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Locke Lord QuickStudy: New York Court of Appeals Appears Ready to Decide Whether Discontinuance of a ?Foreclosure Action Can De-Accelerate a Loan and Reset the Statute of Limitations

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While New York courts continue to hear cases involving defaulted loan obligations stemming from the 2008 financial crisis, on January 5, 2021, the New York Court of Appeals heard arguments on four related cases involving New York's six-year statute of limitations in a mortgage foreclosure action. *See Freedom Mortgage Corp. v. Engel*, 163 A.D.3d 631 (2d Dep't 2018); *Ditech Fin., LLC v. Naidu*, 175 A.D.3d 1387 (2d Dep't 2019); *Vargas v. Deutsche Bank Nat'l Tr. Co*., 168 A.D.3d 630 (1st Dep't 2019); *Wells Fargo Bank, N.A. v. Ferrato*, 183 A.D.3d 529, 122 N.Y.S.3d 884 (1st Dep't 2020).

In each of these cases, the Appellate Divisions of the First and Second Department had found that the six-year limitations period began to run on the entire mortgage balance when the lenders commenced prior foreclosure actions or issued a default letter. Those actions accelerated the loans pursuant to the mortgage documents, and had the effect of immediately calling the entire loan amount due. By discontinuing these prior actions, the lenders took the position that loans were de-accelerated and returned to installment loans, thus resetting the six-year statute of limitations. However, the Appellate Divisions rejected this position, holding that the mere discontinuance of the prior actions did not revoke loan accelerations that initially triggered the statute of limitations.

The appellants argued to the Court of Appeals that the Appellate Divisions' rulings directly contradicted New York case law dating back to at least 1885, where the Court of Appeals in *Loeb v. Willis*, found that "[b]y the discontinuance of an action the further proceedings in the action are arrested not only, but what has been done therein is also annulled, so that the action is as if it never had been. If a suit be discontinued at any stage, or the judgment rendered therein be set aside or vacated or reversed, then the adjudication therein concludes no one, and it is not an estoppel or bar in any sense." *Loeb v. Willis*, 100 N.Y. 231, 235, 3 N.E. 177, 179 (1885). Appellants further argued that the discontinuances of the prior actions were sufficiently overt acts to de-accelerate the subject loans and reset the statute of limitations.

In addressing these four appeals, the Court of Appeals must decide the effect of a plaintiff's option to discontinue an action, either voluntarily or by stipulation, and whether such discontinuance, in itself, constitutes an affirmative act of revocation of an accelerated debt obligation. While the Court of Appeals weighed numerous factual considerations in each case, the Court recognized that concrete law is needed to address countless cases that were, at one time, discontinued under the belief that a subsequent action could be commenced without facing the

consequences of an expired statute of limitations. A decision on these issues in the coming months will have a significant impact on cases pending in New York State and centuries' old New York jurisprudence.

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