

Wilmington Sav. Fund Socy., FSB v Hack

2023 NY Slip Op 31524(U)

April 21, 2023

Supreme Court, Queens County

Docket Number: Index No. 701590/2019

Judge: Karina E. Alomar

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This opinion is uncorrected and not selected for official publication.

Short form Order

NEW YORK SUPREME COURT-QUEENS COUNTY

Present: HONORABLE KARINA E. ALOMAR
JUSTICE

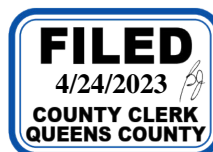
IAS PART 23

-----X
WILMINGTON SAVINGS FUND SOCIETY,
FSB, D/B/A CHRISTIANA TRUST, NOT
INDIVIDUALLY, BUT AS TRUSTEE FOR
PRETIUM MORTGAGE ACQUISITION
TRUST.

Index No.: 701590/2019
Motion Date: 04/13/2023
Motion Sequence No.: 4

Plaintiff,

-against-



DORIS HACK, COMMERCE BANK, NA,
ZARA REALTY HOLDING CORP., NEW
YORK STATE DEPARTMENT OF
TAXATION AND FINANCE, NEW YORK
CITY PARKING VIOLATIONS BUREAU,
NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD, COMMISSIONER OF
LABOR STATE OF NEW YORK,

JOHN DOE (Those unknown tenants, occupants,
Persons or corporations or their heirs,
Distributes, executors, administrators, trustees,
Guardians, assignees, creditors or successors
Claiming an interest in the mortgaged premises.)

Defendants.

-----X
The following numbered papers 152 to 158 read on this motion by defendant Doris Hack for an order pursuant to CPLR §2221(e) granting defendants renewal of this Court’s Decision and Order dated and entered February 27, 2023, and upon renewal granting defendant Doris Hack’s motion for summary judgment, dismissing the complaint

PAPERS	NUMBERED
Notice of Motion, Affidavit, Exhibits.....	152 – 154
Affirmation in Opposition, Exhibits.....	155 – 156
Affirmation in Reply, Exhibits.....	157 – 158

Upon the foregoing cited papers it is ordered that defendant’s motion for leave to renew is decided as follows:

A motion for leave to renew “shall be based upon new facts not offered on the prior motion...or shall demonstrate that there has been a change in the law that would change the prior determination (see *Rowe v. NYCPD*, 85 AD3d 1001 [2d Dept 2011]). It is within the court’s discretion to determine whether the failure to present the new facts in the original motion constitutes a reasonable justification (*Rose v. Levine*, 98 AD3d 1015, 106 [2d Dept 2012]).

Here, defendant argues that the Foreclosure Abuse Prevention Act (FAPA) enacted on December 30, 2022, warrants the dismissal of plaintiff’s complaint as timed barred. FAPA which became effective on December 30, 2022, applies to all pending actions in which a final judgment of foreclosure and sale has not been enforced. (See NY Senate Bill S5473D). The law provides, among other things, that a lender or servicer’s voluntary discontinuance of a foreclosure action does not reset New York’s six-year statute of limitations on foreclosures. Pursuant to FAPA, a successor-in-interest or an assignee of the original plaintiff cannot commence a new action, unless pleading and proving that the assignee is acting on behalf of the original plaintiff. In no event shall the original plaintiff receive more than one six-month extension. (see CPLR §205-a). However, FAPA does not explicitly provide that the newly enacted CPLR §205-a shall operate, by relation back, to invalidate conduct prior to the enactment of FAPA on December 30, 2022. Therefore, it cannot be readily determined that FAPA was intended to take away or impair rights vested under existing laws prior to its enactment.

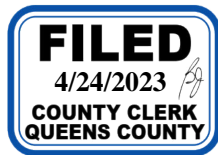
Accordingly, it is hereby

ORDERED that, defendant Doris Hacks motion for an order pursuant to CPLR §2221(e) granting defendants renewal of this Court’s Decision and Order dated and entered February 27, 2023 is denied in its entirety, it is further

ORDERED that, plaintiff shall serve a copy of this order, with notice of entry, upon defendants within thirty (30) days of entry of this order.

This constitutes the decision and order of the Court.

Dated: April 21, 2023



A handwritten signature in black ink, appearing to read "Karina E. Atomar".

Karina E. Atomar, J.S.C.