

91 A.D.3d 722, 937 N.Y.S.2d 105, 2012 N.Y. Slip Op. 00336
(Cite as: **91 A.D.3d 722, 937 N.Y.S.2d 105**)

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Supreme Court, Appellate Division, Second Department,
New York.

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION, etc., appellant,

v.

Bette KALPAKIS, et al., defendants,
Lythia A. Rousseas, et al., intervenors-defendants-respondents.

Jan. 17, 2012.

Background: In mortgage foreclosure action, the Supreme Court, Suffolk County, Whelan, J., [30 Misc.3d 1236\(A\), 2011 WL 892813](#), granted mortgagor's siblings-in-law leave to intervene. Bank appealed.

Holding: The Supreme Court, Appellate Division, held that movants may have had ownership interest in the property.

Affirmed.

West Headnotes

Mortgages 266 436

[266](#) Mortgages

[266X](#) Foreclosure by Action

[266X\(E\)](#) Parties and Process

[266k436](#) k. Intervention. [Most Cited Cases](#)

Mortgagor's siblings-in-law may have had ownership interest in property their father had owned, as required to support their intervention in foreclosure proceeding; their claim that deed transferring property to mortgagor was forged was asserted within two years of its discovery, and bank did not establish, as a matter of law, that the fraud could have been discovered earlier with reasonable diligence. [McKinney's CPLR 213\(8\), 1012\(a\)\(3\)](#).

**[106](#) Butler, Fitzgerald, [Fiveson & McCarthy](#), New York, N.Y. ([David K. Fiveson](#) and [Mark J. Krueger](#) of counsel), for appellant.

[Donald Pearce](#), New York, N.Y., for intervenors-defendants-respondents.

[PETER B. SKELOS](#), J.P., [L. PRISCILLA HALL](#), [LEONARD B. AUSTIN](#), and [ROBERT J. MILLER, JJ.](#)

*[722](#) In an action to foreclose a mortgage, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Suffolk County (Whelan, J.), dated March 8, 2011, as granted that branch of the motion of Lythia A. Rousseas, *[723](#) Barbara M. Kalpakis, and Mark G. Kalpakis which was pursuant to [CPLR 1012\(a\)\(3\)](#) for leave to intervene in the action.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The subject property was owned by George Kalpakis until his death in 1995. According to the affidavit of Lythia A. Rousseas, George Kalpakis died intestate, and his only heirs were his four children: Lythia A. Rousseas, Barbara Kalpakis, Mark Kalpakis, and James Kalpakis. Pursuant to a deed dated March 12, 2003, the subject property was purportedly transferred from George Kalpakis, who was then deceased, to Bette Kalpakis, James Kalpakis's wife. In 2007 Bette Kalpakis executed a mortgage on the property in favor of the plaintiff's predecessor.

In April 2010 the plaintiff commenced this action to foreclose the mortgage. In December 2010 Lythia A. Rousseas, Barbara Kalpakis, and Mark Kalpakis (hereinafter collectively the movants) moved, inter alia, pursuant to [CPLR 1012\(a\)\(3\)](#) for leave to intervene in the action. The movants asserted that the deed dated March 12, 2003, was a forgery, and that they did not discover the fraud until 2009.

The Supreme Court properly granted that branch of the movants' motion which was pursuant to [CPLR 1012\(a\)\(3\)](#) for leave to intervene in the action, as the movants established that they may have an ownership interest in the property that is the subject of the foreclosure proceeding (see [U.S. Bank N.A. v. Gestetner](#),

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74 A.D.3d 1538, 1541, 902 N.Y.S.2d 247; *Greenpoint Sav. Bank v. McMann Enters.*, 214 A.D.2d 647, 647–648, 625 N.Y.S.2d 273). Contrary to the plaintiff's contention, it did not establish that the movants' claim to invalidate the deed dated March 12, 2003, was barred by the statute of limitations. The movants' claim was asserted within two years of discovery of the fraud (*see Piedra v. Vanover, 174 A.D.2d 191, 196, 579 N.Y.S.2d 675*), and the plaintiff did not establish, as a matter of law, that the fraud could have been discovered earlier with reasonable diligence (*see CPLR 213[8]; Sargiss v. Magarelli, 12 N.Y.3d 527, 532, 881 N.Y.S.2d 651, 909 N.E.2d 573; Citicorp Trust Bank, FSB v. Makkas, 67 A.D.3d 950, 953, 889 N.Y.S.2d 656*).

N.Y.A.D. 2 Dept., 2012.
JP Morgan Chase Bank, Nat. Ass'n v. Kalpakis
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