STATE OF NEW YORK

7922--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 28, 2021

Introduced by M. of A. WALKER, DAVILA, GALLAGHER -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the general obligations law, and the real property actions and proceedings law, in relation to the rights of parties involved in foreclosure actions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "Foreclosure Process Abuse Prevention Act".

§ 2. Section 203 of the civil practice law and rules is amended by adding a new subdivision (h) to read as follows:

(h) Clarification. Once a cause of action upon an instrument described under subdivision four of section two hundred thirteen of this article has accrued, no party may unilaterally waive, postpone, cancel, or reset the accrual thereof, or otherwise effectuate a unilateral extension of the limitations period prescribed by law to interpose the claim, unless expressly permitted by law.

§ 3. Subdivision (c) of section 205 of the civil practice law and rules, as amended by chapter 216 of the laws of 1992, is amended to read as follows:

(c) Application. This section also applies to a proceeding brought under the workers' compensation law **but shall not apply to any proceedings governed by section two hundred five-a of this article**.

§ 4. The civil practice law and rules is amended by adding a new section 205-a to read as follows:

§ 205-a. Termination of certain actions related to real property. (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 other manner than by a voluntary discontinuance, a

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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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, subdivision (c) of section thirty-two hundred fifteen, rules thirty-two hundred sixteen and thirty-four hundred four of this chapter, for violation of, or non-compliance with, any uniform court rules, local court rules, individual judge part rules, or court order, or 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 after the termination provided that the new action would have been timely commenced within the applicable limitations period prescribed by law at the time of commencement of the prior action and that service upon the original defendant is effected within such six-month period. For purposes of this subdivision:

1. a successor in interest, executor or administrator of the plaintiff shall not be deemed the plaintiff, unless pleading and proving upon clear and convincing evidence that said successor in interest, executor or administrator is acting on behalf or asserting the rights of the original plaintiff; and

2. in no event shall the plaintiff receive more than one six-month extension under this subdivision.

(b) Where the defendant has served an answer and the action upon an instrument described under subdivision four of section two hundred thirteen of this article is terminated in any manner, and a new action upon the same transaction or occurrence or series of transactions or occurrences is commenced by the original plaintiff or a successor in interest, executor or administrator of the original plaintiff, the assertion of any cause of action or defense by the defendant in the new action shall be timely if it was timely asserted in the prior action.

§ 5. Section 206 of the civil practice law and rules is amended by adding a new subdivision (e) to read as follows:

(e) Based on standardized mortgage instruments. In an action to foreclose upon any uniform or model mortgage instrument securing real property or any interest therein, as adopted by the federal national mortgage association (Fannie Mae), federal home loan mortgage corporation (Freddie Mac), or U.S. Department of Housing and Urban Development (HUD), the time within which the action must be commenced and the claim interposed shall be computed from the time the right to demand immediate payment in full of all sums so secured thereby may be exercised. For purposes of this subdivision only, there shall be a rebuttable presumption that all substantive conditions precedent to accrual of a cause of action to foreclose upon any such mortgage instrument, if any, have been satisfied. The presumption may be rebutted by clear and convincing evidence. Nothing contained herein shall give rise to the presumption that any event of default under the mortgage instrument has occurred, except for purposes of computation of the time within which the action must be commenced and the claim interposed.

§ 6. Subdivision (d) of rule 3217 of the civil practice law and rules, as added by section 29 of part J of chapter 62 of the laws of 2003, is amended to read as follows:

(d) Effect of discontinuance of actions based upon certain instruments related to real property. Unless effectuated in strict accordance with the applicable provisions of article seventeen of the general obligations law, the discontinuance of an action upon an instrument

described under subdivision four of section two hundred thirteen of this chapter, by any means, shall not, in form or effect:

1. act as a waiver, postponement, cancellation, resetting, or tolling of accrual of the cause of action;

2. extend the limitations period prescribed by law to interpose the claim; or

3. automatically revoke or nullify an election of remedies made in any complaint.

(e) All notices, stipulations, or certificates pursuant to this rule shall be filed with the county clerk by the defendant.

§ 7. Subdivisions 4 and 5 of section 17-105 of the general obligations law are amended to read as follows:

4. [~~Except as provided in subdivision five, no~~] An acknowledgment, waiver [~~or promise has any effect to~~], promise or agreement, express or implied in fact or in law, shall not, in form or effect, postpone, cancel, reset, toll, revive or otherwise extend the time limited for commencement of an action to foreclose [~~or~~] a mortgage for any greater time or in any other manner than that provided in this section, [~~nor~~] unless it is made as provided in this section.

5. This section does not change the requirements[~~,~~] or the effect with respect to the accrual of a cause of action, nor the time limited for commencement of an action[~~, of~~] based upon either:

a. a payment or part payment of the principal or interest secured by the mortgage, or

b. a stipulation made in an action or proceeding.

§ 8. Subdivision 3 of section 1301 of the real property actions and proceedings law, as added by chapter 312 of the laws of 1962, is amended and a new subdivision 4 is added to read as follows:

3. While the action is pending or after final judgment for the plaintiff therein, no other action shall be commenced or maintained to recover any part of the mortgage debt, without leave of the court in which the former action was brought. For purposes of calculating the time within which an action must be commenced and the claim interposed under subdivision four of section two hundred thirteen of the civil practice law and rules, this subdivision shall not constitute a stay of proceedings or statutory prohibition with the meaning of section two hundred four of the civil practice law and rules.

4. If an action to foreclose the mortgage or recover any part of the mortgage debt is adjudicated to be barred by the applicable statute of limitations, any other action to recover any part of the same mortgage debt shall also be barred by the statute of limitations.

§ 9. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 10. This act shall take effect immediately; provided, however:

a. for causes of action pursuant to subdivision (e) of section 206 of the civil practice law and rules as added by section five of this act, having accrued prior to, and would be time barred immediately upon, the effective date of this act, suits thereupon shall be commenced and the claims interposed within one year after this act shall have become a law; and

b. for causes of action pursuant to subdivision (e) of section 206 of the civil practice law and rules as added by section five of this act, having accrued prior to the effective date of such section and for which less than one year remains upon the applicable limitations period for the commencement of an action or proceeding thereupon, such suits shall be commenced and the claims interposed within one year after this act shall have become a law.