SUPREME COURT – STATE OF NEW YORK
Present: HON. VICTOR G. GROSSMAN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

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U.S. BANK TRUST, N.A., as Trustee for WATERFALL VICTORIA GRANTOR TRUST II, SERIES G,

Plaintiff,

-against-

ROBERT JOHNSON a/k/a ROBERT JOHNSON, JR., CHRISTINE JOHNSON,

Defendant.

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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. 500932 / 2019

DECISION AND ORDER ON REMITTAL

This case is before the Court upon remittal from the Appellate Division, Second Department pursuant to its opinion in *Johnson v. Cascade Funding Mortgage Trust 2017-1*, 220 AD3d 929 (2d Dept. 2023).

FACTUAL AND PROCEDURAL BACKGROUND

The facts and history of the case, insofar as they are set forth in the Appellate Division's opinion, are as follows:

> On October 25, 2006, the plaintiffs, Robert Johnson and Christine Johnson, executed a note in the amount of $550,000 in favor of nonparty Flagstar Bank, FSB. The note was secured by a mortgage on certain real property located in Putnam Valley. On September 26, 2011, Flagstar commenced an action to foreclose the mortgage against the Johnsons, among others, and elected to call due the entire amount secured by the mortgage. The mortgage was assigned several times during the pendency of the 2011 foreclosure action, and on October 4, 2017, it was assigned to Cascade Funding Mortgage Trust 2017-1.
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> In an order dated March 5, 2019, the Supreme Court granted dismissal of he 2011 foreclosure action on the ground that Flagstar failed to comply with RPAPL 1304.
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> In June 2019, the Johnsons commenced this action pursuant to RPAPL 1501(4) to cancel and discharge of record the mortgage, for a judgment declaring that the mortgage is unenforceable as against them, and for an award of attorneys' fees pursuant to Real

> Property Law §282 against Cascade, among others. On September 4, 2019, Cascade interposed an answer, asserting, inter alia, a counterclaim to foreclose the mortgage. The Johnsons replied to the counterclaim, asserting various affirmative defenses, including that the counterclaim was time-barred. Thereafter, the Johnsons moved, among other things, for summary judgment on the complaint insofar as asserted against Cascade and dismissing the counterclaim. Cascade opposed the motion and cross-moved, inter alia, to dismiss the complaint insofar as asserted against it for failure to state a cause of action.
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> In an order dated March 22, 2021, the Supreme Court, inter alia, denied that branch of the Johnsons' motion which was for summary judgment on the complaint insofar as asserted against Cascade, in effect, denied that branch of the Johnsons' motion which was for summary judgment dismissing the counterclaim, granted that branch of the cross-motion of Cascade which was to dismiss the complaint insofar as asserted against it, and searched the record and awarded summary judgment to Cascade declaring that the subject mortgage was not null and void. The Johnsons appeal.

Id., 220 AD3d at 929-930.[1]

> The Appellate Division opined:
>
> Here, in support of their motion, the Johnsons established, prima facie, that the mortgage debt was accelerated on September 26, 2011, when Flagstar commenced the 2011 foreclosure action and elected to call due the entire amount secured by the mortgage in the complaint [cit.om.]. The Johnsons further demonstrated, prima facie, that since the subsequent foreclosure action, in the form of a counterclaim, was commenced on September 4, 2019, more than six years later, it was time-barred [cit.om.].
>
> In opposition, Cascade argued that this action was timely commenced pursuant to CPLR 205(a), as it was commenced within six months of the Supreme Court granting dismissal of the 2011 foreclosure action. However, the recently enacted Foreclosure Abuse Prevention Act [cit.om.], replaced the savings provision of CPLR 205(a) with CPLR 205-a in actions upon instruments described in CPLR 213(4) [cit.om.]. Under CPLR 205-a(a), "[i]f an action upon an instrument described under [CPLR 213(4)] 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..., or upon a final judgment upon the merits, the original plaintiff...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

[1] To complete the procedural history of the case before recounting the Appellate Division's decision on the Johnsons' appeal: By Decision and Order dated March 6, 2023, the Court denied the Johnsons' motion for summary judgment and awarded Cascade summary judgment of foreclosure. The Court thereupon issued an Order of Reference which provided *inter alia* for an amendment of the caption -- realigning the parties and substituting Cascade's successor-in-interest as a party plaintiff herein – so as to read as set forth hereinabove. On July 6, 2023, the Plaintiff moved for a Judgment of Foreclosure and Sale. The motion was stayed pending the Appellate Division's determination of the Johnsons' appeal and remains undecided.

> 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." CPLR 205-a(a) further provides that "[f]or 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."
>
> Here, the Supreme Court granted dismissal of the 2011 foreclosure action for failure to comply with RPAPL 1304 on March 5, 2019. However, while Cascade established that it interposed its counterclaim to foreclose the mortgage within the six-month period provided under CPLR 205-a on September 4, 2019, Cascade is an assignee of the original plaintiff and has not pleaded nor proved that it is acting on behalf of the original plaintiff. Therefore, Cascade is not entitled to the benefit of the savings provision of CPLR 205-a.

Id., 220 AD3d at 931-932.

THE APPELLATE DIVISION REMITTAL

Since the March 22, 2021 order that was the subject of the Johnsons' appeal was issued prior to the enactment of the Foreclosure Abuse Prevention Act ("FAPA") (effective December 30, 2022), the Appellate Division remitted the case to this Court for further proceedings regarding the constitutionality of FAPA's retroactive application herein:

> However, Cascade challenges the constitutionality of FAPA, contending, inter alia, that retroactive application of FAPA would violate the Due Process Clause of the United States Constitution. Inasmuch as the Supreme Court did not consider the issues relating to the constitutionality of FAPA in determining the branches of the Johnsons' motion and Cascade's cross-motion which were addressed to the first and second causes of action insofar as asserted against Cascade and Cascade's counterclaim, we remit the matter to the Supreme Court, Putnam County, for consideration thereof, after any further briefing, argument, and hearing that the court deems appropriate, and for a new determination of those branches of the motion and cross-motion thereafter.

Id., 220 AD3d at 932.

Upon consultation with the parties, this Court determined that it is necessary, to deal properly with the Appellate Division's remittal, to address the question whether Cascade was entitled to the benefit of the six-month "saving provision" under the law as it existed prior to

the enactment of FAPA, that is, under CPLR §205(a). The Court, in its March 22, 2021 order, determined that Cascade was entitled to invoke Section 205(a), and the Court's holding in that regard was not disturbed on appeal. Cascade's status as a party entitled to invoke Section 205(a) rests squarely on *Wells Fargo Bank, N.A. v. Eitani,* 148 AD3d 193 (2d Dept.), *appeal dismissed* 29 NY3d 1023 (2017). Query, whether the soundness of *Eitani* is called into question by the assertion in the FAPA Senate Sponsor's memorandum that *Eitani* was "wrong and must not be followed," or by the Court of Appeals' decision in *Ace Securities Corp. v. DB Structured Products, Inc.,* 38 NY3d 643 (2022)? If Cascade was not entitled to the benefit of the six-month savings provision under pre-FAPA law, then questions pertaining to the constitutionality of CPLR §205-a's retroactive application need not be addressed at all.

CASCADE'S RIGHT TO INVOKE CPLR §205(a)

A. CPLR §205(a)

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 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 executor or administrator, may commence a new action upon the same transaction or occurrence of 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.

B. The Holding of *Wells Fargo Bank, N.A. v. Eitani*

Argent Mortgage Company commenced a foreclosure action. During the course of the action, Argent assigned and delivered the subject note and mortgage to Wells Fargo Bank. Wells Fargo was not substituted as party plaintiff even though it was the real party in interest; it continued the action under Argent's name pursuant to CPLR §1018, which provides:

> Upon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action.

After the foreclosure action was dismissed, Wells Fargo commenced a new action and invoked CPLR §205(a). In *Wells Fargo Bank, N.A. v. Eitani, supra*, 148 AD3d 193 (2d Dept. 2017), the Second Department held:

> As the assignee of the mortgage, Wells Fargo had a statutory right, pursuant to CPLR 1018, to continue the prior action in Argent's place, even in the absence of a formal substitution [cit.om.]. Since, by virtue of CPLR 1018, the prior action could have been continued by Argent's successor in interest, Wells Fargo was, in actuality, the true party plaintiff in the prior action, and is entitled to the benefit of CPLR 205(a).

Eitani, supra, 148 AD3d at 199.

C. Cascade (Like *Wells Fargo* in the *Eitani* Case) Was the Real Party In Interest Herein On March 5, 2019 When the 2011 Foreclosure Action Was Dismissed

On April 3, 2024, the Court conducted a hearing to determine whether Cascade was the real party in interest in the 2011 foreclosure action prior to its dismissal on March 5, 2019, and therefore eligible per *Wells Fargo Bank, N.A. v. Eitani, supra* to invoke the six-month savings provision under CPLR §205(a). The question, in other words, is *when* Cascade acquired standing to foreclose.

"Standing requires an inquiry into whether a litigant has 'an interest...in the lawsuit that the law will recognize as a sufficient predicate for determining the issue at the litigant's request' [cit.om.]....In a mortgage foreclosure action, a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced." *Bank of New York v. Silverberg,* 86 AD3d 274, 279 (2d Dept. 2011). "[A] written assignment of the underlying note or the physical delivery of the note…is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident." *Deutsche Bank Natl. Trust Co. v. Logan,* 146 AD3d 861, 862 (2d Dept. 2017); *Aurora Loan*

Services, LLC v. Taylor, 114 AD3d 627, 628 (2d Dept. 2014), *aff'd* 25 NY3d 355 (2015). *See also, Bank of New York Mellon v. Deane*, 41 Misc.3d 494, 970 NYS2d 427, 431-434 (Sup. Ct. Kings Co. 2013).

The record in this case demonstrates that Cascade (i.e., Cascade Funding Mortgage Trust 2017-1) became the real party in interest in the 2011 foreclosure action in October 2017; that it remained the real party in interest when the 2011 foreclosure action was dismissed on March 5, 2019; and that it was still the real party in interest when the counterclaim for foreclosure was interposed in the present action in September of 2019.

The evidence thereof includes:

- A series of assignments, culminating in a written assignment of the Johnsons' Note and Mortgage from Cascade Funding, LP, Series I to Cascade Funding Mortgage Trust 2017-1 dated October 4, 2017 and recorded January 30, 2018.
- The Johnsons' Note with a series of allonges, culminating in an undated allonge indorsed by Cascade Funding, LP, Series I to the order of Cascade Funding Mortgage Trust 2017-1.
- A Custodial Agreement by and between *inter alia* Cascade Funding Mortgage Trust 2017-1 as Issuer, Specialized Loan Servicing as a Servicer, and Wells Fargo Bank, N.A. as Custodian, dated October 23, 2017, pursuant to which Wells Fargo as custodian took physical possession of the portfolio of loans owned by Cascade Funding Mortgage Trust 2017-1 as of the closing date thereof, October 23, 2017.
- A "Notice of Assignment, Sale or Transfer of Ownership of Mortgage Loan" dated October 31, 2017, whereby Cascade Funding Mortgage Trust 2017-1 informed the Johnsons that "on 10/23/2017 the ownership of your mortgage loan was transferred to Cascade Funding Mortgage Trust 2017-1…"
- A Limited Power of Attorney executed on October 31, 2017 whereby Cascade Funding Mortgage Trust 2017-1 appointed Specialized Loan Servicing LLC as its attorney-in-fact for the mortgage loans serviced by Specialized for Cascade as owner.
- The testimony by a representative of Specialized Loan Servicing LLC on behalf of Cascade Funding Mortgage Trust 2017-1 that the aforesaid business records demonstrated that Cascade Funding Mortgage Trust 2017-1 was the owner and holder of the Johnsons' Note, and maintained possession thereof through its custodian, Wells Fargo Bank, N.A., as of October 2017.

- The absence of any further assignment of the Note or Mortgage until August 7, 2020, when, after the interposition of its counterclaim for foreclosure in this action, Cascade Funding Mortgage Trust 2017-1 assigned the Johsons' Mortgage to the current Plaintiff herein, Waterfall Victoria Grantor Trust II, Series G.

- The holding of this Court in its March 22, 2021 Decision and Order (pp. 13-14), that Cascade Funding Mortgage Trust 2017-1 possessed standing to prosecute its counterclaim for foreclosure as of the time of its interposition in September 2019.

In view of the foregoing, the Court finds that Cascade was the real party in interest in the 2011 foreclosure action prior to its dismissal on March 5, 2019, and therefore eligible per *Wells Fargo Bank, N.A. v. Eitani, supra* to invoke the six-month savings provision under CPLR §205(a).

D. *Wells Fargo Bank, N.A. v. Eitani* Was Correctly Decided

In his Memorandum in Support of FAPA, the New York State Senate Sponsor asserts that FAPA §205-a codifies the Court of Appeals' decision in *Reliance Ins. Co. v. Polyvision Corp.*, 9 NY3d 52 (2007), that the Second Department's holding in *Wells Fargo Bank, N.A. v. Eitani, supra* was made in contravention of *Reliance*, and that *Eitani* "is wrong and must not be followed." Since the Senate Sponsor's assertion is critical not only to the question whether Cascade is entitled to the benefit of CPLR §205(a), but also to the question whether retroactive application of FAPA §205-a is constitutional, its soundness must be evaluated with some care.

FAPA §205-a modified Section 205(a), for purposes of mortgage foreclosure actions, in two respects which bear on the issues presented here. First, the party eligible for the six-month savings provision is designated in §205-a(a) not as the "plaintiff" but as the "***original*** plaintiff", thus:

> …the **original** plaintiff, or, if the **original** plaintiff dies and the cause of action survives, his executor or administrator, may commence a new action upon the same transaction or occurrence of or series of transactions or occurrences within six months after the termination…

Second, a new pleading requirement is instituted in §205-a(a)(1), thus:

> 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…

According to the Senate Sponsor, the rationale for the statutory amendments is as follows:

> …CPLR 205(a) as amended and reconstituted under CPLR 205-a(a) and (a)(1), codifies the Court's holding in *Reliance Ins. Co. v Polyvision Corp* (9 NY3d 52, 57-58 [2007]; *accord U.S. Bank N.A. v DLJ Mtge. Capital, Inc.*, 141 AD3d 431, 433 [1st Dept 2016], *aff'd* 33 NY3d 72 [2019]; *Craft EM CLO 2006-1, Ltd. v Deutsche Bank AG*, 178 AD3d 552, 553 [1st Dept 2019]) and clarifies the six-month extension afforded under the section is available only to the *original* plaintiff and is not intended to be extended to a different party because that "would open a new tributary in the law, presumably available to individuals as well as corporations, and breathe life into otherwise stale claims" (*Reliance*, 9 NY3d at 58). "[M]indful of the potential ramifications of a rule allowing" otherwise, the Court correctly directed that CPLR 205(a) should be read "as it was written by the Legislature...." (*id.*).

The Senate Sponsor proceeds to confront *Eitani*:

> Yet, in direct contravention of *Reliance*, the majority in *Eitani* held that Wells Fargo Bank, N.A. (Wells Fargo), the assignee of a mortgage loan originated by Argent Mortgage Company, LLC (Argent), was entitled to the six-month extension afforded to "the plaintiff" under CPLR 205(a) because the mortgage loan was assigned by Argent to Wells Fargo during the pendency of the prior action, which was commenced by Argent (*see* 148 AD3d at 200-203). This holding is wrong and must not be followed. In *Eitani*, Wells Fargo was not asserting the rights of Argent in the new action. That is, Wells Fargo did not claim to be acting on behalf or for the benefit of Argent. Rather, as correctly explained by the dissent in *Eitani*, Wells Fargo was seeking to enforce its own rights in and to the mortgage loan; the rights it acquired from Argent (148 AD3d at 206-209 [Leventhal, J., dissenting]. Therefore, *Eitani* and its progeny should not be followed (*e.g.*, *Gordon*, 158 AD3d at 837-839).

See, New York State Senate Introducer's Memorandum in Support, Bill No. S5473D, pp. 11-12.

However, the *Eitani* Court was well aware of the Court of Appeals' decision in *Reliance* and took pains to explain just why its holding was made in accordance with, and not in contravention of, the principles underlying *Reliance*.

- The *Eitani* Court explicitly acknowledged (148 AD3d at 200) the *Reliance* Court's observation (9 NY3d at 57) that the benefit provided by CPLR §205(a) is bestowed on "'the plaintiff' who prosecuted the initial action," or under certain circumstances, the executor or administrator of a deceased plaintiff's estate.

- The *Eitani* Court also acknowledged (148 AD3d at 201) the *Reliance* Court's holding that the application of CPLR §205(a) "to a different party plaintiff, representing in part different interests, would require the placing of a construction upon the section plainly beyond its intent and purpose" (9 NY3d at 57).

- However, in the *Eitani* Court's view, "the instant case is distinguishable from *Reliance* and represents what may be a rare circumstance in which dismissal of a prior action commenced by a different party plaintiff justifies application of CPLR 205(a) to recommencement by a successor in interest to the prior plaintiff." 148 AD3d at 201. Why? Not only do the assignor and assignee "share the same interest, or 'claim'…to enforce the rights under the note and mortgage by obtaining a judgment of foreclosure and sale", but, critically, **where the assignment occurs prior to the dismissal of the original action, the assignee by virtue of CPLR §1018 is in actuality "the true party plaintiff in the prior action" and therefore entitled to the benefit of Section 205(a) in the second action**, a result the Court deemed "in keeping with the remedial purpose of CPLR 205(a) and the legislative intent underlying the enactment of the statute." 148 AD3d at 199, 201-203.

The same conclusion was reached by the First Department in *HSBC Guyerzeller Bank AG v. Chascona N.V.*, 66 AD3d 488, 489 (1st Dept. 2009), by the Third Department in *United States Bank N.A. v. Jalas*, 195 AD3d 122, 1224 n.1 (3d Dept. 2021), and by another panel of the Second Department in *U.S. Bank National Ass's v. Gordon*, 158 AD3d 832, 838-839 (2d Dept. 2018). Indeed, no court has ever ruled to the contrary.

Justice Leventhal, dissenting in *Eitani*, correctly recognized (148 AD3d at 207) that per *Reliance* (9 NY3d at 57-58) the fundamental criterion for the application of Section 205(a) is not only that the same rights are sought to be vindicated in the first and second actions, but also that "the identity of the individual on whose behalf redress is sought, [must] remain [] the same." Justice Leventhal's disagreement with the *Eitani* majority was not on that score, but instead over the significance in this context of CPLR §1018. Since his view was explicitly adopted by FAPA's Senate Sponsor, it is worth quoting here:

> ***In the case at bar, the identity of the entity on whose behalf redress is sought has not remained the same. Wells Fargo is not Argent in a different capacity. Following the holding in Reliance, then, CPLR 205(a) does not apply here.***
>
> In an effort to distinguish *Reliance* from this case, the majority concludes that Argent and Wells Fargo, though different entities, each sued to enforce the same right in that each sought to foreclose on the subject property based on the alleged default on the note and mortgage. However, while Wells Fargo seeks the same relief that Argent sought, namely, to foreclose on the mortgage, ***Wells Fargo seeks not to vindicate Argent's rights but to vindicate Wells Fargo's rights.***
>
> The majority notes that, even absent a formal substitution, an assignee of a mortgage can continue an action in the name of the original mortgagee [cit.om.]. Certainly, CPLR 1018 provides that "[u]pon any transfer of interest, the action may be continued by or against the original parties unless the court directs the person to whom the interest is transferred to be substituted or joined in the action." Here, however, ***the foreclosure action Argent commenced was dismissed. Wells Fargo is not continuing Argent's action in Argent's name, and Wells Fargo was not substituted for Argent in that action. Rather, Wells Fargo commenced this action after the time in which to commence an action had expired,*** and seeks to apply CPLR 205(a) to toll the statute of limitations.

Eitani, supra, 148 AD3d at 208 (Leventhal, J., dissenting [emphasis added]).

With all due respect, it seems to this Court that Justice Leventhal missed the *Eitani* majority's point because he misconstrued CPLR §1018. When the note and mortgage are assigned during the course of the first action and prior to its dismissal, the action may per Section 1018 continue (as it did in *Eitani* and in the case at bar) under the name of the assignor without substitution of the assignee as party plaintiff. As one court put it, upon assignment "an assignee of a mortgage can continue an action in the name of the original mortgagee, even in the absence of a formal substitution (CPLR 1018)…" *Central Federal Savings, F.S.B. v. 405 W. 45th St. Inc.*, 242 AD2d 512 (1st Dept. 1997). In such a case, **even absent substitution, the assignee becomes the real party in interest in the first action**. *See, U.S. Bank National Ass'n v. Duran,* 174 AD3d 768, 769 (2d Dept. 2019); *Aurora Loan Services, LLC v. Lopa,* 130 AD3d 952, 953

(2d Dept. 2015); *Citibank, N.A. v. Van Brunt Properties, LLC*, 95 AD3d 1158, 1160 (2d Dept. 2012). That the assignee is truly the real party in interest is confirmed by the fact that it is bound by any judgment in the first action. *See, Froehlich v. Town of Huntington*, 159 AD2d 606, 607 (2d Dept.), *appeal dismissed* 76 NY2d 935 (1990), *lv. denied* 77 NY2d 803 (1991). Thus:

- Justice Leventhal's assertion that in *Eitani* "the identity of the entity on whose behalf redress is sought has not remained the same" is in error: Wells Fargo was the real party in interest in both the first and the second actions.

- Justice Leventhal's observation that "Wells Fargo seeks not to vindicate Argent's rights but to vindicate Wells Fargo's rights" is correct, but Argent's rights are immaterial, for Wells Fargo was seeking to vindicate its own rights in both the first and the second actions.

- Justice Leventhal's observation that "Wells Fargo is not continuing Argent's action in Argent's name, and Wells Fargo was not substituted for Argent in that action" reflects a curious misunderstanding of CPLR §1018. What actually happened was that Wells Fargo continued the original foreclosure action in Argent's name, for, per Section 1018, no substitution was required.

In sum, the identity of the individual on whose behalf redress was sought – i.e., Wells Fargo as Argent's assignee – was the same in both the original foreclosure action and the subsequent action wherein Wells Fargo invoked CPLR §205(a). Thus, the criterion which Justice Leventhal correctly asserted must govern eligibility for the Section 205(a) savings provision dictated the *Eitani* majority's holding that Wells Fargo was entitled to invoke the Section 205(a) savings provision. *Eitani* is therefore wholly consistent with the Court of Appeals' holding in *Reliance* and with the remedial purposes of CPLR §205(a).

Nothing in the Court of Appeals' more recent decision in *ACE Securities Corp. v. DB Strutured Products, Inc.*, 38 NY3d 643 (2022) is to the contrary.

In *ACE Securities*, two certificate holders of an RMBS trust notified HSBC Bank in its capacity as trustee of a breach by the sponsor of the underlying RMBS transaction and demanded that HSBC pursue remedies available under the pooling and servicing agreement. When HSBC

declined, the certificate holders filed a lawsuit on the day before the statute of limitations expired. Because they lacked standing, HSBC thereafter filed an untimely complaint on behalf of the trust and sought to invoke CPLR §205(a). Although both the certificate holders and HSBC were seeking to enforce the same rights, i.e., those of the RMBS trust, the Court of Appeals held that HSBC was not entitled to invoke Section 205(a):

> HSBC is not "the plaintiff" in the prior action and the benefit of CPLR 205(a) is unavailable to save its untimely complaint. Contrary to HSBC's contention, this conclusion is consistent with the public policy underpinning the savings statute. CPLR 205(a) is a remedial statute that, like its predecessors, is "designed to insure to *the diligent* suitor" an opportunity to have a claim heard on the merits [cit.om.] when the suitor has "initiated a suit in time" [cit.om.] but the claim was dismissed on some technical, non-merits based ground. While the savings statute undoubtedly has a "broad and liberal purpose" [cit.om.] to "ameliorate the potentially harsh effect of the statute of limitations" [cit.om.], "the important consideration is that, by invoking judicial aid [in the first action], a litigant gives timely notice to [the] adversary of a present purpose to maintain [its] rights before the courts" [cit.om.]. Where, as here, the litigant commencing the second action is not the original plaintiff, application of CPLR 205(a) would protect the rights of a *dilatory* – not a diligent – suitor. By failing to bring the action within the statute of limitations, HSBC signaled that it had no intention to pursue its claims in court. CPLR 205(a) does not apply and HSBC's failure to commence an action within the statute of limitations is fatal.

ACE Securities Corp. v. DB Structured Products, Inc., supra, 38 NY3d at 655-656.

In contrast, by virtue of the assignment of the note and mortgage and the application of CPLR §1018, Cascade (like Wells Fargo in *Eitani*) became the real party in interest and hence "the plaintiff" in the prior action. Moreover, there was no dilatory behavior at all. Before the assignment, Cascade (like Wells Fargo) had no interest in the note and mortgage and hence no cause of action upon which to sue. Upon assignment, Cascade (like Wells Fargo) was entitled per CPLR §1018 to assume prosecution of the pending action without a formal substitution as party plaintiff. *Eitani's* holding that the assignee bank in such circumstances is entitled to invoke the CPLR §205(a) is fully consonant with the Court of Appeals' decisions in *Reliance* and *ACE Securities,* and with the statute's "broad and liberal purpose" to "ameliorate the potentially harsh

effect of the statute of limitations." *See, ACE Securities, supra,* 38 NY3d at 655; *George v. Mt. Sinai Hospital,* 47 NY2d 170, 177 (1979); *Gaines v. City of New York,* 215 NY 533, 539 (1915).

The Court concludes its analysis on this point with a brief disquisition on the bedrock principle of the separation of powers.

"As a reflection of the pattern of government adopted by the State of New York, which includes by implication the separation of the executive, legislative and judicial powers [cit.om.], it is a fundamental principle of the organic law that each department of government should be free from interference, in the lawful discharge of duties expressly conferred, by either of the other branches [cit.om.]." *NYS Inspection, Security and Law Enforcement Employees v. Cuomo,* 64 NY2d 233, 239 (1984). *See,* N.Y.Const., art. III, §1; art. IV, §1; art. VI. *See also, Saxton v. Carey,* 44 NY2d 545, 549 (1978). In this tripartite scheme of government, it is the "sole prerogative" of the courts to construe the law. *See, People ex rel Mutual Life Ins. Co. of N.Y. v. board of Supervisors,* 16 N.Y. 424, 436 (1857). *See also, Patchak v. Zinke,* 583 U.S. 244 (2018) (citing *Massachusetts v. Mellon,* 262 U.S. 447, 488 [1923]); *Wayman v. Southard,* 23 U.S. 1, 46 (1825) (Marshall, J.) ("The difference between the departments undoubtedly is, that the legislature makes, the executive executes, and the judiciary construes the law").

> The power to construe the statutes of this state is ordinarily vested in the courts and not the legislature. Thus **the legislature has no power to expound its own laws** or to determine their constitutionality, and **should not upon any pretense, impose its authority with respect to questions of interpretation pending in the courts. Its function is to declare what the law shall be, not to judge of what it is. Hence it has no controlling power to retroactively declare that an existing statute shall receive a given construction when such construction is contrary to that which the statute would ordinarily have received.**

McKinney's Cons. Laws of N.Y., Book 1 (Statutes), §75 [citing cases; emphasis added]. Thus, in remarks peculiarly appropriate to the case at bar, one Court observed:

> A legislative body violates the separation of powers doctrine by purporting to retroactively overrule a final judicial decision by a subsequent declaration of what the legislature originally intended. Similarly, legislation that targets an Appellate Court's final decision, seeking to reinterpret the meaning of a prior statute, constitutes a legislative adjudication of the case in contravention of the separation of powers doctrine.

Wilmington Trust, N.A. v. Gawlowski, 81 Misc.3d 683, 690 (Sup. Ct. Suffolk Co. 2023).

Thus, the principle of the separation of powers dictates that neither FAPA's Senate Sponsor nor the Legislature has power to instruct this Court that "the holding [of Eitani] is wrong and must not be followed." At best:

> The legislature may…declare by statute the true meaning of a previous statute, and while **such a declaration will have no controlling effect in causes which had already arisen, it will lay down a rule for construction for the future.** So, where the Legislature has passed a statute indicating what its intent and purpose had been in passing a statute at a previous session, although **such new law may not control interpretations of the law passed at a previous session**, it is entitled to great weight and respect of the courts as a **legislative construction of ambiguous phraseology.**

McKinney's Cons. Laws of N.Y., Book 1 (Statutes), §75 [citing cases; emphasis added].

For the reasons discussed above, it is the judgment of this Court that the *Eitani* Court correctly construed CPLR §205(a) in light of CPLR §1018; that the holding of *Eitani* is sound and remains good law so far as the interpretation of CPLR §205(a) is concerned; and that FAPA / CPLR §205-a represents not a "legislative construction of ambiguous phraseology" in Section 205(a), but an amendment thereof the effect of which is to narrow eligibility for the statutory six-month saving period by legislatively overruling *Eitani* and prescribing a new and different rule.

The Court proceeds in accordance with the Second Department's remittal to address the question whether the retroactive displacement of CPLR §205(a) as construed in *Eitani* by FAPA / CPLR §205-a would in this case violate Cascade's constitutional rights.[2]

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[2] In this case, the Second Department accorded FAPA / CPLR §205-a retroactive effect, ruling that "while Cascade established that it interposed its counterclaim to foreclose the mortgage within the six-month period provided under CPLR 205-a on September 4, 2019, Cascade is an

RETROACTIVE APPLICATION OF CPLR §205-a WOULD VIOLATE CASCADE'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW

A. FAPA / CPLR §205-a Impairs Cascade's Substantial Rights

Retroactive application of the newly enacted CPLR §205-a to Cascade's 2019 mortgage foreclosure action would plainly impair Cascade's substantive rights by rendering untimely a cause of action that was timely commenced under the law prevailing when Cascade acted.

"CPLR 205(a) is a tolling provision governing the operation of the statute of limitations in recommenced actions." McKinney's Cons. Laws of New York, Practice Commentaries (Alexander) C205:5, p. 274 (2023). In *Morris Investors, Inc. v. Commissioner of Finance of City of New York,* 69 NY2d 933 (1987), the Court of Appeals recognized that "CPLR 205(a), a remedial provision protecting the right of litigants who have given timely notice of the assertion of their claims, 'has its roots in the distant past' (*Gaines v. City of New York,* 215 NY 533, 537 …)." *Id.,* 69 NY2d at 935. In *Gaines,* Judge Cardozo traced Section 205(a)'s predecessor statute back to the English Limitation Act of 1623 (21 Jac. I, c. 16, §4), which was incorporated into New York law by statutes enacted in 1788 (L. 1788, c. 43) and 1801 (1 R.L. p. 186, §5), whence it passed into the Revised Statutes (2 R.S. p. 298, §33), was carried forward into the Code of Procedure (Section 84), amended in 1863 (L. 1863, c. 392) and codified in Section 405 of the Code of Civil Procedure. *See, Gaines v. City of New York, supra,* 215 NY 533 (1915).

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assignee of the original plaintiff and has not pleaded nor proved that it is acting on behalf of the original plaintiff. Therefore, Cascade is not entitled to the benefit of the savings provision of CPLR 205-a." *See, Johnson v. Cascade Funding Mortgage Trust 2017-1, supra,* 220 AD3d at 932. *See also, U.S. Bank National Ass'n v. Armand,* 220 AD3d 963 (2d Dept. 2023). Under the circumstances, the Court deems the question whether the Legislature intended Section 205-a's retroactive application to be outside the scope of the Second Department's remittal.

CPLR §205(a) was derived from the Code of Civil Procedure, 1876, §405. *See,* McKinney's Cons. Laws of New York, CPLR §205, Historical and Statutory Notes (2003).

"[T]he function of [CPLR 205(a)] is to ameliorate the potentially harsh effect of the Statute of Limitations in certain cases in which at least one of the fundamental purposes of the Statute of Limitations has in fact been served, and the defendant has been given timely notice of the claim being asserted by or on behalf of the injured party… 'The important consideration is that by invoking judicial aid, a litigant gives timely notice to his adversary of a present purpose to maintain his rights before the courts' (Gaines v. City of New York, 215 NY 533, 539…)." *George v. Mt. Sinai Hospital,* 47 NY2d 170, 177-178 (1979). As the Second Circuit stated in *Hakala v. Deutsche Bank AG,* 343 F.3d 111 (2d Cir. 2003):

> The purpose of §205(a) is to avert unintended and capricious unfairness by providing that if the first complaint was timely but was dismissed for such curable reasons, the suit may be reinstituted within six months of the dismissal. Given its ***remedial importance in guarding against capricious, unfair deprivation of a valuable claim***, the Court of Appeals has cautioned that §205(a)'s "broad remedial purpose is not be frittered away by any narrow construction." *Morris Investors, Inc. v. Comm'r of Finance,* 69 NY2d 933, 935…(1987).

Hakala v. Deutsche Bank AG, supra, 343 F.3d at 115 (emphasis added).

In sum, CPLR §205(a) codifies an injured party's venerable longstanding right not to be deprived of a valuable claim by a capricious, unfair application of the statute of limitations. Retroactive application of the newly enacted CPLR §205-a to Cascade's 2019 mortgage foreclosure action would plainly impair Cascade's substantive rights by rendering untimely a cause of action that was timely commenced under the law prevailing when Cascade acted.

In *Gilbert v. Ackerman,* 159 NY 118 (1899), the Court of Appeals held:

> There is no question as to the power of the legislature to pass or to shorten statutes of limitation. A party has no more a vested interest in the time for the commencement of an action than he has in the form of the action. ***The only restriction upon the legislature in the enactment of statutes of limitation is that a reasonable time be allowed for suits***

> ***upon causes of action theretofore existing***. *Rexford v. Knight*, 11 NY 308…; *People v. Turner*, 117 NY 227… The question of reasonableness, naturally and primarily, is with the legislature; and when the question is brought before the court the surrounding circumstances are regarded in determining whether the legislature, in prescribing a period of limitation, has erred to the prejudice of substantial rights. ***The right possessed by a person of enforcing his claim against another is property; and if a statute of limitations, acting upon that right, deprives the claimant of a reasonable time within which suit may be brought, it violates the constitutional provision that no person shall be deprived of property without due process of law.***

Gilbert, supra, 159 NY at 124 (emphasis added). *See, Brothers v. Florence*, 95 NY2d 290, 300 (2000) ("When…a limitations period is statutorily shortened, or created where none existed before, Due Process requires that potential litigants be afforded a "reasonable time…for the commencement of an action before the bar takes effect"); *Merz v. Seaman*, 265 AD2d 385, 388-389 (2d Dept. 1999) (statute effective "immediately" "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"); *Ruffolo v. Garbarini & Scher, P.C.*, 239 AD2d 8, 12 (1st Dept. 1998) (same); *Alston v. Transport Workers Union of Greater New York*, 225 AD2d 424, 425 (1st Dept. 1996) (same, citing *Gilbert, supra*). *See also, People v. Cohen*, 245 NY 419, 421-422 (1927) ("statute of limitations *intended as a retrospective law* must give a person reasonable time to enforce a remedy available to him before the bar of the statute will apply"); *Halsted v. Silberstein*, 196 NY 1, 15 (1909) (same); *Parmenter v. State of New York*, 135 NY 154 (1892); *Reid v. Board of Albany County Supervisors*, 128 NY 364 (1891).

B. The Retroactive Displacement of CPLR §205(a) As Interpreted in *Eitani* Cannot Be Justified in Accordance with Constitutional Requirements

> [A]n unfair retroactive assessment of liability upsets settled expectations, and it thereby undermines a basic objective of law itself.
>
> To find that the Due Process Clause protects against this kind of fundamental unfairness …is to read the Clause in light of a basic purpose: *the fair application of law*, which purpose harkens back to the Magna Carta…

Regina Metropolitan Co., LLC v. NYS Div. of Housing and Community Renewal, 35 NY3d 332, 388 (2020) (quoting *Eastern Enterprises v. Apfel*, 524 U.S. 498, 557 (1998) [Breyer, J., dissenting]). The Court of Appeals' decision in *Regina* supplies the analytical framework for assessing the constitutionality of retroactive legislation in light of the Due Process Clause. The *Regina* Court wrote:

> To comport with the requirements of due process, retroactive application of a newly enacted provision must be supported by **"a legitimate legislative purpose furthered by rational means"** (*American Economy*, 30 NY3d at 157-158…, citing *General Motors Corp. v. Romein*, 503 U.S. 181, 191…[1992]). Of course, as with prospective elements of legislation, legislative 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 [cit.om.]. Nevertheless, the Supreme Court has made clear that **"retroactive legislation does have to meet a burden not faced by [purely prospective] legislation," which is satisfied when "the retroactive application of the legislation is *itself* justified by a rational legislative purpose"** (*Pension Benefit Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730…[1984] [emphasis added]).
>
> Because "[r]etroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation" (*Romein*, 503 U.S. at 191…), "the justification for [prospective legislation] may not suffice for [the retroactive aspects]" (*R.A. Gray & Co.*, 467 U.S. at 730…). We have suggested that, **in order to comport with due process, there must be a "persuasive reason" for the "potentially harsh" impacts of retroactivity** (*Holly S. Clarendon Trust v. State Tax. Comm.*, 43 NY2d 933, 935… [1978]; [cit.om.]….
>
> …..
>
> In determining whether retroactive application of a statute is supported by a rational basis, the relationship between the length of a retroactivity period and its purpose is critical. Generally, **there are two types of retroactive statutes that courts have found to be constitutional: those employing brief, defined periods that function in an administrative manner to assist in effectuating the legislation, and statutory retroactivity that – even if more substantial – is integral to the fundamental aim of the legislation**….

Regina, supra, 35 NY3d at 375, 376 (emphasis added). However, the *Regina* Court noted that "there are limits on retroactive imposition of liability even when it is related to a rational statutory goal." *Id.*, at 382. On the specific matter before it, the Court concluded:

> The Legislature is entitled to impose new burdens and grant new rights in order to address societal issues and, in enacting the HSTPA, it sought to alleviate a pressing affordable housing shortage that it rationally deemed warranted action. But there is a critical distinction for purposes of due process analysis between prospective and retroactive legislation. **As the Supreme Court has observed, retroactive legislation that reaches "particularly far" into the past and that imposes liability of a high magnitude relative to impacted parties' conduct raises "substantial questions of fairness" (Eastern Enters., 524 U.S. at 534…). In the retroactivity context, a rational justification is one commensurate with the degree of disruption to settled, substantial rights** and, in this instance, that standard has not been met….

Id., 35 NY3d at 385-386 (emphasis added).

The United States Constitution and the New York State Constitution both provide that no person shall be deprived of property without due process of law. U.S. Const. Amend. XIV; N.Y. Const. Art. I, §6. "The right possessed by a person of enforcing his claim against another is property" (*Gilbert v. Ackerman, supra),* and applying a statute effective "immediately" retroactively to dismiss an action that was viable at the time it was filed impairs a valuable property right and violates due process. *See, id.; Brothers v. Florence, supra; People v. Cohen, supra; Halsted v. Silberstein, supra*; *Parmenter v. State of New York, supra*; *Reid v. Board of Albany County Supervisors, supra; Merz v. Seaman, supra*; *Ruffolo v. Garbarini & Scher, P.C., supra*; *Alston v. Transport Workers Union of Greater New York, supra* (collecting cases); *Bloch v. Schwartz, supra.*

Applying newly enacted CPLR §205-a as the Johnsons would have the Court apply it here raises "substantial questions of fairness" in that it would reach back into the past to "impose[] liability of a high magnitude" – the complete loss of Cascade's right to enforce its claim on the note and mortgage – "relative to [its] conduct" – relying on CPLR §205(a) as construed by the Second Department in Eitani. *See, Eastern Enters. v. Apfel, supra,* 524 U.S. at 534; *Regina Metropolitan Co., LLC v. NYS Div. of Housing and Community Renewal, supra*, 35 NY3d at 385-386. So patently unfair an application of law could survive

constitutional scrutiny, if at all, only upon a "rational justification…commensurate with the degree of disruption to settled, substantial rights." *See Regina, supra,* at 386.

There is a relative dearth of authority addressing the constitutionality of FAPA's retroactive application in this context. One court, upholding the retroactive application of CPLR §205-a, made three points (editorially denominated **[1]**, **[2]** and **[3]**, to facilitate analysis, in the excerpt of that court's opinion here quoted):

> **[1]** CPLR §205-a is not a statute of limitations, but a "grace period," which applies *if applicable* (*see United States Fidelity & Guaranty Co. v. E.W. Smith Co.*, 46 NY2d 498 [1979]…). The relevant portion of FAPA does not operate to shorten the statute of limitations, it merely addresses its expiration and any potential tolling. **[2]** The intent of the Legislature in enacting FAPA was to address an ongoing issue whereby lenders commonly avoided strict compliance with remedial statutes and manipulated the statute of limitations to their advantage. **[3]** The Legislature sought to clarify the meaning of existing statutes and achieved this goal by "codify[ing] [the] correct judicial applications thereof, and rectify[ing] erroneous interpretations thereof" (*see* 2021 NY S.B. 5473D).

Bank of New York Mellon Trust Co., N.A. v. Huerta, 82 Misc.3d 1235(A) at *4 (Sup. Ct. Queens Co. 2024). Based on those three assertions, the *Huerta* Court concluded:

> Thus, the retroactivity of FAPA was clearly integral to the fundamental aim of the legislation and was supported by a persuasive reason. Indeed, the Legislature saw fit to promulgate the legislation to combat the abuse of the judicial process by lenders to the detriment of borrowers. The potentially harsh impact is outweighed by the statutory goal and qualifies as a rational basis.

Id. Essentially to the same effect is *U.S. Bank Trust, N.A. v. Miele,* 80 Misc.3d 839, 852-854 (Sup. Ct. Westchester Co. 2023).

However, all three pillars of the argument on which those courts validated retroactive application of FAPA / CPLR §205-a are fundamentally unsound.

First, in an effort to avoid constitutional constraints on the legislature's retroactively shortening a limitations period to render untimely a claim that was timely when interposed, the *Huerta* Court advanced the notion that Section 205-a "does not operate to shorten the statute of

limitations" but is merely a "grace period" which "addresses its expiration and any potential tolling." That assertion ignores *centuries* of historical precedent (*see,* pp. 15-16, *supra*) establishing the "remedial importance" of the statutory savings provision in "guarding against capricious, unfair deprivation of a valuable claim" where the primary purpose of the statute of limitations – timely notice of claim – has been satisfied. *See, Hakala v. Deutsche Bank AG, supra,* 343 F.3d at 115 (citing *Morris Investors, Inc. v. Comm'r of Finance, supra* 69 NY2d 933, 935). *See also, Gaines v. City of New York, supra,* 215 NY 533, 539. Thus, as another court frankly acknowledged, Section 205-a "shortened the statute of limitations", thereby implicating foreclosing banks' constitutional rights. *See, U.S. Bank, N.A. v. Nicholson,* 8 Misc.3d 1239(A) at *7 (Sup. Ct. Suffolk Co. 2024).

Second, the *Huerta* Court found that FAPA's retroactive application is justified by the Legislature's stated purpose of "address[ing] an ongoing issue whereby lenders commonly avoided strict compliance with remedial statutes and manipulated the statute of limitations to their advantage." However, the Legislature's finding that "there is an ongoing problem with abuses of the judicial foreclosure process…exacerbated by court decisions which…have given mortgage lenders and loan servicers opportunities to avoid strict compliance with remedial statutes and manipulate statutes of limitation to their advantage" (*see,* New York State Senate Introducer's Memorandum in Support, S5473D; New York State Assembly Memorandum in Support of Legislation, A7737B) was made without conducting any hearings or reviewing any evidence beyond a survey of caselaw the holdings of which the Legislature disapproves. Cascade's invocation of the savings provision of CPLR §205(a) involved no "abuse" of the foreclosure process: like all other similarly situated plaintiff-assignees, it was plainly entitled

to the benefit of the Section 205(a) savings period as construed by the Second Department in *Eitani*. Indeed, it would qualify in all respects for that same benefit under FAPA except for Section 205-a's rule limiting eligibility for the statutory savings period in derogation of *Eitani*. As demonstrated hereinabove (*see*, pp. 7-14), the *Eitani* Court correctly construed CPLR §205(a) in light of CPLR §1018, and its holding is fully in accord with the doctrine of *Reliance Ins. Co. v. Polyvision Corp.*, 9 NY3d 52 (2007), which the Legislature purports to have codified in CPLR §205-a.

Third, and finally, the *Huerta* Court relied in error on the Senate Sponsor's spurious claim that in CPLR §205-a the Legislature was merely "clarify[ing] the meaning of existing statutes" by "codify[ing] [the] correct judicial applications thereof, and rectify[ing] erroneous interpretations thereof" (citing 21 NY S.B. 5473D). Quite plainly, FAPA did no such thing because it left existing Section 205(a) wholly intact and applicable to all cases except mortgage foreclosures. As the Assembly Memorandum frankly acknowledged, FAPA / CPLR §205-a "***creates a new 'savings' statute expressly for mortgage foreclosure cases***" (*see*, New York State Assembly Memorandum in Support of Legislation, A7737B) Thus, the purported remedial purpose of FAPA to "*ensure the laws of this state apply equally to all litigants*, including those currently involved in mortgage foreclosure action, in order to *ensure that parties purporting to sue on mortgage debt are bound by the same statues of limitations that bind all other litigants*" (*see*, New York State Senate Introducer's Memorandum in Support, S5473D; New York State Assembly Memorandum in Support of Legislation, A7737B) is wholly inapplicable in the case of CPLR §205-a: retroactive application thereof would not ensure "equal" application of the law to all litigants but instead subject Cascade, as a mortgage lender, to harshly unequal

treatment in violation of its constitutional rights by causing dismissal of a claim that was viable under the law existing at the time this action was commenced.

In view of the foregoing, this Court concludes, contrary to *Huerta* and *Miele*, that the far-reaching retroactive displacement of *Eitani* by CPLR §205-a is supported by no rational justification commensurate with the degree of disruption to settled, substantial rights (*see, Regina Metropolitan Co., LLC v. NYS Div. of Housing and Community Renewal,* 35 NY3d at 385-386), and accordingly, that the retroactive application of CPLR §205-a would violate Cascade's constitutional right to due process of law. In such circumstances, as the Court of Appeals taught in *Brothers v. Florence, supra,* "a court may uphold the constitutional validity of the retrospective application of the new statute by interpreting it as authorizing suits upon otherwise time-barred claims within a reasonable time after the statute's effective date." *See, id.,* 95 NY2d at 301. As the Court in *U.S. Bank, N.A. v. Nicholson, supra,* observed, "by commencing the action before FAPA's effective date, this plaintiff, a fortiori, commenced the action within a reasonable time after effectiveness." *Id.,* 8 Misc.3d 1239(A) at *8.[3]

It is therefore

ORDERED AND DECLARED, that the retroactive application of FAPA / CPLR §205-a herein so as to render the Plaintiff's claim untimely would violate its constitutional right to due process of law, and it is further

ORDERED AND DECLARED, that Plaintiff's action was timely commenced, wherefore Defendants' affirmative defense that the claim is barred by the statute of limitation is stricken, and it is further

[3] Since the Court's ruling on the issue of Plaintiff's constitutional right to due process of law is dispositive, the Court does not reach Plaintiff's additional claim that retroactive application of CPLR §205-a would constitute an unconstitutional taking of private property for public use without just compensation.

ORDERED, that the return date of Plaintiff's pending motion for a Judgment of Foreclosure and Sale shall be July 29, 2024.

The foregoing constitutes the decision and order of the Court.

Dated: July 15, 2024 ENTER
Carmel, New York

HON. VICTOR G. GROSSMAN, J.S.C.