Decided and Entered: January 11, 2018   525047
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BANK OF AMERICA, NATIONAL
    ASSOCIATION,
                        Respondent,

        v

JOSEPH G. LUMA II, Also Known   MEMORANDUM AND ORDER
    as JOSEPH LUMA, et al.,
                        Defendants,
        and

SONYA LUMA,
                        Appellant.
_____

Calendar Date: November 16, 2017

Before: McCarthy, J.P., Lynch, Devine, Mulvey and Aarons, JJ.

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        Russell A. Schindler, Kingston, for appellant.

        Leopold & Associates, Armonk (Fernando C. Rivera-Maissonet
of counsel), for respondent.

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Devine, J.

        Appeal from an order of the Supreme Court (Cahill, J.),
entered March 8, 2017 in Ulster County, which denied defendant
Sonya Luma's motion for, among other things, summary judgment
dismissing the complaint against her.

        Defendant Sonya Luma (hereinafter defendant) and defendant
Joseph G. Luma II (hereinafter Luma) executed a promissory note,
payable to plaintiff's predecessor-in-interest, that was secured
by a mortgage on real property in Ulster County. In August 2008,

counsel for the lender and loan servicer wrote a letter to
defendant and Luma advising that they were in default for
nonpayment. Plaintiff commenced this mortgage foreclosure action
in July 2015 against defendant, Luma and others. Defendant
answered and raised, among other things, the statute of
limitations as an affirmative defense. Defendant then moved for
a variety of relief that included dismissal of the complaint as
time-barred. Supreme Court denied the motion in its entirety.
Defendant now appeals and, in her brief, focuses solely upon the
timeliness of the action.

        We affirm. "The six-year statute of limitations in a
mortgage foreclosure action begins to run from the due date for
each unpaid installment unless the debt has been accelerated;
once the debt has been accelerated by a demand or commencement of
an action, the entire sum becomes due and the statute of
limitations begins to run on the entire mortgage" (Lavin v
Elmakiss, 302 AD2d 638, 639 [2003], lv dismissed 100 NY2d 577
[2003], lv denied 2 NY3d 703 [2004] [citations omitted]; accord
Goldman Sachs Mtge. Co. v Mares, 135 AD3d 1121, 1122 [2016];
see CPLR 213 [4]; 21st Mtge. Corp. v Adames, 153 AD3d 474, 475
[2017]). Defendant asserts that the August 2008 letter
constituted a demand to accelerate the debt but, for that to be
the case, the letter must express that intent "in a clear and
unequivocal manner" (Goldman Sachs Mtge. Co. v Mares, 135 AD3d at
1122; see Nationstar Mtge., LLC v Weisblum, 143 AD3d 866, 867
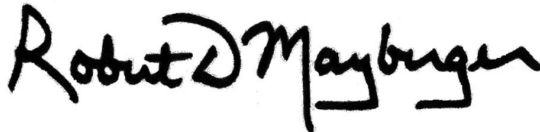[2016]).

        The August 2008 letter advised defendant and Luma that they
had violated the terms of the note and mortgage by failing to
make monthly payments and that counsel had been retained "to
exercise all of [the loan servicer's] rights and remedies at law,
and in equity, including, but not limited to, the right to sell
the above captioned premises at a public sale." The letter
therefore left all legal and equitable avenues open, did not
indicate that immediate payment was demanded and, indeed, went on
to state that the debt's validity would not be assumed unless
there was an absence of timely written objection to some or all
of it. There was, moreover, neither an explicit demand for
payment in the letter nor the use of the word "accelerate." The
letter accordingly failed to "clearly and unequivocally advise

defendant . . . that all sums due under the note and mortgage were immediately due and payable" so as to accelerate the debt and trigger the running of the statute of limitations (Chase Mtge. Co. v Fowler, 280 AD2d 892, 893 [2001]; see Goldman Sachs Mtge. Co. v Mares, 135 AD3d at 1122-1123). Thus, we agree with Supreme Court that the present foreclosure action is not time-barred.

McCarthy, J.P., Lynch, Mulvey and Aarons, JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:

Robert D. Mayberger
Clerk of the Court