To be Argued by:
SCHUYLER B. KRAUS
(Time Requested: 15 Minutes)

APL-2018-00166
Suffolk County Clerk's Index No. 21853/14
Appellate Division–Second Department Docket No. 2015-10458

Court of Appeals

of the

State of New York

GREGG LUBONTY,

Plaintiff-Appellant,

– against –

U.S. BANK NATIONAL ASSOCIATION, as Indenture Trustee
for American Home Mortgage Investment Trust 2005-4A and
AMERICAN HOME MORTGAGE INVESTMENT TRUST 2005-4A,

Defendant-Respondent.

BRIEF FOR DEFENDANT-RESPONDENT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to 22 NYCRR Rule 500.1(f), Defendant-Respondent U.S. Bank National Association, as Trustee for American Home Mortgage Investment Trust 2005-4A, states that U.S. Bank National Association is a wholly owned subsidiary of U.S. Bancorp, a publicly held company.

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PRELIMINARY STATEMENT

Defendant-Respondent U.S. Bank National Association, as Trustee for American Home Mortgage Investment Trust 2005-4A ("Respondent") respectfully submits this brief in opposition to the appeal filed by Plaintiff-Appellant Gregg Lubonty ("Appellant"). Appellant is appealing from a decision and order ("Decision") of the Supreme Court, Appellate Division, Second Judicial Department ("Appellate Division"), dated March 28, 2018, which affirmed a decision and order of the Supreme Court, Suffolk County, dismissing Appellant's complaint.

Appellant's argument is simple—and incorrect. He reads CPLR 204(a) as allowing him to wholly avoid a $2.5 million foreclosure claim on statute of limitations grounds by means of strategic filings in bankruptcy court. Specifically, Appellant asserts that, after Respondent filed a foreclosure claim against him well within the applicable six-year statute of limitations, New York law permitted him to: (i) string out Respondent's ability to enforce its rights through his multiple bankruptcy filings; then, (ii) once the final stay was lifted, move successfully to dismiss Respondent's foreclosure action upon a finding that Respondent did not properly serve its complaint upon him; and then, (iii) after dismissal of the foreclosure action, file an affirmative action to quiet title counting the duration of the prior stays for statute of limitations purposes.

Appellant's opportunistic gamesmanship was not countenanced by the Appellate Division and should not be countenanced by this Court. As an initial matter, Appellant is misreading CPLR 204(a), which, as prior authority holds, does not give him the loophole he claims. Moreover, Appellant openly argues that this Court should blindly apply CPLR 204(a) to arrive at an unreasonable or absurd result; namely, that a defendant is free to employ disingenuous but clever tactics using bankruptcy court filings to stop a plaintiff from pursuing a just case by effectively shortening a six-year limitations period to one that could, in theory, run for only a few days.

Future like-minded defendants should not be permitted to dramatically shorten limitations periods through strategic filings that frustrate claims. The Decision should be affirmed.

COUNTER STATEMENT OF QUESTIONS PRESENTED

Question 1. Did the Appellate Division correctly apply CPLR 204(a)'s tolling provisions for the duration of Appellant's two bankruptcy actions (*i.e.*, more than four years, five months)?

Answer: Yes. The Appellate Division correctly applied CPLR 204(a) by holding that the filing of a bankruptcy petition, either before or after a foreclosure action is commenced, triggers the statute's tolling provisions.

COUNTER STATEMENT OF FACTS

On or about August 2, 2005, Appellant executed a note in the principal amount of $2.5 million (the "Note") for the benefit of American Home Mortgage Acceptance Inc. ("AHMA"). R. 33-39. In order to secure payment on the Note, Appellant executed a mortgage (the Mortgage and the Note shall hereinafter be referred to together as the "Lubonty Loan") encumbering the multi-million dollar property in the tony neighborhood of Southampton, New York (the "Property"). R. 41-67. Respondent was the owner and holder of the Lubonty Loan at all times relevant to this appeal. R. 81-88.

On June 11, 2007, AHMA—although it had no standing to do so—commenced an action to foreclose on the Lubonty Loan styled *American Home Mortgage Acceptance, Inc. C/O American Home Mortgage Servicing v Gregg Lubonty, et al.*, in the Supreme Court, Suffolk County, under Index No. 17749/2007 (the "First Foreclosure Action"). R. 142-143.

Approximately two weeks later, on June 26, 2007, Appellant filed a voluntary Chapter 11 bankruptcy petition in the U.S. Bankruptcy Court, Southern District of Florida, Docket No. 07-14945-AJC (the "First Bankruptcy Action"). Appellant's bankruptcy petition listed the Property as one of Appellant's assets. *See* R. 89-136. The First Bankruptcy Action was dismissed on November 24, 2009 on Appellant/debtor's motion. *See* R. 137-141. Accordingly, the First Foreclosure

Action was stayed for two years, four months and 29 days. On September 27, 2010 the First Foreclosure Action was dismissed as "abandoned" due to AHMA's failure to timely enter a default. R. 142-143.

On June 9, 2011, a foreclosure action styled *U.S. Bank National Association as Indenture Trustee for American Home Mortgage Investment Trust 2005-4A v. Gregg Lubonty, et al.*, was commenced in the Supreme Court, Suffolk County, under Index No. 18893/2011 (the "Second Foreclosure Action"). R. 26. On September 30, 2011, Appellant filed a motion to dismiss the Second Foreclosure Action. R. 199. Less than three weeks later, on October 19, 2011, Appellant commenced a second bankruptcy by filing a voluntary Chapter 11 petition (that was converted to a Chapter 7) in the U.S Bankruptcy Court, Eastern District of New York, Docket No. 8-11-77413 (the "Second Bankruptcy Action"). R. 144-197. The Second Bankruptcy Action stayed the Second Foreclosure Action and enforcement of the Mortgage until November 26, 2013, when the bankruptcy trustee released the Property and three other properties (in total the four properties were valued at $7.375 million) from Appellant's bankruptcy estate in exchange for a payment of $25,000 from Appellant. The bankruptcy trustee released the four properties reasoning that the liens on the properties were greater than their market

value.[1] R. 194-198. As such, the Second Foreclosure Action was stayed for two years, one month and seven days. After the stay was lifted, on October 21, 2014, the trial court granted Appellant's pending motion and dismissed the Second Foreclosure Action upon a finding that Appellant was not properly served with process. R. 199-201.

Sixteen days later, on November 5, 2014, Appellant commenced this action to quiet title and to vacate and discharge the Lubonty Loan based on Appellant's legal theory that the statute of limitations had expired. R. 24-28. Respondent moved to dismiss the Complaint. R. 73-213. On August 17, 2015, the Trial Court issued a detailed five-page decision dismissing Appellant's action (the "Order"). The Order correctly reasoned that, pursuant to CPLR 204(a), Appellant's two bankruptcies tolled the statute of limitations to foreclose for the time the bankruptcy stays were in place. R. 5-9. Notice of Entry was duly served and Appellant appealed the Trial Court's Order to the Appellate Division. R. 2-15.

Briefs were submitted to the Appellate Division and oral argument was held on November 6, 2017. On March 28, 2018, a four judge panel of the Appellate Division unanimously affirmed the Trial Court's Order. R. 258-260. On May 11, 2018, Appellant served a motion seeking leave to appeal to this Court. On

[1] Judge Whelan noted "the apparently inconsistent positions taken by the [Appellant] in the Bankruptcy proceedings, claiming that the [P]roperty was of inconsequential value due to the pending foreclosure action and the position taken in the instant case." R. 201

September 13, 2018, this Court granted Appellant's motion for leave to file the instant appeal. R. 261.

ARGUMENT

I. CPLR 204(a) CLEARLY TOLLS THE STATUTE OF LIMITATIONS IRRESPECTIVE OF WHEN A MATTER WAS COMMENCED

Section 204 of the CPLR provides that a statute or court order that stays the commencement of an action tolls the limitations period for the duration of the stay. *See* CPLR 204(a). In other words, the statute of limitations is suspended (*i.e.*, it stops running) during the period of time that a litigant's prosecutorial hands are tied. *See* Weinstein Korn & Miller, 1 New York Civil Practice: CPLR P 204.02 (2018) ("CPLR 204(a) . . . reflects the long-standing recognition that a restraint imposed . . . should not operate to deprive a party of a right of action.") (*citing Wilkinson v. First Nat'l Fire Ins. Co.*, 72 N.Y. 499, 503 (1878)). That tolling provision applies, whether an action is pending or not, as soon as the statutory or judicial stay incepts.

New York Courts have correctly applied 204(a) tolling to pending actions, including foreclosures, for bankruptcy stays. *See MLG Capital Assets, LLC v. Judith Eidelkind Trust*, 275 A.D.2d 357, 357, 713 N.Y.S.2d 124 (2d Dep't 2000) (applying CPLR 204(a) tolling even though a foreclosure action was pending at the

time the bankruptcy petition was filed);[2] *PSP-NC, LLC v. Raudkivi*, 138 A.D.3d 709, 711, 29 N.Y.S.3d 51, 52-53 (2d Dep't 2016) (holding that CPLR 204(a) tolled the statute of limitations despite the fact that a foreclosure action was commenced prior to the bankruptcy case); *In re Strawbridge*, 2012 U.S. Dist. LEXIS 29751, at *27 (S.D.N.Y 2012) (finding that CPLR 204(a) applied even though the creditor accelerated the loan and took steps to foreclose prior to the debtor's bankruptcy petition). They have not applied that statute as Appellant urges here—for good reason.

Tolling the statute of limitations for pending actions while a bankruptcy proceeding is ongoing makes sense. Statutes of limitations are designed to encourage plaintiffs to pursue known claims diligently. *See Ackerman v. Price Waterhouse*, 84 N.Y.2d 535, 644 N.E.2d 1009, 620 N.Y.S.2d 318 (1994); David D. Siegel, New York Practice, § 33 (4th Ed. 2005) (explaining that statutes of limitations represent a sufficient period of time for an ordinary, diligent party to bring an action). They specify that claims that lay dormant past a certain

[2] Appellant's protestations that the Appellate Division's affirmance in *MLG Capital Assets, LLC v. Judith Eidelkind Trust*, 275 A.D.2d 357 (2d Dep't 2000) has "no bearing in the instant case" is misguided. In *MLG*, the Appellate Division determined that the lower court correctly held that CPLR 204(a) tolling applies when a *pending* foreclosure action is stayed by a bankruptcy petition. Appellant goes to great lengths to distinguish *MLG* from this case by highlighting that the debt was reaffirmed. That fact is inconsequential because, although reaffirmation reset the statute of limitations in January 1993, CPLR 204(a) tolling was still necessary to make the second foreclosure action filed in May 25, 1999—more than six-years after reaffirmation—timely. *See* Add. to App.'s Br.

prescribed period of time are extinguished—regardless of their merit. *See McCarthy v. Volkswagen of America*, 55 N.Y.2d 543, 548 (1982) ("Statutes of Limitation are essentially arbitrary time limitations barring the commencement of an action[.]"). A plaintiff who sleeps on its rights is therefore foreclosed from obtaining a remedy. *See In re Estate of Feinberg*, 18 N.Y.2d 499, 507, 277 N.Y.S.2d 249, 255 (1966) (explaining that the purpose of a statute of limitations is to penalize claimants for procrastinating). CPLR 204 tolling excludes, from the calculation of the statute of limitations, the time during which plaintiffs are prohibited from enforcing their rights through no fault of their own. That is fair. The statute ensures that diligent plaintiffs are given the full time prescribed by the Legislature to prosecute their claims, while causing no prejudice to defendants, who are well aware of the claims that have already been filed against them.

Sister states with virtually identical tolling statutes have applied them even when a prior lawsuit was commenced. *Fiero v. Perle*, B237779, 2013 Cal. App. Unpub. LEXIS 8862, at *2 (Cal. Ct. App. 2d Dist. Dec. 10, 2013) (holding that a second lawsuit to enforce a judgment was timely under Cal. Code Civ. Proc. § 356 tolling, despite the fact that the plaintiff had previously commenced a prior lawsuit to enforce); *Paniague v. Organ County Fire Auth.*, 149 Cal. App. 4th 83, 88 (Cal. Ct. App. 4th Dist. 2007) (holding that Cal. Code Civ. Proc. § 356 applied to toll the statute of limitations despite the prior commencement and dismissal of an action

without prejudice);[3] *Seamans v. Walgren*, 82 Wn.2d 771, 772-775 (Wa. 1973) (applying Rev. Code Wash. ("RCW") § 4.16.230 tolling even though the lawsuit was commenced prior to the statutory prohibition); *Merceri v. Deutsche Bank AG*, 2 Wn. App. 2d 143, 149 (Ct. App. Wa. Jan. 22, 2018) ("[B]ecause the automatic [bankruptcy] stay prohibited [the bank] from continuing with, or recommencing, its foreclosure [action] for over two years, the statute falls within RCW 4.16.230's meaning of a 'statutory prohibition.");[4] *Hutchings v. Royal Bakery*, 66 Ore. 301, 303 (Or. 1913) (finding that Oregon's tolling statute applied and that the statute of limitations to file a second lawsuit was tolled during an appeal of the first lawsuit's judgment of nonsuit).[5]

The legislature prescribes a period of limitations for claimants to enforce their rights against another. It is six years for foreclosure actions. *See* CPLR 213(4). That period represents what the legislature deemed was a sufficient amount of time for a holder of a note and mortgage to prosecute an action against a

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[3] Cal. Code Civ. Proc. § 356 states: "When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action."

[4] RCW § 4.16.230 states: "When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action."

[5] Or. Rev. Stat § 12.210 (previously codified in Section 20 of the L.O.L) states: "When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action."

defaulting borrower. Plaintiffs are entitled to a full and complete opportunity to enforce their claim and obtain their remedy against counterparties. Tolling provisions, like CPLR 204(a), were enacted to ensure that plaintiffs' rights to sue were not curtailed by days, weeks, months, or years. *See, e.g.*, CPLR 202, 204(a), 207, 208.

On two occasions, Appellant filed bankruptcy proceedings that statutorily stayed the commencement of an action. R. 89-136, 144-193; *see* 11 U.S.C. § 362 (declaring that the filing of a bankruptcy petition, which Appellant did twice, stays the "commencement" of an action). Those proceedings deprived Respondent of the full benefit of the legislatively-created six-year statute of limitations for foreclosure actions; as a result of Appellant's clever tactics, Respondent was unable to dismiss its pending foreclosure actions, commence new foreclosure actions, resolve any alleged procedural infirmities with its pleadings, or timely challenge or strike Appellant's defenses and affirmative defenses. Appellant curtailed Respondent's rights by approximately four-and-a-half-years with his calculated litigation strategy. The bankruptcy stays that were in place during the First Foreclosure Action and Second Foreclosure Action fall squarely within CPLR 204(a), and, as such, the statute of limitations was tolled.

Appellant urges this Court to misconstrue the language and purpose of CPLR 204(a) and, ultimately, to sanction the use of the statute as the proverbial

sword and not the shield for which it was clearly intended. R. at 201 ("[T]he tolling that occurred due to [Appellant's] bankruptcy filing and stay is now being used as a sword and not as the intended shield by the [Appellant]."); *see Wilkinson v. First Nat'l Fire Ins. Co.*, 72 N.Y. 499, 503 (1878) ("[A] party shall not take advantage of his own wrong or be permitted to claim a forfeiture by reason of an act or omission which he himself caused … If the obligee himself be the cause that the obligation cannot be performed, there is no forfeiture for it is his own act."). According to Appellant, reactive bankruptcy filings that are clearly designed to insulate defendants from liability in *pending* foreclosure actions do not trigger the tolling provisions of CPLR 204(a). He is wrong. Those filings stay the "commencement" of an action.

II. APPELLANT'S INTERPRETATION OF CPLR 204(a) DOES NOT COMPORT WITH THE LEGISLATIVE INTENT BECAUSE IT WOULD LEAD TO UNJUST AND ABSURD RESULTS

Appellant incorrectly argues that this Court must mechanically apply his assigned meaning of the words contained in CPLR 204(a) regardless of the framework of Article 2 of the CPLR or the context, result or clear intent of the statute at issue. And, he ignores that his interpretation would lead to absurd and unjust results.

It is well-settled that when engaging in statutory analysis, courts must discern the legislative intent behind the statute and avoid "blindly apply[ing its]

words … to arrive at an unreasonable or absurd result." *Williams v. Williams*, 23 N.Y.2d 592, 599, 298 N.Y.S.2d 473, 479 (1969); *see also Zappone v. Home Ins. Co.*, 55 N.Y.2d 131, 137, 447 N.Y.S.2d 911, 914 (1982) ("Literal interpretation of the words used [in statutes] will not be accorded when to do so will occasion great inconvenience, or produce inequality, injustice or absurdity[.]") (internal quotations omitted); *Astoria Gas Turbine Power, LLC v. Tax Comm'n*, 14 A.D.3d 553, 557, 788 N.Y.S.2d 417, 421 (2d Dep't 2005), *aff'd*, 7 N.Y.3d 451 (2006) ("It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature[.]"). In addition, "it is presumed that no unjust or unreasonable result was intended [by the Legislature] and the statute must be given an interpretation and application consonant with that presumption." *Matter of Hyde*, 15 N.Y.3d 179, 185, 906 N.Y.S.2d 796, 799 (2010); *see also, Breen v. Board of Trustees*, 299 N.Y. 8, 19, 85 N.E. 2d 161, 166 (1949).

Appellant's interpretation of CPLR 204(a) would lead to absurd results and betray the purpose of the statute in at least three ways:

1. <u>Appellant's Interpretation Promotes Litigation Gamesmanship</u>

Appellant's interpretation creates an incentive to use bankruptcy filings and other procedural mechanisms to obtain stays until the applicable statute of limitations on a claim has run. Once expired, a defendant can then reveal some technical reason for dismissal (even if the dismissal is without prejudice) and a

plaintiff would have no opportunity to cure, despite having actively prosecuted a lawsuit. The Legislature did not intend statutes of limitations to be used in this manner. *See Williams*, 23 N.Y.2d 592, 598-599 (1969) ("While the facts of this case may appear to fit within the wording [of the statute], it would require us to attribute an extreme maliciousness to the Legislature ….").

This is not just a theoretical possibility. In fact, Appellant engaged in this very tactic in the instant matter. In response to the filing of the Second Foreclosure Action, Appellant filed a motion to dismiss for lack of personal jurisdiction based upon ineffective service. However, Appellant stayed the determination of his own motion by contemporaneously filing for bankruptcy for the second time. R. 199. The Second Foreclosure Action was stayed for more than two years due to Appellant's second bankruptcy. R. 199, 200. According to Appellant, the statute of limitations to enforce the Mortgage expired during this extensive stay. R. 26, 27. After the stay was lifted, the court in the Second Foreclosure Action heard Appellant's motion and dismissed the action upon a finding that proper service of process was not established. R. 200, 201. A reversal of the Order would sanction Appellant's use of the automatic bankruptcy stay to conceal a procedural defect involving service of process until after it was too late for Respondent to cure the defect. Due to no fault of its own, Respondent could lose the right to prosecute its

claim, not because it chose to sit on its rights or because it had no meritorious claim, but because Appellant gamed the system.

Indeed, without the benefit of the bankruptcy stay, Appellant would not have been able to conceal that service of process was defective for over two years. New York Law mandates the swift adjudication of service of process objections. *See* CPLR 3211(e) (providing a defendant only 60 days to move to dismiss for objections based on lack of service); *Wade v. Byung Yang Kim*, 250 A.D.3d 323, 325 (2d Dep't 1998) (holding that CPLR 3211(e)'s 60 day limitation exists "to require a party with a genuine objection to service to deal with the issue promptly and at the outset of the action . . . .") (*quoting* Senate Mem. in Support of L. 1996, ch. 501, McKinney's Session Laws of N.Y., at 2443).

The Appellate Division refused to allow Appellant to benefit from engaging in such gamesmanship and this Court should affirm. A reversal of the Appellate Division would sanction the misuse of bankruptcy petitions to avoid timely claims.[6]

[6] According to the annual report dated December 31, 2017 issued by the United States Courts pursuant to their reporting obligations under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), there were 10,138 Chapter 13 individual debtor cases closed during the 12-month period ending December 31, 2017 in New York. 6,191 of the cases were dismissed with 1,378 of the debtors then refiling for bankruptcy after dismissal. *See* https://www.uscourts.gov/statistics-reports/bapcpa-report-2017.

2. Appellant's Interpretation Impermissibly Shortens The Legislatively Enacted Six-Year Statute Of Limitations

Appellant's interpretation of CPLR 204(a) defies the very design and purpose of the statute of limitations because it truncates a plaintiff's time to bring a claim. Indeed, CPLR 204(a) recognizes the long-standing concept that it would be unjust to allow the statute of limitations to run when claimants are legally barred from taking any action to enforce their rights. *See* Weinstein Korn & Miller, 1 New York Civil Practice: CPLR P 204.02 (2018). Here, for example, Respondent had six years to foreclose on the mortgage. *See* CPLR 213(4). However, after Respondent sought to enforce the mortgage, Appellant filed multiple bankruptcies that tied the Respondent's hands for a total of four years and five months. Accordingly, without the intended benefit of tolling under CPLR 204(a), Respondent's time to enforce its rights could be reduced from six years to one year and seven months.

The illogical result of Appellant's interpretation is even more pronounced for claims that have shorter statute of limitations periods, such as the one-year statute of limitations for intentional torts. *See* CPLR 215. In such a case, even the most diligent plaintiff who files a tort claim the same day he or she suffered an injury could conceivably watch helplessly as the entire statute of limitations evaporates due to a bankruptcy filing or other statutory stay. Once the stay is lifted, the plaintiff would be unable to remedy many alleged infirmities in the

pleading, e.g., defective service, failure to name a necessary party, etc., through commencement of a new action.

Nothing in New York's jurisprudence holds that a claimant only has one chance to correctly commence a lawsuit. In fact, the opposite is true. The right to cure procedural defects by re-filing after a dismissal without prejudice is well-established and commonplace. *See* CPLR 3217(c) ("Effect of discontinuance. Unless otherwise stated in the notice, stipulation or order of discontinuance, the discontinuance is without prejudice . . . ."); Weinstein Korn & Miller, 1 New York Civil Practice: CPLR P 3217.10 (2018) ("The most important issue affecting the discontinuance of an action is whether it is with prejudice to the subsequent commencement of an action based on upon the same transactions or events."); David D. Siegel, New York Practice, § 33 (4th Ed. 2005) (recognizing "that things can happen during the early stages of a case, often unexpectedly, with or without fault on the lawyer's part" which should be able to be remedied in a new timely action); Ronald E. Mallen, Legal Malpractice § 19:15 (2012) (discussing the fact that attorneys in New York are not expected to be infallible).

New York's strong public policy for the adjudication of disputes on the merits would be frustrated by Appellant's interpretation. Even diligent plaintiffs—like Respondent in this case—could lose their day in court, not because of their own inaction, but because a defendant could employ stays and other procedural

mechanisms and use the statute of limitations as a weapon. Appellant's interpretation of CPLR 204(a) unjustly seeks to deprive Respondent of the full statute of limitations period afforded to it by the Legislature.

Finally, Appellant's interpretation fails to give any consideration to a plaintiff's interest to have a reasonable time to assert a claim. Appellant's interpretation of CPLR 204(a) would affect the way all statutes of limitations are calculated in New York. In this case, he proposes reducing the limitations period by 74% for Respondent's foreclosure claim. Appellant's interpretation of CPLR 204(a) must be rejected as it clearly conflicts with the purpose of statutes of limitations. *Blanco v. AT&T Co.*, 90 N.Y.2d 757, 773, 666 N.Y.S.2d 536, 543 (1997) ("Statutes of Limitation were designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. . . Balanced against these considerations is the injured person's interest in having a reasonable opportunity to assert a claim") (internal quotations omitted).

3. Appellant's Interpretation Encourages Plaintiffs To Sit On Their Rights

Statutes of limitations prevent plaintiffs from sleeping on their rights and failing to timely notify defendants of potential adverse claims. *See Crown v. Parker*, 462 U.S. 345, 352 (1983) ("Limitations periods are intended to put defendants on notice of adverse claims and to prevent plaintiffs from sleeping on

their rights."); *Long v. Adirondack Park Agency*, 76 N.Y.2d 416, 420 (1990) (explaining that courts must approach a "statute's provisions sequentially and give the statute a sensible and practical over-all construction, which is consistent with and furthers its scheme and purpose and which harmonizes all its interlocking provisions").

Appellant's interpretation of CPLR 204(a) contradicts those goals. It penalizes a plaintiff who acts swiftly by stripping it of the CPLR's tolling benefits and rewards a plaintiff who sits on its rights by providing it with additional time. Further, Appellant's interpretation would discourage prompt notification to defendants of adverse claims. Such a rule would be nonsensical. The Legislature did not enact CPLR 204(a) to dissuade plaintiffs from bringing timely claims or putting defendants on notice.

CONCLUSION

Based upon the foregoing, the Second Department's unanimous decision and the Trial Court's Order should be affirmed.

Dated: New York, New York
January 25, 2019

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NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.1(j) that the foregoing brief was prepared on a computer using Microsoft Word

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Dated: New York, New York
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