

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 17th day of January 2024.

P R E S E N T:

HON. WAYNE SAITTA, Justice.

-----X  
Q & O ESTATE CORP.,

Plaintiff

Index No. 515765/2016  
MS 4

-against-

US BANK TRUST NAT'L ASSOC.,  
MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC. AS NOMINEE FOR AMERICAN  
BROKERS CONDUIT, and CITIGROUP GLOBAL  
MARKETS REALTY CORP.,

ORDER

Defendants

-----X

The following papers read on this motion:

NYSCEF Doc Nos

Notice of Motion/Order to Show Cause/  
Petition/Affidavits (Affirmations) and  
Exhibits

80-82

Cross-motions Affidavits (Affirmations)  
and Exhibits

Answering Affidavit (Affirmation)

83

Reply Affidavit (Affirmation)

85

Supplemental Affidavit (Affirmation)

Plaintiff moves for summary judgment on its action to quiet title to the property located at 424 Hart Street, Brooklyn, New York.

On or about January 25, 2008 Defendant Citigroup Global Markets Realty Corp. commenced a foreclosure action and elected to accelerate its mortgage on the property.

Although the Court in the foreclosure action denied an application for the appointment of a referee because Citigroup had not demonstrated it owned the mortgage and note, the Court did not dismiss the foreclosure action.

Citigroup later voluntarily moved to discontinue the Foreclosure Action and the Order of the Court dated November 14, 2012 granting voluntary discontinuation did not

provide that the mortgage was decelerated. Defendant filed another Foreclosure Action April 20, 2017

Plaintiff commenced this action to quiet title of the Subject Property on September 8, 2016 more than 6 years after the commencement of the 2008 foreclosure action. This present action was dismissed by order of J Solomon dated April 19 2017, holding that the acceleration of the mortgage by commencing the foreclosure action was a nullity.

This Court granted renewal and vacated the order dismissing this action based on the subsequent adoption of the Foreclosure Abuse Prevention Act which provided that a discontinuation of a foreclosure action does not constitute a deceleration, nor can it revive or reset a statute of limitations period. (*FAPA §8*, amending CPLR 3217(e)).

FAPA applies to the 2017 foreclosure action because a final judgment of foreclosure and sale has not yet been enforced. (*FAPA §10*).

Defendants' argument that this quiet title action is time barred is misplaced. Actions to quiet title are governed by the ten-year period of CPLR 212(a). (see *Mahabir v Snyder Realty Group*, 217 AD3d 850 [2d Dept 2023]; *Stevens v Communicare Properties LLC*, 111 AD3d 614[2d Dept 2013]).

Wherefore after argument, it is hereby ORDERED that Plaintiff's motion for summary judgment and to dismiss Defendants' counterclaims is granted; and it further, ORDERED that the Kings County Clerk is directed to cancel the lis pendens filed in connection with this action.

Settle Judgement on notice.

ENTER:



JSC

HON. WAYNE SAIITA  
J.S.C.