

Recent Cases Offer Instruction for Lenders on Avoiding FAPA Estoppel in Foreclosure or Quiet Title Actions in New York

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In this blog post, we discuss two recent decisions from the Second Department of the New York Appellate Division that addressed what constitutes such an expressed judicial determination.

Lender Estopped: *Brennan*

The borrowers prevailed in *Brennan v. Deutsche Bank Trust Co. Ams.*, [237 AD3d 1027](#) [2d Dept 2025]. The lender had commenced a prior foreclosure action in April 2013, which was dismissed in April 2018 for failure to show compliance with the 90-day notice requirement of RPAPL 1304. In December 2019, the borrowers brought a quiet title action seeking to discharge the mortgage. While the lender won summary judgment, the borrowers appealed, and the Second Department reversed.

The borrowers met their *prima facie* burden by showing that the commencement of the prior foreclosure action in April 2013 had accelerated the mortgage loan. Since more than six years had passed, the foreclosure statute of limitations had expired.

The Second Department further held that mailing a 90-day notice under RPAPL 1304, while a condition precedent to foreclosure, was “not a precondition for acceleration of the debt.” (See *id.* at 1030.) Thus, the prior foreclosure action was not dismissed upon an expressed judicial determination of invalid acceleration. Applying FAPA, the lender was estopped from challenging the prior acceleration.

Lender Not Estopped: *Gruen*

The lender prevailed in *U.S. Bank Trust, N.A. v. Gruen*, [237 AD3d 996](#) [2d Dept 2025]. The lender had commenced a prior foreclosure action in 2009. In February 2019, the court issued a judgment for failure to comply with the 90-

day notice requirement of RPAPL 1304 **as well as the notice of default provision in the mortgage.** The lender's successor commenced a second foreclosure action in March 2019. The borrower sought to dismiss the action, which the lower court denied, and the Second Department affirmed on appeal.

The Second Department invoked the well-established principle that there is no valid acceleration "where the plaintiff does not have the authority to accelerate the debt or to sue to foreclose at that time." (See *id.* at 998.) In this case, the borrower failed to establish that the commencement of the prior action in 2009 was a valid acceleration.

Even though the lender elected to call for the entire amount due in the 2009 complaint, the action was subsequently dismissed, *inter alia*, for failure to comply with the notice of default provision in the mortgage, which was a condition precedent to acceleration. Therefore, the Second Department found an expressed judicial determination that the loan was not validly accelerated, and as such, the estoppel provision in FAPA did not apply. (See *id.* at 998-99.)

Key Takeaways for Lenders and Servicers

- Lenders and servicers should carefully review the court's orders from a prior foreclosure action when faced with a FAPA challenge, particularly when those orders implicate the notice of default.
- If the prior foreclosure action was dismissed, even in part based upon the notice of default, lenders and servicers should expressly preserve and invoke the argument that the prior action was not a valid acceleration.

Hinshaw's Consumer Financial Services team will continue to monitor case law on this issue and report on significant developments.

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