

No. \_\_\_\_\_

---

**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,

*Applicant,*

v.

CASSANDRA FOX,

*Respondent.*

---

**APPLICATION TO THE HON. SONIA SOTOMAYOR FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST  
JUDICIAL DEPARTMENT**

---

Pursuant to Supreme Court Rule 13(5), U.S. Bank National Association, not in its Individual Capacity but Solely as Trustee for the RMAC Trust, Series 2016-CTT (“Applicant”) hereby moves for an extension of time of 30 days, to and including May 14, 2025, for the filing of a petition for a writ of certiorari. Unless the extension is granted, the deadline for filing the petition for certiorari will be April 14, 2025. This application is filed 10 days in advance of that date, and Applicant has made no prior application for an extension.

In support of this request, Applicant states as follows:

1. 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’s judgment dismissing Applicant’s foreclosure complaint and granting Respondent’s motion for summary judgment on its counterclaim to discharge the mortgage lien against the subject property.

2. On June 5, 2023, Applicant 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 Applicant’s motion.

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

4. On October 15, 2025, Applicant timely filed a motion for reargument of its motion for leave to appeal. On January 14, 2025, the Court of Appeals entered an order denying Applicant’s motion for reargument of its motion for leave to appeal.

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

6. Applicant seeks review of important questions concerning the constitutionality of CPLR § 205-a, which operates to retroactively bar certain mortgage foreclosure actions—including actions filed before its enactment—and, as a result, allows judgments to enter extinguishing previously valid and enforceable mortgage liens, as happened in this case.

7. In this case, a predecessor-in-interest to Applicant commenced a mortgage foreclosure action after Respondent defaulted on her loan, but that action was dismissed after witnesses did not appear for trial. Applicant, who had purchased the mortgage from the plaintiff in that prior action, filed a new foreclosure action. That action was brought pursuant to New York’s general “savings statute,” CPLR § 205(a), which permits a plaintiff to re-file an action within six months after an action was terminated on a non-merits basis, absent “specific conduct constituting neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation.” *Cadichon v. Facelle*, 961 N.E.2d 623, 625 (N.Y. 2011); CPLR § 205(a).

8. In 2022 and while Applicant's foreclosure suit was pending, the New York Legislature enacted the Foreclosure Abuse Prevention Act ("FAPA"), which, as relevant here, enacted a new savings statute applicable exclusively to foreclosure actions, which eliminates the right to re-file if the prior action terminated for "any form of neglect" or "violation of any court rules." CPLR § 205-a(a). In addition, FAPA precludes "a successor in interest or an assignee of the original plaintiff" from filing a new foreclosure action unless it can prove that it "is acting on behalf of the original plaintiff." CPLR § 205-a(a)(1). Pursuant to these provisions, after first reversing the trial court and applying the pre-FAPA CPLR § 205(a), the Appellate Division, First Department recalled and vacated its decision and, applying the new CPLR § 205-a, dismissed Applicant's foreclosure action and discharged Applicant's mortgage.

9. Retroactive application of CPLR § 205-a violates at least two constitutional provisions. First, because it extinguishes vested rights in real property without any compensation, CPLR § 205-a violates the Takings Clause of the Fifth Amendment. See U.S. Const. amend. V ("[N]or shall private property be taken for public use, without just compensation"). Retroactive application of CPLR § 205-a categorically deprives the lender of its ownership interest in property, gives the property to the foreclosure defendant, and leaves the lender "without economically beneficial or productive options for its use." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1018 (1992). Furthermore, FAPA directly upsets "distinct investment-backed expectations" of mortgagees and their assignees that a prior non-merits disposition would give rise to a right under New York's "savings statute" to re-commence a foreclosure action and that this right would subsist in an assignee of the mortgage. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

10. Second, retroactive application of CPLR § 205-a to mortgages transferred prior to its enactment, and permitting recommencement in a more narrower set of circumstances, violates

the Due Process Clause of the Fourteenth Amendment. As this Court recognized in *General Motors Corp. v. Romein*, “[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.” 503 U.S. 181, 191–92 (1992). CPLR § 205-a does just that by retroactively altering the effect of non-merits dispositions of prior foreclosure actions in a manner that extinguishes mortgages, as happened here. Moreover, retroactive application of CPLR § 205-a does not “further[] by rational means” FAPA’s remedial aim of eliminating abusive foreclosure tactics, particularly when applied, as here, to the successor-in-interest to a mortgage. *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992). CPLR § 205-a effectively punishes Applicant for the prior non-merits dismissal of the foreclosure action filed by Applicant’s predecessor-in-interest by barring Applicant from enforcing the mortgage through a second foreclosure action—and thus requiring a forfeiture of the mortgage.

11. The questions concerning CPLR § 205-a’s constitutionality are important and warrant this Court’s attention. The statute 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 and especially in the secondary mortgage market where investors re-supply capital to enable home ownership. Retroactive application of CPLR § 205-a 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 to originate new loans by selling or securitizing existing loans, CPLR § 205-a also threatens to harm prospective homeowners by increasing lending rates.

12. Applicant's counsel requires additional time to prepare a petition that fully addresses these important issues raised by the decision below. Applicant is a Residential Mortgage-Backed Security ("RMBS"), which is an investment vehicle. The RMBS pool included many investors who needed to come to consensus before counsel was able to proceed with a Petition to this Court. In addition, the RMBS has been in the process of changing investment managers, which affected the process of approvals. Furthermore, undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on April 14, 2025. Accounting for counsel's prior scheduling conflicts, Applicant requires additional time to complete and file the Petition. An extension of 30 days will allow Applicant's counsel to prepare a petition that fully addresses the serious constitutional issues raised by CPLR § 205-a's retroactive application.

Dated: April 4, 2025

Respectfully submitted,

McCARTER & ENGLISH, LLP

*s/ Jaynee LaVecchia*  
\_\_\_\_\_  
Jaynee LaVecchia  
Four Gateway Center  
100 Mulberry St.  
Newark, NJ 07102  
*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*