

Results for: "Bergman on New York Mortgage Foreclosures"

#### Cases

#### 1. Avatar Lenox Ave LLC v. Jacqueline Allmond Cuisine, Inc.

Supreme Court of New York, New York County | Mar 08, 2023 | 2023 N.Y. Misc. LEXIS 1172

... accounting only if required by the mortgage documents ( see 2 **Bergman on New York Mortgage Foreclosures** § 23.52). Here, the loan agreement, note and mortgage mandate Plaintiff ... ... doctrine and establish the requisite detriment to the asserting party." (1 **Bergman on New York Mortgage Foreclosures** § 5.08 [2019]). ( see National Distillers & Chemical Corp. v ...

#### 2. A 10 Capital, LLC v. Lispenard 3J, LLC

Supreme Court of New York, New York County | Feb 21, 2023 | 2023 N.Y. Misc. LEXIS 736 ... and establish the requisite detriment to the asserting party." (I Bergman on New York Mortgage Foreclosures § 5.08 [2019])., unclean hands, prior action pending, waiver and ...

### 3. SKW-B Acquisitions Seller C, LLC v. 1475 1st Ave LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5486 ... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02...

#### 4. SKW-B Acquisitions Seller C, LLC v. 681 Ninth Ave. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5493

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

### 5. SKW-B Acquisitions Seller C, LLC v. 476 Ninth Ave. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5489

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 6. SKW-B Acquisitions Seller C, LLC v. 474 Ninth Ave. Realty Holdings LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5490

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 7. SKW-B Acquisitions Seller C, LLC v. 472 Ninth Ave. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5497

... receivership is to "protect and preserve the collateral property" (1 Bergman on New York Mortgage Foreclosures §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 8. SKW-B Acquisitions Seller C, LLC v. 356 W. 37th St. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5485

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 9. SKW-B Acquisitions Seller C, LLC v. 79 Mercer St. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5488

... receivership is to "protect and preserve the collateral property" (1 Bergman on New York Mortgage Foreclosures §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 10. SKW-B Acquisitions Seller C, LLC v. 67-65 Greene St., LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5449

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 11. PS Funding, Inc. v. RH Hull LLC

Supreme Court of New York, Kings County | Aug 12, 2022 | 2022 N.Y. Misc. LEXIS 6017

... County 2015], citing RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on. New York Mortgage Foreclosures** 2.01 (4) (k) [note: online edition]). "The proponent of a motion ...

# 12. Namdar E. Vill. Holdings Llc v. 219 Ave a N.Y. City Llc A.K.a219 Ave A. N.Y. City Llc.158 Firstave N.Y. City Llc.75 Second Ave. Llc.324 E. 14th St. Llc

Supreme Court of New York, New York County | May 10, 2022 | 2022 N.Y. Misc. LEXIS 10156

... will always be junior, inferior and subordinate to the mortgage" (1 **Bergman on New York Mortgage Foreclosures** §...

#### 13. • Namdar E. Vil. Holdings LLC v. 219 Ave A NYC LLC

Supreme Court of New York, New York County | May 10, 2022 | 2022 N.Y. Misc. LEXIS 2435

... always be junior, inferior and subordinate to the mortgage" (1 Bergman on New York Mortgage Foreclosures § 2.02 at 2-12). Only parties with actual liens or encumbrances ...

#### 14. Green Poultry Farming, LLC v. Bengal Wholesale Co.

Supreme Court of New York, Kings County | Apr 22, 2022 | 2022 N.Y. Misc. LEXIS 2453

... Kings County 2015] [citing RPAFL § 13.21; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 (4) (k) (note: online edition)]). Where a plaintiff establishes ...

#### 15. 🙆 517-525 W. 45 LLC v. Avrahami

Supreme Court of New York, Appellate Division, First Department | Feb 24, 2022 | 202 A.D.3d 611

... defect in the judgment or sale under the first foreclosure" (4 **Bergman on New York Mortgage Foreclosures** § 32.03 [1] [2021] [emphasis added]; ...

#### 16. Bank of Am., N.A. v. Kessler

Supreme Court of New York, Appellate Division, Second Department | Dec 15, 2021 | 202 A.D.3d 10

**Overview:** Bank failed to comply with the strict requirements of RPAPL 1304, and thus, a condition precedent to the foreclosure action was not met. RPAPL 1304(2) simply required that the notices required by its provisions be mailed in a separate envelope from those other notices.

... right to commence an action to foreclose on its mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 4.04B). Case law from this Court indeed reflects that "the ...

... right to commence an action to foreclose on its mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 4.04B). Case law from this Court indeed reflects that "the ...

#### 17. 70 Green St Multi Family LLC v. 70 Green St., LLC

Supreme Court of New York, Kings County | Dec 14, 2021 | 2021 N.Y. Misc. LEXIS 6845

... County 2015] [citing RPAPL § 1321; 1-2 Bruce .1. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 (4) (k) (note: online edition)]). Summary judgment is a ...

#### 18. A Citibank, N.A. v. Yanling Wu

Supreme Court of New York, Appellate Division, Second Department | Sep 01, 2021 | 199 A.D.3d 48

**Overview:** Plaintiff bank in a foreclosure action was not required to be licensed as a "debt collection agency" pursuant to Administrative Code of the City of New York § 20-490; however, plaintiff had failed to sustain its initial burden of demonstrating default, as its supporting affidavit was based upon the affiant's review of unidentified business records.

... than to collect money directly from a debtor ( see 1 **Bergman on New York Mortgage Foreclosures** § 2.02; ...

#### 

Supreme Court of New York, Appellate Division, Second Department | Aug 04, 2021 | 197 A.D.3d 453

**Overview:** A bank's motion for summary judgment striking a subordinate note holder's statute of limitations defense in the bank's mortgage foreclosure action was properly granted pursuant to CPLR 213[4] because the subordinate note holder conceded that the bank's prior foreclosure action was discontinued less than six years after it was commenced.

... 650 , 432 N.Y.S.2d 238 ; see also 1 **Bergman on New York Mortgage Foreclosures** § 4.03[1] [2021]). Discharge & Payment, Time for Payments Transfers, Due ...

#### 20. Dernard v. Citibank, N.A.

Supreme Court of New York, Appellate Division, Second Department | Jun 16, 2021 | 195 A.D.3d 783

**Overview:** In an RPAPL art. 15 proceeding to quiet title, the doctrine of equitable estoppel precluded plaintiff from asserting that the recorded mortgage was void because plaintiff had ratified the loan agreement and had full benefit of the loan agreement, even after plaintiff had gained knowledge of the alleged defect in the recorded mortgage.

- ... to provide "collateral security for the payment of [the] obligation" (1 **Bergman on New York Mortgage Foreclosures** § 1.20)....
- ... 398; see also 1 **Bergman on New York Mortgage Foreclosures** § 5.03; see generally Restatement [Second] of Contracts §§ 90...
- ... credit line and the efficacy of the mortgage remain outstanding" (1 **Bergman on New York Mortgage Foreclosures** § 2.25; ...

#### 21. Ponce Bank v. Bushwick & Jefferson Realty LLC

Supreme Court of New York, Kings County | Apr 28, 2021 | 2021 N.Y. Misc. LEXIS 2479

... County 2015] [citing RPAPL § 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 (4) (k) (note: online edition)])....

#### 22. RL 900 Park, LLC v. Ender

United States District Court for the Southern District of New York | Feb 25, 2021 | 2021 U.S. Dist. LEXIS 35469

**Overview:** Given that plaintiff never filed with the clerk and indexed against the property a notice of pendency, N.Y. Real Prop. Acts Law § 1331, at the onset of this case, or at any time before intervenor-defendant purchased the property, title passed to intervenor-defendant without notice of this action and it could not be affected by the case's outcome.

... claim against a piece of property. See 2 Bruce J. Bergman, **Bergman on New York Mortgage** Foreclosures ("Bergman") § 15.02 (2020); see also David D. Siegel & Patrick ...

#### 23. A In re 53 Stanhope LLC

United States Bankruptcy Court for the Southern District of New York | Feb 18, 2021 | 625 B.R. 573

**Overview:** Plan confirmation was denied because lender's claims against certain of Debtors for default interest based on the maturity of the loans to those debtors as well as against two debtors based on the encumbrances permitted by those debtors would give rise to claims that could not be rendered unimpaired by full cash payment under the Plan.

... 6-7 (Sup. Ct. N.Y. Cty. Aug. 29, 2014); 1 **Bergman on New York Mortgage Foreclosures**, § 5.06 (2020). Discharge & Payment, Time for Payments HN9 ...

#### 24. Deutsche Bank Natl. Trust Co. v Blank

Supreme Court of New York, Appellate Division, Second Department | Dec 30, 2020 | 189 A.D.3d 1678

**Overview:** Trial court properly declined to dismiss foreclosure action as time-barred, CPLR 213(4), because plaintiff raised questions of fact as to whether it validly revoked December 10, 2009 acceleration of loan, within six years from that date; stipulation of discontinuance was emailed to defendant's counsel day after de-acceleration notice was mailed.

... "a viable path for reinstatement of the loan" ( see 1 **Bergman on New York Mortgage Foreclosures** § 4.04 [2020] ["Until acceleration, the borrower is free to pay ...

#### 25. Wells Fargo Bank, N.A. v Islam

Supreme Court of New York, Appellate Division, Second Department | Nov 18, 2020 | 188 A.D.3d 1116

**Overview:** Lender's foreclosure complaint was time-barred, CPLR 213(4), because six-year statute of limitations began to run on or about July 24, 2008, when lender accelerated mortgage debt, lender did not commence action until March 30, 2017, and none of facts relied upon by lender established that 2008 acceleration of loan balance was affirmatively revoked.

 $\dots$  AD3d 980 , 983 , 943 N.Y.S.2d 540 , quoting 1 Bergman on New York Mortgage Foreclosures  $\$  5.11[3] ; cf. LPP Mtge. Ltd. v Gold , 44  $\dots$ 

#### 26. A Plenitude Capital LLC v. Utica Ventures, LLC

United States District Court for the Eastern District of New York | Oct 22, 2020 | 2020 U.S. Dist. LEXIS 197383

... 971 N.Y.S.2d 827, 829 (Sup. Ct. 2013) (citing **Bergman on New York Mortgage Foreclosures** § 2.01(1)); Butterly v. Maribert Realty Corp., 234 A.D. ...

#### 

Supreme Court of New York, Appellate Division, Fourth Department | Oct 02, 2020 | 189 A.D.3d 20

**Overview:** Partnership failed to raise triable issue of fact whether statute of limitations was revived pursuant to applicable General Obligations Law § 17-105(1). Partnership's conduct in compelling

partnership to recommence payments on mortgage after statute of limitations expired and thus became unenforceable was to detriment of partnership.

... General Obligations Law § ] 17-105 that are controlling" (1 **Bergman on New York Mortgage Foreclosures** § 5.11 [7] [2020]). Fourth, principles of statutory construction support the ...

 $\dots$  516 US 864 [1995]; see generally 1 **Bergman on New York Mortgage Foreclosures** § 5.11 [6] [a] ). Fifth, case law to which we  $\dots$ 

# 28. <u>A Beneficial Homeowner Serv. Corp. v Heirs at Large of Ramona E.</u> Thwaits

Supreme Court of New York, Appellate Division, Third Department Jul 02, 2020 | 185 A.D.3d 1126

**Overview:** Plaintiff's action was time-barred under CPLR 213(4) as 2015 notices did not constitute affirmative acts that would notify borrower's legal representative that prior debt acceleration was revoked and that loan was reinstated to installment payments as manner and method in which notices were sent and to whom did not effectuate plaintiff's intent.

... 296-297, 80 N.Y.S.3d 637 [2018]; 1 **Bergman on New York Mortgage Foreclosures** § 4.03 [1] [2020]). Plaintiff made no further effort to substitute ...

#### 29. Fogarty v. Bayview Loan Servicing LLC (In re Fogarty)

United States District Court for the Eastern District of New York | Jul 01, 2020 | 2020 U.S. Dist. LEXIS 264531

... and Proceedings Law ("RPAPL") § 221 and § 713(5) . 4 **Bergman on New York Mortgage** Foreclosures § 33.01. An eviction proceeding under § 713(5) , which must ...

#### 30. A Trust v Barua

Supreme Court of New York, Appellate Division, Second Department | Jun 03, 2020 | 184 A.D.3d 140

**Overview:** As a borrower demonstrated that a lender's second foreclosure action was time-barred by CPLR 213(4) and 3211(a)(5), and as the lender failed to raise a question of fact in opposition, the trial court erred in denying the borrower's motion dismiss the second foreclosure.

- ... N.A. v Burke , 94 AD3d at 983 , quoting 1 **Bergman on New York Mortgage Foreclosures** § 5.11 [3] ; cf. LPP Mtge. Ltd. v Gold , ...
- ... 532 NYS2d 426 [1988]; see also 1 **Bergman on New York Mortgage Foreclosures** §§ 4.05, 5.11 [2]; ...
- ... benefit of the mortgagee, in whose control it should repose" (1 **Bergman on New York Mortgage Foreclosures** § 4.03). It need hardly be said that the holder ...
- ... 432 NYS2d 238 [1980]; see 2 **Bergman on New York Mortgage Foreclosures** § 17.01; accord RPAPL 1351 [2]). Partial foreclosure "permits ...
- ... 78 AD2d at 650; see also 1 **Bergman on New York Mortgage Foreclosures** § 4.03 [1] ). The decision of whether to revoke an ...
- ... of the time it matured or became due ( see 1 **Bergman on New York Mortgage Foreclosures** § 5.11 [2] [2020]). Conversely, and without more, "recovery is barred ...

#### 31. A In re Broadway Equity Holdings LLC

United States Bankruptcy Court for the Southern District of New York | May 12, 2020 | 617 B.R. 777

**Overview:** Evidence was overwhelming that note and mortgage were not forged, but rather, were signed on behalf of borrowers by its principals because executed note and mortgage had minimal changes from the previously circulated drafts and the principals admitted at a meeting that they signed the note.

... 819 N.Y.S.2d 213 (Sup. Ct. Qns. Cty 2006); 1 **Bergman on New York Mortgage Foreclosures** § 1.20 (2020). A proven, unrecorded mortgage is still enforceable against ...

#### 

United States District Court for the Eastern District of New York | Feb 26, 2020 | 2020 U.S. Dist. LEXIS 33931

- ... 412 (2d Dep't 2006); see also > **Bergman On New York Mortgage Foreclosures** § 12.04 ("Where a deed is delivered to a subsequent owner ...
- ... necessary party to foreclosure, unless a deficiency judgment is sought."); 2 **Bergman On New York Mortgage Foreclosures** § 12.04 ("[W]hen the mortgagor has completely parted with his title, ...

#### 33. Indymac Fed. Bank FSB v. Parekh

Supreme Court of New York, New York County | Jan 21, 2020 | 2020 NYLJ LEXIS 346

... founded both upon statute and case law" (1 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** §2.20[3] [2015]). " CPLR 5001(a) provides that in an equitable action ...

#### 34. US Bank N.A. v Lavey

Supreme Court of New York, Greene County Nov 22, 2019 66 Misc. 3d 1204(A)

... doctrine and establish the requisite detriment to the asserting party" (1 **Bergman on New York Mortgage Foreclosures** § 5.08 [2019]). The clear public policy of this state is ...

#### 35. • 21st Mtge. Corp. v Balliraj

Supreme Court of New York, Appellate Division, Second Department | Nov 13, 2019 | 177 A.D.3d 687

**Overview:** As the borrowers demonstrated, pursuant to CPLR 213(4), that an acceleration of the mortgage debt occurred more than six years prior to the commencement of the present action, the trial court properly granted their motion to dismiss the lender's mortgage foreclosure complaint as time-barred by CPLR 203(a).

- ... upon the occurrence of certain events delineated in the mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 4.02; see Wells Fargo Bank, N.A. v Burke, ...
- ... 734 NYS2d 77 [2001]; see also 1 **Bergman on New York Mortgage Foreclosures** §§ 4.05, 5.11 [2]; cf. Phoenix Acquisition Corp. ...

#### 36. A CIT Bank, N.A. v. Buono

United States District Court for the Eastern District of New York | Nov 08, 2019 | 2019 U.S. Dist. LEXIS 195911

- ... the owner of the property is a form of settlement." 3 **Bergman on New York Mortgage Foreclosures** § 24.08 (2019). However, "there is no requirement . . . ...
- ... an appropriate avenue for settling or concluding a foreclosure action." 3 **Bergman on New York Mortgage Foreclosures** § 25.09 (2019). in satisfaction of the mortgage debt, which settled ...

#### 37. A Bank of N.Y. Mellon Trust Co., NA v Obadia

Supreme Court of New York, Appellate Division, Second Department | Oct 23, 2019 | 176 A.D.3d 1020

**Overview:** A foreclosure complaint was not subject to dismissal for lack of standing; holder status was alleged, and a special indorsement from the original lender to a nonparty entity did not preclude treating the note as a bearer instrument under UCC 3-204(2) absent evidence of delivery to the entity, which was necessary under UCC 3-202(1) for negotiation.

... 975 NYS2d 480 [2013]; see generally 2 **Bergman on New York Mortgage Foreclosures** § 12.04 ), it does not necessarily follow that Ocean Villas ...

#### 38. Wells Fargo Bank, N.A. v Henry

Supreme Court of New York, Queens County | Sep 03, 2019 | 64 Misc. 3d 1235(A)

... required to support the plaintiffs testimonial evidence by affidavit (see 2-20 **Bergman on New York Mortgage Foreclosures** § 20.06[1][d] citing Johnson v Frederick , 219 NYS2d 482 [Kings ...

#### 39. A Horn v Nestor

Supreme Court of New York, New York County | Jul 31, 2019 | 2019 N.Y. Misc. LEXIS 4298

... control, or prevail over those in the mortgage" (Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 1.01[2][a] ). Therefore, the Court finds that the terms ...

#### 40. Aurora Loan Servs., LLC v Tobing

Supreme Court of New York, Appellate Division, Second Department | May 15, 2019 | 172 A.D.3d 975

**Overview:** In a foreclosure proceeding, the lender waived its right to object to the trial court's authority to order a reference to determine whether the 30-day notice of default was properly sent in accordance with the terms of the subject mortgage because lender failed to object to the reference and actively participated in the hearing before the referee.

- ... 432 NYS2d 238 [1980]; see also 2 **Bergman on New York Mortgage Foreclosures** § 17.03). Accordingly, as the plaintiff correctly contends, compliance with the ...
- ... see also 2 **Bergman on New York Mortgage Foreclosures** § 17.02). In New York, "partial foreclosure exists as a form of judicial foreclosure" (2 **Bergman on New York Mortgage Foreclosures** § 17.01; accord...

#### 41. 1 Citimortgage, Inc. v Etienne

Supreme Court of New York, Appellate Division, Second Department | May 08, 2019 | 172 A.D.3d 808

**Overview:** Company lacked standing to raise the issue of compliance with RPAPL 1304 as a defense, because the statutory defense created by RPAPL 1302(2) for noncompliance with RPAPL 1304 was a personal defense which could not be raised by a stranger to the note and underlying mortgage.

 $\dots$  975 NYS2d 480 [2013] ; see generally 2 **Bergman on New York Mortgage Foreclosures** § 12.04 ), it does not necessarily follow that OKL may  $\dots$ 

#### 42. Dunity Bank v St. John's Dryden Realty Corp.

Supreme Court of New York, Appellate Division, Third Department | Apr 04, 2019 | 171 A.D.3d 1272

**Overview:** As a lender abandoned the liens on a second parcel by affirmatively electing to allow them to be extinguished by a tax foreclosure proceeding, and as the lender's motion for a deficiency judgment was untimely under RPAPL 1371(2), the trial court properly denied the lender's motion for a deficiency judgment against the guarantors.

... 3 NYS2d 312 [Sup Ct, Kings County 1938] ; 4 Bergman on New York Mortgage Foreclosures Ch. 34, § 34.04 [4] [a] [2018]). ...

#### 43. • Wilmington Trust, N.A. v Teo

Supreme Court of New York, Kings County | Apr 01, 2019 | 2019 N.Y. Misc. LEXIS 1631

... has no demonstrated right to the debt ( id. ; see **Bergman on New York Mortgage Foreclosures** 12.05[1][a] [1991] ); quoting Bank of New York v. Silverberg...

#### 44. U.S. Bank Nat'l Ass'n v. Singh

Supreme Court of New York, Kings County | Apr 01, 2019 | 2019 NYLJ LEXIS 981

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, 2.01 [4] [k] [note: online edition]). USBNA's instant motion is ...

#### 

Supreme Court of New York, Appellate Division, Third Department | Mar 28, 2019 | 170 A.D.3d 1438

**Overview:** Bank lacked standing to bring eviction proceeding against a mortgagor, RPAPL 721, because the referee's authority, which was granted by virtue of the 2003 judgment of foreclosure and sale, was exhausted upon the execution and delivery of the 2008 deed, and the referee had no authority to issue the 2016 deed to the bank eight years after the sale.

... and his right of redemption was cut off ( see 3 **Bergman on New York Mortgage Foreclosures** § 27.01 [5] [2018]). Therefore, we find that the statutory 10-year ...

... 670 NE2d 228, 646 NYS2d 987 [1996]; 3 **Bergman on New York Mortgage Foreclosures** § 27.01 [5] [2018]). Because 10 years had not yet passed ...

#### 46. O U.S. Bank N.A. v Singh

Supreme Court of New York, Kings County | Mar 15, 2019 | 63 Misc. 3d 1201(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). USBNA's instant motion ...

#### 47. A Bank of N.Y. Mellon v Dieudonne

Supreme Court of New York, Appellate Division, Second Department | Mar 13, 2019 | 171 A.D.3d 34

**Overview:** As the reinstatement provision in the mortgage was not a condition precedent to acceleration of the mortgage, and as it did not prevent the lender from validly exercising its option to accelerate, the trial court properly granted a borrower's motion to dismiss the lender's foreclosure complaint as time-barred by CPLR 213(4).

- ... [Sup Ct, Suffolk County 2017]; see generally 1 **Bergman on New York Mortgage Foreclosures** § 1.07 [2018]). As we have already observed, a cause of ...
- ... upon the occurrence of certain events delineated in the mortgage" (1 Bergman on New York Mortgage Foreclosures § 4.02 [2018]; see Wells Fargo Bank, N.A. v Burke, ...
- ... 532 NYS2d 426 [1988] ; see also 1 **Bergman on New York Mortgage Foreclosures** §§ 4.05 , 5.11 [2] [2018] ; cf. Phoenix Acquisition Corp. ...

### 48. A Kerns v. Wells Fargo Bank, N.A.

Supreme Court of Virginia | Sep 27, 2018 | 296 Va. 146

**Overview:** Statute of limitations in Va. Code Ann. § 8.01-246(2) barred a borrower's breach of contract claims against a bank because the claims accrued when the debt on a mortgage loan agreement was accelerated prior to foreclosure, but the borrower did not file his suit within five years of this date of accrual.

... a cause of action accrues upon acceleration); 1 Bruce J. Bergman, **Bergman on New York Mortgage** Foreclosures § 5.11 (2018) ("Even though a mortgage may be payable in ...

### 49. A In re Tara Retail Grp., LLC

United States Bankruptcy Court for the Northern District of West Virginia | Sep 19, 2018 | 2018 Bankruptcy LEXIS 2854

**Overview:** Debtor's objection to its principal secured lender's proof of claim for a prepayment premium was sustained, disallowing the prepayment premium because under the parties' agreement, accelerating the maturity of the note upon debtor's default cut off any right the lender had to a prepayment premium, as acceleration neutered the make-whole provision.

... provisions or a statute providing for the right of prepayment. 1 **Bergman on New York Mortgage Foreclosures** § 1.16[1] (2018). However, "[a]cceleration, by definition, advances the maturity date ...
... upon Comm2013's choice to accelerate the Note. See e.g., 1 **Bergman on New York Mortgage Foreclosures** § 2.06 (2018) (noting that Standards of Performance, Creditors & Debtors ...

#### 50. • Bank of N.Y. Mellon v Celestin

Supreme Court of New York, Appellate Division, Second Department | Aug 22, 2018 | 164 A.D.3d 733

**Overview:** As a lender's current foreclosure action was commenced within six years of its prior foreclosure action, a buyer failed to sustain her initial burden of demonstrating, prima facie, that the action was untimely under CPLR 213(4); therefore, the trial court properly denied the buyer's motion to dismiss a lender's complaint.

 $\dots$  477 , 658 NYS2d 138 [1997] ; 1-4 **Bergman on New York Mortgage Foreclosures** § 4.03 ). Since this action was commenced within six years  $\dots$ 

#### 51. U.S. Bank N.A. v O'Neill

Supreme Court of New York, Suffolk County | Jun 13, 2018 | 2018 N.Y. Misc. LEXIS 2397

... the findings are substantially supported by the record]; see also 2-20 **Bergman on New York Mortgage Foreclosures** § 20.06 [2017][[a]lthough a defaulting defendant is not entitled to notice ...

#### 52. Bank of N.Y. Mellon Trust Co. v. Edgley

Supreme Court of New York, Suffolk County | Jun 06, 2018 | 2018 N.Y. Misc. LEXIS 5287

... 646 NYS2d 530 [2d Dept 1996]; see also 2-20 **Bergman on New York Mortgage Foreclosures** 20.02 ). Accordingly, plaintiff's motion is granted and the order of ...

### 53. A Soroush v Citimortgage, Inc.

Supreme Court of New York, Appellate Division, Second Department | May 23, 2018 | 161 A.D.3d 1124

**Overview:** Supreme court should have denied lender's motion pursuant to CPLR 3211(a)(1) to dismiss homeowner's complaint on ground that it was not documentary evidence and did not utterly refute factual allegations of the complaint. Lender's letter did not demonstrate affirmative act of revocation was timely interposed.

... NY Slip Op 32697[U] [Sup Ct, Kings County 2016] ; 1-4 **Bergman on New York Mortgage** Foreclosures § 4.03 ; cf. U.S. Bank N.A. v Barnett , 151 ...

#### 54. BANK OF NEW YORK MELLON TRUST CO. v. EDGLEY

Supreme Court of New York, Suffolk County | May 23, 2018 | 2018 N.Y. Misc. LEXIS 4503

... 646 NYS2d 530 [2d Dept 1996]; see also 2-20 **Bergman on New York Mortgage Foreclosures** 20.02 ). Accordingly, plaintiff's motion is granted and the order of ...

55. U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CERTIFICATEHOLDERS OF BEAR STEARNS ASSET BACKED SECURITIES I LLC, ASSET BACKED CERTIFICATES, SERIES 2006-AC4, Plaintiff, v. SASIPIM MONPARPUNTH, CHON MONPARPUNTH, MIDLAND FUNDING LLC DBA IN NEW YORK AS MIDLAND FUNDING OF DELAWARE, LLC, MIDLAND FUNDING LLC A/S/I/I TO A CHASE ACCOUNT, Defendants.

Supreme Court of New York, Suffolk County | Mar 09, 2018 | 2018 N.Y. Misc. LEXIS 4705

... thus the liability phase of this foreclosure action is over (see **Bergman on New York Mortgage Foreclosures** §2.01[1] ). Although the court could well deny plaintiff's request for ...

#### 56. • U.S. Bank N.A. v Gordon

Supreme Court of New York, Appellate Division, Second Department | Feb 28, 2018 | 158 A.D.3d 832

**Overview:** Borrower failed to demonstrate when debt was accelerated or when cause of action accrued and, as such, the bank's foreclosure action was not time-barred, CPLR 203(a), because acceleration provisions in note and mortgage were made optional at discretion of holder and were not automatically triggered upon borrower's default.

- ... 532 NYS2d 426 [1988] ; see also 1-5 **Bergman on New York Mortgage Foreclosures** § 5.11 [2] [2017]). Here, Rose Gordon contends, and the Supreme ...
- ... not automatically triggered upon Rose Gordon's default ( see generally 1-4 **Bergman on New York Mortgage Foreclosures** § 4.03 [2017]), the allegation in the 2007 complaint that Rose ...
- 57. A Northern Blvd Corona, LLC v Northern Blvd Prop., LLC

Supreme Court of New York, Appellate Division, Second Department | Jan 24, 2018 | 157 A.D.3d 895 ... 68 AD3d 925 , 892 NYS2d 436 [2009] ; 3-30 **Bergman on New York Mortgage Foreclosures** § 30.06 ) and, therefore, may set aside a foreclosure sale ...

58. WEBSTER BANK, NATIONAL ASSOCIATION, Plaintiff, v. Harvey Selman, Joni Selman, American Home Mortgage, Internal Revenue Service, Citibank, N.A., Midland Funding, LLC, "JOHN DOE" and "JANE DOE,", Defendants.

Supreme Court of New York, Suffolk County | Aug 14, 2017 | 2017 N.Y. Misc. LEXIS 5999

- ... 646 NYS2d 530 [2d Dept 1996] ; see also 2-20 **Bergman on New York Mortgage Foreclosures** 20.02 ). Accordingly, plaintiff's motion is granted and the order of ...

United States District Court for the Eastern District of New York | May 16, 2017 | 2017 U.S. Dist. LEXIS 75347

... 34 (2d Dep't 2015); see also **Bergman on New York Mortgage Foreclosures** § 19.07[1] (2016). In this case, the only defense asserted by ...

### 60. Onewest Bank N.A. v Franklin

Supreme Court of New York, Kings County | May 11, 2017 | 55 Misc. 3d 1218(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01[4][k] [note: online edition]). On a motion for leave ...

#### 61. Onewest Bank N.A. v. Franklin

Supreme Court of New York, Kings County | May 10, 2017 | 2017 NYLJ LEXIS 1312

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, §2.01[4][k] [note: online edition]). On a motion for leave to ....

#### 62. SDF46 Bogart 1 LLC v 19 Bogart Realty Dev. Inc.

Supreme Court of New York, Kings County | Apr 03, 2017 | 2017 N.Y. Misc. LEXIS 1357

... County 2015] [citing RPAPL § 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 (4) (k) (note: online edition)]). Here, SDF46 Bogart 1 ...

### 63. **1** Lambert v. Schiller

Supreme Court of New York, Greene County | Dec 02, 2016 | 2016 N.Y. Misc. LEXIS 5308

... payments due to complete the purchase price have been made" (2-16 **Bergman on New York Mortgage Foreclosures** § 16.06 [1] [b] ) [note: on-line edition]. The vendee holds ...

#### 64. <u>Bank of New York Mellon v. Arif Izmirligil</u>

Supreme Court of New York, Appellate Division, Second Department | Nov 30, 2016 | 144 A.D.3d 1063

**Overview:** Relieving a mortgagee of an obligation to comply with the attorney affirmation requirement in Administrative Orders 548/10 and 431/11 erred because the Chief Administrative Judge had authority to issue the Orders, as (1) they were issued under N.Y. Const. art. VI, § 30 and Judiciary Law § 212(2)(d), and (2) the requirement was not substantive.

... affirmation must accompany the request for judicial intervention ( see 1-2 **Bergman on New York Mortgage Foreclosures** § 2.01 ). Where a residential mortgage foreclosure action was pending ...

#### 65. JP Morgan Chase Bank, N.A. v. Singh

Supreme Court of New York, Kings County | Nov 15, 2016 | 2016 NYLJ LEXIS 4875

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, §2.01 [4] [k] [note: online edition]). Chase 's instant motion ...

#### 

Supreme Court of New York, Kings County | Nov 15, 2016 | 53 Misc. 3d 1213(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). Chase 's instant ...

#### 67. A U.S. Bank N.A. v Shereshevsky

Supreme Court of New York, Kings County | Nov 01, 2016 | 53 Misc. 3d 1214(A)

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). Elka Shereshevsky claims ...

#### 68. U.S. Bank Nat'l Assoc. v. Shereshevsky

Supreme Court of New York, Kings County | Nov 01, 2016 | 2016 NYLJ LEXIS 3946

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, §2.01 [4] [k] [note: online edition]). Elka Shereshevsky claims that ...

#### 

Supreme Court of New York, Queens County | Oct 31, 2016 | 2016 N.Y. Misc. LEXIS 4213

... therefrom to honor the entire obligation to which it relates" (1-5 **Bergman on New York Mortgage Foreclosures** § 5.11 [6] [b] ; see National Heritage Life Ins. Co. ...

... AD2d 842, 576 N.Y.S.2d 457 [3d Dept 1991]; 1-5 **Bergman on New York Mortgage Foreclosures** § 5.11 [6] [a] ). Any promise to pay was conditional ...

#### 70. Bank of N.Y. Mellon v. Bissessar

Supreme Court of New York, Queens County | Oct 31, 2016 | 2016 NYLJ LEXIS 3744

... therefrom to honor the entire obligation to which it relates" (1-5 **Bergman on New York Mortgage Foreclosures** §5.11 [6] [b] ; see National Heritage Life Ins. Co. v. ...

... AD2d 842, 576 N.Y.S.2d 457 [3d Dept 1991]; 1-5 **Bergman on New York Mortgage Foreclosures** §5.11 [6] [a] ). Any promise to pay was conditional and, ...

### 71. Confidential Lending, LLC v. Project E. 19, LLC

Supreme Court of New York, Kings County | Oct 21, 2016 | 2016 NYLJ LEXIS 4871

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, §2.01[4][k] [note: online edition]). In order to establish prima facie ...

#### 72. A Confidential Lending, LLC v Project E. 19, LLC

Supreme Court of New York, Kings County | Oct 21, 2016 | 53 Misc. 3d 1213(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01[4][k] [note: online edition]). In order to establish prima ...

#### 73. A Desiano v Fitzgerald

City Court of New York, Peekskill, Westchester County | Aug 29, 2016 | 53 Misc. 3d 935

**Overview:** Tenant was immune from a non-payment proceeding pursuant to RPL § 339-kk(e) for only those months she remitted her rent payments directly to the condominium association in order to bring the common charges current because, if the tenant were not required to pay for the other monthly rent due, it would result in her unjust enrichment.

... NY, Book 49, Real Property Law § 339-kk [2015 ed]; 4-36 **Bergman on New York Mortgage Foreclosures** § 36.11 [2015]; 19A NY Jur 2d, Condominiums and Cooperative Apartments ...

#### 74. Li Operations LLC v McEntee

Supreme Court of New York, Queens County | Aug 01, 2016 | 2016 N.Y. Misc. LEXIS 3978

... determine the propriety of the foreclosure sale ( see e.g. 3-30 **Bergman on New York Mortgage Foreclosures** § 30.06 [a sale may be overturned if it was conducted ...

#### 75. <u>Citimortgage, Inc. v Gueye</u>

Supreme Court of New York, New York County | Jun 21, 2016 | 52 Misc. 3d 1203(A)

... founded both upon statute and case law" (1 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.20[3] [2015]). " CPLR 5001(a) provides that in an equitable ...

#### 76. United States Bank Na v. Stevens

Supreme Court of New York, Suffolk County | Apr 22, 2016 | 2016 N.Y. Misc. LEXIS 7929

... 720 NYS2d 161 [2d Dept 2001]; see also 1-5 **Bergman on New York Mortgage Foreclosures** § 5.11 [2] [2014]). Under Section 22 of defendant's mortgage, the ...

#### 77. **1** Wells Fargo Bank, N.A. v Tessler

Supreme Court of New York, Kings County | Mar 01, 2016 | 50 Misc. 3d 1224(A)

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). RPAPL 1303 ...

#### 

Supreme Court of New York, Queens County | Feb 18, 2016 | 2016 N.Y. Misc. LEXIS 531

... 763 N.Y.S.2d 493 [2003]; see also 1-5 **Bergman on New York Mortgage Foreclosures** § 5.11 ). Furthermore, plaintiff established that there was a default ...

#### 79. PNC Bank, N.A. v Joseph

Supreme Court of New York, Kings County | Feb 08, 2016 | 50 Misc. 3d 1221(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). As a preliminary ...

#### 

Supreme Court of New York, Appellate Division, Second Department | Nov 25, 2015 | 133 A.D.3d 846 ... ed June 2015] ["Purchaser with Notice from Purchaser without Notice"]; 1-1 **Bergman on New York Mortgage Foreclosures** § 1.21 [Oct 2015]). To not allow the bona fide purchaser ...

#### 

Supreme Court of New York, Queens County | Oct 26, 2015 | 2015 N.Y. Misc. LEXIS 4029

... and not an action to recover the debt ( see 2-22 **Bergman on New York Mortgage Foreclosures** § 22.02 ). Dismissal of this defense is warranted. As to ...

#### 82. A Puryear v Prokeen Mgt. Co., Inc.

Supreme Court of New York, Kings County | Oct 06, 2015 | 49 Misc. 3d 1207(A)

... a judgment ( see RPAPL 1321 ; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). A motion for ...

#### 83. U.S. Bank N.A. v Miller

Supreme Court of New York, Kings County | Sep 21, 2015 | 49 Misc. 3d 1205(A)

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 [4] [k] [note: online edition]) . On a motion ...

# 84. <u>P 20150730002</u>, <u>NYCTL 1998-2 Trust</u>, et al., plaintiffs, v Zoila Lucinda <u>Avila</u>, et al., defendants, Edmund R. Wolk, etc., et al., respondents; Charis <u>Sachtouris</u>, nonparty-appellant.

CCH New York State Tax Reporter Jul 29, 2015 NY St. Tax. Rep. (CCH) P 20150730002

Property > Cases and Rulings > STATE CASE -- APPELLATE COURT > P 20150730002, NYCTL 1998-2 Trust, et al., plaintiffs, v Zoila Lucinda Avila, et al., defendants, Edmund R. Wolk, etc., et al., respondents; Charis Sachtouris, nonparty-appellant.

... is deemed transferred from the land to the surplus monies" (3-35 **Bergman on New York Mortgage Foreclosures** § 35.01[3][a]). ...

#### 85. A NYCTL 1998-2 Trust v Avila

Supreme Court of New York, Appellate Division, Second Department | Jul 29, 2015 | 130 A.D.3d 993

... from the land to the surplus monies" (3-35 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 35.01 [3] [a] ). RPAPL 1361 (2) provides that the ...

#### 

Supreme Court of New York, Westchester County | Jul 21, 2015 | 48 Misc. 3d 1212(A)

... 77 N.E. 721 [1906]; see also 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 [4] [r] ["Although most often the conception of redemption ...

#### 87. • DKR Mtge. Asset Trust 1 v Rivera

Supreme Court of New York, Appellate Division, Second Department | Jul 15, 2015 | 130 A.D.3d 774

**Overview:** As a lender voluntarily discontinued its foreclosure action without prejudice, and as the borrower was not a prevailing party, the trial court properly denied her motion for attorney's fees under Real Property Law § 282 and CPLR 3217(b).

... statute applicable to landlord-tenant disputes ( see 2-26 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 26.01 [2] ). Although the parties do not cite, and ...

### 88. 10 766 Miller Lend LLC v Flamingo Funding Inc.

Supreme Court of New York, Kings County | Jul 10, 2015 | 2015 N.Y. Misc. LEXIS 2523

... [Sup Ct Kings County 2014] [citing 1-2 Bruce J. Bergman, **Bergman on New York Mortgage** Foreclosures, § 2.01[4][k] [online edition]). Here, the Flamingo Defendants admittedly defaulted ....

#### 89. Wells Fargo Bank, N.A. v Sylvester

Supreme Court of New York, Kings County | Mar 25, 2015 | 47 Misc. 3d 1203(A)

... a judgment ( see RPAPL 1321; 1—2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]).As a preliminary matter ...

#### 90. Bank of N.Y. Mellon v Osback

Supreme Court of New York, Kings County | Mar 25, 2015 | 47 Misc. 3d 1203(A)

... a judgment ( see RPAPL 1321; 1—2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01[4][k] [note: online edition]). On a motion for leave ...

#### 

Supreme Court of New York, Kings County | Mar 23, 2015 | 47 Misc. 3d 1203(A)

... a judgment ( see RPAPL 1321; 1—2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01[4][k] [note: online edition]). On a motion for leave ...

#### 92. • Nucci v. PHH Mortg. Corp.

United States District Court for the Eastern District of New York | Mar 04, 2015 | 2015 U.S. Dist. LEXIS 42697

... an equitable defense, not a jurisdictional argument. 1 Bruce J. Bergman, **Bergman on New York**Mortgage Foreclosures § 5.08[1] (2014). Therefore, I respectfully recommend that plaintiff's motion for ....

#### 

Supreme Court of New York, Appellate Division, Second Department | Feb 25, 2015 | 125 A.D.3d 930

**Overview:** As the trial court had no revisory or appellate jurisdiction under CPLR 5019(a) to vacate another judge's order, as there were no extraordinary circumstances warranting dismissal of a bank's complaint, and as the bank established its entitlement to a judgment as a matter of law under RPAPL 1321, the trial court's rulings and order were reversed.

... findings should have been granted ( see 3-27 Bruce J. Bergman, **Bergman on New York Mortgage** Foreclosures § 27.06 [2] [a] [2014] ; RPAPL 1321 ; HSBC Bank ...

#### 94. Dank of Am., N.A. v. Reznik

Supreme Court of New York, Kings County | Feb 11, 2015 | 46 Misc. 3d 1218(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). On a motion ...

#### 95. Ponce De Leon Fed. Bank v Grameen Nobel Realty, LLC

Supreme Court of New York, Queens County Jan 09, 2015 | 46 Misc. 3d 1209(A)

... default prior to the lender's commencing a foreclosure action (see, 1-4 **Bergman on New York Mortgage Foreclosures**, § 4.04A ["The general rule is that demand for payment ...

### 96. PHH Mtge. Corp. v Koch

Supreme Court of New York, Kings County | Jan 05, 2015 | 46 Misc. 3d 1206(A)

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01[4][k] [note: online edition]). On a motion for leave ...

### 97. **1** Metlife Home Loans v. Pappu

Supreme Court of New York, Kings County | Dec 23, 2014 | 46 Misc. 3d 1204(A)

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01[4][k] [note: online edition]). On a motion for leave ...

#### 98. DP Morgan Chase Bank, N.A. v Hyman

Supreme Court of New York, Kings County | Dec 22, 2014 | 46 Misc. 3d 1203(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). Chase 's motion ...

#### 

Supreme Court of New York, Kings County | Nov 17, 2014 | 46 Misc. 3d 630

**Overview:** Plaintiff in residential foreclosure action was not entitled to summary judgment against defendant. While record established compliance with RPAPL 1303 notice requirements, plaintiff failed to submit affidavit of service showing proper service on defendant under RPAPL 1304, and plaintiff failed to comply with pleading requirement of RPAPL 1306.

... a judgment ( see RPAPL 1321 ; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] ). As a preliminary matter Foreclosures, ...

#### 100. First United Mtge. Banking Corp. v Valdivieso

Supreme Court of New York, Kings County Nov 12, 2014 45 Misc. 3d 1216(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). As a preliminary ...

#### 101. • DLJ Mtge. Capital, Inc. v Pittman

Supreme Court of New York, Kings County | Sep 08, 2014 | 2014 N.Y. Misc. LEXIS 4140

... v Parisi, 265 AD2d 297, 696 N.Y.S.2d 207; **Bergman on New York Mortgage Foreclosures** § 12.05 [1] [a] [1991]. Movant argues that the language in ...

#### 102. ◆ <u>Eastern Sav. Bank, FSB v. Whyte</u>

United States District Court for the Eastern District of New York | Aug 11, 2014 | 2014 U.S. Dist. LEXIS 196448

... tenants be served with a notice of foreclosure); BRUCE J. BERGMAN, **BERGMAN ON NEW YORK MORTGAGE FORECLOSURES** Ch. 12, § 12.03 (Matthew Bender 2014) ("Month to month tenants, ...

#### 103. U JPMorgan Chase Bank, N.A. v Plaskett

Supreme Court of New York, Kings County | Jul 29, 2014 | 45 Misc. 3d 531

... plaintiff's right to a judgment ( see RPAPL 1321; 1-2 **Bergman on New York Mortgage Foreclosures** § 2.01 [4] [k] ). RPAPL 1304 provides that, "at least ...

#### 104. D Astoria Fed. Sav. & Loan Assn. v Lawson

Supreme Court of New York, Kings County | Jul 15, 2014 | 44 Misc. 3d 1210(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). Astoria's motion papers ...

#### 105. • Bank of Am., N.A. v. Brooks

Supreme Court of New York, Westchester County | Jun 13, 2014 | 43 Misc. 3d 1234(A)

- ... mortgage holder to sue for foreclosure at all ( see 1-2 **Bergman on New York Mortgage Foreclosures** § 2.20 [4] ["a mortgage holder is not obligated to foreclose ...
- ... an out-of-possession mortgagee was liable for building code violations (see 1-2 **Bergman on New York Mortgage Foreclosures** § 2.20 [4], citing Department of Housing Preservation and Development ...

### 106. **1** Wells Fargo Bank, NA v. Gonsalves

Supreme Court of New York, Westchester County | Jun 03, 2014 | 44 Misc. 3d 531

**Overview:** A mortgagee was permitted to reinstate the complaint for foreclosure to correct the mistake of the refunded filing fee (CPLR 2001) but was denied it motion to restore its originally filed notice of pendency because restoring it to the date of filing could prejudice parties who acquired an interest in the property during the period it was deleted.

- ... the action as if he had been made a party." (2-15 **Bergman on New York Mortgage Foreclosures** § 15.02 ) While the effect of a foreclosure will be ...
- ... the procedural equivalent of a liability finding ( see e.g. 1-2 **Bergman on New York Mortgage Foreclosures** § 2.01 [1] [describing the liability phase of a foreclosure action ...

#### 107. A In re Sheba Realty Corp.

United States Bankruptcy Court for the Eastern District of New York | Mar 27, 2014 | 2014 Bankr. LEXIS 1282

**Overview:** Creditor's claim for default interest was disallowed entirely, under 11 U.S.C.S. § 502(b)(1), because bank never had, and creditor did not have, right to compel debtor to pay default interest under terms of note and mortgage because debtor timely cured any monetary defaults because bank and/or creditor were not entitled to reject cure payments.

- ... A mortgage document should be interpreted as any contract. See 1-4 **Bergman on New York Mortgage Foreclosures** § 4.05[1][a] . Since the above-quoted language of the mortgage seems ...
- ... notified of the correct address, this presumption is inapplicable. See 1-4 **Bergman on New York Mortgage Foreclosures** § 4.05 and cases cited therein; Cf. Greyhound Capital Corp. v. ...

#### 108. Dank of Am, N.A. v Umeh

Supreme Court of New York, Bronx County | Mar 10, 2014 | 2014 N.Y. Misc. LEXIS 2090

- ... has no demonstrated right to the debt ( id .; see **Bergman on New York Mortgage Foreclosures** § 12.05 [1] [a] [1991])." ( Bank of N.Y. v. Silverberg ...
- 109. International Union of Bricklayers & Allied Craftworkers v Bank of New York Mellon

Supreme Court of New York, New York County | Jan 17, 2014 | 2014 N.Y. Misc. LEXIS 250

... New York ." (Id . at 239-40; see also **Bergman on New York Mortgage Foreclosures** § 34.02[2][a] [as "a general rule, RPAPL § 1371 finds application ...

### 110. U Valley Natl. Bank v. Cong. Atzei Chaim of Siget

Supreme Court of New York, Kings County | Jan 03, 2014 | 42 Misc. 3d 1207(A)

... 1426 46 St ., 60 AD3d at 742-743; 3-33 **Bergman on New York Mortgage Foreclosures** § 33.04[2] [2013]). Defendant's argument that the action must be dismissed ...

#### 111. A Bass v. D. Ragno Realty Corp.

Supreme Court of New York, Appellate Division, Second Department Nov 27, 2013 111 A.D.3d 863

**Overview:** As an easement holder that was not named in the lender's foreclosure action did not have a right of redemption or a possessory interest in the burdened land, the trial court properly granted the easement holder's cross-motion to dismiss the lenders' complaint for strict foreclosure or re-foreclosure under RPAPL 1352 and 1503.

595, 240 NYS 468 [1930]; 3-32 **Bergman on New York Mortgage Foreclosures** § 32.04). Financing, Foreclosures Foreclosures, Strict Foreclosures Financing, Secondary Financing...

### 112. U HSBC Bank, USA v. SSSR, Inc.

Supreme Court of New York, Westchester County | Sep 06, 2013 | 41 Misc. 3d 863

... or establishing a defendant's liability at trial ( see e.g. 1-2 **Bergman on New York Mortgage Foreclosures** § 2.01 [1] [describing the liability phase of a foreclosure action ...

### 113. First Central Savings Bank v Select Choice Realty, LLC

Supreme Court of New York, Queens County | May 22, 2013 | 2013 N.Y. Misc. LEXIS 3411

... see also UCC §§ 9-203[f] , 9-308 [d] ; 4-34 **Bergman on New York Mortgage Foreclosures** § 34.02 ). Pursuant to General Obligations Law § 13-101 , ...

#### 114. People's United Bank v Whitford Dev., Inc.

Supreme Court of New York, Suffolk County | May 13, 2013 | 39 Misc. 3d 1228(A)

... thereby removing the multiple mortgage conundrum from the case ( see **Bergman on New York Mortgage Foreclosures** § 2.07 p 2-26.6). So long as the demand for such ...

#### 115. • Perkins v Barry

Supreme Court of New York, Kings County | May 01, 2013 | 39 Misc. 3d 1220(A)

... a judgment ( see RPAPL §1321 ; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01[4][k] [note: online edition]. To that end, Mr. & ...



Results for: "Bergman on New York Mortgage Foreclosures"

#### Cases

### 1. **(a)** 517-525 W. 45 LLC v. Avrahami

Supreme Court of New York, Appellate Division, First Department | Feb 24, 2022 | 202 A.D.3d 611

... defect in the judgment or sale under the first foreclosure" (4 **Bergman on New York Mortgage Foreclosures** § 32.03 [1] [2021] [emphasis added]; ...

### 2. Dernard v. Citibank, N.A.

Supreme Court of New York, Appellate Division, Second Department Jun 16, 2021 | 195 A.D.3d 783

**Overview:** In an RPAPL art. 15 proceeding to quiet title, the doctrine of equitable estoppel precluded plaintiff from asserting that the recorded mortgage was void because plaintiff had ratified the loan agreement and had full benefit of the loan agreement, even after plaintiff had gained knowledge of the alleged defect in the recorded mortgage.

- ... to provide "collateral security for the payment of [the] obligation" (1 **Bergman on New York Mortgage Foreclosures** § 1.20)....
- ... 398; see also 1 **Bergman on New York Mortgage Foreclosures** § 5.03; see generally Restatement [Second] of Contracts §§ 90...
- ... credit line and the efficacy of the mortgage remain outstanding" (1 **Bergman on New York Mortgage Foreclosures** § 2.25; ...

#### 3. Bank of N.Y. Mellon v Dieudonne

Supreme Court of New York, Appellate Division, Second Department | Mar 13, 2019 | 171 A.D.3d 34

**Overview:** As the reinstatement provision in the mortgage was not a condition precedent to acceleration of the mortgage, and as it did not prevent the lender from validly exercising its option to accelerate, the trial court properly granted a borrower's motion to dismiss the lender's foreclosure complaint as time-barred by CPLR 213(4).

- ... [Sup Ct, Suffolk County 2017]; see generally 1 **Bergman on New York Mortgage Foreclosures** § 1.07 [2018]). As we have already observed, a cause of ...
- ... upon the occurrence of certain events delineated in the mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 4.02 [2018]; see Wells Fargo Bank, N.A. v Burke, ...
- $\dots$  532 NYS2d 426 [1988]; see also 1 **Bergman on New York Mortgage Foreclosures** §§ 4.05 , 5.11 [2] [2018]; cf. Phoenix Acquisition Corp.  $\dots$

#### 4. PS Funding, Inc. v. RH Hull LLC

Supreme Court of New York, Kings County | Aug 12, 2022 | 2022 N.Y. Misc. LEXIS 6017

... County 2015], citing RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on. New York Mortgage Foreclosures** 2.01 (4) (k) [note: online edition]). "The proponent of a motion ...

#### 5. • 21st Mtge, Corp. v Balliraj

Supreme Court of New York, Appellate Division, Second Department | Nov 13, 2019 | 177 A.D.3d 687

**Overview:** As the borrowers demonstrated, pursuant to CPLR 213(4), that an acceleration of the mortgage debt occurred more than six years prior to the commencement of the present action, the trial court properly granted their motion to dismiss the lender's mortgage foreclosure complaint as time-barred by CPLR 203(a).

- ... upon the occurrence of certain events delineated in the mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 4.02; see Wells Fargo Bank, N.A. v Burke, ...
- ... 734 NYS2d 77 [2001]; see also 1 **Bergman on New York Mortgage Foreclosures** §§ 4.05, 5.11 [2]; cf. Phoenix Acquisition Corp. ...

### 6. Aurora Loan Servs., LLC v Tobing

Supreme Court of New York, Appellate Division, Second Department | May 15, 2019 | 172 A.D.3d 975

**Overview:** In a foreclosure proceeding, the lender waived its right to object to the trial court's authority to order a reference to determine whether the 30-day notice of default was properly sent in accordance with the terms of the subject mortgage because lender failed to object to the reference and actively participated in the hearing before the referee.

- ... 432 NYS2d 238 [1980]; see also 2 **Bergman on New York Mortgage Foreclosures** § 17.03). Accordingly, as the plaintiff correctly contends, compliance with the ...
- ... see also 2 **Bergman on New York Mortgage Foreclosures** § 17.02). In New York, "partial foreclosure exists as a form of judicial foreclosure" (2 **Bergman on New York Mortgage Foreclosures** § 17.01; accord...

#### 

Supreme Court of New York, Appellate Division, Fourth Department | Oct 02, 2020 | 189 A.D.3d 20

**Overview:** Partnership failed to raise triable issue of fact whether statute of limitations was revived pursuant to applicable General Obligations Law § 17-105(1). Partnership's conduct in compelling partnership to recommence payments on mortgage after statute of limitations expired and thus became unenforceable was to detriment of partnership.

- ... General Obligations Law § ] 17-105 that are controlling" (1 **Bergman on New York Mortgage Foreclosures** § 5.11 [7] [2020]). Fourth, principles of statutory construction support the ...
- ... 516 US 864 [1995]; see generally 1 **Bergman on New York Mortgage Foreclosures** § 5.11 [6] [a] ). Fifth, case law to which we ...

#### 8. A Trust v Barua

Supreme Court of New York, Appellate Division, Second Department | Jun 03, 2020 | 184 A.D.3d 140

**Overview:** As a borrower demonstrated that a lender's second foreclosure action was time-barred by CPLR 213(4) and 3211(a)(5), and as the lender failed to raise a question of fact in opposition, the trial court erred in denying the borrower's motion dismiss the second foreclosure.

- ... N.A. v Burke, 94 AD3d at 983, quoting 1 **Bergman on New York Mortgage Foreclosures** § 5.11 [3]; cf. LPP Mtge. Ltd. v Gold, ...
- ... 532 NYS2d 426 [1988]; see also 1 **Bergman on New York Mortgage Foreclosures** §§ 4.05, 5.11 [2]; ...
- ... benefit of the mortgagee, in whose control it should repose" (1 **Bergman on New York Mortgage Foreclosures** § 4.03 ). It need hardly be said that the holder ...
- ... 432 NYS2d 238 [1980] ; see 2 **Bergman on New York Mortgage Foreclosures** § 17.01 ; accord RPAPL 1351 [2] ). Partial foreclosure "permits ...
- ... 78 AD2d at 650; see also 1 **Bergman on New York Mortgage Foreclosures** § 4.03 [1] ). The decision of whether to revoke an ...
- ... of the time it matured or became due ( see 1 **Bergman on New York Mortgage Foreclosures** § 5.11 [2] [2020]). Conversely, and without more, "recovery is barred ...

#### 9. Oitibank, N.A. v. Yanling Wu

Supreme Court of New York, Appellate Division, Second Department | Sep 01, 2021 | 199 A.D.3d 48

**Overview:** Plaintiff bank in a foreclosure action was not required to be licensed as a "debt collection agency" pursuant to Administrative Code of the City of New York § 20-490; however, plaintiff had failed to sustain its initial burden of demonstrating default, as its supporting affidavit was based upon the affiant's review of unidentified business records.

... than to collect money directly from a debtor ( see 1 **Bergman on New York Mortgage Foreclosures** § 2.02; ...

#### 10. A CIT Bank, N.A. v. Buono

United States District Court for the Eastern District of New York | Nov 08, 2019 | 2019 U.S. Dist. LEXIS 195911

- ... the owner of the property is a form of settlement." 3 **Bergman on New York Mortgage Foreclosures** § 24.08 (2019). However, "there is no requirement . . . ...
- ... an appropriate avenue for settling or concluding a foreclosure action." 3 **Bergman on New York Mortgage Foreclosures** § 25.09 (2019). in satisfaction of the mortgage debt, which settled ...

#### 11. Avatar Lenox Ave LLC v. Jacqueline Allmond Cuisine, Inc.

Supreme Court of New York, New York County | Mar 08, 2023 | 2023 N.Y. Misc. LEXIS 1172

- ... accounting only if required by the mortgage documents ( see 2 **Bergman on New York Mortgage Foreclosures** § 23.52). Here, the loan agreement, note and mortgage mandate Plaintiff ...
- ... doctrine and establish the requisite detriment to the asserting party." (1 **Bergman on New York Mortgage Foreclosures** § 5.08 [2019]). ( see National Distillers & Chemical Corp. v ...

#### 

Supreme Court of New York, Appellate Division, Second Department | Aug 04, 2021 | 197 A.D.3d 453

**Overview:** A bank's motion for summary judgment striking a subordinate note holder's statute of limitations defense in the bank's mortgage foreclosure action was properly granted pursuant to CPLR 213[4] because the subordinate note holder conceded that the bank's prior foreclosure action was discontinued less than six years after it was commenced.

... 650 , 432 N.Y.S.2d 238 ; see also 1 **Bergman on New York Mortgage Foreclosures** § 4.03[1] [2021]). Discharge & Payment, Time for Payments Transfers, Due ...

#### 13. A U.S. Bank N.A. v Singh

Supreme Court of New York, Kings County | Mar 15, 2019 | 63 Misc. 3d 1201(A)

... a judgment ( see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 2.01 [4] [k] [note: online edition]). USBNA's instant motion ...

### 14. Namdar E. Vil. Holdings LLC v. 219 Ave A NYC LLC

Supreme Court of New York, New York County | May 10, 2022 | 2022 N.Y. Misc. LEXIS 2435

... always be junior, inferior and subordinate to the mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 2.02 at 2-12). Only parties with actual liens or encumbrances ...

#### 15. **1** Citimortgage, Inc. v Etienne

Supreme Court of New York, Appellate Division, Second Department | May 08, 2019 | 172 A.D.3d 808

**Overview:** Company lacked standing to raise the issue of compliance with RPAPL 1304 as a defense, because the statutory defense created by RPAPL 1302(2) for noncompliance with RPAPL 1304 was a personal defense which could not be raised by a stranger to the note and underlying mortgage.

... 975 NYS2d 480 [2013] ; see generally 2 **Bergman on New York Mortgage Foreclosures** § 12.04 ), it does not necessarily follow that OKL may ...

#### 16. A 10 Capital, LLC v. Lispenard 3J, LLC

Supreme Court of New York, New York County | Feb 21, 2023 | 2023 N.Y. Misc. LEXIS 736

... and establish the requisite detriment to the asserting party." (I Bergman on New York Mortgage Foreclosures § 5.08 [2019])., unclean hands, prior action pending, waiver and ...

#### 17. Green Poultry Farming, LLC v. Bengal Wholesale Co.

Supreme Court of New York, Kings County | Apr 22, 2022 | 2022 N.Y. Misc. LEXIS 2453

... Kings County 2015] [citing RPAFL § 13.21; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 (4) (k) (note: online edition)]). Where a plaintiff establishes ....

#### 18. 70 Green St Multi Family LLC v. 70 Green St., LLC

Supreme Court of New York, Kings County | Dec 14, 2021 | 2021 N.Y. Misc. LEXIS 6845

... County 2015] [citing RPAPL § 1321; 1-2 Bruce .1. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 (4) (k) (note: online edition)]). Summary judgment is a ...

#### 19. U.S. Bank N.A. v O'Neill

Supreme Court of New York, Suffolk County | Jun 13, 2018 | 2018 N.Y. Misc. LEXIS 2397

... the findings are substantially supported by the record]; see also 2-20 **Bergman on New York Mortgage Foreclosures** § 20.06 [2017][[a]lthough a defaulting defendant is not entitled to notice ...

#### 

Supreme Court of New York, Appellate Division, Third Department | Mar 28, 2019 | 170 A.D.3d 1438

**Overview:** Bank lacked standing to bring eviction proceeding against a mortgagor, RPAPL 721, because the referee's authority, which was granted by virtue of the 2003 judgment of foreclosure and sale, was exhausted upon the execution and delivery of the 2008 deed, and the referee had no authority to issue the 2016 deed to the bank eight years after the sale.

... and his right of redemption was cut off ( see 3 **Bergman on New York Mortgage Foreclosures** § 27.01 [5] [2018]). Therefore, we find that the statutory 10-year ...

... 670 NE2d 228, 646 NYS2d 987 [1996]; 3 **Bergman on New York Mortgage Foreclosures** § 27.01 [5] [2018]). Because 10 years had not yet passed ...

#### 21. • Windward Bora, LLC v. Thompson

United States District Court for the Eastern District of New York | Feb 26, 2020 | 2020 U.S. Dist. LEXIS 33931

... 412 (2d Dep't 2006); see also > **Bergman On New York Mortgage Foreclosures** § 12.04 ("Where a deed is delivered to a subsequent owner ...

... necessary party to foreclosure, unless a deficiency judgment is sought."); 2 **Bergman On New York Mortgage Foreclosures** § 12.04 ("[W]hen the mortgagor has completely parted with his title, ...

### 22. SKW-B Acquisitions Seller C, LLC v. 472 Ninth Ave. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5497

... receivership is to "protect and preserve the collateral property" (1 Bergman on New York Mortgage Foreclosures §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 23. US Bank N.A. v Lavey

Supreme Court of New York, Greene County | Nov 22, 2019 | 66 Misc. 3d 1204(A)

... doctrine and establish the requisite detriment to the asserting party" (1 **Bergman on New York Mortgage Foreclosures** § 5.08 [2019]). The clear public policy of this state is ...

#### 24. Bank of Am., N.A. v. Kessler

Supreme Court of New York, Appellate Division, Second Department | Dec 15, 2021 | 202 A.D.3d 10

**Overview:** Bank failed to comply with the strict requirements of RPAPL 1304, and thus, a condition precedent to the foreclosure action was not met. RPAPL 1304(2) simply required that the notices required by its provisions be mailed in a separate envelope from those other notices.

... right to commence an action to foreclose on its mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 4.04B). Case law from this Court indeed reflects that "the ...

... right to commence an action to foreclose on its mortgage" (1 **Bergman on New York Mortgage Foreclosures** § 4.04B). Case law from this Court indeed reflects that "the ...

#### 25. A Bank of N.Y. Mellon Trust Co., NA v Obadia

Supreme Court of New York, Appellate Division, Second Department | Oct 23, 2019 | 176 A.D.3d 1020

Overview: A foreclosure complaint was not subject to dismissal for lack of standing; holder status was alleged, and a special indorsement from the original lender to a nonparty entity did not preclude treating the note as a bearer instrument under UCC 3-204(2) absent evidence of delivery to the entity, which was necessary under UCC 3-202(1) for negotiation.

... 975 NYS2d 480 [2013]; see generally 2 **Bergman on New York Mortgage Foreclosures** § 12.04), it does not necessarily follow that Ocean Villas ...

### 26. SKW-B Acquisitions Seller C, LLC v. 67-65 Greene St., LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5449

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 

Supreme Court of New York, Appellate Division, Second Department | Aug 22, 2018 | 164 A.D.3d 733

**Overview:** As a lender's current foreclosure action was commenced within six years of its prior foreclosure action, a buyer failed to sustain her initial burden of demonstrating, prima facie, that the action was untimely under CPLR 213(4); therefore, the trial court properly denied the buyer's motion to dismiss a lender's complaint.

... 477 , 658 NYS2d 138 [1997] ; 1-4 **Bergman on New York Mortgage Foreclosures** § 4.03 ). Since this action was commenced within six years ...

# 28. <u>A Beneficial Homeowner Serv. Corp. v Heirs at Large of Ramona E. Thwaits</u>

Supreme Court of New York, Appellate Division, Third Department | Jul 02, 2020 | 185 A.D.3d 1126

**Overview:** Plaintiff's action was time-barred under CPLR 213(4) as 2015 notices did not constitute affirmative acts that would notify borrower's legal representative that prior debt acceleration was revoked and that loan was reinstated to installment payments as manner and method in which notices were sent and to whom did not effectuate plaintiff's intent.

... 296-297, 80 N.Y.S.3d 637 [2018]; 1 **Bergman on New York Mortgage Foreclosures** § 4.03 [1] [2020]). Plaintiff made no further effort to substitute ...

#### 29. SKW-B Acquisitions Seller C, LLC v. 1475 1st Ave LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5486

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02...

#### 30. SKW-B Acquisitions Seller C, LLC v. 681 Ninth Ave. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5493

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 31. SKW-B Acquisitions Seller C, LLC v. 476 Ninth Ave. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5489

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 32. SKW-B Acquisitions Seller C, LLC v. 79 Mercer St. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5488

... receivership is to "protect and preserve the collateral property" (1 Bergman on New York Mortgage Foreclosures §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 33. O Soroush v Citimortgage, Inc.

Supreme Court of New York, Appellate Division, Second Department | May 23, 2018 | 161 A.D.3d 1124

**Overview:** Supreme court should have denied lender's motion pursuant to CPLR 3211(a)(1) to dismiss homeowner's complaint on ground that it was not documentary evidence and did not utterly refute factual allegations of the complaint. Lender's letter did not demonstrate affirmative act of revocation was timely interposed.

... NY Slip Op 32697[U] [Sup Ct, Kings County 2016]; 1-4 **Bergman on New York Mortgage** Foreclosures § 4.03; cf. U.S. Bank N.A. v Barnett, 151 ...

#### 

Supreme Court of New York, Kings County | Apr 01, 2019 | 2019 N.Y. Misc. LEXIS 1631

... has no demonstrated right to the debt ( id. ; see **Bergman on New York Mortgage Foreclosures** 12.05[1][a] [1991] ); quoting Bank of New York v. Silverberg...

#### 35. SKW-B Acquisitions Seller C, LLC v. 474 Ninth Ave. Realty Holdings LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5490

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 36. SKW-B Acquisitions Seller C, LLC v. 356 W. 37th St. LLC

Supreme Court of New York, New York County | Sep 27, 2022 | 2022 N.Y. Misc. LEXIS 5485

... a receivership is to "protect and preserve the collateral property" (1 **Bergman on New York Mortgage Foreclosures** §§ 10.01 and 10.02 [2018]). Further, entitlement to injunctive relief requires ...

#### 37. A RL 900 Park, LLC v. Ender

United States District Court for the Southern District of New York | Feb 25, 2021 | 2021 U.S. Dist. LEXIS 35469

**Overview:** Given that plaintiff never filed with the clerk and indexed against the property a notice of pendency, N.Y. Real Prop. Acts Law § 1331, at the onset of this case, or at any time before intervenor-defendant purchased the property, title passed to intervenor-defendant without notice of this action and it could not be affected by the case's outcome.

... claim against a piece of property. See 2 Bruce J. Bergman, **Bergman on New York Mortgage** Foreclosures ("Bergman") § 15.02 (2020); see also David D. Siegel & Patrick ...

#### 38. <u>A In re Tara Retail Grp., LLC</u>

United States Bankruptcy Court for the Northern District of West Virginia | Sep 19, 2018 | 2018 Bankruptcy LEXIS 2854

**Overview:** Debtor's objection to its principal secured lender's proof of claim for a prepayment premium was sustained, disallowing the prepayment premium because under the parties' agreement, accelerating the maturity of the note upon debtor's default cut off any right the lender had to a prepayment premium, as acceleration neutered the make-whole provision.

... provisions or a statute providing for the right of prepayment. 1 **Bergman on New York Mortgage** Foreclosures § 1.16[1] (2018). However, "[a]cceleration, by definition, advances the maturity date ...

... upon Comm2013's choice to accelerate the Note. See e.g., 1 **Bergman on New York Mortgage Foreclosures** § 2.06 (2018) (noting that Standards of Performance, Creditors & Debtors ...

#### 39. A Plenitude Capital LLC v. Utica Ventures, LLC

United States District Court for the Eastern District of New York | Oct 22, 2020 | 2020 U.S. Dist. LEXIS 197383

... 971 N.Y.S.2d 827, 829 (Sup. Ct. 2013) (citing **Bergman on New York Mortgage Foreclosures** § 2.01(1)); Butterly v. Maribert Realty Corp., 234 A.D. ...

### 40. A In re Broadway Equity Holdings LLC

United States Bankruptcy Court for the Southern District of New York | May 12, 2020 | 617 B.R. 777

**Overview:** Evidence was overwhelming that note and mortgage were not forged, but rather, were signed on behalf of borrowers by its principals because executed note and mortgage had minimal changes from the previously circulated drafts and the principals admitted at a meeting that they signed the note.

... 819 N.Y.S.2d 213 (Sup. Ct. Qns. Cty 2006); 1 **Bergman on New York Mortgage Foreclosures** § 1.20 (2020). A proven, unrecorded mortgage is still enforceable against ...

# 41. Namdar E. Vill. Holdings Llc v. 219 Ave a N.Y. City Llc A.K.a219 Ave A. N.Y. City Llc,158 Firstave N.Y. City Llc,75 Second Ave. Llc,324 E. 14th St. Llc

Supreme Court of New York, New York County | May 10, 2022 | 2022 N.Y. Misc. LEXIS 10156

... will always be junior, inferior and subordinate to the mortgage" (1 **Bergman on New York Mortgage Foreclosures** §...

#### 42. Fogarty v. Bayview Loan Servicing LLC (In re Fogarty)

United States District Court for the Eastern District of New York | Jul 01, 2020 | 2020 U.S. Dist. LEXIS 264531

... and Proceedings Law ("RPAPL") § 221 and § 713(5) . 4 **Bergman on New York Mortgage** Foreclosures § 33.01. An eviction proceeding under § 713(5) , which must ...

#### 43. Indymac Fed. Bank FSB v. Parekh

Supreme Court of New York, New York County Jan 21, 2020 2020 NYLJ LEXIS 346

... founded both upon statute and case law" (1 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** §2.20[3] [2015]). " CPLR 5001(a) provides that in an equitable action ...

#### 44. A Horn v Nestor

Supreme Court of New York, New York County | Jul 31, 2019 | 2019 N.Y. Misc. LEXIS 4298

... control, or prevail over those in the mortgage" (Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, § 1.01[2][a] ). Therefore, the Court finds that the terms ....

#### 45. Ponce Bank v. Bushwick & Jefferson Realty LLC

Supreme Court of New York, Kings County | Apr 28, 2021 | 2021 N.Y. Misc. LEXIS 2479

... County 2015] [citing RPAPL § 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures** § 2.01 (4) (k) (note: online edition)])....

#### 46. Wells Fargo Bank, N.A. v Islam

Supreme Court of New York, Appellate Division, Second Department | Nov 18, 2020 | 188 A.D.3d 1116

**Overview:** Lender's foreclosure complaint was time-barred, CPLR 213(4), because six-year statute of limitations began to run on or about July 24, 2008, when lender accelerated mortgage debt, lender did not commence action until March 30, 2017, and none of facts relied upon by lender established that 2008 acceleration of loan balance was affirmatively revoked.

... AD3d 980, 983, 943 N.Y.S.2d 540, quoting 1 Bergman on New York Mortgage Foreclosures § 5.11[3]; cf. LPP Mtge. Ltd. v Gold, 44 ...

#### 47. U.S. Bank Nat'l Ass'n v. Singh

Supreme Court of New York, Kings County | Apr 01, 2019 | 2019 NYLJ LEXIS 981

... to a judgment (see RPAPL 1321; 1-2 Bruce J. Bergman, **Bergman on New York Mortgage Foreclosures**, 2.01 [4] [k] [note: online edition]). USBNA's instant motion is ...

#### 48. A In re 53 Stanhope LLC

United States Bankruptcy Court for the Southern District of New York | Feb 18, 2021 | 625 B.R. 573

**Overview:** Plan confirmation was denied because lender's claims against certain of Debtors for default interest based on the maturity of the loans to those debtors as well as against two debtors based on the encumbrances permitted by those debtors would give rise to claims that could not be rendered unimpaired by full cash payment under the Plan.

... 6-7 (Sup. Ct. N.Y. Cty. Aug. 29, 2014); 1 **Bergman on New York Mortgage Foreclosures**, § 5.06 (2020). Discharge & Payment, Time for Payments HN9 ...

#### 49. BANK OF NEW YORK MELLON TRUST CO. v. EDGLEY

Supreme Court of New York, Suffolk County | May 23, 2018 | 2018 N.Y. Misc. LEXIS 4503

... 646 NYS2d 530 [2d Dept 1996]; see also 2-20 **Bergman on New York Mortgage Foreclosures** 20.02 ). Accordingly, plaintiff's motion is granted and the order of ...

#### 50. Bank of N.Y. Mellon Trust Co. v. Edgley

Supreme Court of New York, Suffolk County | Jun 06, 2018 | 2018 N.Y. Misc. LEXIS 5287

... 646 NYS2d 530 [2d Dept 1996] ; see also 2-20 Bergman on New York Mortgage Foreclosures 20.02

). Accordingly, plaintiff's motion is granted and the order of ....

#### 51. A Unity Bank v St. John's Dryden Realty Corp.

Supreme Court of New York, Appellate Division, Third Department | Apr 04, 2019 | 171 A.D.3d 1272

**Overview:** As a lender abandoned the liens on a second parcel by affirmatively electing to allow them to be extinguished by a tax foreclosure proceeding, and as the lender's motion for a deficiency judgment was untimely under RPAPL 1371(2), the trial court properly denied the lender's motion for a deficiency judgment against the guarantors.

... 3 NYS2d 312 [Sup Ct, Kings County 1938]; 4 **Bergman on New York Mortgage Foreclosures** Ch. 34, § 34.04 [4] [a] [2018]). ...

#### 52. Deutsche Bank Natl. Trust Co. v Blank

Supreme Court of New York, Appellate Division, Second Department | Dec 30, 2020 | 189 A.D.3d 1678

**Overview:** Trial court properly declined to dismiss foreclosure action as time-barred, CPLR 213(4), because plaintiff raised questions of fact as to whether it validly revoked December 10, 2009 acceleration of loan, within six years from that date; stipulation of discontinuance was emailed to defendant's counsel day after de-acceleration notice was mailed.

... "a viable path for reinstatement of the loan" ( see 1 **Bergman on New York Mortgage Foreclosures** § 4.04 [2020] ["Until acceleration, the borrower is free to pay ....

#### 53. Wells Fargo Bank, N.A. v Henry

Supreme Court of New York, Queens County | Sep 03, 2019 | 64 Misc. 3d 1235(A)

... required to support the plaintiffs testimonial evidence by affidavit (see 2-20 **Bergman on New York Mortgage Foreclosures** § 20.06[1][d] citing Johnson v Frederick , 219 NYS2d 482 [Kings ...

#### 54. A Kerns v. Wells Fargo Bank, N.A.

Supreme Court of Virginia | Sep 27, 2018 | 296 Va. 146

**Overview:** Statute of limitations in Va. Code Ann. § 8.01-246(2) barred a borrower's breach of contract claims against a bank because the claims accrued when the debt on a mortgage loan agreement was accelerated prior to foreclosure, but the borrower did not file his suit within five years of this date of accrual.

... a cause of action accrues upon acceleration); 1 Bruce J. Bergman, **Bergman on New York Mortgage**Foreclosures § 5.11 (2018) ("Even though a mortgage may be payable in ...