

New York Court Finds an Action is Timely in Some Circumstances in CPLR 205(a) Decision

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By: Victor L. Matthews

The Appellate Division of the New York Supreme Court’s First Department recently issued a decision addressing the calculation of the six-month timeframe permitted to file a new action, according to New York’s Civil Practice Law & Rules ([CPLR](#)) 205(a) and following the termination of a prior action. The First Department concluded that an action is timely if it is brought within six months of the termination of time to appeal a denial of a motion to renew.

In *Deutsche Bank Nat’l Trust Co. v. Gouin*, a first foreclosure action was commenced in 2012 and dismissed under CPLR 3215(c) [failure to seek a default judgment] August 6, 2018. The plaintiff filed a notice of appeal but did not perfect its appeal. The appeal was deemed dismissed on February 15, 2019. Plaintiff also timely filed a motion to renew and reargue on August 22, 2018. That motion was denied on May 3, 2019. Plaintiff did not appeal that decision. A second action was commenced in October 2019—more than six months after the dismissal of the appeal, but within six months of the denial of the motion to renew.



CPLR 205(a), with limited exceptions, allows for the commencement of a new action after the termination of a prior timely action, provided that the commencement and service of the new action take place within six months of the termination of the prior action. The First Department held that, according to CPLR 205(a), the second action was timely because the “order denying plaintiff’s motion to renew was appealable as of right” and the prior “action did not terminate until plaintiff’s time to appeal that order had expired and its appeals as of right were exhausted.” The fact that the plaintiff did not appeal from the denial of the motion to renew and reargue was not a factor in determining that the second action was timely because that denial was appealable as of right.

Lenders should review their portfolios to determine whether any previously dismissed action could be the subject of a timely viable motion to renew. If so, they should promptly proceed with a motion.

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