

Despite Acceleration of Debt Through Prior Dismissed Foreclosure Action, Bankruptcy Petition Tolls Statute of Limitations on Subsequent Action

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In [Lubonty v. U.S. Bank National Association](#), a mortgagor sought to void a mortgage loan claiming that the six-year statute of limitations to foreclose had expired. The mortgagor had commenced multiple bankruptcy proceedings that triggered automatic stays and prevented foreclosure from proceeding for approximately four and a half years. New York law, [CPLR § 204](#), extends the statute of limitations “[w]here the commencement of an action has been stayed by a court or by statutory prohibition,” and the trial court held that the six-year statute of limitations was extended by the time period during which the foreclosure was stalled through successive bankruptcy petitions.

On appeal, the Second Department analyzed the mortgagor’s argument—that the mortgagee could not toll the statute of limitations because the mortgagee had already commenced a lawsuit prior to the imposition of the bankruptcy stays. The mortgagor attempted to draw a distinction between “commencement” and “continuation” and argued that because CPLR § 204 only applied to “commencement,” the mortgagee lost the benefit of tolling by previously commencing a lawsuit. The Second Department rejected the mortgagor’s theory and concluded that CPLR § 204 applied even though the mortgagee had commenced a foreclosure action before the bankruptcy proceedings.

The Second Department’s clarification is important because at least one trial court had agreed with the mortgagor’s interpretation of CPLR § 204. See *Beneficial Homeowner Service Corp. v. Tovar*.

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