

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. THOMAS A. ADAMS,
Supreme Court Justice

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DEUTSCHE BANK NAT'L TRUST CO., et al,

Plaintiff,

- against -

Defendants.

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FORECLOSURE PART
NASSAU COUNTY

INDEX NO.:

MOTION DATE: 3/9/18

MOTION SEQ.: 1 & 2

The Defendants motion, pursuant to CPLR 3211 (a) (5), to dismiss the Plaintiff's complaint as time barred and the Plaintiff's cross motion, pursuant to CPLR 3212 and RPAPL §1321, for summary judgment and the appointment of a Referee to compute are determined as hereinafter provided.

The Plaintiff commenced this residential mortgage foreclosure action on January 27, 2017 (see Defendants' Exhibit C). The Defendants allege, in sum, that the action is time barred because it was filed more than six (6) years after the prior March 19, 2010 acceleration of the debt in an earlier action (Index #5227/10) which was dismissed on July 31, 2012 (see Defendants' Exhibit B). However, a triable issue of fact exists as to whether the July 31, 2012 order terminated the earlier action (see Kashipour v Wilmington Savings Fund Socy., FSB, 144 AD3d 985) or whether, as the Plaintiff contends, the acceleration of the note was affirmatively revoked on March 8, 2016 (see February 6, 2018 affidavit of Sherry Benight, a representative of the Plaintiff's loan servicer, para. 18; Exhibit P) (cf MSMJ Realty, LLC v DLJ Mtge. Capital, Inc., 157 AD3d 885; US Bank v Barnett, 151 AD3d 791).

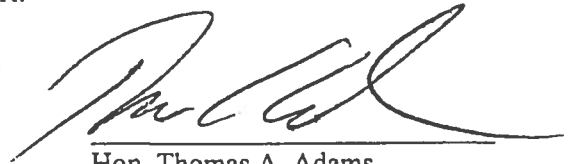
Moreover, a related factual dispute exists as to whether the statute of limitations was renewed by payment on or about May 27, 2014 and July 25, 2014 (see Benight affd. paras 19 and 20; Exhibits Q and R) which the Defendant Elizabeth Hasty explicitly denies (see March 2, 2018 reply affidavit, paras 10 and 11) (see US Bank, NA v Martin, 144 AD3d 891).

Accordingly, upon the Defendants' service of a note of issue, this matter is respectfully referred to the Trial Assignment Part (TAP II) for a July 19, 2018 (9:30 a.m.) hearing (see CPLR 3212 [c]). A copy of this order shall be served upon the Calendar Clerk and accompany the note of issue when filed. A failure to file a note of issue or appear as directed may constitute a waiver of that

party's claim. Finally, the Plaintiff's cross motion, pursuant to CPLR 3212 and RPAPL §1321, for summary judgment and the appointment of a Referee to compute is denied with leave to renew, if warranted, upon the resolution of the Defendants' motion, pursuant to CPLR 3211 (a) (5), to dismiss the action as time barred.

Date: MAY 01 2018

ENTER:



Hon. Thomas A. Adams
Supreme Court Justice

ENTERED

MAY 02 2018

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

CLERK
COUNTY
NASSAU