

At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 13 day of June, 2016.

**PRESENT: HON. LOREN BAILY-SCHIFFMAN**  
JUSTICE

VW BEDSTUY LLC,

Plaintiff,

- against -

JUAN TAVARES A/K/A JUAN TAVERAS, FIRST UNITED MORTGAGE BANKING CORP, MRC RECEIVABLES CORP, CRIMINAL COURT OF NYC (KINGS), NYSDOT&F, NYC PVB, NYC ECB, JAWAM, INC, D/B/A EMPIRE BAIL BONDS, NYC TAB, AND "JOHN AND JANE DOE" & NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NYC PARKING VIOLATIONS BUREAU, NYC ENVIRONMENTAL CONTROL BOARD, JAWAM, INC, D/B/A EMPIRE BAIL BONDS, NYC TRANSIT ADJUDICATION BUREAU, AND JOHN AND JANE DOE, THE NAMES OF THE LAST TWO DEFENDANTS BEING FICTITIOUS, THE TRUE NAMES UNKNOWN TO THE PLAINTIFF AND ARE INTENDED TO BE PARTIES IN POSSESSION OF ANY PART OF THE MORTGAGED PREMISES, IF ANY,

Defendants.

Index No.: **511724/2015**

Motion Seq. # 1, 2 & 3

DECISION & ORDER

As required by CPLR §2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Motion, Affidavits, Affirmation and Exhibits	1
Notice of Cross-Motion, Affidavit, Affirmation and Exhibits	2
Affirmation in Opposition to Cross-Motion	3
Plaintiff's Reply Affirmation, Affidavit and Exhibits	4

Upon the foregoing papers Defendant, Juan Taveras ("Taveras"), moves this Court for an Order pursuant to RPAPL §1501(4) quieting title of the subject property, 603 Knickerbocker Avenue, Brooklyn (Block 3362, Lot 129) and dismissing Plaintiff's complaint pursuant to CPLR §3211(a)(5). In a separate motion Plaintiff, VW Bedstuy LLC ("Bedstuy") moved to renew and reargue their prior motion for summary judgment pursuant to CPLR §2221 and CPLR §3212.

### Background

Taveras executed a note and mortgage in favor of First United Mortgage Banking Corp. ("First United") on September 13, 2006 in the amount of \$514,400. This mortgage has been the subject of two prior foreclosure actions. The first action was brought originally by First United on or about September 17, 2007 under Index # 34944. Sometime thereafter First United assigned the aforementioned mortgage to DLJ Mortgage Capital ("DLJ") and the caption of the action under Index # 34944/2007 was changed to reflect DLJ, as Plaintiff instead of First United. By order dated May 24, 2011, Hon. Debra Silber, dismissed the DLJ action with prejudice based upon defects in the assignment to DLJ and improper service on Taveras<sup>1</sup>.

Thereafter, DLJ assigned the mortgage to Beltway Capital, LLC ("Beltway") on February 1, 2011 and on February 3, 2011 it was assigned again to Bedstuy. Bedstuy commenced the second action on this same mortgage under Index # 10560/13 on or about May 30, 2013. By order dated April 27, 2015, Hon. Larry Martin determined that although Judge Silber had dismissed the prior action with prejudice, any defects in the DLJ assignment were not dispositive on the issue of standing, as the mortgage passes as an incident to the note. *Bank of Silverberg, 86 AD3d 274, 280 (2<sup>nd</sup> Dept 2011)*. Judge Martin found that Bedstuy produced sufficient proof that it was in possession of the note at the time the action under Index # 10560/13 was commenced. However, Judge Martin dismissed that action based upon Bedstuy's failure to submit sufficient proof that it complied with RPAPL §1304 and 1306.

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<sup>1</sup> J. Silber specifically set forth that the prejudice only applied to the mortgage issued by First United in the amount of \$514,400 and not to the second mortgage on the subject property. Plaintiff has not asserted any claims based upon a second mortgage.

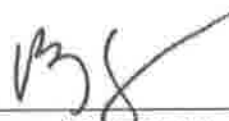
Judge Martin's order dismissing the action brought under Index # 10560/13 was dated April 27, 2015 and Plaintiff commenced the instant action on September 24, 2015, less than six months later. Issue was joined when Taveras served his answer containing affirmative defenses on or about November 2, 2015. Defendant moved to dismiss the complaint based upon Plaintiff's failure to comply with RPAPL §1304 and 1306. By order dated May 8, 2016 this Court found that Bedstuy submitted sufficient proof that the notices required by RPAPL §1304 and 1306 were sent in compliance with the statute. Defendant also moves to dismiss the instant action based upon a statute of limitations defense. The instant action is governed by the six year statute of limitations as set forth in CPLR §213(1) which expired on June 1, 2013. *JP Morgan Chase Bank v Mbanefo*, 123 AD3d 669, 671 (2<sup>nd</sup> Dept 2014). The prior action dismissed by Judge Martin was commenced timely on May 30, 2013. Plaintiff contends that the tolling provisions of CPLR §205(a) are applicable in the case at bar. CPLR §205(a) tolls the Statute of Limitations and permits commencement of a second action within six months of the termination of an action. *Webb v Greater NY Automobile Dealers Assn*, 123 AD3d 1111(2<sup>nd</sup> Dept 2014); *Marrero v Crystal Nails*, 114 AD3d 101 (2<sup>nd</sup> Dept 2013); *Zulic v Persich*, 106 AD3d 904 (2<sup>nd</sup> Dept 2013). CPLR §205(a) additionally requires that the service upon the defendant be effectuated within six months of the terminated action. *Quinones v Neighborhood Youth and Family Services, Inc*, 71 AD3d 1106 (2<sup>nd</sup> Dept 2010); *Kaps-All Packaging Systems, supra at 738*; *First Central Savings Bank v Merldian Residential Capital*, 35 Misc3d 1206(A) (S Ct, Nassau County, 2012). Service upon Taveras was effectuated within six months of the prior action's discontinuance, on or about October 14, 2015, thereby tolling the six year statute of limitations pursuant to CPLR §205(a). Accordingly, contrary to Defendant's

contention, the instant action was commenced timely pursuant to CPLR §205(a).

Accordingly, Defendant's motion to dismiss the complaint is denied in its entirety and Plaintiff's Order of Reference is signed.

This is the Decision and Order of the Court.

ENTER,



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LOREN BAILY-SCHIFFMAN  
JSC