had the same physical address and tax map identifier.

A foreclosure action was commenced on July 16, 2012, and a judgement of foreclosure was thereafter issued. Subsequent to the foreclosure sale, it was discovered that the legal description provided in the mortgage, Notice of Pendency and Judgement and Foreclosure and Sale omitted the metes and bounds description for the parcel of land containing the residence and only contained the metes and bounds of the vacant lot. HSBC Bank argued that the error was typographical and the mortgage and all subsequent documents should be corrected *nunc pro tunc*. This request constituted an application to reform the mortgage. Additionally, HSBC Bank requested that the foreclosure sale be vacated and that additional time be granted to conduct another foreclosure sale.

The Court denied HSBC Bank's requested relief on the grounds that an action to reform a mortgage due to mistake is subject to a six-year statute of limitations, which commences at the time of the mistake. Since the mortgage was granted by Nussinow in 2005, the statute of limitations expired in 2011 prior to the commencement of the foreclosure action in 2012. While the statute of limitations for a mortgage foreclosure is six years from the date of acceleration, here the mistake constituted a request for reformation which accrued on the date the mortgage was granted.