No. 24-

IN THE

Supreme Court of the United States

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT,

Petitioner,

v.

CASSANDRA FOX,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

CPLR 205-a(a) retroactively renders untimely a large category of mortgage foreclosure claims that, under pre-existing law, were timely and valid, and extinguishes the mortgages underlying those claims. The questions presented by this petition are as follows:

1. Does retroactive application of CPLR 205-a(a) violate the Takings Clause of the Fifth Amendment to the United States Constitution?

2. Does retroactive application of CPLR 205-a(a) violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

Petitioner is U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT. Petitioner was plaintiff-appellant below.

Respondent is Cassandra Fox. Respondent was defendant-respondent below.

JPMorgan Chase Bank, N.A. and Board of Managers of the Ruppert Yorkville Towers Condominium were also defendants below.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT, makes the following disclosure pursuant to this Court's Rule 29.6: U.S. Bank National Association is a wholly owned subsidiary of U.S. Bancorp, which is a publicly traded company.

LIST OF RELATED PROCEEDINGS

Supreme Court of the State of New York, New York County

- *U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT v. Cassandra Fox, et al.*, Index No. 850160/21: Judgment entered Feb. 17, 2022.

Supreme Court of the State of New York, Appellate Division, First Judicial Department

- *U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT v. Cassandra Fox*, No. 2022-01325: Decision and Order entered May 4, 2023; Order denying reargument or, in the alternative, leave to appeal to the New York Court of Appeals entered August 10, 2023.

New York Court of Appeals

- *U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT v. Cassandra Fox*, Order denying leave to appeal entered Sept. 12, 2024; Order denying reargument entered January 14, 2025.

United States Supreme Court

- *U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT v. Cassandra Fox*, No. 24A960

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OPINIONS BELOW

The decision and order of the Supreme Court of the State of New York, New York County, is unreported and is reproduced at 15a–25a. The January 5, 2023 decision and order of the Supreme Court of New York, Appellate Division, First Judicial Department, which was vacated on May 4, 2023, is reported at 212 A.D.3d 422 and 181 N.Y.S.3d 231 and is reproduced at 26a–32a. The May 4, 2023 decision and order of the Supreme Court of New York, Appellate Division, First Judicial Department is reported at 216 A.D.3d 445 and 188 N.Y.S.3d 52 and is reproduced at 1a–4a. The order of the Supreme Court of New York, Appellate Division, First Judicial Department denying Petitioner's motion for reargument or, in the alternative, leave to appeal to the New York Court of Appeals is unreported and is reproduced at 7a–8a. The order of the New York Court of Appeals denying Petitioner's motion for leave to appeal is reported at 42 N.Y.3d 903 and 243 N.E.3d 523 and is reproduced at 9a–10a. The order of the New York Court of Appeals denying Petitioner's motion for reargument is reported at 42 N.Y.3d 1073 and 251 N.E.3d 644 and is reproduced at 11a–12a.

JURISDICTION

On May 4, 2023, the Supreme Court of the State of New York, Appellate Division, First Judicial Department, entered its decision and order affirming the judgment of the trial court dismissing Petitioner's foreclosure complaint and granting Respondent's motion for summary judgment on its counterclaim to discharge the mortgage lien against the subject property.

On June 5, 2023, Petitioner filed a timely motion to reargue or for leave to appeal the First Department's May

4, 2023 decision and order. On August 10, 2023, the First Department entered an order denying Petitioner's motion.

On September 11, 2023, Petitioner timely filed a motion for leave to appeal with the New York Court of Appeals. On September 12, 2024, the Court of Appeals entered an order denying Petitioner's motion for leave to appeal.

On October 15, 2025, Petitioner timely filed a motion for reargument of its motion for leave to appeal. On January 14, 2025, the New York Court of Appeals entered an order denying Petitioner's motion for reargument of its motion for leave to appeal.

On April 5, 2025, Petitioner timely filed an application to extend the time to file a petition for a writ of certiorari from April 14, 2025 to May 14, 2025. On April 10, 2025, Justice Sotomayor granted Petitioner's Application. *See U.S. Bank National Association, as Trustee for the RMAC Trust, Series 2016-CTT v. Fox*, No. 24A960.

This Court has jurisdiction pursuant to 28 USC § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution reads, in relevant part: "nor shall private property be taken for public use, without just compensation."

Section One of the Fourteenth Amendment to the United States Constitution reads, in relevant part: "nor

shall any State deprive any person of life, liberty, or property, without due process of law…."

CPLR 205(a) provides as follows:

> New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

CPLR 205-a(a) provides:

> If an action upon an instrument described under subdivision four of section two hundred

thirteen of this article is timely commenced and is terminated in any manner other than a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for any form of neglect, including, but not limited to those specified in subdivision three of section thirty-one hundred twenty-six, section thirty-two hundred fifteen, rule thirty-two hundred sixteen and rule thirty-four hundred four of this chapter, for violation of any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment, or upon a final judgment upon the merits, the original plaintiff, or, if the original plaintiff dies and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period. For purposes of this subdivision:

1. a successor in interest or an assignee of the original plaintiff shall not be permitted to commence the new action, unless pleading and proving

> that such assignee is acting on behalf of the original plaintiff; and
>
> 2. in no event shall the original plaintiff receive more than one six-month extension.

INTRODUCTION

Petitioner is a successor to a mortgage made by Respondent in connection with Respondent's purchase of residential property in 2008. After a prior foreclosure action brought by Petitioner's predecessor was dismissed on non-merits grounds, Petitioner filed a new foreclosure action in New York Supreme Court relying on a provision of New York's Civil Practice Law and Rules that allows a plaintiff to recommence an action within six months of a non-merits dismissal, even if the statute of limitations expired subsequent to commencement of the dismissed action. *See* CPLR 205(a). While that action was pending, in December 2022, the New York legislature enacted the Foreclosure Abuse Prevention Act ("FAPA"), which became effective on December 30, 2022. FAPA excluded foreclosure actions—and only foreclosure actions—from the right conferred in CPLR 205(a) to re-file otherwise time-barred actions dismissed on non-merits grounds within six months of dismissal. Under FAPA, specifically the newly-enacted CPLR 205-a(a), a foreclosure plaintiff may not re-file if a prior action was dismissed for, *inter alia*, any "violation of any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment." Moreover, CPLR 205-a(a) also

prohibits any "successor in interest or an assignee of the original plaintiff" from bringing the new action, unless the successor in interest or assignee can "plead[] and prove[] that such assignee is acting on behalf of the original plaintiff." In other words, FAPA permits only the original named plaintiff to commence a new action. Furthermore—and crucially—FAPA makes these provisions retroactively applicable "to all [foreclosure actions] in which a final judgment of foreclosure and sale has not been enforced." FAPA § 10.

As a direct result of FAPA, this and many other foreclosure claims that were timely on December 29, 2022 were abruptly barred on December 30—and the mortgages underlying those claims just as promptly extinguished. FAPA provides no vehicle to mortgagees or their assignees to bring those previously timely claims, and provides no compensation for the loss of their property interests. As such, FAPA violates both the Takings Clause and the Due Process Clause.

FAPA violates the Takings Clause under the multi-factor test set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), and also constitutes a *per se* taking under *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992). Under the balancing test articulated in *Penn Central*, courts weigh three factors when determining whether a taking occurred: (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Penn Cent.*, 438 U.S. at 124. All three factors support the conclusion that retroactive application of FAPA in this action

worked an unconstitutional taking. FAPA eliminates the value of mortgages, interferes with investment-backed expectations, and transfers interests in property from one private party to another without advancing any public good. And FAPA works a *per se* taking by completely depriving mortgagees and their assignees of "all economically beneficial us[e]" of their property. *Lucas*, 505 U.S. at 1019. Because application of FAPA resulted in the total elimination of Petitioner's property rights, it is the equivalent of a physical appropriation and thus a taking. *Id.* at 1071.

Retroactive application of FAPA also violates the Due Process clause. Due process "requires that statutes of limitations must 'allow a reasonable time after they take effect for the commencement of suits upon existing causes of action.'" *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 286 (1983). FAPA's modification of the existing statute of limitations governing foreclosure actions rendered Petitioner's foreclosure action—which was timely when it was filed—untimely. And FAPA provides no time, much less a "reasonable time," in which mortgagees or their assignees can bring a claim prior to CPLR 205-a(a) taking effect. Furthermore, retroactive application of FAPA fails under the rational basis balancing test applicable to all retroactive legislation. FAPA's retroactivity does not advance its supposed legislative aim of curbing "abuses" of the foreclosure process because the Legislature cannot curb or deter actions taken in the past. In FAPA, the Legislature singled out a particular class of plaintiffs and saddled them and them alone with a new, unique, harsh, and—importantly and fatally—retroactively applicable set of procedural bars that effectively extinguishes previously

valid foreclosure claims and, by extension, the mortgages underlying them.

Furthermore, the issues raised warrant this Court's review. The decision below directly conflicts with this Court's decision in *Louisville Joint Stock Land Bank*. Like the statute in *Louisville Joint Stock Land Bank*, FAPA has been applied retroactively to "take away rights of [a] mortgagee in specific property…." 295 U.S. at 589. It also conflicts with the principle recognized in *Block* and countless other cases—as well as decisions from several circuits, including the Second Circuit—that statutes of limitations must "allow a reasonable time after they take effect for the commencement of suits upon existing causes of action." Finally, the issues raised in this Petition are important not just to Petitioner but to many litigants in New York, and have arisen and will continue to arise frequently in state and federal courts in New York until this Court intervenes.

STATEMENT

A.

On April 7, 2008, Respondent, Cassandra Fox ("Respondent") borrowed the principal amount of $417,000.00 to purchase property at 1619 3rd Avenue, Apartment 17J, New York, New York 10128 ("Property"). 16a.[1] The debt was secured by a mortgage to the lender, Indymac Bank, F.S.B. ("Indymac"). *See* 16a, 98a. Plaintiff's mortgage was thereafter assigned to OneWest Bank, F.S.B. ("OneWest"), Petitioner's immediate predecessor-in-interest. 99a.

1. "__a" denotes reference to the Appendix.

Respondent defaulted on her loan in August 2010, and, on December 29, 2010, OneWest filed an action to foreclose the mortgage in the New York State Supreme Court, New York County (the "2010 Foreclosure Action"). 2a, 16a. Following protracted litigation, trial was scheduled for December 16, 2019. 16a. OneWest appeared on the trial date and requested an adjournment, as only one of the three witnesses it needed to prove its case had appeared. 17a. The trial court denied the adjournment request and, by order dated February 17, 2019, dismissed the 2010 Foreclosure Action for "failure of [OneWest] to litigate its case at trial as scheduled for December 16, 2019." 2a. OneWest appealed, and by decision and order dated February 9, 2021, the Appellate Division, First Judicial Department affirmed the trial court's dismissal of the 2010 Foreclosure Action. 2a.

B.

On June 18, 2020, while the appeal of the 2010 Foreclosure Action was pending, OneWest assigned the mortgage to Petitioner. 141a. Petitioner filed this Action to foreclose the mortgage on June 9, 2021, under New York's saving's statute, CPLR 205(a). 2a. CPLR 205(a) generally allows a plaintiff the opportunity to recommence an action within six months of a dismissal not on the merits, even if the statute of limitations expired subsequent to commencement of the first action. The right to re-file an action dismissed on a non-merits ground represents longstanding practice in New York courts, dating back centuries. See *Reliance Ins. Co. v. PolyVision Corp.*, 876 N.E.2d 898, 899 (N.Y. 2007) (citing *Gaines v. City of New York*, 109 N.E. 594, 595 (N.Y. 1915)) ("Tracing its roots to seventeenth century England, the remedial concept

embodied in CPLR 205(a) has existed in New York law since at least 1788."). Embodying the preference to "allow plaintiffs to avoid the harsh consequences of the statute of limitations and have their claims determined on the merits," CPLR 205(a) allows recommencement when "a prior action was commenced within the limitations period [and] defendants [were] on notice of the claims." *Malay v. City of Syracuse*, 33 N.E.3d 1270, 1274 (N.Y. 2015) (citing *Goldstein v. New York State Urb. Dev. Corp.*, 921 N.E.2d 164, 168–69 (N.Y. 2009)). As Judge Cardozo wrote in 1915, the "broad and liberal purpose" of the statute "is not to be frittered away by any narrow construction." *Gaines*, 109 N.E. at 596.

In its current form, CPLR 205(a) provides:

> If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff … may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to [CPLR 3216] or otherwise, the judge shall set forth on the record the specific conduct constituting

> the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

In 2008, in response to certain judicial decisions, the Legislature amended CPLR 205(a) to add the requirement that, "[w]here a dismissal is one for neglect to prosecute the action made pursuant to [CPLR 3216] or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation." CPLR 205(a).

According to the Senate Introducer's Memorandum in Support, the bill which resulted in the 2008 amendment "set[ ] forth a resolution to a persistent problem within our courts regarding dismissal for neglect to prosecute the action." Senate Introducer Mem in Support, Bill Jacket, L.2008, ch. 156 at 10. That memorandum continued, "[t]he intent of CPLR 205(a) has been misconstrued allowing for many cases to be dismissed on the basis of neglect to prosecute. The law is presently unclear with respect to what specifically constitutes a neglect to prosecute particularly where it falls outside Rule 3216." *Id.* With respect to the justification for the bill, the memorandum concluded that "[a]mending CPLR 205(a) to provide uniformity would reestablish the original legislative intent of this chapter." *Id.* Thus, this prior legislative history establishes that the original intent was for the-neglect to-prosecute exception to apply in limited circumstances only, not for just any failure to comply with a statute or court rule.

C.

Respondent filed a counterclaim seeking to cancel and discharge the mortgage and notice of pendency. 2a. After summary judgment briefing, the trial court granted Respondent's motion for summary judgment, dismissed Petitioner's Complaint as time-barred and granted summary judgment on Respondent's counterclaim to cancel and discharge Petitioner's mortgage. 15a–25a. On appeal, the First Department initially reversed the trial court. 26a–32a. Applying CPLR 205(a), the First Department concluded that the foreclosure action was "not time-barred, as it was brought within six months of the dismissal of the prior foreclosure action," and because the trial court's decision and order dismissing the 2010 Foreclosure Action "did not set forth on the record any additional instances of neglect by the plaintiff that could 'demonstrate *a general pattern of delay* in proceeding with the litigation.'" 27a.

D.

Respondent moved to reargue and/or renew the First Department's January 5, 2023 decision, contending that, under the newly-enacted FAPA, Petitioner's foreclosure action was time-barred. 7a–8a. As relevant here, FAPA, which became effective on December 30, 2022, excluded foreclosure actions from the right conferred in CPLR 205(a) to re-file otherwise time-barred actions dismissed on non-merits grounds within six-months of dismissal. It did this by amending the CPLR to create a new section 205-a. Subsection (a) of this section contains a savings provision which is materially narrower than section 205(a) in two important respects. First, in contrast to

CPLR 205(a), which denied the right to re-file where a prior action concluded in "a dismissal of the complaint for neglect to prosecute the action" and required that an order dismissing a case for neglect to prosecute "set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation," CPLR 205-a(a) bars re-filing outside of the original limitations period if the prior dismissal was "for any form of neglect." CPLR 205-a(a) then sets forth the following a non-exhaustive list of types of "neglect" that can foreclose re-filing, specifically; "those [dismissals] specified in [CPLR 3126(3)], [CPLR 3215], [CPLR 3216,] and [CPLR 3404], for violation of any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment." Thus, whereas CPLR 205(a) takes away the recommencement option only upon a general pattern of delay, which must be detailed by the trial court in the record, the new CPLR 205-a(a) takes away the benefit in the foreclosure setting when dismissal occurred "for any form of neglect," even if it was only a one-time event. As Judge Grossman of the New York State Supreme Court, Putnam County aptly put it:

> [N]ewly enacted Section 205-a(a) applies *only* to mortgage foreclosure cases; existing Section 205(a) continues to apply in all other cases; consequently, only in the case of mortgage lender, and in that of no other injured plaintiff, is a dismissal resulting from the failure to appear at a single scheduled court conference deemed a "neglect to prosecute" causing a forfeiture of

> the benefit of the statutory "savings provision. There is no conceivable rational basis for that distinction: a single failure to appear evinces neglect to prosecute or it does not, but the answer does not vary according to the identity of the plaintiff. The specter that the Legislature bowed to political pressures and targeted mortgage lenders for retribution is palpable.

U.S. Bank Nat'l Ass'n v. Speller, 80 Misc. 3d 1233(A) (Sup. Ct., Putnam Cty. 2023).

Second, even if a prior dismissal otherwise qualifies under CPLR 205-a(a)(1)'s narrowed savings provision, CPLR 205-a(a)(1) bars "a successor in interest or an assignee of the original plaintiff" from bringing the new action, unless the successor-in-interest or assignee can "plead[] and prove[] that such assignee is acting on behalf of the original plaintiff." In other words, FAPA permits only the original named plaintiff to commence a new action.

The Legislature expressly provided that FAPA "shall take effect immediately and shall apply to all [foreclosure actions] in which a final judgment of foreclosure and sale has not been enforced." FAPA § 10. And, of significance here, New York appellate courts have concluded that FAPA applies retroactively. That is to say, New York courts have applied CPLR 205-a(a) to bar claims that would have fallen within the scope of CPLR 205(a)'s savings provision and thus, under the law as it existed prior to FAPA would have been timely, whether filed before (as here) or after FAPA's effective date. As a direct result of FAPA, foreclosure claims that were timely on

December 29, 2022 were abruptly barred on December 30. Consequently, in this action and many others, FAPA has extinguished otherwise valid and timely foreclosure claims, and with those claims the mortgage interest in the underlying real property. It provides no grace period for plaintiffs to bring previously accrued, valid, and timely claims, and no other means by which plaintiffs can avoid its harsh effects.

E.

Petitioner opposed Respondent's motion to reargue, contending, *inter alia*, that retroactive application of FAPA would violate the Due Process Clause of the Fourteenth Amendment. 40a–50a. The First Department granted Respondent's motion and substituted its prior decision with a new decision and order, dated May 4, 2023, affirming the judgment of the trial court without addressing Petitioner's challenges to FAPA's retroactive application. 1a–4a. Applying the new standard articulated in CPLR 205-a(a), the First Department observed that the "earlier action was dismissed for neglect and 'violation of [a] court rule[].'" 3a (alteration in original). The First Department also reasoned that the second foreclosure action was time-barred because Petitioner "is concededly not the original plaintiff and is not acting on behalf of the original plaintiff." *Id.*

On June 5, 2023, Petitioner moved before the First Department for leave to appeal to the New York Court of Appeals or, in the alternative, for reargument. 51a–94a. Petitioner's motion presented several arguments, among them that the retroactive application of CPLR 205-a(a) violated the Due Process Clause of the Fourteenth

Amendment and the Takings Clause of the Fifth Amendment. 65a–86a. The First Department denied Petitioner's motion. 7a–8a. Petitioner then moved directly before the Court of Appeals for leave to appeal. The Court of Appeals denied leave to appeal. 9a–10a. Petitioner moved in the Court of Appeals for leave to renew or reargue the denial of its motion for leave to appeal, and by order dated January 14, 2025, the Court of Appeals denied Petitioner's motion to renew or reargue. 11a–12a.

ARGUMENT

I. IN RETROACTIVELY APPLYING FAPA, THE DECISION BELOW VIOLATES PETITIONER'S RIGHTS UNDER THE DUE PROCESS AND TAKINGS CLAUSES

A. Retroactive application of CPLR 205-a(a) violates the Takings Clause

Applied retroactively, CPLR 205-a(a) erases an interest in real property, leaving mortgagors with homes they did not pay for and mortgagees and their assignees with nothing. This represents a clear violation of the Takings Clause of the United States Constitution. *See* U.S. CO-NST. amend. V ("[N]or shall private property be taken for public use, without just compensation").

In its takings jurisprudence, this Court has analyzed governmental appropriation of vested property rights under two frameworks. First, a regulatory taking may violate the Takings Clause under the multi-factor test set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978) (holding that, in analyzing

a regulatory takings, a court should consider (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action"). Second, governmental action that deprives an owner of "all economically beneficial us[e]" of the property will be deemed a *per se* taking, that, absent just compensation, violates the Takings Clauses. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1018 (1992). Under either framework, retroactive application of CPLR 205-a(a) to extinguish a foreclosure action that was timely under existing law (i.e., CPLR 205(a)) and eliminate a mortgage without providing any compensation violates the Takings Clause.

1.

For hundreds of years, this Court has protected rights in property from unconstitutional takings through veiled regulatory action. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 590 (1935) (statute void under takings clause because it effected a "taking of substantive rights in specific property acquired by the Bank prior to" its enactment). As this Court explained in *Louisville Joint Stock Land Bank*,

> [i]f the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

295 U.S. at 602. In retroactively applying FAPA to extinguish U.S. Bank's foreclosure claim and discharge the mortgage, the decision below constitutes a judicially approved legislative taking of U.S. Bank's property[2] without just compensation.

Under the balancing test articulated in *Penn Central*, courts weigh three factors when determining whether a taking occurred: (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Penn Cent.*, 438 U.S. at 124. All three factors support the conclusion that retroactive application of FAPA in this action worked an unconstitutional taking.

In evaluating the first *Penn Central* factor concerning economic impact, courts "compare the value that has been taken from the property with the value that remains in the property." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987). Here, the comparison could not be more stark. Before FAPA, U.S. Bank had a valid mortgage which secured a $417,000 loan. Now, because the First Department's retroactive application of FAPA not only extinguished its foreclosure action, but also discharged the mortgage, it has nothing. FAPA's economic impact on Petitioner was the evisceration of its property interest.

The second *Penn Central* factor examines whether the property owner had investment-backed expectations.

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2. That property is both U.S. Bank's underlying lawsuit and its mortgage.

Penn Cent., 438 U.S. at 124. When U.S. Bank acquired the mortgage, it did so knowing that, in the event that the appeal of the 2010 Foreclosure Action was unsuccessful, it could bring a new foreclosure action under CPLR 205(a). After U.S. Bank purchased the mortgage and commenced a new foreclosure action, the legislature passed FAPA and stripped U.S. Bank of its rights under the mortgage. Thus, U.S. Bank's investment-backed expectations were nullified.

The third *Penn Central* factor also demonstrates that retroactive application of FAPA effects a taking. FAPA's retroactivity provision does not "merely affect property interests through 'some public program adjusting the benefits and burdens of economic life to promote the common good,'" but instead "eviscerates" Petitioner's property interest. *Lingle v. Chevron USA Inc.*, 544 U.S. 528, 539 (2005) (quoting *Penn Cent.*, 438 U.S. at 133–34). Moreover, FAPA does not promote any "public good" but simply transfers interests in property from one private party to another—an action that serves "no legitimate purpose of government and [is] thus … void." *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984); *see also id.* (suggesting that real property legislation enacted to benefit "particular class of identifiable individuals" does not serve "a legitimate public purpose"). Moreover, as legislation intended to benefit a specific class of persons (mortgagors) at the expense of another (mortgagees) through what amounts to a transfer of private property interests, FAPA's retroactive application does not "secure[] an average reciprocity of advantage that has been recognized as a justification for various laws." *DeBenedictis*, 480 U.S. at 488 (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922)).

The lower courts' retroactive application of FAPA in this Action satisfies each factor of the *Penn Central* test. FAPA's retroactivity provision thus represents an uncompensated taking of Petitioner's property, in violation of the Takings Clause.

2.

Governmental action constitutes a *per se* taking if it completely deprives an owner of "all economically beneficial us[e]" of the property. *Lucas*, 505 U.S. at 1019. In that event, the "government must pay just compensation" for such a taking. *Id.* 1026–32.

Here, U.S. Bank's rights in the property secured by the mortgage has been rendered worthless because the First Department retroactively applied FAPA. Because application of FAPA resulted in the total elimination of U.S. Bank's property rights, it is the equivalent of a physical appropriation and thus a taking. *Id.* at 1071.

Indeed, the decision below conflicts with long-established law protecting secured creditor's rights in property. In *Louisville Joint Stock Land Bank*, this Court considered whether retroactive application of a statute that abrogated a secured creditor's rights in property was unconstitutional under the Takings Clause. 295 U.S. at 588. There, the Court readily recognized that a statute could not be applied retroactively to "take away rights of [a] mortgagee in specific property…." *Id.* at 589. This Court held that a statute that takes away substantive rights in property acquired by a party prior to its passage without just compensation violates the Takings Clause. *Id.*

Just like the statute this Court struck down in *Louisville Joint Stock Land Bank*, FAPA deprives mortgagees of property rights without just compensation. As in *Louisville Joint Stock Land Bank,* the decision below retroactively applied a statute (here FAPA) to deprive U.S. Bank of its property rights without just compensation. Since the era of the Founders, this Court has recognized that statutes of this kind work an egregious violation of the Takings Clause. *See Calder v. Bull*, 3 U.S. 386, 388 (1798) (*Chase, C.J.*) ("a law that takes property from A and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with SUCH powers").

Thus, whether analyzed as a regulatory taking of property under *Penn Central* or a *per se* taking under *Lucas*, retroactive application of CPLR 205-a(a) violates the takings clause. And, as explained below, *see infra* § II(B), many other foreclosure plaintiffs in the State of New York have suffered and will suffer the same consequence from FAPA in pending cases. This Court should grant the petition to stop the ongoing spree of unconstitutional takings resulting from retroactive application of FAPA in situations exemplified by U.S. Bank's case.

B. Retroactive Application of 205-a(a) violates Due Process

Retroactive application of FAPA also violates the Due Process Clause. "Retroactivity is generally disfavored in the law in accordance with fundamental notions of justice that have been recognized throughout history." *Eastern Enters, v. Apfel*, 524 U.S. 498, 533 (1998) (plurality opinion). This Court has observed that "[e]lementary

considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly," and "settled expectations should not lightly be disrupted." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). Retroactive legislation can compromise "interests in fair notice and repose" protected by the Due Process clause. *Landgraf*, 511 U.S. at 266 (citing *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17 (1976)).

Applying CPLR 205-a(a) to retroactively bar claims that, the day before its enactment, were timely violates due process in two ways. First, due process prohibits retroactive application of a statute that, like FAPA does here, applies a time-bar to extinguish a previously accrued claim without allowing a grace period in which those claims can be filed before the bar takes effect. And second, retroactive application of CPLR 205-a does not represent a rational means of advancing a legitimate legislative interest.

1.

Applied retroactively, FAPA violates the principle, recognized by this Court on countless occasions, that "[t]he Constitution … requires that statutes of limitations must 'allow a reasonable time after they take effect for the commencement of suits upon existing causes of action.'" *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 286 (1983) (quoting *Texaco, Inc. v. Short*, 454 U.S. 516, 527 n.21 (1982)). Retroactive application of shortened limitations periods or new time-bars "deprive the plaintiff of property without affording it at any time an opportunity to be heard in its defense." *Brinkerhoff-*

Faris Tr. & Sav. Co. v. Hill, 281 U.S. 673, 678 (1930). As this Court observed in *Wilson v. Iseminger*, a law that purports to "bar the existing rights of claimants" without affording them an opportunity "to try [those] right[s] in the courts" is, in effect, "not … a statute of limitations, but an unlawful attempt to extinguish rights arbitrarily, whatever might be the purport of its provisions." 185 U.S. 55, 62 (1902); *see also Texaco*, 454 U.S. at 528 ("[W]hen the practical consequences of extinguishing a right are identical to the consequences of eliminating a remedy, the constitutional analysis is the same.").

This Court first articulated that principle in 1870, when it construed a Kansas statute creating a new two-year limitations period to not retroactively bar claims that accrued more than two years before its enactment. *Sohn v. Waterson*, 84 U.S. 596, 598–599 (1873). The Court in *Sohn* explained that it would presume that the legislature did not intend retroactive application of a time bar to actions "accrued more than the limited time before the statute was passed," as "[s]uch an intent would be unconstitutional." *Id.* at 599. Due process would not permit through the retroactive application of new law the extinguishment of accrued unfiled claims that could not possibly satisfy the two-year limitation.

By 1890, this Court had recognized as "settled doctrine" the principle that a legislature may shorten existing limitations periods or create new ones, "provided, in each case, a reasonable time, taking all the circumstances into consideration, be given by the new law for the commencement of suit before the bar takes effect." *Wheeler v. Jackson*, 137 U.S. 245, 255 (1890); *see also Ochoa v. Hernandez y Morales*, 230 U.S. 139,

161–62 (1913) (proclaiming it "well settled that [statutes of limitations] may be modified by shortening the time prescribed, but only if this be done while the time is still running, and so that a reasonable time still remains for the commencement of an action before the bar takes effect"); *accord Atchafalaya Land Co. v. F.B. Williams Cypress Co.*, 258 U.S. 190, 197 (1922); *Union Pac. R. Co. v. Laramie Stock Yards Co.*, 231 U.S. 190, 202 (1913); *U.S. Fid. & Guar. Co. v. United States*, 209 U.S. 306, 316 (1908); *Herrick v. Boquillas Land & Cattle Co.*, 200 U.S. 96, 102 (1906); *Turner v. New York*, 168 U.S. 90, 94 (1897). By contrast, a statute of limitations that retroactively barred accrued claims without allowing "a reasonable time" for parties with an accrued claim to sue "would be unconstitutional and void." *McGahey v. Virginia*, 136 U.S. 685, 707 (1890); *see also Herrick*, 200 U.S. at (1906) (endorsing the view that a statute of limitations would be "unconstitutional" "if construed as absolutely barring causes of action existing at the time of its passage"); *Wilson*, 185 U.S. at 62 (recognizing that "[i]t is essential that such statutes allow a reasonable time after they take effect for the commencement of suits upon existing causes of action").

Retroactive application of CPLR 205-a violates this longstanding principle. After first concluding that U.S. Bank's foreclosure action was timely under CPLR 205(a)—the law in effect at the time Petitioner brought this action—the First Department reversed course, vacating its original decision and concluding that FAPA's claim was untimely under 205-a(a). Thus, FAPA's modification of the existing statute of limitations governing foreclosure actions rendered Petitioner's foreclosure action untimely. And—unlike the statutes this Court upheld more than a century apart in *Texaco* and *Terry*,

FAPA provides no time—much less a "reasonable time" in which mortgagees or their assignees can bring a claim prior to CPLR 205-a(a) taking effect. CPLR 205-a(a) was applied to this action, and others, filed before FAPA took effect pursuant to section 10 of FAPA. That FAPA achieves this end by eliminating a tolling period, rather than shortening an existing statute of limitations or creating a new one, is immaterial; its "practical consequences" are the same—the extinguishment of claims retroactively rendered untimely by FAPA, *see Texaco*, 454 U.S. at 528, and the denial of Petitioner's day in court, *see Wilson*, 185 U.S. at 62. Retroactive application of 205-a(a) to extinguish Petitioner's previously valid foreclosure claim—and with it Petitioner's interest in the property—exemplifies to "a high degree the evil and injustice of retroactive legislation" and is inimical to due process. *Union Pacific*, 231 U.S. at 202.

2.

As explained above, retroactive application of CPLR 205-a(a) violates due process because it retroactively imposes a new bar to extinguish already accrued (and, here, filed) claims. In addition, CPLR 205-a(a) fails under the rational basis balancing test applicable to all retroactive legislation.

A retroactive law violates due process if "the legislature has acted in an arbitrary and irrational way." *Usery*, 428 U.S. at 15. Retroactive application of a newly enacted provision passes this test if it is supported by "a legitimate legislative purpose furthered by rational means." *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). Stated otherwise, the retroactive

statute must have been enacted for a legitimate legislative purpose, and retroactively applying the statute must be a rational means to accomplish such purpose. *See United States v. Carlton*, 512 U.S. 26, 30 (1994). Those requirements have not been met here.

The sponsor memo states the following with respect to the purpose and intent of FAPA:

> The Legislature finds that there is an ongoing problem with abuses of the judicial foreclosure process; that the problem has been exacerbated by court decisions which, contrary to the intent of the Legislature, have given mortgage lenders and loan servicers opportunities to avoid strict compliance with remedial statutes and manipulate statutes of limitation to their advantage; and that the purpose of the present remedial legislation is to clarify the meaning of existing statutes, codify correct judicial applications thereof, and rectify erroneous judicial interpretations thereof.

S.B. S5473D at Sponsor Memo, Purpose and Intent of Bill.

The central purpose of FAPA—to curb "abuses of the foreclosure process" by "avoid[ing] strict compliance with remedial statutes and manipulat[ing] statutes of limitation"—is not rationally advanced by retroactive application of CPLR 205-a(a) to vested interests in property.[3] Eliminating perceived "abuses" of the

3. To be sure, the Legislature is free to make new law amending a statute that courts have interpreted or applied in a manner that

foreclosure process can be achieved by prospectively prohibiting such abuses. Extinguishing valid claims based on actions taken in the past, in reliance on existing law, serves only to punish.

By contrast, in cases in which this Court has permitted retroactive application of a statute, the legislative aim justifying retroactivity was rationally linked to the statute's retroactive application. For example, in *R.A. Gray & Co.*, this Court rejected a due process challenge to retroactive application of a statute that required employers that withdrew from a multiemployer pension plan to pay a fixed debt to the plan and expressly extended that penalty to those who withdrew within the five months prior to enactment. 467 U.S. at 720, 725. After observing that Congress had been "quite explicit" that the statute was made retroactive in order to "prevent employers from taking advantage of a lengthy legislative process and withdrawing while Congress debated," this Court emphasized that the retroactivity period was limited in scope to achieve its aim, noting, "as the amendments progressed through the legislative process, Congress advanced the effective date chosen so that it would encompass only that retroactive time period that Congress believed would be necessary to accomplish its purposes." *Id.* at 730–731.

In *Usery*, this Court upheld legislation requiring coal operators to compensate miners who had already left the industry for the disability caused by the latent effects of exposure to coal dust, resulting in black lung disease, or

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dissatisfies lawmakers, but that prerogative is not in and of itself a rational justification for making the amendment retroactive.

pneumoconiosis. 428 U.S. at 15, 18–20. The *Usery* Court reasoned that the retroactive imposition of liability on the coal operator that previously employed the miner was "justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor." *Id.* at 18.

Unlike the internal revenue code amendment at issue in *R.A. Gray & Co.* and the Black Lung Benefits Act at issue *Usery*, FAPA's retroactive scope does not advance the legislative aim of curbing "abuses" of the foreclosure process, because the Legislature cannot curb or deter actions taken in the past. Instead, it is purely punitive. In FAPA, the Legislature singled out a particular class of plaintiffs and saddled them and them alone with a new, unique, harsh, and—importantly and fatally—retroactively applicable set of procedural bars that effectively extinguishes previously valid foreclosure claims and, by extension, the mortgages underlying them. Every other plaintiff in New York continues to enjoy the right, set forth in CPLR 205(a), to bring a renewal action.

The degree to which FAPA undermines settled expectations and reliance on existing law also undermines its constitutionality. This Court has recognized that "[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992). Disruption of legitimate expectations and reasonable reliance is precisely why "justifications for [prospective application of a statute] may not suffice for retroactive application." *R.A. Gray & Co.*, 467 U.S. at 730. Since the particular concerns

about retroactive legislation arise from the threat such legislation often poses to settled expectations and reliance on existing law, it stands to reason that the stronger the expectations and the more reasonable the reliance, the more likely a retroactive law is to beget arbitrary results. And the reliance interests and settled expectations that FAPA undermines are particularly compelling.

Given the extent of the settled interests at issue and the absence of any justification for unsettling those interests, retroactive application of FAPA is irrational. *See, e.g., R.R. Ret. Bd. v. Alton R. Co.*, 295 U.S. 330 (1935).

The extent of FAPA's retroactivity also weighs against its constitutionality. This Court has tolerated retroactivity "where it is 'confined to short and limited periods required by'" a legitimate legislative purpose. *E. Enters.*, 524 U.S. at 500 (plurality opinion) (quoting *R.A. Gray. & Co.*, 467 U.S. at 731); *accord United States v. Darusmont*, 449 U.S. 292, 296–97 (1981). FAPA's retroactive effect is not "short and limited"—it is boundless. Under section 10 of FAPA, the law applies to any foreclosure action pending in New York courts at the time of its enactment, regardless of when the action was filed. And FAPA attaches retroactive consequences to events in *prior* foreclosure proceedings, without any limitation as to when those events occurred. As a result, decades' worth of mortgage contracts are being suddenly and significantly altered and wiped out without any forewarning.

FAPA's statutory amendments, applied retroactively, violate due process protections against retroactive legislation. This Court's review of the judgment below is urgently needed.

II. The Questions Presented Warrant this Court's Review

A. The Decision Below Conflicts with Relevant Decisions of this Court

FAPA's statutory provisions alter the application of New York's statute of limitations in a manner which retroactively bars claims that were timely under existing law. As explained above, this contravenes over a century of precedent from this Court recognizing that the Constitution prohibits such retroactive application. *See, e.g.*, *Block*, 461 U.S. at 286 n.23; *Herrick*, 200 U.S. at 102; *Wilson*, 185 U.S. at 62; *Sohn*, 84 U.S. at 599.

The decision below is squarely in conflict with this authority. Despite *Wilson*'s teaching, reiterated in *Block*, that statutes of limitations must "allow a reasonable time after they take effect for the commencement of suits upon existing causes of action," 185 U.S. at 62, CPLR 205-a(a) extinguishes not only claims that accrued prior to its effective date, but claims that were *filed* prior to its effective date. CPLR 205-a(a) extinguishes previously timely foreclosure claims without providing a grace period in which lenders or their assignees can bring a previously-accrued claim. Indeed, the court below dismissed Petitioner's foreclosure action despite the fact that Petitioner filed the action in the trial court *before* FAPA was enacted. Moreover, *Texaco* makes clear that procedural statutes that abruptly bar existing and previously valid and timely claims extinguish a right and should be analyzed as such. *See Texaco*, 454 U.S. at 528.

Moreover, the First Department's decision also squarely conflicts with this Court's holding in *Louisville*

Joint Stock Land Bank. Like the statute in *Louisville Joint Stock Land Bank*, FAPA has been applied retroactively to "take away rights of [a] mortgagee in specific property…." 295 U.S. at 589. Thus, like the statute in *Lousiville Joint Stock Land Bank*, FAPA violates the Takings Clause in its retroactive application.

In short, under both the Takings Clause and the Due Process Clause, New York cannot enact a law extinguishing Respondent's mortgage without compensating Petitioner. And it cannot accomplish that same unlawful end through ostensibly procedural means, by retroactively legislating a new statute of limitations or denying Petitioner the right to sue simply because Petitioner was lawfully assigned the mortgage. Accordingly, this Court's review is necessary to correct the lower court's disregard of a long line of binding precedent that governs Petitioner's constitutional challenge.

B. The Decision Below Conflicts with Decisions from Multiple Circuits

The decision below also conflict with decisions of several courts of appeals, including the United States Court of Appeals for the Second Circuit. *See Ross v. Artuz*, 150 F.3d 97, 100 (2d Cir. 1998) ("It is … impermissible for a newly enacted or shortened statute of limitations to extinguish existing claims immediately upon the statute's enactment."); *accord Serv. Emp. Int'l Union, Loc. No. 36, AFL-CIO v. Off. Ctr. Servs., Inc.*, 670 F.2d 404, 413 (3d Cir. 1982); *Brown v. Angelone*, 150 F.3d 370, 373 (4th Cir. 1998); *United States v. Flores*, 135 F.3d 1000, 1004 (5th Cir. 1998); *Lindh v. Murphy*, 96 F.3d 856, 866 (7th Cir. 1996) (en banc), *reversed on other grounds*, 521 U.S. 320

(1997); *O'Connor v. United States*, 133 F.3d 548 (7th Cir. 1998); *United States v. Simmonds*, 111 F.3d 737, 746 (10th Cir. 1997), *overruled on other grounds*, *United States v. Hurst*, 322 F.3d 1256 (10th Cir. 2003).

The nascent split between New York courts and the Second Circuit underscores the urgent need for this Court to resolve the conflict. At least two federal courts have already addressed the constitutionality of CPLR 205-a; both of those judgments have been appealed to the Second Circuit. *See E. Fork Funding LLC v. U.S. Bank, N.A.*, No. 20-CV-3404 (AMD) (RML), 2023 WL 2660645, at *5 (E.D.N.Y. Mar. 23, 2023); *Article 13, LLC v. Ponce de Leon Fed. Bank*, 686 F. Supp. 3d 212, 220 (E.D.N.Y. 2023). Lenders, assignees, and borrowers alike are faced with uncertainty in an area of law where clarity is paramount. *Cf.* Restatement (Third) of Conflict of Laws § 7.05 TD No 4 (2023) (emphasizing a state's "strong interest in ensuring the integrity of its real property records and promoting clarity of title to real property located within its territory"). Moreover, the split between New York state and federal courts will encourage forum shopping between state and federal courts, leading to arbitrary outcomes where the result of a case turns on whether the mortgage holder is a citizen of New York for diversity jurisdiction purposes. Granting the petition and resolving this split will restore uniformity, clarity, and certainty to this important area of law.

C. The Questions Presented are Important and Recurring

Finally, this Court's review is warranted to address the important and recurring questions of whether CPLR

205-a may be applied retroactively consistent with the Due Process and Takings Clauses of the Constitution. Foreclosure cases are common in New York courts; more than 15,000 were filed between October 22, 2022 and October 9, 2023. Hon. Joseph A. Zayas, 2023 Report of the Chief Administrator of the Courts on the Status of Foreclosure Cases Pursuant to Chapter 507 of the Laws of 2009, at 4, https://www.nycourts.gov/legacyPDFS/publications/pdfs/ForeclosureAnnualReport2023.pdf. In the past three years, many of these cases have addressed the constitutionality of CPLR 205-a and other retroactive provisions of FAPA. Since FAPA was enacted in 2022, at least a dozen decisions from lower state courts in New York have confronted and decided constitutional challenges to CPLR 205-a or other retroactively applicable provisions of FAPA.[4] And the

4. *See US Bank Nat'l Ass'n as Tr. for Truman 2012 SC2 Title Tr. v. Calhoun*, No. 2024-03864, 2025 WL 863929, at *1 (N.Y. App. Div. Mar. 20, 2025) (upholding FAPA against due process challenge); *Bayview Loan Servicing, LLC v. Dalal*, 80 Misc. 3d 1100, 1105, 196 N.Y.S.3d 640, 645 (N.Y. Sup. Ct. 2023) (upholding FAPA against due process challenge), *appeal dismissed*, 232 A.D.3d 487, 223 N.Y.S.3d 620 (2024); *Bank of New York Mellon Tr. Co., N.A. as trustee for Certificateholders of Multi-Class Mortg. Pass-Through Certificates, Chaseflex Tr. Series, 2007-M1 v. Huerta*, 82 Misc. 3d 1235(A), 208 N.Y.S.3d 849 (N.Y. Sup. Ct. 2024) (upholding FAPA against due process and takings clause challenges); *U.S. Bank Tr., N.A. as Tr. for LSF9 Master Participation Tr. v. Miele*, 80 Misc. 3d 839, 853, 197 N.Y.S.3d 656, 670 (N.Y. Sup. Ct. 2023) (upholding FAPA against due process and takings clause challenges); *HSBC Bank USA as Tr. of Ace Sec. Corp. Home Equity Loan Tr. v. IPA Asset Mgmt., LLC*, 79 Misc. 3d 821, 825, 190 N.Y.S.3d 622, 626 (N.Y. Sup. Ct. 2023) (upholding FAPA against due process and takings clause challenges); *U.S. Bank Tr., N.A. as Tr. for LSF9 Master Participation Tr. v. Miele*, 80 Misc. 3d 839, 854, 197 N.Y.S.3d 656,

questions presented are not raised only in foreclosure actions, or only in state courts. At least two federal district courts have addressed constitutional challenges to FAPA in quiet title actions filed by mortgagors.[5]

---

671 (N.Y. Sup. Ct. 2023) (upholding FAPA against due process and takings clause challenges); *U.S. Bank Tr. Nat'l Ass'n as Tr. for RCF 2 Acquisition Tr. v. Joerger*, 83 Misc. 3d 605, 617, 214 N.Y.S.3d 876, 887–88 (N.Y. Sup. Ct. 2024) (holding that 205-a violates due process); *HSBC Bank USA, N.A. v. Besharat*, 80 Misc. 3d 269, 284, 195 N.Y.S.3d 380 (N.Y. Sup. Ct. 2023) (holding that 205-a violates due process); *U.S. Bank Nat'l Ass'n v. Speller*, 80 Misc. 3d 1233(A), 197 N.Y.S.3d 925 (N.Y. Sup. Ct. 2023), *supplemented sub nom. U.S. Bank Nat. Ass'n v. Speller* (N.Y. Sup. Ct. 2024) (holding that 205-a violates due process); *U.S. Bank, N.A. v. Nicholson*, 82 Misc. 3d 1239(A), 208 N.Y.S.3d 853 (N.Y. Sup. Ct. 2024) (concluding that applying FAPA as written would violate due process). In a number of other cases, foreclosure plaintiffs have raised the constitutionality of 205-a, but the court declined to reach the issue for one reason or another. *See Wells Fargo Bank, Nat'l Ass'n v. Cafasso*, 223 A.D.3d 695, 697, 203 N.Y.S.3d 166, 168–69 (2024) (remanding to trial court for consideration of constitutional challenge); *Johnson v. Cascade Funding Mortg. Tr. 2017-1*, 220 A.D.3d 929, 932, 196 N.Y.S.3d 796, 799 (2023) (remanding to trial court for consideration of constitutional challenge); *U.S. Bank Nat'l Ass'n v. Santos*, 218 A.D.3d 827, 829, 193 N.Y.S.3d 271 (2023) (remanding to trial court for consideration of constitutional challenge); *U.S. Bank Tr., N.A. as Tr. for LB-Cabana Series IV Tr. v. Leonardo*, 79 Misc. 3d 1075, 1081, 192 N.Y.S.3d 472 (N.Y. Sup. Ct. 2023) (not reaching constitutional issue and deciding case on statutory grounds)

5. *E. Fork Funding*, No. 20-CV-3404 (AMD) (RML), 2023 WL 2660645, at *5; *Article 13*, 686 F. Supp. 3d at 220. Both *East Fork Funding* and *Article 13* held that CPLR 205-a is constitutional, despite existing Second Circuit precedent recognizing that due process forbids retroactive legislation changing a statute of limitations such as to extinguish claims without providing a grace period. *See Ross*, 150 F.3d at 100. Both decisions have been appealed.

The questions presented are also important. FAPA deprives lenders and their assignees of a property interest and confers a windfall on borrowers, who get to discharge the mortgage and keep their property without paying for it. It also undermines settled expectations in the lending market, especially in the secondary mortgage market where investors re-supply capital to enable home ownership. Retroactive application of CPLR 205-a also threatens the secondary market for mortgages in another way. Investors and securitizers of mortgage loans would need to conduct due diligence on every single existing loan to ensure that the statute of limitations has not expired due to a prior non-merits disposition of a foreclosure action. And because lenders often obtain funds

---

In *East Fork Funding*, the Second Circuit certified to the New York Court of Appeals the question of "[w]hether Sections 4 and/or 8 of the Foreclosure Abuse Prevention Act, codified at N.Y. C.P.L.R. 203(h) and 3217(e), respectively, apply to a unilateral voluntary discontinuance taken prior to the Act's enactment." 118 F.4th 488 (2d Cir. 2024). The Court of Appeals denied certification. *E. Fork Funding, LLC v. U.S. Bank, Nat'l Ass'n*, 245 N.E.3d 1147 (N.Y. 2024). In *Article 13*, the Second Circuit on March 25, 2025 certified the following two questions to the Court of Appeals:

> 1. Whether, or to what extent does, Section 7 of the Foreclosure Abuse Prevention Act, codified at N.Y. C.P.L.R. 213(4)(b), apply to foreclosure actions commenced before the statute's enactment?
>
> 2. Whether FAPA's retroactive application violates the right to substantive and procedural due process under the New York Constitution, N.Y. Const., art. I, § 6?

132 F.4th 586, 594 (2d Cir. 2025).

As of the date of this petition, the Court of Appeals has yet to respond to the certification in Article 13.

to originate new loans by selling or securitizing existing loans, CPLR 205-a also threatens to harm prospective homeowners by increasing lending rates.

* * *

In this Action and many others like it, courts have applied FAPA to retroactively extinguish previously timely foreclosure claims on defaulted mortgages and discharge the mortgages. FAPA provides no vehicle to mortgagees or their assignees to bring those previously timely claims, and provides no compensation for the loss of their property interests. As such, retroactive application of FAPA violates both the Takings Clause and the Due Process Clause.

Furthermore, the decision below directly conflicts with this Court's Takings Clause and Due Process Clause jurisprudence, as well as decisions of several circuits, including the Second Circuit, which includes the State of New York. The issues raised in this Petition are important not just to Petitioner but to many litigants in New York, and have arisen and will continue to arise frequently in state and federal courts in New York until this Court intervenes.

CONCLUSION

The petition for a writ of certiorari should be granted.

May 14, 2025

Respectfully Submitted,

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APPENDIX A — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, FILED MAY 4, 2023

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

Kern, J.P., Friedman, Gesmer, González, Mendez, JJ.

16928

Index No. 850160/21
Case No. 2022-01325

U.S. BANK NATIONAL ASSOCIATION *etc.*,

Plaintiff-Appellant,

-against-

CASSANDRA FOX,

Defendant-Respondent,

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.

Order, Supreme Court, New York County (Francis A. Kahn, III, J.), entered on or about February 15, 2022, which granted defendant Cassandra Fox's motion to dismiss the complaint as time-barred and for summary judgment on her counterclaim to cancel and discharge the mortgage and notice of pendency, unanimously affirmed, without costs.

Appendix A

On December 29, 2010, plaintiff's predecessor, OneWest Bank, F.S.B., commenced an action to foreclose the mortgage. By order dated December 17, 2019, Supreme Court dismissed the action "for failure of [OneWest Bank, F.S.B.] . . . to litigate its case at trial as scheduled for December 16, 2019." This Court affirmed, holding that the motion court providently exercised its discretion under 22 NYCRR 202.27(b) (*see OneWest Bank, FSB v Fox*, 191 AD3d 481 [1st Dept 2021]).

Plaintiff commenced this new foreclosure action on June 9, 2021. Defendant moved to dismiss the complaint as time-barred and for summary judgment on defendant's counterclaim to discharge the mortgage lien against the property. By order dated February 15, 2022, the court granted defendant's motion, dismissed the complaint and discharged the mortgage and lis pendens.

Plaintiff appealed to this Court. After submission of briefs and oral argument, but before this Court had issued an order on the appeal, the Legislature enacted the Foreclosure Abuse Prevention Act (FAPA) on December 30, 2022. The parties were permitted to brief the effect of FAPA on this case.

FAPA provides that it "shall take effect immediately and shall apply to all actions commenced on an instrument described under subdivision four of section two hundred thirteen of the civil practice law and rules in which a final judgment of foreclosure and sale has not been enforced" (2022 McKinney's Sess Law News of NY, ch 821, § 10). Accordingly, it applies to this foreclosure action.

Appendix A

FAPA amends CPLR 205 to provide that it no longer applies to mortgage foreclosure actions (CPLR 205[c]), and creates a new statute, CPLR 205-a. Like CPLR 205, CPLR 205-a contains a "savings clause" provision that permits plaintiff in a mortgage foreclosure action that has been terminated to commence a new action within six months. However, CPLR 205-a provides that, in order for a plaintiff to take advantage of this clause, the earlier action must not have been dismissed "for any form of neglect" or "for violation of any court rules." Unlike CPLR 205, where the earlier termination is for neglect, CPLR 205-a bars a party from invoking the savings clause even if the court failed to "set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay" (CPLR 205). In addition, CPLR 205-a provides that "a successor in interest or an assignee of the original plaintiff shall not be permitted to commence the new action, unless pleading and proving that such assignee is acting on behalf of the original plaintiff," and that the original plaintiff may only receive one six-month extension (CPLR 205-a[a][1], [2]).

Here, the motion court noted that the earlier action was dismissed based on plaintiff's failure to appear ready for trial and that the case had been "languishing since 2010." This Court, in affirming the dismissal of the earlier action, cited 22 NYCRR 202.27. Accordingly, the earlier action was dismissed for neglect and "violation of [a] court rule[]" (CPLR 205-a[a]). Furthermore, plaintiff in this action is concededly not the original plaintiff and is not acting on behalf of the original plaintiff. Accordingly, plaintiff is statutorily barred from commencing this action.

We have considered the parties' remaining arguments and find them unavailing.

The Decision and Order of this Court entered herein on January 5, 2023 is hereby recalled and vacated (*see* M-775 decided simultaneously herewith).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 4, 2023

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

APPENDIX B — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, FILED MAY 4, 2023

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

PRESENT: Hon. Cynthia S. Kern, Justice Presiding,
David Friedman
Ellen Gesmer
Lizbeth González
Manuel J. Mendez,
Justices.

Motion No. 2023-00775
Index No. 850160/21
Case No. 2022-01325

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT,

Plaintiff-Appellant,

-against-

CASSANDRA FOX,

Defendant-Respondent,

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.

Appendix B

Defendant-respondent having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on January 05, 2023 (Appeal No. 16928),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the branch of the motion seeking reargument is granted and, upon reargument, the decision and order of this Court entered on January 05, 2023 (Appeal No. 16928) is recalled and vacated and a new decision and order substituted therefor. (See Appeal No. 16928 decided simultaneously herewith.) That branch of the motion that is for leave to appeal is denied as moot.

ENTERED: May 04, 2023

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

APPENDIX C — ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, FILED AUGUST 10, 2023

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

PRESENT: Hon. Cynthia S. Kern, Justice Presiding,
David Friedman
Ellen Gesmer
Lizbeth González
Manuel J. Mendez,
Justices.

Motion No. 2023-02519
Index No. 850160/21
Case No. 2022-01325

U.S. BANK NATIONAL ASSOCIATION, *etc.*,

Plaintiff-Appellant,

-against-

CASSANDRA FOX,

Defendant-Respondent,

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.

Plaintiff-appellant having moved for reargument of, or in the alternative, for leave to appeal to the Court of

Appendix C

Appeals from, the decision and order of this Court, entered on May 04, 2023 (Appeal No. 16928),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: August 10, 2023

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

APPENDIX D — ORDER OF THE STATE OF NEW YORK, COURT OF APPEALS, DECIDED SEPTEMBER 12, 2024

STATE OF NEW YORK
COURT OF APPEALS

Mo. No. 2023-651

U.S. BANK NATIONAL ASSOCIATION, &C.,

Appellant,

v.

CASSANDRA FOX,

Respondent,

et al.,

Defendants.

Decided and Entered on the
twelfth day of September, 2024

Present, Hon. Rowan D. Wilson, *Chief Judge*, ***presiding***.

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

Appendix D

ORDERED, that the motion is denied with one hundred dollars costs and necessary reproduction disbursements.

Judge Halligan took no part.

/s/ H Davis
Heather Davis
Deputy Clerk of the Court

APPENDIX E — ORDER OF THE STATE OF NEW YORK, COURT OF APPEALS, DECIDED JANUARY 14, 2025

STATE OF NEW YORK
COURT OF APPEALS

Mo. No. 2024-695

U.S. BANK NATIONAL ASSOCIATION, &C.,

Appellant,

v.

CASSANDRA FOX,

Respondent,

et al.,

Defendants.

Decided and Entered on the
fourteenth day of January, 2025

Present, Hon. Rowan D. Wilson, *Chief Judge*, ***presiding***.

Appellant having moved for reargument of a motion for leave to appeal to the Court of Appeals in the above cause;

Appendix E

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.

Judge Halligan took no part.

/s/ H Davis
Heather Davis
Clerk of the Court

APPENDIX F — DECISION AND ORDER ON MOTION OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, FILED FEBRUARY 8, 2022

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PART 32
INDEX NO. 850160/2021
MOTION SEQ. NO. 001

U.S. BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE FOR THE RMAC TRUST,
SERIES 2016-CTT,

Plaintiff,

v.

CASSANDRA FOX, JPMORGAN CHASE BANK,
N.A., BOARD OF MANAGERS OF THE RUPPERT
YORKVILLE TOWERS CONDOMINIUM,
JOHN DOE NUMBER ONE
JOHN DOE NUMBER TEN,

Defendant.

Filed February 8, 2022

PRESENT: HON. FRANCIS KAHN, III
Justice

Appendix F

DECISION AND ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74 were read on this motion to/for DISMISS.

Upon the foregoing documents, Plaintiff's motion is withdrawn pursuant to Plaintiff's correspondence dated October 14, 2021 (NYSCEF Doc No 48).

2/8/2022	/s/ Francis A.Kahn, III
DATE	FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:	☐	CASE DISPOSED
	☐	GRANTED
APPLICATION:	☐	SETTLE ORDER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/ REASSIGN
	☐	DENIED
	☒	NON-FINAL DISPOSITION
	☐	GRANTED IN PART
	☐	SUBMIT ORDER
	☐	FIDUCIARY APPOINTMENT
	☒	OTHER
	☐	REFERENCE

APPENDIX G — DECISION + ORDER ON MOTION OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, FILED FEBRUARY 17, 2022

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS KAHN, III **PART** 32
Justice

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT,

Plaintiff,

-v-

CASSANDRA FOX, JPMORGAN CHASE BANK, N.A., BOARD OF MANAGERS OF THE RUPPERT YORKVILLE TOWERS CONDOMINIUM, JOHN DOE NUMBER ONE JOHN DOE NUMBER TEN,

Defendant.

INDEX NO. 850160/2021

MOTION DATE _____

MOTION SEQ. NO. 002

Filed February 17, 2022

Appendix G

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 75
were read on this motion to/for **DISMISS**

Upon the foregoing documents, the motion is determined as follows:

This is an action to foreclosure on a mortgage on residential real property located at 1619 3rd Avenue, Unit 17J, New York, New York. The mortgage at issue was given by Defendant Cassandra C. Fox ("Fox") to secure a loan of $417,000.00 that was documented by a note dated April 7, 2008. Defendant Fox apparently first defaulted on this loan on August 1, 2010. The purported holder of the mortgage at that time commenced an action to foreclose by filing a summons and complaint on December 29, 2010 (*see* NY Cty Index No 810136/2010). That action was actively litigated for some 7 years and included two summary judgment motions and several hearings. Plaintiff filed a note of issue in 2018 and by order dated August 14, 2019, Justice Deborah Kaplan referred the matter to Justice Mary V. Rosado for a trial to be completed before the end of 2019. Justice Rosado held a pre-trial conference on October 22, 2019 and the parties consented to a trial date of December 16, 2019.

On that date, counsel for both parties appeared and a colloquy on the record was held. Plaintiff's counsel appeared and informed the Court that they could

commence, but not complete a trial that day as two of their three witnesses were unavailable. Plaintiff's counsel asserted to the Court that the witness unavailability was the result of "law office failure". Defendant's counsel orally requested the case be dismissed and Justice Rosado granted the motion on the record. As a reason for the dismissal, Justice Rosado noted it was because Plaintiff was "not moving forward". Plaintiff's request to commence the trial with the witness that was present and for a continuance to produce the other witnesses was denied.

Justice Rosado issued an order dated December 17, 2019 dismissing Plaintiff's complaint which stated, virtually in its entirety, as follows:

> This action is dismissed for failure of the Plaintiff One West Bank, FSB to litigate its case at trial as scheduled for December 16, 2019. Plaintiff was aware of the trial date after a pre-trial conference was held on October 22, 2019 pursuant to an Order dated August 14, 2019 (Kaplan, J.). Counsel from Plaintiff's firm appeared on that date and the trial date, December 16, 2019, was set upon consent of the parties. On the trial date, Plaintiff's counsel appeared, by a different attorney from the same firm, and requested an adjournment due to law office failure. Plaintiff's counsel claimed that the attorney who appeared from his office for the pre-trial conference failed to follow proper office protocol to ensure that all necessary

> witnesses would be available for trial. As such, Plaintiff's counsel only had one of three witnesses needed to prove its case. However, during the pre-trial Plaintiff's counsel advised the Court that she had only one witness for trial. On the date of trial, he claimed that he had two additional unavailable witnesses. This case has been languishing since 2010. Accordingly, the complaint is dismissed and the Clerk is directed to enter judgment accordingly.

By decision dated February 9, 2021, the Appellate Division, First Department affirmed Justice Rosado's decision holding as follows:

> The court providently dismissed this foreclosure action for failure of plaintiff to litigate its case at trial as scheduled for December 16, 2019 (*see* 22 NYCRR 202.27 [b]; *see also Campos v New York City Health and Hosps. Corp.*, 307 AD2d 785, 763 N.Y.S.2d 292 [1st Dept 2003]). The court properly rejected plaintiff's unsubstantiated argument of law office failure as the reason it was unable to make out a prima facie case at trial unless granted an adjournment or continuance (*see also Mazzola v Village Hous. Assoc., LLC,* 164 AD3d 668, 669, 83 N.Y.S.3d 127 [2d Dept 2018]). Given plaintiff's failure to diligently prepare for trial, the court providently denied its request for an adjournment or continuance (*see generally Matter of Global Liberty Ins.*

Appendix G

Co. v Perez, 168 AD3d 592, 593, 93 N.Y.S.3d 18 [1st Dept 2019]).

(*Onewest Bank, FSB v Fox,* 191 AD3d 481 [1st Dept 2021].

Thereafter, Plaintiff's motion to vacate the dismissal of the 2010 action was denied by order of Justice Rosado dated March 31, 2021. Plaintiff again appealed, but Defendant Fox's motion to dismiss the appeal was granted by decision of the Appellate Division, First Department dated August 26, 2021. In the interim, Plaintiff commenced this action on June 9, 2021 with the filing of a summons and complaint. Defendant Fox served and filed an answer containing eight affirmative defenses, including expiration of the statute of limitations, and a counterclaim pursuant to Article 15 of the Real Property Actions and Proceedings Law.

Now, Defendant Fox moves to dismiss pursuant to CPLR §3211[a][5], for summary judgment on her counterclaim and to cancel the notice of pendency. Plaintiff opposed the motion.

On a motion to dismiss a cause of action as barred by the statute of limitations the movant bears the initial burden of showing *prima facie* that the time to sue has expired (*see Wilmington Sav. Fund Socy., FSB v Alam,* 186 AD3d 1464 [2d Dept 2020]; *Benn v Benn,* 82 AD3d 548 [1st Dept 2011]). An action to foreclose on a mortgage is governed by a six-year statute of limitations (CPLR

§214[6]; *Citimortgage, Inc. v Dalal*, 187 AD3d 567 [2d Dept 2020]). To meet its burden, "the Defendant must establish, *inter alia*, when the Plaintiff's cause of action accrued" (*Lebedev v Blavatnik*, 144 AD3d 24, 28 [1st Dept 2016], *quoting Cottone v Selective Surfaces, Inc.*, 68 AD3d 1038, 1041 [2d Dept 2009]). "The law is well settled 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" (*EMC Mtge. Corp. v Patella*, 279 AD2d 604, 605 [2d Dept 2001]). The commencement of an action to foreclose on a mortgage can constitute an unequivocal act of accelerating the mortgage note (*see Freedom Mortgage Corp. v Engel*, 37 NY3d 1 [2021]). Where the movant demonstrates preliminarily that a claim is barred by the statute of limitations, the plaintiff must establish that a toll or stay is applicable or that an issue of fact exists (*see Matter of Schwartz*, 44 AD3d 779 [2d Dept 2007]).

The commencement of the 2010 action was an unequivocal act of acceleration (*see eg HSBC Bank United States, N.A. v Hochstrasser*, 193 AD3d 915 [2d Dept 2021]). Among other things, the complaint expressly stated that "[p]ursuant to the terms of the note and mortgage, the plaintiff has elected and does hereby elect to declare the entire principal balance to be due and owing." Based upon the foregoing, Defendant Fox established that the statute of limitations in this matter accrued on December 29, 2010 and that more than six-years transpired before the action was dismissed.

In opposition, Plaintiff posits that the action was timely commenced based upon under the savings provision

of CPLR §205[a]. That section permits a plaintiff to commence a new action based upon the same transaction within six months of the conclusion of the prior action where it "is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action or a final judgment on the merits" (CPLR §205[a]). "The statute is not technically a 'toll,' as it does not stop the underlying statute of limitations from running, but is instead a six-month 'extension' of the time for commencing the new action when its qualifying circumstances are present" (*Sokoloff v Schor*, 176 AD3d 120, 126-127 [2d Dept 2019]).

Plaintiff's assertion that the exclusion from CPLR §205[a] of cases dismissed for neglect to prosecute is limited to only those instances when CPLR §3216 is applied is without merit (*see Andrea v. Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C.*, 5 NY3d 514, 520 [2005]). CPLR §205[a] expressly provides that dismissal for neglect to prosecute the action may be "made pursuant to rule thirty-two hundred sixteen of this chapter *or otherwise*" (emphasis added), provided the Court "set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation" (*see also Sokoloff v Schor*, supra at 133; *Marrero v Nails*, 114 AD3d 101 [2d Dept 2013]; *Berman v Szpilzinger*, 200 AD2d 367 [1st Dept 1994]). Similarly, Plaintiff's assertion that a dismissal pursuant to Uniform Rules for Trial Courts §202.27[b][22 NYCRR] cannot constitute

neglect to prosecute is unsupported (*see Marrero v Nails,* supra at 110 ["Accordingly, the dismissal of an action pursuant to 22 NYCRR 202.27 (b) may, under appropriate circumstances, constitute a dismissal for neglect to prosecute"]).

The basis of dismissal of Plaintiff's 2010 foreclosure action, failure to proceed to trial on a final date, is definitively neglect to prosecute (*see Laffey v New York,* 72 AD2d 685 [1st Dept 1979], *aff'd* 52 NY2d 797 [Dismissal of action was for neglect to prosecute where Plaintiff announced "ready to go to trial, but . . . had no witnesses available and could not 'actually proceed to trial'"]; *see also Keel v Parke, Davis & Co.,* 72 AD2d 546 (2d Dept 1979]; *Wright v. L. C. Defelice & Son, Inc.,* 22 AD2d 962 [2d Dept 1964].

The prior action was dismissed by Justice Rosado on the appointed trial date because Plaintiff's counsel therein was not prepared to try the case to completion. The finality of the trial date and the reason therefore was made patently apparent to the parties at the pre-trial conference held two months earlier. Justice Rosado made clear both on the record and in her written decision the basis for her dismissal was "failure of the Plaintiff . . . to litigate its case at trial." Justice Rosado also stated that the case was "languishing since 2010". Further, Plaintiff's request that the dismissal be "without prejudice" was rebuffed by Justice Rosado (*cf.* Deutsche *Bank Natl. Trust Co. v Baquero,* 192 AD3d 660 [2d Dept 2021]). As explained by the Court of Appeals:

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> Where a case is dismissed for (neglect to prosecute], it is not acceptable to permit plaintiffs to start all over again, after the statute of limitations has expired. To countenance that result would be to convert the dismissal itself into just one more opportunity to try again . . .

(*Andrea v Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C.*, supra at 521).

Accordingly, CPLR §205[a] is inapplicable herein and the branch of Defendant Fox's motion for summary judgment dismissing Plaintiff's complaint as barred by the statute of limitations is granted.

As to the branch of Defendant Fox's motion for summary judgment on its counterclaim, "[p]ursuant to RPAPL 1501(4), a person having an estate or an interest in real property subject to a mortgage can seek to cancel and discharge that encumbrance where the period allowed by the applicable statute of limitations for the commencement of an action to foreclose the mortgage has expired, provided that the mortgagee or its successor was not in possession of the subject real property at the time the action to cancel and discharge the mortgage was commenced" (*1081 Stanley Ave., LLC v Bank of N.Y. Mellon Trust Co., N.A.*, 179 AD3d 984, 986 [2d Dept 2020]). Accordingly, based on the foregoing determination of the Court, Defendant Fox established *prima facie* entitlement to judgment as a matter of law on her counterclaim. No issue of fact exists.

Accordingly, it is

ORDERED that Defendant Cassandra C. Fox's motion for summary judgment is granted and the Plaintiff's complaint is dismissed, and it is

ORDERED that Defendant Cassandra C. Fox's motion for summary judgment on her counterclaim is granted, and it is

ORDERED that the mortgage dated April 7, 2008 encumbering 1619 3rd Avenue, Unit 17J, New York, New York (CRFN No.: 2008000168013) is cancelled and discharged and the New York City Department of Finance, Office of the City Register is directed to amend its records to reflect this cancellation and discharge, and it is

ORDERED that the notice of pendency filed in the New York County Clerk's Office filed against the real property located at 1619 3rd Avenue, Unit 17J, New York, New York (Block 1536, Lot 1546) is discharged, and the Clerk shall note same in its records.

2/15/202 2 — /s/ Francis A. Kahn, III

DATE — FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE: ☒ CASE DISPOSED

☒ GRANTED ☐ DENIED

APPLICATION: ☐ SETTLE ORDER

CHECK IF

APPROPRIATE: ☐ INCLUDES TRANSFER/REASSIGN

Appendix G

☐ NON-FINAL DISPOSITION
☐ GRANTED IN PART ☐ OTHER
☐ SUBMIT ORDER
☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

APPENDIX H — ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, FILED JANUARY 5, 2023

SUPREME COURT OF THE STATE OF
NEW YORK APPELLATE DIVISION,
FIRST JUDICIAL DEPARTMENT

Index No. 850160/21
Case No. 2022-01325

16928

U.S. BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE FOR THE RMAC TRUST,
SERIES 2016-CTT,

Plaintiff-Appellant,

-against-

CASSANDRA FOX,

Defendant-Respondent,

JPMORGAN CHASE BANK, N.A., *et al.*,

Defendants.

Kern, J.P., Friedman, Gesmer, González, Mendez, JJ.

Appendix H

Order, Supreme Court, New York County (Francis A. Kahn, III, J.), entered on or about February 15, 2022, which granted defendant Cassandra Fox's motion for summary judgment dismissing the complaint as time-barred and for summary judgment on her counterclaim to cancel and discharge the mortgage and notice of pendency, reversed, on the law, without costs, and the motion denied.

The action was not time-barred, as it was brought within six months of the dismissal of the prior foreclosure action (*see* CPLR 205[a]).[1] While the prior action was dismissed due to plaintiff's unreadiness to go forward with the trial as scheduled on December 16, 2022 (*see Onewest Bank, FSB v Fox*, 191 AD3d 481 [1st Dept 2021]), the *Onewest* trial court, in dismissing the case, did not set forth on the record any additional instances of neglect by the plaintiff that could "demonstrate *a general pattern of delay* in proceeding with the litigation" (CPLR 205[a] [emphasis added]), as opposed to one particular lapse, namely, the lack of readiness on the trial date. The court's statement that the case had been "languishing since

1. CPLR 205(a) provides in pertinent part: "If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment on the merits, the plaintiff . . . may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination. . . . Where a dismissal is one for neglect to prosecute the action made pursuant to [CPLR 3216] or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay."

2010" does not suffice, inasmuch as it fails to specify any "*specific conduct* . . . demonstrat[ing] a general pattern of delay" (CPLR 205[a] [emphasis added]). As this Court has recently held, a "general pattern of delay" must comprise more than one instance of dilatory conduct (*see U.S. Bank N.A. v Kim*, 192 AD3d 612, 613 [1st Dept 2021], *appeal dismissed* 37 NY3d 932 [2021] [the plaintiff was entitled to the benefit of CPLR 205(a) because the order dismissing its prior action pursuant to CPLR 3215(c), based on a failure to seek a default judgment within one year of the default, "did not include any findings of specific conduct demonstrating a general pattern of delay"]; *see also HSBC Bank USA, N.A. v Janvier*, 187 AD3d 999, 1001 [2d Dept 2020] [same]; *U.S. Bank Trust, N.A. v Moomey-Stevens*, 168 AD3d 1169, 1170-1171 [3d Dept 2019] [same]). In brief, a single data point does not a "general pattern" make.

The dissent misplaces its focus on whether the order dismissing the *Onewest* action—which cited as its basis 22 NYCRR 202.27(b), not CPLR 3216—may nonetheless be deemed to have been a dismissal "for neglect to prosecute the action made pursuant to [CPLR 3216] *or otherwise*" within the meaning of CPLR 205(a) (emphasis added). Even if the *Onewest* action was dismissed for neglect, the concluding sentence of CPLR 205(a) (added by L 2008, ch 156, § 1) requires an on-the-record recitation of sufficient examples of neglect in prosecuting the action to "demonstrate a general pattern of delay in proceeding with the litigation." As one commentator observed in the year of the enactment of the relevant amendment to CPLR 205(a):

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"The amendment limits the circumstances in which dismissal for neglect to prosecute will fall within the exception to the six-month recommencement benefit. The newly-added sentence imposes two preconditions to the application of the neglect-to-prosecute exception. First, the court in the previously dismissed action must have 'set forth on the record the specific conduct constituting the neglect'; and second, such conduct must 'demonstrate a general pattern of delay in proceeding with the litigation.'

"Thus, an action that was dismissed because of some type of neglect to prosecute does not lose the benefit of CPLR 205(a)'s six-month recommencement period unless such neglect consisted of 'a general pattern of delay in proceeding with the litigation' (emphasis added). If the prior dismissal was based on neglect of lesser magnitude, the plaintiff can take advantage of CPLR 205(a)'s recommencement benefit. Furthermore, the 'general pattern of delay' must have been 'set forth' in the record of the court in which the neglect-to-prosecute dismissal occurred" (Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR 205, 2022 Pocket Part at 266).

Stated otherwise, to deprive plaintiff of the recommencement benefit of CPLR 205(a), it was not enough for the *Onewest* dismissal order to specify the particular instance of neglect on which the dismissal was based. Rather, the *Onewest* court was required to set forth on the record sufficient additional examples of neglectful "specific conduct" by plaintiff to "demonstrate a general pattern of delay." However, the only "specific conduct" the *Onewest* trial court described on the record in dismissing the case was plaintiff's unreadiness to go forward on the scheduled trial date. Neither the dissent nor defendant identifies any other "specific conduct" constituting neglect by plaintiff that was set forth on the record by the *Onewest* court. Accordingly, inasmuch as the *Onewest* record sets forth only one instance of "specific conduct [by plaintiff] constituting . . . neglect," which is not sufficient to "demonstrate a general pattern of delay in proceeding with the litigation," plaintiff was entitled to rely on CPLR 205(a) in commencing this action.

We have considered defendant's remaining arguments and find them unavailing.

All concur except Gesmer, J. who dissents in a memorandum as follows:

Appendix H

GESMER, J. (Dissenting)

CPLR 205(a) acts as a tolling provision to permit filing of a new action after the expiration of the statute of limitations where a prior action was timely commenced and later terminated. However, the statute excludes from the savings clause cases that were dismissed for neglect to prosecute (*id.*). Because the order dismissing the prior action in this case "set forth on the record specific conduct constituting the [plaintiff's] neglect," and that conduct "demonstrat[ed] a general pattern of delay in proceeding with the litigation" (*id.*), I disagree with my colleagues that plaintiff may invoke the savings clause of CPLR 205(a). Accordingly, I respectfully dissent.

Contrary to the majority's conclusion, the prior action was not dismissed solely because plaintiff failed to proceed to trial on the date scheduled. Rather, the order noted that the case had been "languishing since 2010," and plaintiff was still not prepared to prove its prima facie case on the scheduled trial date on December 16, 2019. Furthermore, the order stated that, at the October 22, 2019 pretrial conference, plaintiff's counsel had advised the court that plaintiff would present one witness at trial, and the parties agreed to the December 16, 2019 trial date. On the trial date, however, plaintiff's counsel announced that, to prove its case, it would require an additional two witnesses who were not available that day. Based on plaintiff's neglect and lengthy pattern of delay, the court granted defendant's oral motion to dismiss. This Court affirmed the dismissal (*Onewest Bank, FSB v Fox*, 191 AD3d 481, 481 [1st Dept 2021]).

Plaintiff argues that, because the order dismissing the prior proceeding did not cite CPLR 3216 but rather cited 22 NYCRR 202.27(b), the prior action was not dismissed for failure to prosecute. However, "the fact that the prior action was expressly dismissed pursuant to 22 NYCRR 202.27(b) does not preclude a determination that the prior action was, in fact, dismissed . . . for neglect to prosecute" (*Marrero v Crystal Nails*, 114 AD3d 101, 110 [2d Dept 2013]).

Moreover, CPLR 205(a) was amended in 2008 to provide that, "[w]here a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chapter *or otherwise* (emphasis added)," the court must specify the conduct constituting the neglect. Plainly, this amendment contemplates that a court might dismiss an action for failure to prosecute without citing to CPLR 3216, and that action could be excluded from the operation of the savings clause. Since the order dismissing the prior action set forth the specific course of conduct constituting plaintiff's failure to prosecute, I would find that plaintiff may not invoke the savings clause of CPLR 205(a) and is now precluded from commencing this action.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 5, 2023

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

APPENDIX I — BRIGANDI LETTER, FILED MARCH 7, 2023

Knuckles Komosinski & Manfro LLP
600 E. Crescent Ave., Suite 201 |
Upper Saddle River, New Jersey 07458
Tel (201) 391-0370 | eFax (201) 781-6744 |
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Partners
Mark R. Knuckles
Jordan J. Manfro
John E. Brigandi
Louis Levithan

John E. Brigandi
(201) 391-0370,
ext. 301
jeb@kkmllp.com

M775, Returned 3/6/2023,
Request permission to file
a late opposition.

March 7, 2023

Via NYSCEF
CLERK
First Department

Re: US Bank National Association v. Fox, et. al.
Appellate Case No.: 2022-01325

Dear XXXX,

This office represents U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT ("Plaintiff" or "US Bank") in the above-referenced action. I am writing to respectfully request this Court accept Plaintiff's late opposition to

Appendix I

Defendant Cassandra Fox's ("Defendant") motion seeking an order granting reargument of this Court's January 5, 2023, decision (hereinafter, "Defendant's Motion"). The instant request is made with consent of Defendant.

By way of background, on February 13, 2023, Defendant filed a motion seeking an order granting reargument of this Court's January 5, 2023, decision reversing the trial court's February 15, 2022, order dismissing Plaintiff's Complaint as time-barred, or in the alternative, seeking an order granting leave to the New York Court of Appeals ("Defendant's Motion"). Defendant's Motion was returnable on March 6, 2023. On March 1, 2023, Plaintiff filed opposition to Defendant's Motion. (Dkt 15) On March 1, 2023, this Court returned Plaintiff's opposition pursuant to CPLR 2214(b), as it was not filed seven days prior to the return date of March 6, 2023.

The reason that Plaintiff untimely filed its opposition was because I incorrectly miscalendared the return date for the following day March 7, 2023. As such, the undersigned inadvertently filed Plaintiff's opposition to Defendant's Motion one day late on March 1, 2023, rather than February 28, 2023. This error was simply caused by the undersigned's miscalendaring, and Defendant will suffer no prejudice as a result of permitting Plaintiff's opposition to be considered by this Court.

This Court has wide discretion to determine whether to accept late opposition to a motion under the circumstances presented here. *See* CPLR 2214(c); *Rivers*

v. Butterhill Realty, 145 A.D.2d 709, 710 (3d Dep't. 1988). Moreover, the issues presented in Defendant's Motion, and Plaintiff's opposition thereto, concerning the applicability of the Foreclosure Abuse and Prevention Act ("FAPA"), and whether it applies retroactively, concern an issue of law that should be adjudicated on its merits. Plaintiff's opposition painstakingly details how the applicability of FAPA in a retroactive manner is a violation of the United States Constitution and the New York Constitution.

For these reasons, Plaintiff respectfully requests that this Court accept its late filing of its opposition to Defendant's Motion (Dkt. 15), as though it was timely filed.

Respectfully Submitted,

/s/ John E. Brigandi
John E. Brigandi, Esq.

SO ORDERED

/s/ Ellen Gesmer March 7, 2023
JSC: Date:

APPENDIX J — DECISION AND ORDER ON MOTION OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, FILED JULY 19, 2023

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PART 32
INDEX NO. 850160/2021
MOTION SEQ. NO. 003

U.S. BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE FOR THE RMAC TRUST,
SERIES 2016-CTT,

Plaintiff,

v.

CASSANDRA C. FOX, JPMORGAN CHASE BANK,
N.A., BOARD OF MANAGERS OF THE RUPPERT
YORKVILLE TOWERS CONDOMINIUM,
JOHN DOE NUMBER ONE THROUGH
JOHN DOE NUMBER TEN,

Defendant.

Filed July 19, 2023

PRESENT: HON. FRANCIS A. KAHN, III
Justice

Appendix J

DECISIONS AND ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, the motion is denied as moot based upon the Appellate Division, First Department's affirmance of this Court's dismissal of this action (*see US Bank NA v Fox*, 216 AD3d 445 [1st Dept 2023]).

7/19/2023 /s/ Francis A.Kahn, III
FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:	☒	CASE DISPOSED
	☐	GRANTED
APPLICATION:	☐	SETTLE ORDER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/ REASSIGN
	☒	DENIED
	☐	NON-FINAL DISPOSITION
	☐	GRANTED IN PART
	☐	SUBMIT ORDER
	☐	FIDUCIARY APPOINTMENT
	☐	OTHER
	☐	REFERENCE

APPENDIX K — DECISION AND ORDER ON MOTION OF THE SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY, FILED JULY 19, 2023

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PART 32
INDEX NO. 850160/2021
MOTION SEQ. NO. 004

U.S. BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE FOR THE RMAC TRUST,
SERIES 2016-CTT,

Plaintiff,

v.

CASSANDRA FOX, JPMORGAN CHASE BANK,
N.A., BOARD OF MANAGERS OF THE RUPPERT
YORKVILLE TOWERS CONDOMINIUM,
JOHN DOE NUMBER ONE
JOHN DOE NUMBER TEN,

Defendant.

Filed July 19, 2023

PRESENT: HON. FRANCIS KAHN, III
Justice

Appendix K

DECISIONS AND ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the motion is denied as moot based upon the Appellate Division, First Department's affirmance of this Court's dismissal of this action (*see US Bank NA v Fox*, 216 AD3d 445 [1st Dept 2023]).

7/19/2023 /s/ Francis A.Kahn, III
FRANCIS A. KAHN, III, A.J.S.C.

CHECK ONE:	☒	CASE DISPOSED
	☐	GRANTED
APPLICATION:	☐	SETTLE ORDER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/ REASSIGN
	☒	DENIED
	☐	NON-FINAL DISPOSITION
	☐	GRANTED IN PART
	☐	SUBMIT ORDER
	☐	FIDUCIARY APPOINTMENT
	☐	OTHER
	☐	REFERENCE

APPENDIX L — AFFIRMATION IN OPPOSITION OF THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT, FILED MARCH 1, 2023

SUPREME COURT OF THE STATE OF
NEW YORK APPELLATE DIVISION,
FIRST DEPARTMENT

Appellate Case No. 2022-01325

Index No. 850160/2021

U.S. BANK NATIONAL ASSOCIATION,
NOT IN ITS, INDIVIDUAL CAPACITY BUT
SOLELY AS TRUSTEE FOR THE RMAC TRUST,
SERIES 2016-CTT,

Plaintiff-Appellant,

-against-

CASSANDRA FOX, *et al.*,

Defendant-Respondent.

Filed March 1, 2023

AFFIRMATION IN OPPOSITION

John E. Brigandi, Esq., an attorney admitted to practice law in the Courts of the State of New York, affirms the following under penalties of perjury:

Appendix L

1. I am an attorney at Knuckles, Komosinski & Manfro, LLP ("KKM"), attorneys for Plaintiff-Appellant U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT (hereinafter, "Plaintiff") and as such am fully familiar with the facts and circumstances giving rise to the instant matter. The source of my knowledge and information are the records maintained by KKM in connection with this action, the public court records at issue in the instant mater, and the documents provided by my client.

2. I respectfully submit this affirmation in opposition to the instant motion by Defendant-Respondent Cassandra Fox (hereinafter, "Defendant") seeking an order granting reargument of this Court's January 5, 2023, decision reversing the trial court's February 15, 2022, order dismissing Plaintiff's Complaint as time-barred, or in the alternative, seeking an order granting leave to the New York Court of Appeals (hereinafter, "Defendant's Motion").

PRELIMINARY STATEMENT

3. This Court correctly determined that the trial court's decision to dismiss the instant foreclosure action as time-barred was unwarranted, as Plaintiff was entitled to rely upon CPLR 205(a) in commencing the instant action, as the prior foreclosure action was not dismissed for neglect to prosecute, nor was a general pattern of delay demonstrated. The instant motion does not dispute these material facts, but instead attempts to reverse

this Court's decision relying upon newly signed law, The Foreclosure Abuse and Prevention Act ("FAPA"), and seeking to apply it retroactively to this action. However, applying FAPA retroactively would be an unconstitutional violation of substantive due process under the Fourteenth Amendment, and the Contracts Clause of the United States Constitution. FAPA further acts as a change in law which impairs and has a substantial impact upon the parties' contractual relationship by potentially making a once timely action time-barred and prohibiting Plaintiff from acting upon its contractual right to foreclose. This Court has a duty to strike down laws which are clearly unconstitutional. Its decision should be left undisturbed accordingly.

4. Notwithstanding, there is neither a showing of divergent decisions by the various Appellate Divisions on the issues raised by Defendant, nor any basis for claiming the existence of unresolved issues of great public importance, which would necessitate attention by the Court of Appeals.

5. Rather, the issues in the instant matter are quite simple, and the facts are not in dispute. There is no basis to revisit this Court's decision, accordingly.

LEGAL STANDARD

6. Motions to reargue are governed under CPLR §2221(d), providing in relevant part, that they should be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.

7. In determining whether to grant leave to the Court of Appeals, courts generally look to the novelty, difficulty, and importance of the legal and public policy issues to determine whether the "interest of substantial justice" warrants leave to appeal. N.Y. Const. Art. VI, §3(b)(6); 22 N.Y.C.R.R. 500.22(b)(4) (Leave should be granted when "the issues are novel or of public importance"); *See also In re Shannon B.*, 70 N.Y.2d 458, 462 (1987) (Granting leave on an "important issue"); Town of Smithtown v. Moore, 11 N.Y.2d 238,241 (1962) (Granting leave "primarily to consider [a] question . . . of state-wide interest and application"); *Neidle v. Prudential Ins. Co. of Am.*, 299 N.Y. 54, 56, 1949) (Granting leave based on the "importance of the decision" and its "far-reaching consequences"); *People ex rel. Wood v. Graves*, 226 A.D. 714, 714 (3d Dept. 1929) ("[M]otion to appeal granted as the questions of law presented are of general public importance and ought to be reviewed by the Court of Appeals").

LEGAL ARGUMENT

8. Defendant's Motion contends that reargument is warranted as FAPA should be applied retroactively to bar Plaintiffs Complaint as time-barred. However, this Court presumably contemplated FAPA when issuing its decision on January 5, 2023, after FAPA had been implemented on December 30, 2022.

9. Notwithstanding, applying FAPA retroactively to this action following an appeal would be an unconstitutional violation of substantive due process under the Fourteenth Amendment to the United States Constitution. Substantive

due process under the Fourteenth Amendment "protects against certain government actions regardless of the fairness of the procedures used to implement them." *Bryant v. N.Y.S. Educ. Dep't*, 692 F.3d 202, 217 (2d Cir. 2012). This protection applies to behavior that "shocks the conscious" and violates a "right implicit in the concept of ordered liberty." *U.S. v. Salerno*, 481 U.S. 739, 746 (1987). A mortgage holder's rights in a mortgage are a constitutionally protected property interest, which the Second Circuit has held to be a fundamental right.

10. In *Radwan v. Manuel*, 55 F.4th 101 (2d Cir. 2022), the University of Connecticut terminated the plaintiffs one-year scholarship after plaintiff raised her middle finger to a television camera following a nationally televised soccer game. The Second Circuit determined that "Radwan's one-year athletic scholarship—because it was for a fixed period and terminable only for cause, and because Radwan reasonably expected to retain the scholarship's benefits for that set period—created a contractual right that rose to the level of a constitutionally protected property interest." *Id.* at 125.

11. Here, Plaintiffs contractual rights in the subject mortgage are likewise for a defined period of time (30 years) during which Plaintiff expects to retain the benefits from the mortgage's security interest in the property. The right of parties to contract with one another is certainly a fundamental right, and the reliance upon law as it stands at the time that the contract is entered into and at the time of commencement of an action to enforce those contractual rights is fundamental to ordered liberty.

12. Applying FAPA retroactively to cases commenced before its passage disturbs these rights as it eviscerates Plaintiffs ability to rely upon the applicable law that governed this matter at the time this action was commenced. *See Holly S. Clarendon Tr. v. State Tax Com.*, 43 N.Y.2d 933, 935 (1978) ("the apparent absence of a persuasive reason for retroactivity, with its potentially harsh effects, offends constitutional limits."). Any retroactive application of FAPA therefore violates Plaintiffs substantive due process rights.

13. FAPA additionally violates the Contracts Clause of the United States Constitution. Article I, Section 10, Clause 1 of the United States Constitution provides, in pertinent part, that "[N]o State shall . . . pass any . . . Law impairing the Obligations of contracts." When determining whether a law is in violation of the contracts clause, one must discern whether 1) whether a contractual relationship exists; 2) whether a change in law impairs that contractual relationship; and 3) whether the impairment is substantial. *Nunez v. Cuomo*, No. 11-CV-3457 (DLI) (LB), 2012 U.S. Dist. LEXIS 110867, at *17 (E.D.N.Y. Aug. 7, 2012) *citing Harmon v. Markus*, 412 F. App'x 420,423 (2d Cir. 2011).

14. Here, there is clearly a contractual relationship embodied in the Mortgage contract between Plaintiff and Defendant. FAPA further acts as a change in law which impairs and has a substantial impact upon the parties' contractual relationship by potentially making a once timely action time-barred and prohibiting Plaintiff from acting upon its contractual right to foreclose. In

essentially serving to retroactively eviscerate Defendant's contractual obligations to Plaintiff retroactively over fourteen years after the parties entered into the Mortgage contract, it is respectfully submitted that FAPA acts as an unconstitutional violation of the Contracts Clause to the United States Constitution.

15. FAPA further acts as an unconstitutional bill of attainder. Article I, Section 10, of the Constitution prohibits the states from enacting bills of attainder. The Supreme Court has described a bill of attainder as "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Nixon v. Adm'r of Gen. Servs.*, 433 US 425, 468 (1977). Historically, bills of attainder were used in England, primarily targeting individuals accused of disloyalty to the government. However, the Framers of the U.S. Constitution chose to depart from that historical practice.

16. The Supreme Court has explained that the constitutional prohibitions on bills of attainder "reflected the Framers' belief that the Legislative Branch is not so well suited as politically independent judges and juries to the task of ruling upon the blameworthiness of, and levying appropriate punishment upon, specific persons." *United States v. Brown*, 381 US 437, 445 (1965). The Clause was intended to serve as "a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature." *Id.* at 442. Although initially directed at criminal punishments, by 1866, the Supreme Court held that a forbidden attainder could

include the "deprivation of any rights, civil or political, previously enjoyed," if the circumstances and causes of the deprivation demonstrated that the deprivation amounted to punishment. *Cummings v. Missouri*, 4 Wall (71 US] 277, 320 (1867). Additionally, the Second Circuit has held that the Clause applies to corporations. *See Consolidated Edison Co. of N.Y., Inc. v. Pataki*, 292 F.3d 338, 349 (2d Cir. 2002) ("the protection afforded by the Bill of Attainder Clauses is not a purely personal guarantee and therefore is one of the constitutional rights enjoyed by corporations") (internal quotations omitted).

17. Under prevailing case law, a law is prohibited under the bill of attainder clause "if it (1) applies with specificity, and (2) imposes punishment." *BellSouth Corp. v. FCC*, 162 F.3d 678, 683 (1998). Here, it is undeniable that FAPA is targeted at a specific group—foreclosure plaintiffs—with the intent to punish that group by depriving them of their property rights.

18. For example, prior to FAPA, all civil litigants could rely on the statute savings clause in CPLR 205(a). Now, foreclosure plaintiffs must comply with CPLR 205-a, whereas every other plaintiff can continue to use CPLR 205(a). CPLR 205(a) provides:

> (a) New action by plaintiff. If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment

> upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty two hundred sixteen of this chapter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.

19. In contrast, CPLR 205-a reads:

> (a) If an action upon an instrument described under subdivision four of section two hundred thirteen of this article is timely commenced and is terminated in any manner other than a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, *a dismissal of the complaint for any form of neglect, including, but not limited to those specified in subdivision three of section thirty-one hundred twenty-six, section thirty-two hundred fifteen, rule thirty-two hundred sixteen and rule thirty-four hundred four of this chapter, for violation of*

> *any court rules or individual part rules, for failure to comply with any court scheduling orders, or by default due to nonappearance for conference or at a calendar call, or by failure to timely submit any order or judgment,* or upon a final judgment upon the merits, the original plaintiff, or, if the original plaintiff dies and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months following the termination, provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of the commencement of the prior action and that service upon the original defendant is completed within such six-month period. For purposes of this subdivision:
>
> ***1.*** *a successor in interest or an assignee of the original plaintiff shall not be permitted to commence the new action, unless pleading and proving that such assignee is acting on behalf of the original plaintiff; and*
>
> ***2.*** *in no event shall the original plaintiff receive more than one six-month extension.* (Emphasis added).

20. In addition to limiting when a foreclosure plaintiff could actually use CPLR 205-a ("for any form of neglect"), the new action must be commenced by the

original plaintiff (or an assignee acting on behalf of the original plaintiff). The Legislature included this additional requirement knowing that mortgages are routinely sold, effectively ensuring that CPLR 205-a could not be used and punishing the plaintiff who can no longer enforce its mortgage. Without question, the Legislature designed FAPA with the sole purpose of punishing foreclosure plaintiffs. Accordingly, this Court should not enforce FAPA as it is an unconstitutional bill of attainder.

21. For these reasons, Plaintiff respectfully requests Defendant's motion be denied in its entirety.

Dated: Upper Saddle River, New Jersey
February 24, 2023

Respectfully submitted,

KNUCKLES, KOMOSINSKI & MANFRO, LLP

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APPENDIX M — AMENDED NOTICE OF MOTION IN THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION: FIRST DEPARTMENT, FILED JUNE 5, 2023

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

U.S. BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS TRUSTEE FOR
THE RMAC TRUST, SERIES 2016-CTT,

Plaintiff-Appellant,

-against-

CASSANDRA FOX,

Defendant-Respondent,

JPMORGAN CHASE BANK, N.A.; BOARD OF MANAGERS OF THE RUPPERT YORKVILLE TOWERS CONDOMINIUM; "JOHN DOE #1" THROUGH "JOHN DOE #10," INCLUSIVE, THE NAMES OF THE LAST TEN NAMED DEFENDANTS BEING FICTITIOUS, REAL NAMES UNKNOWN TO THE PLAINTIFF, THE PARTIES INTENDED BEING PERSONS OR CORPORATIONS HAVING AN INTEREST IN, OR TENANTS OR PERSONS IN POSSESSION OF, PORTIONS OF THE MORTGAGED PREMISES DESCRIBED IN THE COMPLAINT,

Defendants.

Appendix M

AMENDED NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Adam M. Swanson, Esq. dated June 5, 2023, and the exhibits annexed thereto, and upon all papers and proceedings had herein, Plaintiff-Appellant, U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT ("U.S. Bank"), a Corporation organized and existing under the Laws of the United States of America ("Appellant"), by its attorneys, McCarter & English, LLP, will move this Court at the Courthouse located at 27 Madison Avenue, New York, NY 10010, on the 26th day of June, 2023, at 10:00 a.m., or as soon thereafter as counsel can be heard for an order granting Appellant reargument or leave to appeal to the Court of Appeals from the decision and order of the Appellate Division, First Department, dated and entered with the clerk of the Appellate Division, First Department on May 4, 2023.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 2214(b), answering papers, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

Appendix M

Dated: June 5, 2023

McCARTER & ENGLISH, LLP
Counsel for Plaintiff-Appellant

/s/ Adam M. Swanson
By: Adam M. Swanson, Esq.
Trevor J. Larrubia, Esq.
Worldwide Plaza
825 Eighth Avenue, 31st Floor
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TO: Erin E. Wietecha, Esq.
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67 West Street, Suite 401
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Appendix M

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Index No. 850160/2021

Appellate Docket No: 2022-01325

U.S. BANK NATIONAL ASSOCIATION,
NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS TRUSTEE FOR
THE RMAC TRUST, SERIES 2016-CTT,

Plaintiff-Appellant,

-against-

CASSANDRA FOX,

Defendant-Respondent,

JPMORGAN CHASE BANK, N.A.; BOARD OF
MANAGERS OF THE RUPPERT YORKVILLE
TOWERS CONDOMINIUM; "JOHN DOE #1"
THROUGH "JOHN DOE #10," INCLUSIVE,
THE NAMES OF THE LAST TEN NAMED
DEFENDANTS BEING FICTITIOUS, REAL
NAMES UNKNOWN TO THE PLAINTIFF, THE
PARTIES INTENDED BEING PERSONS OR
CORPORATIONS HAVING AN INTEREST IN, OR
TENANTS OR PERSONS IN POSSESSION OF,
PORTIONS OF THE MORTGAGED PREMISES
DESCRIBED IN THE COMPLAINT,

Defendants.

Appendix M

AFFIRMATION IN SUPPORT OF APPELLANT'S MOTION FOR REARGUMENT OR FOR LEAVE TO APPEAL TO THE COURT OF APPEALS

ADAM M. SWANSON, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following to be true under penalty of perjury:

INTRODUCTION

1. I am a partner of McCarter & English, LLP, counsel for Plaintiff- Appellant, U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT ("U.S. Bank"), a Corporation organized and existing under the Laws of the United States ("Appellant" or "U.S. Bank") in the above-captioned appeal. Thus, I am fully familiar with the facts and circumstances set forth below based on my review of the files maintained by my office, my review of the relevant public and court records, and correspondence with my client.

2. This Affirmation is respectfully submitted in support of Appellant's Motion for Leave to Reargue or Leave to Appeal to the Court of Appeals from the Decision & Order of this Court dated May 4, 2023, and the Order (Motion #775)[1] granting, in part, Respondent's motion

1. A copy of this Court's Decision & Order dated May 4, 2023, is available on the electronic docket of this appeal as New York State Courts Electronic Filing ("NYSCEF") document number 22, annexed as Exhibit ("Ex.") A. A copy of this Court's May 4,

for reargument or leave to appeal to the Court of Appeals ("Motion").

PRELIMINARY STATEMENT

3. This Court retroactively applied the Foreclosure Abuse Prevention Act ("FAPA")[2] to discharge Appellant's mortgage and notice of pendency. Rather than adhere to long established legal and constitutional principles, the Court destroyed Appellant's vested rights by applying new laws that did not exist when this case or appeal were brought. Granting Appellant reargument or leave to appeal to the Court of Appeals is necessary, *inter alia*, to protect Appellant's due process rights under the Fourteenth Amendment of the U.S. Constitution and Article I of the N.Y. Constitution, which have been violated. Appellant's property was taken without just compensation, in violation of the Fifth Amendment of the U.S. Constitution and Article I of the N.Y. Constitution.

4. The legislative enactment of FAPA was a rejection of years of judicial decisions correctly applying New York law by this Court and others. This is uniquely demonstrated in this appeal where this Court itself initially applied New York law properly, but then reversed itself and applied the Legislature's new law under FAPA. But in addition to Appellant's due process and takings right,

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2023 Order granting reargument to Respondent and denying leave to appeal to the Court of Appeals is available at NYSCEF document number 21 and annexed as Ex. B.

2. A copy of FAPA is annexed as Ex. C.

retroactively applying FAPA also violates separation of powers rules and when applied to Appellant, violates the Bill of Attainder Clause of the U.S. Constitution.

5 In its January 5, 2023 decision, this Court correctly found, pursuant to long-standing law, that Appellant properly exercised its rights to recommence its foreclosure action under New York's "savings statute"—CPLR § 205(a)—when it timely filed its complaint to commence this action.

6. Soon after, on May 4, 2023, this Court recalled its January 5, 2023 decision and issued a new decision reversing itself. In that second decision, this Court retroactively applied FAPA to instead statutorily bar Appellant from commencing its action and consequently discharged Appellant's mortgage.

7. If this Court's May decision stands, confusion and chaos will continue to permeate and long-settled dispositions risk being nullified by FAPA's retroactive application. Without reargument or leave to appeal, this Court's May decision sanctions the legislative punishment and penalization of foreclosing plaintiffs like Appellant and violates the powers of this Court. Appellant will be penalized for following the precedents of this Court and failing to comply with new statutory rules that did not exist when Appellant exercised its right to commence this suit.

8. This Court must vacate its May decision and reinstate its January decision to protect Appellant's constitutional rights and enforce the boundaries of the

judicial power vested with this Court. If not, this Court should grant leave to appeal to the Court of Appeals because of the serious constitutional concerns implicated in this case and of other foreclosure plaintiffs in pending cases, making the precedent established here a matter of state-wide significance.

STATEMENT OF RELEVANT FACTS

9. This appeal stems from an order of the Supreme Court, New York County, (*Kahn, III, J.S.C.*) dated February 15, 2022, and entered on February 17, 2022, granting Cassandra Fox's ("Respondent") motion for summary judgment, and dismissing Appellant's Complaint as time-barred and for summary judgment on Respondent's counterclaim to cancel and discharge Appellant's mortgage and notice of pendency. A copy of the Respondent's Motion to Reargue[3] including therein the record on appeal (NYSCEF Doc. No. 4), the Feb. 15, 2022 order (NYSCEF Doc. No. 1) and the underlying appellate briefs (NYSCEF Doc. Nos. 5, 7 and 10) is annexed as Ex. D. *See* Ex. D at 24–29.

10. By Decision & Order dated January 5, 2023, this Court initially reversed the Supreme Court's February 17, 2022 dismissal order and denied Respondent's motion for summary judgment ("Decision I"). Ex. D at 9–14. Decision I was premised upon the law in existence when

3. Appellant's Affirmation in Opposition to Respondent's Motion to Reargue is annexed as Ex. E (NYSCEF Doc. No. 15) and Respondent's Reply in Support of the Motion to Reargue is annexed as Ex. F (NYSCEF Doc. No. 20).

Appellant's underlying action was commenced and until December 30, 2022.

11. By Decision & Order dated May 4, 2023, and upon Respondent's motion for reargument, this Court recalled and vacated Decision I ("Decision II"). *See* Ex. A. Decision II was premised upon the law that came into existence on December 30, 2022, under FAPA.

12. Appellant was served with Notice of Entry of Decision II on May 4, 2023,[4] and now moves for leave to reargue or appeal to the Court of Appeals.

ARGUMENT

I. ARGUMENT AND REASONS TO GRANT REARGUMENT OR LEAVE TO APPEAL

13. A motion for leave to reargue made pursuant to CPLR § 2221(d) and 22 NYCRR § 1250.16 is discretionary "and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision." *Carrillo v. PM Realty Grp.*, 16 A.D.3d 611 (2d Dept. 2005); *see also* CPLR § 2221(d)(2).

14. It is respectfully submitted that this Court overlooked the constitutional implications of vacating Decision I because the Court: (1) did not address the

4. The May 4, 2023 Notice of Entry is annexed as Ex. G (NYSCEF Doc. No. 121).

constitutional issues stemming from the retroactive application of FAPA; and (2) misapplied FAPA retroactively to violate Plaintiff's constitutional rights.

15. Leave to appeal to the Court of Appeals should be granted where the case involves questions likely to arise frequently and, if allowed to stand, would introduce confusion into the body of the law. *See Sciolina v. Erie Preserving Co.*, 151 N.Y. 50, 54 (1896); 4 N.Y. Jur. 2d Appellate Review § 293.

16. Leave to appeal should be granted also where the issues are novel or of public importance, present a conflict with prior decisions of the Court of Appeals, or involve important questions of statutory construction. *See* 22 NYCRR 500.22(b)(4); *Sciolina*, 151 N.Y. at 54; 4 N.Y. Jur. 2d Appellate Review § 293.

17. Appellant's appeal satisfies all of these grounds. At its very core, this case presents issues of great public importance—whether retroactively applying FAPA violates the U.S. and N.Y. Constitutions. As stated above, Decision II violates several of Appellant's constitutional rights and exemplifies the unconstitutional results of FAPA being applied retroactively. The post-FAPA outcome here typifies what will happen in many cases that are pending appeal right now. On this basis alone, leave to appeal to the Court of Appeals should be granted.

18. This, however, is not the only reason leave to appeal is warranted. Whether courts should retroactively apply FAPA is a novel issue. New York courts are already

rendering conflicting decisions on this issue and FAPA's construction is squarely at issue in both resolved and pending cases throughout the State.[5] Indeed, the outcome here reaches beyond Appellant's rights and touches the rights of many foreclosure plaintiffs in New York.

19. A review of only Westlaw reported decisions shows that in the past two years, CPLR § 205(a) has been construed in close to fifty different foreclosure cases. *See* Ex. H. Most surprising is that in just the last six months, there are nine reported decisions discussing the new CPLR § 205-a, only created by FAPA in December 2022. *See* Ex. I. This Court's retroactive application of FAPA in Decision II implicitly abrogates most, if not all cases applying CPLR § 205(a) and where a judgment of foreclosure and sale has not yet been enforced, each decision may be subject to vacatur. FAPA is a gross violation of those parties' settled and vested rights. Through FAPA, the Legislature has reached into this Court and other courts' dockets and dictated its preferred outcome. Addressing whether the Legislature can do this is of great public importance.

20. Decision II's vacatur of Decision I exemplifies the confusion that exists and will continue if Decision II sets

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5. *See e.g. HSBC Bank USA, N.A. v. Besharat*, 2023 WL 3555407 (N.Y. Sup. Ct. May 19, 2023); *U.S. Bank Nat'l Ass'n v. Simon*, 2023 WL 3486592, at *2 (N.Y. App. Div. May 17, 2023); *HSBC Bank USA as Tr. of Ace Sec. Corp. Home Equity Loan Tr. v. IPA Asset Mgmt., LLC*, 2023 WL 3472308, at *2 (N.Y. Sup. Ct. May 16, 2023); *Nestor I LLC v. Moriarty-Gentile*, 78 Misc. 3d 1233(A) (N.Y. Sup. Ct. 2023).

the precedent.[6] This Court applied well-settled law to reach its conclusion in Decision I—that Appellant properly invoked CPLR § 205(a)—to only four months later, apply the new FAPA retroactively and reach the exact opposite conclusion. Without appellate clarity and settlement of the grave constitutional concerns about its retroactive application, decisions will be left to the trial court's discretion and that will likely lead to more inconsistent decisions injecting further confusion into New York law.

II. THE FORECLOSURE ABUSE PREVENTION ACT

A. FAPA's Impact on New York Law

21. FAPA is a paradigm shift in the law of New York mortgages and foreclosures. FAPA made sweeping changes to the rules governing foreclosure actions, upended decades of common law, and changed statutory rights.

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6. In Decision II, this Court did not explicitly address the constitutional issues raised by the retroactive application of FAPA. In opposition to Respondent's motion to reargue, Appellant did bring its constitutional concerns to the Court. Under the precedent of Decision II, trial courts of this Department are left to conclude only by implication that this Court approves the retroactive application of FAPA's new CPLR § 205-a, which did not even exist when many cases pending appeal were brought. Decision II has already been relied upon for this proposition. *See HSBC Bank USA as Tr. of Ace Sec. Corp. Home Equity Loan Tr. v. IPA Asset Mgmt., LLC,* 2023 WL 3472308, at *1 (N.Y. Sup. Ct. May 16, 2023).

22. The Senate Sponsor's Memo accompanying FAPA[7] states the intent and effect was to, *inter alia*, legislatively reverse the Court of Appeals in *Freedom Mortgage Corp. v. Engel*, 37 N.Y.3d 1 (2021), where the high Court examined the interplay between the statute of limitations and the revocation of an election to accelerate a mortgage loan. But FAPA went well beyond *Engel*.

23. At issue here are just two of those sweeping changes. First is FAPA's creation of CPLR § 205-a, a new "savings statute" applying to foreclosure plaintiffs *only* in lieu of CPLR § 205(a). The new CPLR § 205-a severely circumscribes a foreclosure plaintiff's prior rights. Under the new regime of CPLR § 205-a, a foreclosure plaintiff has no right to bring a new action if the prior action terminated for "any form of neglect" or "for violation of any court rules," and there is no requirement that the neglect be set forth on the Court's record. In comparison, the prior CPLR § 205(a) requires a court to set forth on the record the specific instances of neglect which must constitute a general pattern of delay in order to bar a litigant's re-commencement right.[8] In other words, now the court in a second foreclosure action can dismiss at its discretion by simply finding "any form of neglect" in the prior suit and without the support of findings issued by the judge in that prior action. This change was the impetus for Decision II.

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7. A copy of the Senate Sponsor's Memo is annexed as Ex. J.

8. Contrary to the Legislature's stated intent that FAPA is "remedial," the old standard requiring a general pattern of neglect remains the standard that all other New York litigants are measured by.

24. Second, CPLR § 205-a includes another new constraint, that "a successor in interest or an assignee of the original [foreclosure] plaintiff shall not be permitted to commence the new action, unless pleading and proving that such assignee is acting on behalf of the original plaintiff," and may receive only one six- month extension. CPLR § 205-a[a], [1], [2]. These are burdens placed only on foreclosure plaintiffs. Under the new regime, a plaintiff acquiring the original note and mortgage during a pending foreclosure has no right under the savings statute, unless it specifically pleads and proves that it is acting on behalf of the original plaintiff. This Court enforced these new constraints in Decision II, but never explained how Appellant could have complied with them—which was impossible.

25. Section 10 of FAPA provides that it is to take effect "immediately" upon signing in "all [foreclosure] actions . . . in which a final judgment of foreclosure and sale has not been enforced," including language typically interpreted to require prospective application of newly enacted statutes. *See* FAPA § 10, Ex. C.

26. A lawsuit is a vested right. *See generally Wolff v. McDonnell,* 418 U.S. 539, 579 (1974) (rights of individuals to pursue legal redress for claims having basis in law or fact is protected by First Amendment right to petition and Fourteenth Amendment right to due process); *Monsky v. Moraghan*, 127 F.3d 243, 246 (2d Cir. 1997).

27. And because FAPA applies in all foreclosure actions in which a final judgment of foreclosure and sale

have not been enforced, it will have the effect of destroying pending foreclosure lawsuits brought under CPLR § 205(a) if allowed retroactive application.

28. Thus, it is critical that FAPA not apply retroactively because as shown by this Court's successive decisions, it results only in unconstitutional outcomes.

III. THE COURT'S RETROACTIVE APPLICATION OF FAPA IS AN UNCONSTITUTIONAL TAKING

29. The retroactive application of FAPA violates the N.Y. and U.S. Takings Clauses of the constitution, which protect lenders from governmental appropriation of their vested property rights. *See* U.S. CONST. amend. V ("[N] or shall private property be taken for public use, without just compensation");[9] N.Y. CONST. art. I, § 7 ("Private property shall not be taken for public use without just compensation.").

30. Where a lender timely re-commenced a foreclosure action under CPLR § 205(a) and that suit is now pending, if applied to that suit, FAPA is a *per se* or categorical regulatory taking of rights. It is a categorical taking because it deprives the lender of its ownership interest in property, gives the property to the borrower or a real estate speculator, and leaves the lender without economically beneficial or productive options for its use.

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9. For purposes of analysis here, the Takings Clause under the Fifth Amendment of the U.S. Constitution is applied through the Fourteenth Amendment of the U.S. Constitution.

See generally Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104 (1978); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1018 (1992); *City of Buffalo* v. *J.W. Clement Co.*, 28 N.Y.2d 241, 253 (1971).

31. For hundreds of years, rights in property have been protected from unconstitutional takings through veiled regulatory actions. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 590 (1935) (statute was void under the takings clause because it effected a "taking of substantive rights in specific property acquired by the Bank prior to" its enactment.) The United States Supreme Court explained in *Louisville Joint Stock Land Bank*:

> If the public interest requires, and permits, the taking of property of individual mortgagees in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest may be borne by the public.

U.S. 555 at 602.

32. If allowed retroactive application, this Court's Decision II—an outcome dictated by the Legislature through FAPA—constitutes a judicially- approved legislative taking of Appellant's property without just compensation.

33. Under *Penn Central's* balancing test, courts weigh three factors to determine whether there was a

taking: (1) "[t]he economic impact of the regulation on the claimant," (2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and (3) "the character of the governmental action." *Penn Cent.*, 438 U.S. at 124.

34. In evaluating the first *Penn Central* factor, the economic impact, courts "compare the value that has been taken from the property with the value that remains in the property." *Keystone Bituminous v. DeBenedictis*, 480 U.S. 470, 497 (1987). Here, this factor is evaluated easily—Plaintiff no longer has any economic value in its mortgage because this Court's retroactive application of FAPA discharged Appellant's mortgage, leaving Appellant with no property. The economic impact here was total destruction.

35. The second *Penn Central* factor is whether the property owner had investment-backed expectations. *Penn Cent.*, 438 U.S. at 124. When Appellant's mortgage was put into foreclosure based upon then existing rights under CPLR § 205(a), Appellant had a contractually-enforceable mortgage on Respondent's property. After FAPA was passed—years after this suit was commenced—Appellant no longer has enforceable rights—all by Legislative fiat. This fact is clearly shown by Decision II. Thus, Appellant's investment-backed expectations were nullified.

36. The third *Penn Central* factor evaluates the character of the governmental action and whether it amounts to a physical invasion, or instead, merely affects

property interests. *Lingle v. Chevron USA Inc.*, 544 US 528 (2005) (holding the examination of the substantial advancement of a legitimate state interest is no longer a valid "takings" consideration). In evaluating the "character" of the governmental action, courts consider whether the action benefits or harms only the property owner at issue or if individuals or entities other than the property owner at issue are affected and to what degree. *Penn Cen.* 438 U.S. at 133–34. Where the governmental action imposes a disproportionate burden on particular property or a limited group, there is no reciprocity of advantage, indicating a taking. *Id.*

37. Here, retroactive application of FAPA falls solely on foreclosing plaintiffs such as Appellant, thus indicating a taking. Retroactive application further results in the extinguishment of any rights Appellant held in its secured property. The state action under FAPA is so invasive that it is a taking under this factor.

38. This case satisfies each factor of the *Penn Central* test and the only conclusion that can be reached is that a regulatory taking has occurred. This Court rubber-stamped that taking and eradicated all of Plaintiff's economic interest in this action, in its mortgage and in the secured property.

39. The *Penn Central* test measures regulatory actions that create burdens, and explains when those burdens may amount to a *de facto* taking. But there is a separate and distinct form of categorical or *per se* taking that is fully sufficient without the *Penn Central*

analysis that is unconstitutional. In *Lucas v. South Carolina Coastal Council*, the Supreme Court held that a governmental action will be deemed a *per se* taking where it completely deprives an owner of "all economically beneficial us[e]" of the property. 505 U.S. 1003, 1019 (1992). If so, the "government must pay just compensation" for such a taking. *Id.* 1026–32.

40. Here, Appellant's secured interest and rights in the property, or in other words its mortgage, have been rendered worthless because this Court retroactively applied FAPA. Since application of FAPA results in the elimination of Appellant's contractual rights, it is the equivalent of a physical appropriation and thus a taking. *Id.* at 1071.

41. Moreover, this Court's retroactive application runs afoul of long- established law protecting secured creditor's rights in property. In *Louisville Joint Stock Land Bank v. Radford*, the Supreme Court considered whether retroactive application of a statute that abrogated a secured creditor's rights in property was unconstitutional under the Takings Clause. 295 U.S. at 588.

42. In *Louisville*, the Court held that a statute cannot be applied retroactively to "take away rights of [a] mortgagee in specific property . . . ." *Id.* at 589. The Supreme Court determined that a statute that takes away substantive rights in property acquired by a party prior to its passage without just compensation violates the Takings Clause. *Id.* In essence, the statute there

permitted the individual declaring bankruptcy to retain his farm for five years with an option to purchase it at the appraised value at any time, subject to the payment of a reasonable rent set by the court. The statute thus deprived the mortgagee of its property rights without just compensation.

43. The issue here is the same and the outcome should be, as well. Like the secured creditor in *Louisville,* Appellant has been stripped of its security interest in the property through FAPA. By reversing Decision I and issuing Decision II, this Court deprived Appellant of its property rights, without just compensation and upon the command of the Legislature. The only way to avoid the appropriation of property from one citizen to another, most egregious type of constitutional taking, is to find that that FAPA cannot have retroactive application. *See Calder v. Bull*, 3 U.S. 386, 388 (1798) (*Chase, C.J.*) ("a law that takes property from A and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with SUCH powers").

44. Because Appellant does not stand alone and many other foreclosure plaintiffs in the State of New York will suffer the same consequence from FAPA, this Court should either grant reargument and reinstate Decision I or grant Appellant leave to appeal to the Court of Appeals.

IV. FAPA's RETROACTIVE APPLICATION VIOLATES DUE PROCESS

A. To Avoid an Unconstitutional Outcome, FAPA Must be Interpreted to Apply Only Prospectively

45. Upon reargument, this Court can avoid the constitutional analysis if it finds the Legislature did not intend for FAPA to apply retroactively. The terms of FAPA do not require retroactive application. New York law has historically and strongly disfavored a retroactive application of law. "Statutes are generally applied prospectively in the absence of express or necessarily implied language allowing retroactive effect." *Dorfman v. Leidner*, 76 N.Y.2d 956, 959 (1990) (citing McKinney's Cons Law of NY, Book 1, Statutes ¶ 51 [b]).

46. The language in section 10 of FAPA that "this act shall take effect immediately" prescribes only prospective application. For example, in *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577 (1998), the Court of Appeals held that statutory amendments providing they would "take effect immediately," "should not apply to actions pending on the effective date of the amendments" and instead "applied prospectively to actions filed" after enactment, even though the Governor issued a signed memorandum stating that the amendments would apply "to all cases currently pending in the courts of our State wherein the primary action has neither been settled nor reduced to judgment." *Id.* at 581, 582, 586.

47. Here, FAPA section 10 provides that it will "take effect immediately and shall apply to all [foreclosure] actions . . . in which a final judgment of foreclosure and sale has not been enforced." *See* FAPA § 10, Ex. C. The Legislature's inclusion of the "take effect immediately" phrase in FAPA evinces an intent that the usual rules of statutory interpretation prevail. *Aguaiza v. Vantage Props., LLC*, 69 A.D.3d 422, 423 (1st Dep't 2010) (citing McKinney's Cons Laws of NY, Book 1, Statutes §51 [b], Comment, at 92) ("[a]s a matter of statutory interpretation, '[w]here a statute by its terms directs that it is to take effect immediately, it does not have any retroactive operation or effect.'"); *cf. Matter of Regina Metro. Co., LLC v. NY State Div. of Hous. & Community Renewal*, 35 N.Y.3d 332, 371–74 (2020) (holding that legislation's "generic reference" that specific statutory amendments apply to "any claims pending" upon enactment did not provide "the requisite textual assurance that the legislature considered the significant impact of reviving barred claims, upsetting the strong public policy favoring repose, and that [the legislature] desired that result" but, when "read in the specific context of this legislation, the 'claims pending' language was sufficiently clear to evince legislative intent to apply the amendments to at least some timely overcharge claims that were commenced prior to enactment" because each of the legislation's 15 parts contained its own effective date provision, most of which were entirely forward looking, "indicating the legislature considered the issue of temporal scope for each").

48. The case of *Marrero v. Nails,* is instructive. 114 A.D.3d 101 (2d Dep't 2013). The *Marrero* court held that a

2008 amendment to CPLR § 205(a) adding a requirement that "the judge . . . set forth on the record the specific conduct constituting the neglect" which caused an action to be dismissed for neglect to prosecute did not retroactively apply to a 2007 dismissal of a previous action. *Id.* at 111. While the amendment was to "take immediate effect," the "legislature did not explicitly state or clearly indicate . . . that the 2008 amendment should apply retroactively [to the disposed action]." *Id.* at 112. Thus, the court presumed "at the outset that the amendment was to have prospective application." *Id.*

49. Similar to FAPA, the sponsor's memo in *Marrero* "set forth a resolution to a persistent problem within our courts regarding dismissal for neglect to prosecute the action." That memorandum continued, "[t]he intent of CPLR § 205(a) has been misconstrued allowing for many cases to be dismissed on the basis of neglect to prosecute. The law is presently unclear with respect to what specifically constitutes a neglect to prosecute particularly where it falls outside Rule 3216." With respect to the justification for the bill, the memorandum concluded that "[a]mending CPLR § 205(a) to provide uniformity would reestablish the original legislative intent of this chapter." *Id.* (citations to legislative materials omitted). Notwithstanding, the *Marrero* court concluded that "[a]lthough the 2008 amendment certainly could be characterized as remedial in nature and may be construed as correcting a certain unintended judicial interpretation, on the other hand, in addition to the presumption of prospective application, the legislature expressed no urgency whatsoever so as to support the case for retroactive applicability."

Marrero, 114 A.D. 3d at 112–13. Thus, the statute did not retroactively apply to the 2007 dismissal order. *Id.* at 111.

50. Here, as in *Marrero*, FAPA's Sponsor's memo does not indicate whether the new CPLR § 205-a should apply to extinguish rights (*i.e.* the right to recommence under CPLR § 205(a)) that vested as a consequence of a previously terminated action). *See New Rez LLC v. Kalina*, 2023 N.Y. Misc. LEXIS 1265 (Sup. Ct. Albany Cnty. March 22, 2023) (finding that FAPA's statutory amendment "does not expressly state that it applies retroactively" and holding that "there is no clear indication that the legislative intent was to impair already vested rights."). In fact, nowhere in FAPA did the Legislature state that its statutory amendments would apply to previously terminated actions. To the contrary, FAPA only applies to pending foreclosures "in which a final judgment of foreclosure and sale has not been enforced." *Id.* This is important because this Court's order in Decision II requires an application of FAPA's statutory amendments to nullify the effect of a terminated action (the prior foreclosure action), specifically, Appellant's right to re-file under CPLR § 205(a) as a consequence of that dismissal.

51. For FAPA to apply as Respondent contends, the Court would have to change the meaning of the termination of a disposed case. But FAPA does not purport to, and cannot, apply to a terminated action. Thus, FAPA must be interpreted as applying only in pending actions to the extent it governs the legal effects of dismissals going forward. It cannot be applied to un-do what has already been done, which is the consequence demonstrated by this Court's Decision II.

52. The plain language of CPLR § 205-a evidences that the Legislature did not intend for this specific new statute to have retroactive effect. This is because paragraph (a)1 prescribes a new pleading standard that can only be satisfied prospectively. As shown here, by enforcing this pleading requirement in Decision II, this Court created a legally impossible hurdle for Appellant.

53. The conditions precedent to invoking the old CPLR § 205(a) were strictly procedural. *See* CPLR 205(a). A new action was timely if: (1) a prior timely action was terminated for a reason not listed in the statute; and (2) the new complaint was filed and served within six months of that termination. *See id.* The plaintiff was not obligated to plead and prove in its complaint that the action was being filed under CPLR § 205(a). *See id.* The new CPLR § 205-a, however, adds a new pleading and proof requirement:

> a successor in interest or an assignee of the original plaintiff shall not be permitted to commence [a new action under CPLR § 205-a], unless *pleading and proving* that such assignee is acting on behalf of the original plaintiff. (Emphasis added).

54. Thus, for a new action to be validly commenced under the new regime, the complaint must not only be timely filed and served but must also plead and prove the relationship between the plaintiff and the "original plaintiff." This requirement is conclusive evidence that the Legislature must have intended for this statute to apply in pending actions only—*i.e.* as to whether an order

dismissing pending actions would give rise to a right to re-file—and not to require dismissal of those actions. If the Legislative intent was truly for a retroactive application of these pleading requirements, then every single pending foreclosure suit premised on CPLR § 205(a) would be nullified. *See Matter of Ahern v. South Buffalo Ry. Co.*, 303 N.Y. 545, 555, *aff'd* 344 U.S. 367; *Vill. of Gloversville v. Howell*, 70 N.Y. 287, 288 (1877) (it is a fundamental rule of constitutional law that a court will presume an act of the Legislature to be constitutional).

55. In the CPLR, a "pleading" is a complaint, answer, an interpleader complaint, a third-party complaint, and a reply. CPLR § 3011. Under the presumption of the consistent usage cannon of statutory interpretation, "a term generally means the same thing each time it is used." *United States v. Castleman*, 572 U.S. 157, 174 (2014) (*Scalia, J.* concurring).

56. Here, FAPA did not re-define "pleading" and, therefore, CPLR § 205- a(a)1's use of that term is defined by CPLR § 3011. Applying that definition, the Legislature's intent becomes clear. In a pending action, the plaintiff's "pleading"— its complaint—has already been filed. The action could not be pending without one. Thus, by prescribing a new pleading standard, the Legislature demonstrated a clear intent that the new CPLR § 205-a only be applied prospectively.

57. Applying CPLR § 205-a to pending cases, as this Court did in Decision II, results in actions being dismissed for non-compliance with a pleading requirement that did

not exist when the pleading was filed. That is an absurd result.

58. If the Court finds that FAPA was not intended to effect such a result and grants reargument, it may avoid an unconstitutional issue and reinstate Decision I. If not, this Court should grant Appellant leave to appeal to the Court of Appeals to resolve this legal absurdity.

B. If the Legislature Did Intend a Retroactive Application, the Court's Retroactive Application of FAPA Impairs Appellant's Substantive Rights

59. "[L]egislative direction concerning the scope of a statute carries a presumption of constitutionality, and the party challenging that direction bears the burden of showing the absence of a rational basis justifying retroactive application of the statute." *Regina Metro*, 35 N.Y.3d at 375. "Because [r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation . . . the justifications for [prospective legislation] may not suffice for the [retroactive aspects]." *Id.* at 375 (citation omitted; internal quotation marks omitted).

60. Here, the Court applied CPLR § 205-a inapposite to the fundamental notions of substantial justice embodied in the Due Process Clause. Specifically, this Court concluded in Decision II that:

i. FAPA barred Appellant's commencement of this action under CPLR § 205-a because: the

action in the trial court was dismissed for neglect (although the trial court failed to set forth on the record the specific conduct constituting such neglect); and

ii. Appellant is neither the original plaintiff nor acting on behalf of the original plaintiff.

61. To comport with Due Process, however, retroactive application of a newly enacted provision must be supported by "a legitimate legislative purpose furthered by rational means." *Am. Econ. Ins. Co. v. State*, 30 N.Y.3d 136, 158 (2017). There must be also a "persuasive reason" for the "potentially harsh" impacts of retroactivity. *Holly S. Clarendon Tr. v. State Tax Comm'n*, 43 N.Y.2d 933, 935 (1978). These requirements have not been met here.

62. Appellant had a statutory right to commence a new action within six months and properly exercised that right by commencing this foreclosure action. When Appellant timely filed its foreclosure action, Appellant was not required to plead *and prove* that it was acting on the behalf of the original plaintiff. Further, at that time, to bar recommencement under CPLR § 205(a), the trial court had to set forth on the record any specific instances of Appellant's neglect evidencing a general pattern, which it did not.

63. By retroactively applying CPLR § 205-a and rendering Appellant's foreclosure untimely, this Court deprived Appellant of vested substantive rights. *See Merz*

v. Seaman, 265 A.D.2d 385, 388-389 (2d Dept. 1999) ("[T]he statute cannot be applied retroactively to dismiss an action that was viable at the time it was filed. Such a result would impair vested rights and violate due process (citations omitted)."); *see also Nestor I LLC v. Moriarty*, 2023 WL 3239954, at *3 n.2 (Sup. Ct., Suffolk Cty. May 2, 2023).

64. This Court's retroactive application of FAPA is harsh and has destabilizing effects on Appellant's "property rights, matters in which predictability and stability are of prime importance." *Landgraf v. USI Film Prod.*, 511 U.S. 244, 271 (1994).

65. There is no indication that the Legislature considered these harsh and destabilizing effects on lenders' settled expectations and vested rights. FAPA's sponsor's memo states only the following about the purpose and intent of FAPA:

i. The Legislature finds that there is an ongoing problem with abuses of the judicial foreclosure process; that the problem has been exacerbated by court decisions which, contrary to the intent of the Legislature, have given mortgage lenders and loan servicers opportunities to avoid strict compliance with remedial statutes and manipulate statutes of limitation to their advantage; and that the purpose of the present remedial legislation is to clarify the meaning of existing statutes, codify correct judicial applications thereof, and rectify erroneous judicial interpretations thereof.

> ii. Accordingly, this bill amends certain statutes and rules to clarify the existing law and overturn those decisions that have strayed from legislative prescription and intent. These amendments and clarifications will ensure the laws of this state apply equally to all litigants, including those currently involved in mortgage foreclosures and related actions. The remedial aim of the bill is to thwart and eliminate abusive and unlawful litigation tactics that have been employed by foreclosure plaintiffs to the prejudice of homeowners throughout New York. That some of these tactics have been sanctioned by the judiciary has resulted in perversion of longstanding law and created an unfair playing field that favors the mortgage banking and servicing industry at the expense of everyday New Yorkers. S.B. S5473D at Sponsor Memo, Purpose and Intent of Bill.

This is purely punitive; it punishes Appellant for exercising rights and it punishes the judiciary for interpretations of the law with which the Legislature disagreed.

66. The punishment given by FAPA has no temporal limit. "In determining whether retroactive application of a statute is supported by a rational basis, the relationship between the length of the retroactivity period and its purpose is critical." *Regina Metro. Co., LLC*, 35 N.Y.3d at 376. Thus, retroactive application would be irrational given the extent of settled interests and lack of a permissible basis for unsettling those interests. *See Chrysler Properties, Inc. v. Morris*, 23 N.Y.2d 515, 522 (1969).

Appendix M

C. FAPA's Effect is not Brief and Defined

67. There have been many decisions issued in the last two years construing the savings provision in CPLR § 205(a). *See* Ex. H. Retroactive application of FAPA's new CPLR § 205-a will legislatively reverse these decisions and may require vacatur of them if a judgment of foreclosure and sale has not yet been enforced. That is precisely what happened here where this Court was constrained to reverse itself upon the legislative commands of FAPA. Thus, this a serious issue of public importance and leave to appeal is necessary to establish clarity.

68. Without clarification on the unconstitutionality of FAPA's retroactive application, parties in pending actions premised on CPLR § 205(a) will be left to wonder whether and when their rights may be upended like Appellant's.

69. Pre-FAPA, and since 2008, the legislature's intent regarding the application of the neglect to prosecute exception in CPLR § 205(a) was clear; for that carve-out to apply, there must be a finding of specific conduct revealing a "general pattern of delay in proceeding with the litigation." CPLR § 205(a) was amended in 2008 to add these additional requirements because, as the legislature explained at that time, its original intent was being misconstrued "allowing for many cases to be dismissed on the basis of neglect to prosecute." Senate Introducer Mem in Support, Bill Jacket, L 2008, ch 156 at 10. This prior legislative history establishes that the original intent for the neglect to prosecute carve-out was to apply in *limited circumstances only*, not for any failure to comply with a statute or court rule.

70. CPLR § 205-a represents a clear rejection of this prior expression of legislative intent—for only foreclosure plaintiffs—and, therefore is not a clarification of the existing law. If it had been, FAPA would have only amended CPLR § 205(a) and not created the new CPLR § 205-a.

71. Moreover, CPLR § 205-a impacts substantive rights by placing severe limitations and restrictions on lenders' ability to recommence an action under the savings statute, which do not apply to any other litigant in New York. This effect contravenes the legislature's purported intent to "ensure the laws of this state apply equally to all litigants," and implicates lenders' right to equal protection under the law. *See James Square Assocs. LP v. Mullen*, 21 N.Y.3d 233, 248 (2013).

72. The harsh and destabilizing effects of applying the new CPLR § 205-a retroactively are readily apparent here. In Decision I, adhering to its precedents, this Court found that the trial court, "in dismissing the case, did not set forth on the record any additional instances of neglect by the plaintiff that could demonstrate a general pattern of delay in proceeding with the litigation" and thus Appellant had a right to file its complaint within six months from the termination of its prior action. *Fox,* 212 A.D.3d at 422 (emphasis omitted; internal quotations marks omitted).

73. Indeed, the only evidence in the record suggesting any form of potential prosecutorial neglect was the trial court's statement that "the case had been languishing since 2010." *Id.* This statement was inconsistent with

that court's other statement that the prior foreclosure was "actively litigated for some 7 years." *U.S. Bank Nat. Ass'n v. Fox*, 2022 WL 489630, at *1 (N.Y. Sup. Ct. Feb. 15, 2022). But the point is that this Court concluded correctly in Decision I that this was not enough to bar Appellant from exercising its rights under CPLR § 205(a) when Appellant commenced this lawsuit. This conclusion reflected the Legislature's intent as stated above; the neglect to prosecute carve-out was to apply in limited circumstances only. This Court's reversal in Decision II of its own conclusion in Decision I directly contravenes the Legislature's actual intent, applies the Legislature's new purported intent and demonstrates the harm occasioned by the retroactive application of FAPA. Its temporal scope is too broad under FAPA.

74. Moreover, if leave to appeal Decision II is not granted, confusion across the state will continue to persist, if not grow. CPLR § 205-a provides that a plaintiff cannot exercise its right under the savings clause if a case has been dismissed "for any form of neglect," but does not define that neglect. Thus, CPLR § 205-a leaves courts with unfettered discretion to define "neglect." As a result, when assessing conduct that occurred years ago, no litigant can measure the viability of a pending lawsuit premised on CPLR § 205(a) and trial courts applying the same statute will reach different conclusions based on their own interpretation of "neglect."

75. This contravenes the prior requirement that supplied certainty; that for a case to be dismissed for prosecutorial neglect, there must be multiple explicit

instances set forth on the record of the prior case revealing "a general pattern of delay." *See U.S. Bank Nat'l Ass'n, Tr. to Bank of Am., Nat'l Ass'n v. Kim*, 192 A.D.3d 612, 613, *appeal dismissed sub nom. U.S. Bank Nat'l Ass'n v. Kim*, 37 N.Y.3d 932 (2021).

76. Since an unbounded application of FAPA into past conduct will require a re-adjudication of actions occurring long ago in disposed cases, its retroactive application is unlawful.

D. The Valid Exercise of a Legal Right is Neither "Abusive" Nor "Unlawful"

77. By definition, the valid exercise of a legal right is neither "abusive" nor "unlawful." *See* S.B. S5473D at Sponsor Memo, Purpose and Intent of Bill. By analogy, here, commencement of Appellant's foreclosure action was authorized statutorily when commenced, and as such, cannot be classified as an "abusive and unlawful litigation tactic[]." *Id.*

78. *A fortiori*, FAPA's purported purpose would not be served by rendering timely commenced foreclosure actions, such as the foreclosure action here, untimely.

E. There is No Support for the Legislature's "Finding" that Foreclosure Delays are Due to "Abusive and Unlawful Litigation Tactics that Have Been Employed by Foreclosure Plaintiffs"

79. To the contrary of the Legislature's statement that foreclosure plaintiffs use delays abusively and

unlawfully, delays in the foreclosure process are properly attributable to "the extraordinary length of the contractual relationship—frequently spanning decades," and the "exacting standards" imposed by the legislature "for bringing a foreclosure claim." *Engel*, 37 N.Y.3d at 1 n.4. Further, "a noteholder has little incentive to repeatedly accelerate and then revoke its election because foreclosure is simply a vehicle to collect a debt and postponement of the claim delays recovery." *Id.* at 36.

80. The New York foreclosure process is notoriously one of the longest and most burdensome in the country "harm[ing] nearly all New Yorkers, including borrowers, and not just the banks and mortgage investors who are unable to obtain returns on their investments"[10] with the average foreclosure taking 1,823 days—or five years—to complete.[11]

81. As a result, FAPA awards severely delinquent borrowers who enjoy the benefit of residing at their property without paying their mortgage, rent or property taxes. Often, the FAPA reward for a borrower or mortgagor is a free property, which is a legislative appropriation of their mortgage lender's rights.

82. In the retroactivity context, a rational justification is one commensurate with the degree of disruption to

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10. Benjamin M. Lawsky, *Report on New York's Foreclosure Process*, N.Y.S. Dep't of Fin. Servs. at 3 (May 2015).

11. Attom Team, *Increased Foreclosure Activity in First Six Months of 2022 Approaches Pre- Covid Levels*, ATTOM (July 14, 2022).

settled, substantial rights and here, that standard has not been met. *Regina Metro. Co., LLC*, 35 N.Y.3d at 386. Consequently, CPLR § 205-a may not be applied retroactively, and the timeliness of the 2021 foreclosure must be resolved under the law in effect when it was commenced.

83. Parsing through the Legislature's justifications shows that there is no rational basis for the retroactive application of FAPA. For this reason, FAPA violates due process if applied retroactively.

V. THE COURT'S RETROACTIVE APPLICATION OF FAPA VIOLATES THE BILL OF ATTAINDER CLAUSE

84. Article I, Section 10 of the Constitution provides that "[n]o State shall . . . pass any bill of attainder." U.S. Const. Art I § 10, cl. 1. The Bill of Attainder Clause prohibits "legislatures from singling out disfavored persons and meting out summary punishment for past conduct." *Landgraf*, 511 U.S. at 266. The Supreme Court has explained that "the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature." *United States v. Brown*, 381 U.S. 437, 442 (1965).

85. As revealed by its application here, FAPA is precisely the type of "trial by legislature" the Bill of

Attainder Clause was intended to avoid. Through FAPA, the Legislature reached this Court's docket to change the outcome on Appellant and reward the Respondent in this very case.

86. In its contemporary usage, the Bill of Attainder Clause prohibits any "law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Selective Serv. Sys. v. Minnesota Pub. Int. Rsch. Grp.*, 468 U.S. 841, 846 (1984) (citations omitted; internal quotation marks omitted). The Supreme Court has identified three elements of an unconstitutional bill of attainder: (1) "specification of the affected persons," (2) "punishment," and (3) "lack of a judicial trial." *Id.* at 847.

A. Specification of the Affected Persons

87. Companies are protected by the Bill of Attainder Clause. "[S]pecification of the affected persons" element includes corporate entities. *See Consol. Edison Co. of New York v. Pataki*, 292 F.3d 338, 349 (2d Cir. 2002). Moreover, "[i]t is well settled that laws that target persons or groups by a revealing description, instead of by name, are equally impermissible under the Bill of Attainder Clause." *Reynolds v. Quiros*, 990 F.3d 286, 296 (2d Cir. 2021).

88. Here, the Legislature targeted mortgage foreclosure plaintiffs and thus targeting a specific person satisfies the specification element of an unlawful bill of attainder. *See* S.B. S5473D at Sponsor Memo, Purpose and Intent of Bill.

B. Punishment

89. To determine whether a law directed at a readily identified group is punitive, courts look to three factors: "(1) whether the challenged statute falls within the historical meaning of legislative punishment; (2) whether the statute, viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes; and (3) whether the legislative record evinces a [legislative] intent to punish." *Selective Serv. Sys.*, 468 U.S. at 852 (citations omitted; internal quotations omitted).

i. Historical Test

90. The Supreme Court has recognized that certain legislative punishment is "so disproportionately severe and so inappropriate to nonpunitive ends that they unquestionably have been held to fall within the proscription of the [Bill of Attainder Clause]." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 473 (1977). "These legislative punishments, when disproportionately severe as imposed, include death, imprisonment, confiscation of property, and prohibition from specified employments or vocations." *Reynolds*, 990 F.3d at 298. This Court's retroactive application of CPLR § 205-a confiscated Appellant's property because Decision II ordered Appellant's mortgage discharged. For all the same reasons that FAPA effects a taking of property, it constitutes punishment under the Bill of Attainder Clause.

ii. Functional Test

91. The functional test of punishment looks to whether the challenged law, "viewed in terms of the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes." *Nixon,* 433 U.S. at 475. Here, this Court's retroactive application of CPLR § 205-a does not further FAPA's "nonpunitive" purpose, which is to reverse *Engel.*

92. Prospective application of FAPA may serve a nonpunitive purpose, but its retroactive application can only be seen as punitive.

iii. Motivational Test

93. The motivational test examines "whether the legislative record 'evinces a congressional intent to punish.'" *Selective Serv. Sys.*, 468 U.S. at 852. "The legislative record by itself is insufficient evidence for classifying a statute as a bill of attainder unless the record reflects overwhelmingly a clear legislative intent to punish." *ACORN v. United States*, 618 F.3d 125, 141 (2d Cir. 2010). The legislative record here discloses overwhelmingly an intent on the part of the legislature to punish "foreclosure plaintiffs." *See* S.B. S5473D at Sponsor Memo, Purpose and Intent of Bill. Appellant's punishment here through this Court's retroactive enforcement of FAPA is evidence of that intent and the exact outcome the Legislature set out to accomplish—to take Appellant's property as punishment.

iv. Lack of Judicial Trial

94. The retroactive application of CPLR § 205-a imposes punishment for past conduct without a judicial trial. Indeed, lenders and other "foreclosure plaintiffs" were given no judicial or quasi-judicial protections to fight the Legislature's conclusory determination that they have employed "abusive and unlawful litigation tactics . . . to the prejudice of homeowners throughout New York." *See* S.B. S5473D at Sponsor Memo, Purpose and Intent of Bill.

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95. As applied to Appellant, retroactive application of CPLR § 205-a meets the criteria for an unlawful bill of attainder because Appellant has been punished unfairly by application of a statute Appellant could not have complied with.

VI. FAPA'S RETROACTIVE APPLICATION VIOLATES THE SEPARATION OF POWERS DOCTRINE

96. The separation of powers doctrine is one of the most fundamental axioms of our republic. Since our nation was founded, it has been understood that the legislative, executive and judiciary branches are separate and distinct. "Judgments within the powers vested in courts by the Judiciary Article of the Constitution may not lawfully be revised, overturned or refused faith and credit by another Department of Government." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 225–26 (1995).

97. In this very case, the Legislature reached down and directed a favorable outcome for Respondent. "The legislative power . . . cannot directly reach the property or vested rights of the citizen, by providing for their forfeiture or transfer to another, without trial and judgment in the courts; for to do so, would be the exercise of a power which belongs to another branch of the government, and is forbidden to the legislature" *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 715 n.4 (2015). This violates the separation of powers doctrine under both the U.S.[12] and N.Y.[13] Constitutions.[14]

98. FAPA's sponsors memo blatantly reveals FAPA's encroachment on the judiciary. The Legislature was disgusted by judicial decisions—from this Court and others—correctly interpreting New York law.

> i. The legislature finds that . . . problem[s] [have] been exacerbated by court decisions, which . . . have given mortgage lenders and loan servicers opportunities to avoid . . . compliance with remedial statutes . . . and [as such] the purpose of [FAPA] . . . is to . . . codify correct judicial applications . . . and *rectify erroneous judicial interpretations*. [Further FAPA must be passed urgently to overrule decisions of the judiciary

12. *See* Articles I, II & III, §§ 1.

13. *See* Articles III, IV & VI, §§ 1.

14. "[L]egislation . . . [that] has the effect to destroy the rights of parties vested under [a] judgment . . . is the exercise of judicial power, not lodged with the law-making power under our constitution." *Agnew v. State*, 166 Misc. 602, 606 (Ct. Cl. 1938).

> because those] "holding[s] [are] wrong and must not be followed. S.B. S5473D at Sponsor Memo, Purpose and Intent of Bill (emphasis added).

99. By requiring that FAPA apply retroactively, the Legislature set out to disturb multiple decisions of the judicial branch and dictate new outcomes, such as the one here. By doing this, the Legislature has impinged upon the inherent powers of the judicial branch and impugned this Court's rightful province.

100. Article VI, § 1 of the New York Constitution vests the judicial authority of New York in a unified court system (Article III, § 1 of the U.S. Constitution does so similarly). This structure was founded on the principle that each branch may not interfere with the discharge of the inherent functions of the other.

> The object of a written Constitution is to regulate, define and limit the powers of government by assigning to the executive, legislative and judicial branches distinct and independent powers. The safety of free government rests upon the independence of each branch and the even balance of power between the three. It is not merely for convenience in the transaction of business that they are kept separate by the Constitution, but for the preservation of liberty itself.

New York State Bankers Association, Inc. v. Wetzler, 81 N.Y.2d 98, 105 (1993).

101. It follows that it "is a fundamental principle of the organic law that each department should be free from interference, in the discharge of its peculiar duties, by either of the others." *People v. Ohrenstein*, 153 A.D.2d 342, 359 (1989), *aff'd*, 77 N.Y.2d 38 (1990).

> [C]ourts are not the puppets of the Legislature. They are an independent branch of the government, as necessary and powerful in their sphere as either of the other great divisions.

Riglander v. Star Co., 98 A.D. 101, 105 (App. Div. 1904), *aff'd sub nom. Riglander Morning J. Ass'n*, 181 N.Y. 531 (1905).

102. Because courts are an independent branch of government, they are vested with the inherent power "to do all things reasonably necessary for the administration of justice within the scope of their jurisdiction." *Gabrelian v. Gabrelian*, 108 A.D.2d 445, 448 (1985), *abrogated on other grounds by A.G. Ship Maint. Corp. v. Lezak*, 69 N.Y.2d 1 (1986).

103. If the Legislature intended FAPA to apply retroactively to dictate the outcome of pending cases, this Court can and must respond. This Court may either sanction the legislative will, blindly apply FAPA, and erase decades of its precedent—all to trample Appellant's rights—or this Court may protect Appellant's rights and the sanctity of its powers by refusing FAPA's retroactive application.

104. By instructing this Court to nullify its settled judicial decisions through retroactively applying FAPA to the pending docket within the judiciary, the Legislature has violated the separation of powers doctrine. In doing so, the Legislature has not only stripped the court of its constitutional power to adjudicate matters, but also has stripped the court of its judicial discretion to decide cases based upon the particular facts of the case. The Legislature can change the law when it disagrees with the judiciary, but it cannot create new laws that apply retroactively so that pending cases are not measured by judicial precedent upon which those cases were built, but by new rules to achieve the Legislature's preferred outcome. That violates this Court's power and function.

105. For these reasons, leave to appeal should be granted to address the Legislature's violation of the separation of powers doctrine.

CONCLUSION

106. For all the reasons stated above, Appellant's Motion for Leave to Reargue or for Leave to Appeal should be granted.

WHEREFORE, Appellant respectfully requests that Appellant's Motion for Leave to Reargue or for Leave to Appeal be granted in its entirety, together with such other and further relief as the Court may deem just and proper.

Dated: June 5, 2023

/s/ Adam M. Swanson
ADAM M. SWANSON

APPENDIX N — COMPLAINT EXHIBIT C— ASSIGNMENT, FILED JUNE 9, 2021

COMPLAINT EXHIBIT C—ASSIGNMENT

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2011060200484001001EE9E0
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 5**	
Document ID: 2011060200484001 Document Date: 12-17-2010 Preparation Date: 06-02-2011 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 3	

Appendix N

PRESENTER:	**RETURN TO:**
WEB TITLE AGENCY ***PICK UP*** 69 CASCADE DRIVE KNOWLTON BLDG SUITE 202 ROCHESTER, NY 14614 585-454-4770 gzimmer@webtitle.us 10-24679	WEB TITLE AGENCY ***PICK UP*** 69 CASCADE DRIVE KNOWLTON BLDG SUITE 202 ROCHESTER, NY 14614 585-454-4770 gzimmer@webtitle.us 10-24679

PROPERTY DATA

Borough	**Block**	**Lot**		**Unit**	**Address**
MANHATTAN	1536	1546	Entire Lot	17J	1619 3 AVENUE

Property Type: DWELLING ONLY - 1 FAMILY

CROSS REFERENCE DATA

CRFN: 2008000168013

PARTIES

ASSIGNOR/OLD LENDER:	**ASSIGNEE/NEW LENDER:**
MERS, INC 1901 E. VOORHEES STREET, SUITE C DANVILLE, IL 61834 x Additional Parties Listed on Continuation Page	ONEWEST BANK FSB 888 E. WALNUT STREET PASADENA, CA 91101

FEES AND TAXES

Mortgage

Mortgage Amount:	$	0.00

Appendix N

Taxable Mortgage Amount:	$ 0.00
Exemption:	
TAXES: County (Basic):	$ 0.00
City (Additional):	$ 0.00
Spec (Additional):	$ 0.00
TASF:	$ 0.00
NYCTA:	$ 0.00
Additional MRT:	$ 0.00
TOTAL:	$ 0.00
Recording Fee:	$ 52.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 06-10-2011 11:30 City Register File No. (CRFN): **2011000206433** /s/ Annette M. Hill ***City Register Official Signature***

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER	[BAR CODE] 2011060200484001001CEB60
RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 5	
Document ID: 2011060200484001 Document Date: 12-17-2010 Preparation Date: 06-02-2011 Document Type: ASSIGNMENT, MORTGAGE	
PARTIES **ASSIGNOR/OLD LENDER:** INDYMAC BANK, FSB 1901 E. VOORHEES STREET, SUITE C DANVILLE, IL 61834	

Appendix N

RECORD & RETURN TO:	**SECTION:**
Frenkel, Lambert, Weiss, Weisman & Gordon, LLP	**BLOCK:1536**
20 West Main Street	**LOT:1546**
Bay Shore, New York 11706	**COUNTY: New York**

ASSIGNMENT OF MORTGAGE

Know that **Mortgage Electronic Registration Systems, Inc. as nominee for IndyMac Bank F.S.B.** ("Assignor"), having a place of business at 1901 E Voorhees Street, Suite C, Danville, IL 61834, in consideration of TEN DOLLARS ($10.00) and other good and valuable consideration paid by **OneWest Bank, FSB** ("Assignee"), having a place of business at 888 E. Walnut Street, Pasadena, CA 91101, does hereby grant, bargain, sell, assign, transfer, and convey unto the Assignee the following described Mortgage or Deed of Trust duly recorded in the office of real property records in the County of New York, for the premises known as 1619 3rd Avenue, Unit17J, New York, NY 10128, together with the note or obligation described and secured by said mortgage, and the monies due and to grow due thereon with the interest, as follows:

MORTGAGOR:	Cassandra C. Fox
MORTGAGEE:	Mortgage Electronic Registration Systems, Inc. as nominee for IndyMac Bank F.S.B.
AMOUNT:	417,000.00
DATE:	April 7, 2008
RECORDED:	April 25, 2008
CRFN:	2008000168013

Appendix N

This assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market.

To have and to hold the same unto the Assignee, and to the successors, legal representatives and assigns of the Assignee forever.

In Witness whereof, the Assignor has hereunto set her/his hand this ___ day of ___DEC 17 2010___, 2010.

IN PRESENCE OF:

/s/ Stacey F. Jones
Stacey F. Jones

Mortgage Electronic Registration Systems, Inc. as nominee for IndyMac Bank F.S.B.:

BY: /s/ Suchan Murray___
Suchan Murray

Title: Assistant Secretary

Appendix N

FINISH FIRST
WEB TITLE

SCHEDULE A
DESCRIPTION OF MORTGAGED PREMISES

Title No.: WTA-10-24679-NY-FC

PARCEL 1

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the easterly line of Third Avenue with the northerly line of East 90th Street, as these streets are now laid out;

RUNNING THENCE northerly along said easterly line of Third Avenue, a distance of 201 feet 5 inches to a point on the southerly line of East 91st Street;

THENCE easterly along said southerly line of East 91st Street, a distance of 394 feet and no inches to a point;

THENCE southerly along a line parallel to said easterly line of Third Avenue, a distance of 201 feet and 5 inches to a point on said northerly line of East 90th Street;

THENCE westerly along said northerly line of East 90th Street, a distance of 394 feet and no inches to the point or place of BEGINNING, by the aforesaid courses and distances, more or less.

PARCEL 2

ALL those plots, piece or parcel of real property, situate, tying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly line of East 91st Street, 244 feet and no inches west of the intersection formed by the said northerly line of East 91st Street with the westerly line of Second Avenue, as these streets are now laid out;

RUNNING THENCE westerly along said northerly line of East 91st Street, a distance of 366 feet and no inches to a point on the easterly line of Third Avenue;

RUNNING THENCE northerly along said easterly line of Third Avenue, a distance of 201 feet 5 inches to a point on the southerly line of East 92nd Street;

RUNNING THENCE easterly along said southerly line of East 92nd Street, a distance of 366 feet and no inches to a point;

THENCE RUNNING southerly along a line parallel to said easterly line of Third Avenue, a distance of 201

feet and 5 inches to the point or place of BEGINNING, by the aforesaid courses and distances more or less;

TOGETHER with 0.069886% interest in the Common Elements;

The condominium Unit (in the Building located at and known as and by Street Number 1619,Third Avenue, New York) known as The Ruppert Yorkville Towers Condominium-designated and described as Unit 17J (hereinafter called the "Unit") in the Declaration (hereinafter called the "Declaration") made by the sponsor (as identified in the Declaration) under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), dated 12/18/02 and recorded 1/3/03 in the Office of the Register of the City of New York, County of New York, in Reel 3708 Page 1, and amended by First Amendment to Declaration dated 1/24/03 and recorded 2/27/03 as CRFN 2003000029255, and also designated as Tax Lot number 1546 Block 1536 Section 5, Borough of Manhattan on the Tax Map of the Real Property Assessment Department of the City of New York and on the floor plans of the said Building, certified by Paul J. Gallo, R.A., on 12/16/02 and filed in the Real Property Assessment Department of the City of New York on 1/3/03 as Condominium Plan No. 1277 and also filed in the City Register's Office on 1/3/03 as Condominium Map No. 5954, as amended and certified by Paul A. Gallo, R.A., on 1/24/03, and certified by the City Surveyor on 2/10/03 and filed with the Register on 2/27/03 as Cross Reference No. CRFN2003000029256.

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2016011300017001003E6A7D
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 3**	
Document ID: 2016011300017001 Document Date: 01-05-2016 Preparation Date: 01-14-2016 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 1	
PRESENTER: INDECOMM GLOBAL SERVICES 1260 ENERGY LANE ENERGY LANE ST. PAUL, MN 55108	**RETURN TO:** INDECOMM GLOBAL SERVICES 1260 ENERGY LANE ENERGY LANE ST. PAUL, MN 55108

Appendix N

PROPERTY DATA					
Borough	**Block**	**Lot**		**Unit**	**Address**
MANHATTAN	1536	1546	Entire Lot	17J	1619 3 AVENUE
Property Type: 1-2 FAMILY DWELLING WITH VACANT LAND					

CROSS REFERENCE DATA
CRFN: 2008000168013
☒ Additional Cross References on Continuation Page

PARTIES	
ASSIGNOR/OLD LENDER:	**ASSIGNEE/NEW LENDER:**
ONEWEST BANK FSB 1661 WORTHINGTON RD SUITE 100 WEST PALM BEACH, FL 33409	OCWEN LOAN SERVICING LLC 1661 WORTHINGTON ROAD STE 100 WEST PALM BEACH, FL 33409

FEES AND TAXES		
Mortgage:		
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00

Appendix N

Additional MRT:	$ 0.00
TOTAL:	$ 0.00
Recording Fee:	$ 42.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 01-22-2016 12:00 City Register File No. (CRFN): **2016000021792** /s/ Annette M. Hill ***City Register Official Signature***

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER	[BAR CODE] 2016011300017001003C68FD
RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 3	
Document ID: 2016011300017001 Document Date: 01-05-2016 Preparation Date: 01-14-2016 Document Type: ASSIGNMENT, MORTGAGE	
CROSS REFERENCE DATA **CRFN:** 2011000206433	

Appendix N

Recording Requested By:
OCWEN LOAN SERVICING, LLC

When Recorded Return To:

When Recorded Return to:
Indecomm Global Services
As Recording Agent Only
1260 Energy Lane
St. Paul, MN 55108

CORPORATE ASSIGNMENT OF MORTGAGE

New York, New York
SELLER'S SERVICING # [redacted] "FOX"

Date of Assignment: January 5th, 2016
Assignor: ONEWEST BANK, FSB BY ITS ATTORNEY IN FACT OCWEN LOAN SERVICING, LLC at 1661 WORTHINGTON RD, SUITE 100, WEST PALM BEACH, FL 33409
Assignee: OCWEN LOAN SERVICING, LLC at 1661 WORTHINGTON ROAD, STE 100, WEST PALM BEACH, FL 33409
Executed By: CASSANDRA C FOX To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND/OR ASSIGNS
Date of Mortgage: 04/07/2008 Recorded: 04/25/2008 in Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 2008000168013 In the County of New York, State of New York.

Appendix N

-Assigned Wholly by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND/OR ASSIGNS TO ONEWEST BANK, F.S.B. Dated: 12/17/2010 Recorded: 06/10/2011 in Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 2011000206433

Section/Block/Lot N/A-1536-1546

Property Address: 1619 3RD AVE 17J, NEW YORK, NY 10128

This Assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market.

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage having an original principal sum of $417,000.00 with interest, secured thereby, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage, and the said property unto the said Assignee forever, subject to the terms contained in said Mortgage. IN WITNESS

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WHEREOF, the assignor has executed these presents the day and year first above written:

ONEWEST BANK, FSB BY ITS ATTORNEY IN FACT OCWEN LOAN SERVICING, LLC
POA: 12/05/2013 as Instrument No.: 2013000501041
On JAN 06 2016

By /s/ Dawn M. Heitmann
DAWN M. HEITMANN, Authorized Signer

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2016011900056002001E0CD3
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 2**	
Document ID: 2016011900056002 Document Date: 06-30-2015 Preparation Date: 01-19-2016 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 1	
PRESENTER: RAS BORISKIN, LLC 900 MERCHANTS CONCOURSE WESTBURY, NY 11590 SUPPORT@SIMPLIFILE.COM	**RETURN TO:** RAS BORISKIN 900 MERCHANTS CONCOURSE WESTBURY, NY 11590 SUPPORT@SIMPLIFILE.COM

Appendix N

PROPERTY DATA				
Borough	**Block**	**Lot**	**Unit**	**Address**
MANHATTAN	1536	1546 Entire Lot	17J	1619 3 AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT				

CROSS REFERENCE DATA
CRFN: 2008000168013

PARTIES	
ASSIGNOR/OLD LENDER: ONEWEST BANK, N.A., FKA ONEWEST BANK FSB, BY ITS 1661 WORTHINGTON RD, SUITE 100 WEST PALM BEACH, FL 33409	**ASSIGNEE/NEW LENDER:** OCWEN LOAN SERVICING, LLC 1661 WORTHINGTON RD, SUITE 100 WEST PALM BEACH, FL 33409

FEES AND TAXES		
Mortgage: Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00

Appendix N

NYCTA:	$ 0.00
Additional MRT:	$ 0.00
TOTAL:	$ 0.00
Recording Fee:	$ 42.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 01-26-2016 15:11 City Register File No. (CRFN): **2016000025206** /s/ Annette M. Hill ***City Register Official Signature***

Appendix N

Recording Requested By:
OCWEN LOAN SERVICING, LLC

When Recorded Return To:

OCWEN LOAN SERVICING, LLC
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401

CORPORATE ASSIGNMENT OF MORTGAGE

New York, New York
SELLERS SERVICING #: 'FOX"
SELLER'S LENDER ID#:
OLD SERVICING #:

Date of Assignment: June 30th, 2015
Assignor: ONE WEST BANK, N.A., FKA ONEWEST BANK FSB, BY ITS ATTORNEY IN FACT OCWEN LOAN SERVICING, LLC at 1661 WORTHINGTON RD, SUITE 100, WEST PALM BEACH, FL 33409
Assignee: OCWEN LOAN SERVICING, LLC at, 1661 WORTHINGTON ROAD, STE 100, WEST PALM BEACH, FL 33409
Executed By: CASSANDRA C FOX To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND/OR ASSIGNS
Date of Mortgage: 04/07/2008 Recorded: 04/25/2008 in Book/Reel/Liber: N/A Page/Folio: N/A as Instrument

Appendix N

No.: 2008000168013 In the County of New York, State of New York.

-Assigned Wholly by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B. A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND/OR ASSIGNS TO ONE WEST BANK FSB Dated: 12/17/2010 Recorded: 06/10/2011 in Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 2011000206433

Section/Block/Lot N/A-1536-1546

Property Address: 1619 3RD AVE 17J, NEW YORK, NY 10128

This Assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market.

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage having an original principal sum of $417,000.00 with interest, secured thereby, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's interest under the Mortgage.

Appendix N

TO HAVE AND TO HOLD the said Mortgage, and the said property unto the said Assignee forever, subject to the terms contained in said Mortgage. IN WITNESS WHEREOF, the assignor has executed these presents the day and year first above written:

ONE WEST BANK, N.A., FKA ONEWEST BANK FSB, BY ITS ATTORNEY IN FACT OCWEN LOAN SERVICING, LLC
On JUN 30 2015

By: /s/ BRANDY BERNS
BRANDY BERNS, Authorized Signer

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2016020200608001001E8490
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 3**	
Document ID: 2016020200608001 Document Date: 01-11-2016 Preparation Date: 02-04-2016 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 1	
PRESENTER: INDECOMM GLOBAL SERVICES 1260 ENERGY LANE ENERGY LANE ST. PAUL, MN 55108	**RETURN TO:** INDECOMM GLOBAL SERVICES 1260 ENERGY LANE ENERGY LANE ST. PAUL, MN 55108

Appendix N

PROPERTY DATA				
Borough	**Block**	**Lot**	**Unit**	**Address**
MANHATTAN	1536	1546 Partial Lot	17J	1619 3 AVENUE
Property Type: 1-2 FAMILY DWELLING WITH ATTACHED GARAGE				

CROSS REFERENCE DATA
CRFN: 2008000168013
☒ Additional Cross References on Continuation Page

PARTIES	
ASSIGNOR/OLD LENDER:	**ASSIGNEE/NEW LENDER:**
OCWEN LOAN SERVICING LLC 1661 WORTHINGTON ROADSUITE 100 WEST PALM BEACH, FL 33409	FEDERAL NATIONAL MORTGAGE ASSOCIATION 4221 DALLAS PARKWAYSUITE 100 DALLAS, TX 75254

FEES AND TAXES		
Mortgage:		
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00

Appendix N

Recording Fee:	$ 42.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 02-10-2016 15:51 City Register File No. (CRFN): **2016000046529** /s/ Annette M. Hill ***City Register Official Signature***
NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER	[BAR CODE] 2016020200608001001C8610
RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 3	
Document ID: 2016020200608001 Document Date: 01-11-2016 Preparation Date: 02-04-2016 Document Type: ASSIGNMENT, MORTGAGE	
CROSS REFERENCE DATA **CRFN:** 2011000206433 **CRFN:** 2016000021792	

Appendix N

When Recorded Return To:
Indecomm Global Services
As Recording Agent Only
1260 Energy Lane
St. Paul, MN 55108

ASSIGNMENT OF MORTGAGE

Dated: January 11, 2016

[redacted]
Reference: 29461705
Package: 80013911
Document: 5454115

For value received **Ocwen Loan Servicing, LLC, 1661 Worthington Road, Suite 100, West Palm Beach, FL 33409**, the undersigned hereby grants, assigns and transfers to **Federal National Mortgage Association, its successors or assigns, 14221 DALLAS PARKWAY, SUITE 100, DALLAS, TX 75254**, all beneficial interest under a certain Mortgage dated **April 7, 2008** executed by **CASSANDRA C FOX to Mortgage Electronic Registration Systems, Inc., as nominee for IndyMac Bank, FSB** and recorded in Book **XX** on Page(s) **XX** as Document Number **2008000168013** on **April 25, 2008 of the official records of the County Clerk of Manhattan County, New York.**

MORTGAGE AMOUNT: **$417,000.00**
PROPERTY ADDRESS:
1619 3RD AVE 17J, NEW YORK, NY 10128
BLOCK: **1536**
LOT: **1546**

(1) This mortgage was assigned from Mortgage Electronic Registration Systems, Inc as nominee for IndyMac Bank, FSB to OneWest Bank, FSB dated 12/17/2010 recorded 06/10/2011 under CRFN # 2011000206433 in Manhattan County records. (2) This mortgage was assigned from OneWest Bank, FSB to Ocwen Loan Servicing, LLC dated 1/5/2016 and Recorded 1/22/2016 under CRFN# 2016000021792

Contact Federal National Mortgage Association for this instrument c/o Seterus, Inc., 14523 SW Millikan Way, #200, Beaverton, OR 97005, telephone #1-866-570-5277, which is responsible for receiving payments

This Assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market.

Ocwen Loan Servicing, LLC

By: /s/ Tammy Jo Sorbo
Tammy Jo Sorbo, Assistant Secretary

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2016110901127001001E98E4
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 4**	
Document ID: 2016110901127001 Document Date: 08-16-2016 Preparation Date: 11-09-2016 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 3	
PRESENTER: T.D. SERVICE COMPANY 4000 W. METROPOLITAN DR SUITE 400 ORANGE, CA 92868 714-480-5536 COUNTYDATABASE@ TDSF.COM	**RETURN TO:** T.D. SERVICE COMPANY 4000 W. METROPOLITAN DR SUITE 400 ORANGE, CA 92868 714-480-5536 COUNTYDATABASE@ TDSF.COM

Appendix N

PROPERTY DATA					
Borough	**Block**	**Lot**		**Unit**	**Address**
MANHATTAN	1536	1546	Entire Lot	17J	1619 3RD AVE
Property Type: MULTIPLE RESIDENTIAL CONDO UNT					

CROSS REFERENCE DATA
CRFN: 2008000168013

PARTIES	
ASSIGNOR/OLD LENDER:	**ASSIGNEE/NEW LENDER:**
FEDERAL NATIONAL MORTGAGE ASSOCIATION 13150 WORLDGATE DRIVE HERDON, VA 20170	WILMINGTON SAVINGS FUND SOCIETY 500 DELAWARE AVENUE, 11TH FLOOR WILMINGTON, DE 19801

FEES AND TAXES		
Mortgage:		
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00
NYCTA:	$	0.00
Additional MRT:	$	0.00
TOTAL:	$	0.00

Appendix N

Recording Fee:	$ 52.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 11-18-2016 10:56 City Register File No. (CRFN): **2016000408020** /s/ Annette M. Hill ***City Register Official Signature***

Appendix N

Recording Requested and Prepared By:
T.D. SERVICE COMPANY
LR Department
4000 W Metropolitan Dr Ste 400
Orange, CA 92868
SUSAN S THACH

And When Recorded Mail To:
T.D. Service Company
LR Department (Cust# 671)
4000 W Metropolitan Dr Ste 400
Orange, CA 92868

7600359625 Space above for Recorder's use _____

Customer#: **671/1** [redacted]

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, **FEDERAL NATIONAL MORTGAGE ASSOCIATION, 13150 WORLDGATE DRIVE, HERDON, VA 20170-0000**, hereby assign and transfer to **WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR CARLSBAD FUNDING MORTGAGE TRUST, 500 DELAWARE AVENUE 11TH FLOOR, WILMINGTON, DE 19801-0000**, all its right, title and interest in and to said Mortgage in the amount of **$417,000.00**, recorded in the State of **NEW YORK**, County of **NEW YORK** Official Records, dated **APRIL 07, 2008** and recorded on **APRIL 25, 2008,**

as Instrument No. 2008000168013, in Book No. ___, at Page No. ___.
Executed by: **CASSANDRA C FOX** (Original Mortgagor).
Original Mortgagee: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR INDYMAC BANK, FSB, ITS SUCCESSORS AND ASSIGNS.**
Property Address: **1619 3RD AVE APT 17J, NEW YORK, NY 10128-0000. SBL#**, B:1536 L:1546.
The assignee is not acting as a nominee of the mortgagor and that the mortgage continues to secure a bonafide obligation.

Date: 8/16/16
FEDERAL NATIONAL MORTGAGE ASSOCIATION, BY RUSHMORE LOAN MANAGEMENT SERVICES LLC, ITS ATTORNEY IN FACT
Power of Attorney Record As Instrument # 2016000245124 In Book No. _____--_____ At Page No. _____--_____.

By: /s/ Jeannette Kabayan_____
(Name, Title): Jeannette Kabayan Assistant Vice President

This Assignment is not subject to the requirements of new section 275 of the real property law because it is an assignment with the secondary mortgage market.

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2017020900554001001E9514
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 4**	
Document ID: 2017020900554001 Document Date: 08-16-2016 Preparation Date: 02-09-2017 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 3	
PRESENTER: RAS BORISKIN, LLC 900 MERCHANTS CONCOURSE WESTBURY, NY 11590 SUPPORT@SIMPLIFILE.COM	**RETURN TO:** RAS BORISKIN, LLC 900 MERCHANTS CONCOURSE, SUITE 106 WESTBURY, NY 11590 SUPPORT@SIMPLIFILE.COM

Appendix N

PROPERTY DATA				
Borough	**Block**	**Lot**	**Unit**	**Address**
MANHATTAN	1536	1546 Entire Lot	17J	1619 3 AVENUE
Property Type: SINGLE RESIDENTIAL CONDO UNIT				

CROSS REFERENCE DATA
CRFN: 2008000168013

PARTIES	
ASSIGNOR/OLD LENDER: FEDERAL NATIONAL MORTGAGE ASSOCIATION 13150 WORLDGATE DRIVE HERDON, VA 20170	**ASSIGNEE/NEW LENDER:** WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIA 500 DELAWARE AVENUE 11TH FLOOR WILMINGTON, DE 19801

FEES AND TAXES		
Mortgage:		
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00

Appendix N

NYCTA:	$ 0.00
Additional MRT:	$ 0.00
TOTAL:	$ 0.00
Recording Fee:	$ 52.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 02-10-2017 11:11 City Register File No. (CRFN): **20170000058255** /s/ Annette M. Hill ***City Register Official Signature***

Appendix N

Recording Requested and Prepared By:
T.D. SERVICE COMPANY
LR Department
4000 W Metropolitan Dr Ste 400
Orange, CA 92868
SUSAN S THACH

And When Recorded Mail To:
T.D. Service Company
LR Department (Cust# 671)
4000 W Metropolitan Dr Ste 400
Orange, CA 92868

[redacted]__ Space above for Recorder's use _____

Customer#: **671/1** Service#: [redacted]
Loan#: [redacted]

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, **FEDERAL NATIONAL MORTGAGE ASSOCIATION, 13150 WORLDGATE DRIVE, HERDON, VA 20170-0000**, hereby assign and transfer to **WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR CARLSBAD FUNDING MORTGAGE TRUST, 500 DELAWARE AVENUE 11TH FLOOR, WILMINGTON, DE 19801-0000**, all its right, title and interest in and to said Mortgage in the amount of **$417,000.00**, recorded in the State of **NEW YORK**, County of **NEW YORK** Official Records, dated **APRIL 07, 2008** and recorded on **APRIL 25, 2008,**

as Instrument No. 2008000168013, in Book No. ___, at Page No. ___.
Executed by: **CASSANDRA C FOX** (Original Mortgagor).
Original Mortgagee: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR INDYMAC BANK, FSB, ITS SUCCESSORS AND ASSIGNS.**
Property Address: **1619 3RD AVE APT 17J, NEW YORK, NY 10128-0000. SBL#** B:1536 L:1546.
The assignee is not acting as a nominee of the mortgagor and that the mortgage continues to secure a bonafide obligation.

Date: 8/16/16
FEDERAL NATIONAL MORTGAGE ASSOCIATION, BY RUSHMORE LOAN MANAGEMENT SERVICES LLC, ITS ATTORNEY IN FACT
Power of Attorney Record As Instrument # _____ In Book No. _____ At Page No. _____.

By: /s/ Jeannette Kabayan
(Name, Title): Jeannette Kabayan Assistant Vice President

This Assignment is not subject to the requirements of new section 275 of the real property law because it is an assignment with the secondary mortgage market.

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2020073000389001001E3FF4
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 3**	
Document ID: 2020073000389001 Document Date: 06-18-2020 Preparation Date: 07-30-2020 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 2	
PRESENTER: CORELOGIC ADVANCED DELIVERY ENGINES, LLC 3001 HACKBERRY ROAD IRVING, TX 75063-0156	**RETURN TO:** CORELOGIC ADVANCED DELIVERY ENGINES, LLC 3001 HACKBERRY ROAD IRVING, TX 75063-0156

Appendix N

PROPERTY DATA				
Borough	**Block**	**Lot**	**Unit**	**Address**
MANHATTAN	1536	1546 Entire Lot		1619 3RD AVE 17J
Property Type: DWELLING ONLY - 1 FAMILY				

CROSS REFERENCE DATA
CRFN: 2008000168013

PARTIES	
ASSIGNOR/OLD LENDER: WILMINGTON SAVINGS FUND SOCIETY, FSB 500 DELAWARE AVENUE, 11TH FLOOR WILMINGTON, DE 19801	**ASSIGNEE/NEW LENDER:** MTGLQ INVESTORS, L.P 2001 ROSS AVENUE, SUITE 2800 DALLAS, TX 75201

FEES AND TAXES		
Mortgage: Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00

Appendix N

NYCTA:	$ 0.00
Additional MRT:	$ 0.00
TOTAL:	$ 0.00
Recording Fee:	$ 47.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 07-30-2020 13:37 City Register File No. (CRFN): **2020000215936** /s/ Annette M. Hill ***City Register Official Signature***

Appendix N

Recording Requested By and Return To:
CORELOGIC
PO BOX 9232
COPPELL, TX 75019
Tax Account Number: _____

Record 1st

ASSIGNMENT OF SECURITY INSTRUMENT

REF NUMBER: [redacted]

Date: JUN 18 2020 Project Code: AP001 Data ID: [redacted]

Property Address: 1619 3RD AVE 17J, NEW YORK, NY 10128

Property Location: BOROUGH OF MANHATTAN

Owner and Assignor ("Assignor") of Mortgage ("Security Instrument"):
WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR CARLSBAD FUNDING MORTGAGE TRUST, 500 DELAWARE AVENUE, 11TH FLOOR, WILMINGTON, DE 19801

Assignee:
MTGLQ INVESTORS, L.P., 2001 ROSS AVENUE, SUITE 2800, DALLAS, TX 75201

Security Instrument is described as follows:

Date: 04/07/2008
Original Amount: $417000.00
Borrower/Grantor/Mortgagor/Trustor:
CASSANDRA C FOX

whose address is 1619 3RD AVE 17J, NEW YORK, NY 10128
Mortgagee/Beneficiary: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND ASSIGNS
Mortgage Recorded or Filed in Instrument Number 2008000168013, 4/25/2008 in the Official Records in the County Recorder's or Clerk's Office of NEW YORK COUNTY, NY.
Property (including any improvements) Subject to Security Instrument:

This assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market.

For good, valuable, and sufficient consideration received, Assignor sells, transfers, assigns, grants, conveys and sets over the Security Instrument and all of Assignor's right, title and interest in the Security Instrument to Assignee and Assignee's successors and assigns, forever.

When the context requires, singular nouns and pronouns include the plural.

WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR CARLSBAD FUNDING

Appendix N

MORTGAGE TRUST BY MTGLQ INVESTORS, L.P., AS ATTORNEY-IN-FACT BY POWER OF ATTORNEY RECORDED ON _____ IN BOOK _____, PAGE_____, INSTRUMENT # _____.

By: /s/ Andrea Rhinehardt
Andrea Rhinehardt

Title: Vice President

Appendix N

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.	[BAR CODE] 2020080700252001001E99FB
RECORDING AND ENDORSEMENT COVER PAGE **PAGE 1 OF 3**	
Document ID: 2020080700252001 Document Date: 06-18-2020 Preparation Date: 08-07-2020 Document Type: ASSIGNMENT, MORTGAGE Document Page Count: 2	
PRESENTER: CORELOGIC ADVANCED DELIVERY ENGINES, LLC 3001 HACKBERRY ROAD IRVING, TX 75063-0156	**RETURN TO:** CORELOGIC ADVANCED DELIVERY ENGINES, LLC 3001 HACKBERRY ROAD IRVING, TX 75063-0156

Appendix N

PROPERTY DATA				
Borough	**Block**	**Lot**	**Unit**	**Address**
MANHATTAN	1536	1546 Entire Lot		1619 3RD AVE 17J
Property Type: DWELLING ONLY - 1 FAMILY				

CROSS REFERENCE DATA
CRFN: 2008000168013

PARTIES	
ASSIGNOR/OLD LENDER:	**ASSIGNEE/NEW LENDER:**
MTGLQ INVESTORS, L.P. 2001 ROSS AVENUE, SUITE 2800 DALLAS, TX 75201	US. BANK NATIONAL ASSOCIATION 60 LIVINGSTON AVENUE, EP-MN-WS3D ST. PAUL, MN 55107

FEES AND TAXES		
Mortgage:		
Mortgage Amount:	$	0.00
Taxable Mortgage Amount:	$	0.00
Exemption:		
TAXES: County (Basic):	$	0.00
City (Additional):	$	0.00
Spec (Additional):	$	0.00
TASF:	$	0.00
MTA:	$	0.00

Appendix N

NYCTA:	$ 0.00
Additional MRT:	$ 0.00
TOTAL:	$ 0.00
Recording Fee:	$ 47.00
Affidavit Fee:	$ 0.00
Filing Fee:	$ 0.00
NYC Real Property Transfer Tax:	$ 0.00
NYS Real Estate Transfer Tax:	$ 0.00
	RECORDED OR FILED IN THE OFFICE OF THE CITY REGISTER OF THE CITY OF NEW YORK Recorded/Filed 08-07-2020 12:58 City Register File No. (CRFN): **2020000223050** /s/ Annette M. Hill ***City Register Official Signature***

Appendix N

Recording Requested By and Return To:
CORELOGIC
PO BOX 9232
COPPELL, TX 75019
Tax Account Number: 1536-1546

Record 2nd

ASSIGNMENT OF SECURITY INSTRUMENT

REF NUMBER: [redacted]

Date: JUN 18 2020 Project Code: AP001 D[redacted]

Property Address: 1619 3RD AVE 17J, NEW YORK, NY 10128

Property Location: BOROUGH OF MANHATTAN

Owner and Assignor ("Assignor") of Mortgage ("Security Instrument"):
MTGLQ INVESTORS, L.P., 2001 ROSS AVENUE, SUITE 2800, DALLAS, TX 75201

Assignee:
U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT, 60 LIVING-STON AVENUE, EP-MN-WS3D, ST. PAUL, MN 55107

Security Instrument is described as follows:

Date: 04/07/2008
Original Amount: $417000.00
Borrower/Grantor/Mortgagor/Trustor:
CASSANDRA C FOX

whose address is 1619 3RD AVE 17J, NEW YORK, NY 10128
Mortgagee/Beneficiary: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND ASSIGNS
Mortgage Recorded or Filed in Instrument Number 2008000168013, 4/25/2008 in the Official Records in the County Recorder's or Clerk's Office of NEW YORK COUNTY, NY.
Property (including any improvements) Subject to Security Instrument:

This assignment is not subject to the requirements of section two hundred seventy-five of the Real Property Law because it is an assignment within the secondary mortgage market.

For good, valuable, and sufficient consideration received, Assignor sells, transfers, assigns, grants, conveys and sets over the Security Instrument and all of Assignor's right, title and interest in the Security Instrument to Assignee and Assignee's successors and assigns, forever.

When the context requires, singular nouns and pronouns include the plural.

MTGLQ INVESTORS, L.P.

By: /s/ Andrea Rhinehardt
Andrea Rhinehardt

Title: Vice President

APPENDIX O — NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK, FILED MARCH 7, 2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 850160/2021

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT,

Plaintiff-Appellant,

-against-

CASSANDRA C. FOX, JP MORGAN CHASE BANK, N.A., BOARD OF MANAGERS OF THE RUPPERT YORKVILLE TOWERS CONDOMINIUM, "JOHN DOE #1" THROUGH "JOHN DOE #10" INCLUSIVE THE NAMES OF THE TEN LAST NAMED DEFENDANTS BEING FICTITIOUS, REAL NAMES UNKNOWN TO THE PLAINTIFF, THE PARTIES INTENDED BEING PERSONS OR CORPORATIONS HAVING AN INTEREST IN, OR TENANTS OR PERSONS IN POSSESSION OF PORTIONS OF THE MORTGAGED PREMISES DESCRIBED IN THE COMPLAINT,

Defendant-Respondents.

Appendix O

STATE OF NEW JERSEY)
) ss:
COUNTY OF BERGEN)

Filed March 7, 2022

NOTICE OF APPEAL

Please Take Notice that U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT, hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from a Decision+ Order on Motion of the Supreme Court of the State of New York, New York County, dated February 15, 2022.

Dated: Upper Saddle River, New Jersey
March 7, 2022

/s/
John E. Brigandi
Attorney for Plaintiff