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Recent Developments in New York's One-Action Rule

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A recent appellate case underscores the strategic opportunities for mortgage lenders under New York's One-Action Rule (NY RPAPL §1301)—and attendant risks to borrowers and their guarantors.

Typically, the One-Action Rule limits lenders to choosing a single remedy for a default on a mortgage—either a foreclosure action to recover the property (perhaps followed by claims for any deficiency), or a suit for money damages against the borrower and/or its guarantor—but not both at once.

But the First Department recently recognized an exception to the Rule that could permit lenders to bring simultaneous foreclosure actions and suits for money damages in situations where the claim against the borrowers or guarantors is considered "separate from defendants' obligation to repay the mortgage debt." *U.S. Bank National Association v. Mave Hotel Investors LLC*, 237 A.D.3d 512 (1st Dept. 2025) ("*Mave Hotel*"). If the reasoning of *Mave Hotel* is followed broadly, lenders may have a greater opportunity to seek recoveries from borrowers and guarantors while also recovering the value of the property through foreclosure.

Foreclosure

The One-Action Rule

The One-Action Rule provides:

While [an] action is pending or after final judgment for the plaintiff therein, no other action shall be commenced or maintained to recover any part of the mortgage debt, including an action to foreclose the mortgage, without leave of the court in which the former action was brought.

In effect, this provision requires a lender to choose between bringing either an action: (a) in equity to foreclose the mortgage, or (b) at law to enforce monetary obligations under the note or guaranty. Once a foreclosure suit is initiated, a

lender is barred from suing to enforce the note or guaranty until there is a final judgment in the foreclosure action, even if the property value will not satisfy the total debt owed.

The purpose of the One-Action Rule is to protect borrowers from having to litigate "multiple suits to recover the same mortgage debt," and instead "confine the proceedings to collect the mortgage debt to one court and one action." *Dollar Dry Dock Bank v. Piping Rock Builders, Inc.*, 581 N.Y.S.2d 361, 362–63 (2d Dept. 1992).

Courts have recognized only narrow exceptions to the Rule, including where one property secures multiple loans, where a guaranty obligation is triggered after the commencement of the foreclosure action (*172 Madison (NY) LLC v. NMP Grp., LLC*, 977 N.Y.S.2d 668 (N.Y. Sup. 2013)), and where collateral is located outside of New York (*Wells Fargo Bank Minnesota, N.A. v. Cohn*, 771 N.Y.S.2d 649 (1st Dept. 2004)).

In addition, courts have granted "leave of court" for lenders to file a separate action under certain "special circumstances," such as where a first mortgagee already sold the property (*Stein v. Nellen Dev. Corp.*, 473 N.Y.S.2d 331, 333 (Sup. Ct. 1984)), the property suffered physical damage during the pendency of the foreclosure action (*Rainbow Venture Assocs., L.P. v. Parc Vendome Assocs., Ltd.*, 633 N.Y.S.2d 478, 479 (1st Dept. 1995); *201 Brook Realty Corp. v. Merrill Assocs.*, 595 N.Y.S.2d 460, 460 (1st Dept. 1993)).

Lower courts have historically applied the One-Action Rule expansively, holding that the protections of the One-Action Rule are not waivable, even by a sophisticated borrower. *See, e.g., Orchard Hotel, LLC v. Zhavian*, 950 N.Y.S.2d 492 (Sup. Ct. Kings Cty. 2012).

'Mave Hotel'

In *Mave Hotel*, the First Department held that notwithstanding the One-Action Rule, a lender could seek to enforce a cash management agreement to recover rents from a borrower and its guarantor while simultaneously foreclosing on the real estate––even though the rents were security for the borrower's payment obligations under the mortgage (*i.e.*, the source of payments under the mortgage). In that case, the borrower had breached cash management agreements by failing to deposit rents and a settlement payment in a lockbox account.

The First Department held that the One-Action Rule was inapplicable because the lenders' claims were "based upon defendants' alleged breaches of specific" lockbox provisions, which involved obligations that were "separate from defendants' obligation to repay the mortgage debt." In effect, the Court held that the borrower engaged in a wrongful act that it deemed independent of simply failing to pay the mortgage debt, the borrower did not deserve the protection of the Rule.

A factor in the court's decision appeared to be that "plaintiff was not obligated to apply funds in the cash management account to the outstanding balance due after borrower defaulted." The court thus distinguished cases holding that, where the rents are to be "applied in reduction of the entire indebtedness from time to time outstanding and secured by the Mortgage" (*e.g.*, as in a standard assignment of leases and rents), or otherwise secure part of the mortgage debt, the One-Action Rule bars a second action, even though the borrower has an obligation to pay those rents to the lender. *Shaw Funding, L.P. v. Grauer*, 950 N.Y.S.2d 524, 524–25 (2d Dept. 2012); *U.S. Bank Nat'l Ass'n as Tr. of Registered Holders of GS Mortg. Sec. Corp. II, Com. Mortg. Pass Through Certificates, Series 2012-GCJ9 v. Mattone*, 2025 WL 754034, at *14 (S.D.N.Y. Mar. 10, 2025).

In a vigorous dissent, one justice argued that the One-Action Rule should apply because

cash management payments which can be used to pay the mortgage debt are essentially part of the mortgage debt itself. The dissent also cautioned that the "practical effect of accepting plaintiff's argument would be that RPAPL 1301(3) could be evaded through formalism." Consistent with the importance of this decision, the case was slated for argument before the Court of Appeals, New York's highest court (but was then removed as a result of an apparent settlement).

The Impact of 'Mave Hotel'

One can imagine other scenarios where a lender can argue that a borrower or its guarantor engaged in independent misconduct, and accordingly where a borrower or guarantor would arguably have even less claim to the protection of the One-Action Rule than in *Mave Hotel*.

For example, in a severely distressed real estate market, guarantors may violate certain financial covenants requiring them to maintain a certain net worth or level of liquidity. In a scenario like that, forcing a lender to wait until after exhaustion of its foreclosure remedy could prejudice the lender's ability to recover the deficiency.

Even worse, if the guarantor has allegedly misrepresented its compliance with those financial covenants, the lender could have a strong equitable claim to pursue both foreclosure and damages simultaneously (and the guarantor will have engaged in independent misconduct arguably similar to that in *Mave Hotel*).

Other scenarios may involve sums of money that, similar to the rents in the *Mave Hotel* case, are technically part of the mortgage debt, but serve a distinct purpose and perhaps should be independently recoverable. For example, if a borrower fails to turnover insurance proceeds in the event of a casualty, that could present a distinct breach from the failure to make a periodic mortgage payment.

Or a borrower may have an obligation to make re-tenanting payments in the event that an anchor tenant fails to renew its lease. Although re-tenanting payments may be defined as part of the "debt" in the mortgage documents, they serve a distinct purpose and are payable on a distinct timeline as compared to the periodic mortgage payments.

An additional consideration is that the Rule bars simultaneous actions only when they are brought "without leave of the court in which the former action was brought." So, in any action where the Rule applies, a potential alternative for lenders is to request permission from the court where the first action was filed before bringing a separate action.

Courts may give a lender who seeks advance permission more latitude to pursue a separate action than a lender who initiates multiple actions without preapproval and seeks to invoke an exception only after the fact.

Particularly in a rocky real estate market where property valuations or guarantors' solvency may deteriorate quickly, market participants should consider *Mave Investors* both when pursuing defaulted borrowers and when drafting transactional documents.

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