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Florida Supreme Court Rules that Dismissal of Foreclosure Action Returns Parties to their Pre-Foreclosure Action Status, and Resets Accrual Date for Statute of Limitations Purposes

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The Florida Supreme Court issued its long awaited decision in *Bartram et al. v. U.S. Bank NA*, case number SC14-1265, on November 3, 2016¹, affirming the decision of the Fifth District Court of Appeals in *U.S. Bank Nat. Ass'n v. Bartram*, 140 So.3d 1007 (Fla. 5th DCA 2014), and finding that dismissal of a foreclosure action returns the parties to their pre-foreclosure complaint status. The decision specifically answered in the negative the following question of great public importance certified by the Fifth District Court of Appeals, as revised by the Florida Supreme Court²:

DOES ACCELERATION OF PAYMENTS DUE UNDER A RESIDENTIAL NOTE AND MORTGAGE WITH A REINSTATEMENT PROVISION IN A FORECLOSURE ACTION THAT WAS DISMISSED PURSUANT TO RULE 1.420(B), FLORIDA RULES OF CIVIL PROCEDURE, TRIGGER APPLICATION OF THE STATUTE OF LIMITATIONS TO PREVENT A SUBSEQUENT FORECLOSURE ACTION BY THE MORTGAGEE BASED ON PAYMENT DEFAULTS OCCURRING SUBSEQUENT TO DISMISSAL OF THE FIRST FORECLOSURE SUIT?

Although the decision itself was based upon the narrow issue raised in the lower court of whether the five year statute of limitations, found in Fla. Stat. section 95.11(2)(c), bars a foreclosure action by the mortgagee based on payment defaults occurring subsequent to dismissal of the first foreclosure suit, it also specifically stated that the analysis in its own prior ruling in *Singleton v. Greymar Associates*, 882 So. 2d 1004 (Fla. 2004), addressing *res judicata* issues raised in re-filed foreclosure actions, applied equally in the statute of limitations context, and that “[a]bsent a contrary provision in the residential note and mortgage, dismissal of the foreclosure action against the mortgagor has the effect of returning the parties to their pre-foreclosure complaint status...” and “after the dismissal, the parties are simply placed back in the same contractual relationship as before, where the residential mortgage remained an installment loan, and the acceleration of the residential mortgage declared in the unsuccessful foreclosure action is revoked.”

The practical impact of this decision is that with respect to a typical long term residential mortgage, in most cases, where a foreclosure action was instituted based upon the borrower’s failure to pay

specific payments, the dismissal of that action, whether voluntary or involuntary, does not preclude the lender from later accelerating the indebtedness and filing a subsequent foreclosure action based on a subsequent default that is not outside the 5 year statute of limitations.

The Florida Supreme Court’s decision appears to have left open the narrow issue of “[w]hether the dismissal of the initial foreclosure action by the court was with or without prejudice may be relevant to the mortgagee’s ability to collect on past defaults.” In *Bartram*, the Fifth District Court of Appeal concluded “... that a foreclosure action for default in payments occurring after the order of dismissal in the first foreclosure action is not barred by the statute of limitations found in section 95.11(2)(c), Florida Statutes, provided the subsequent foreclosure action on the subsequent defaults is brought within the limitations period.” *U.S. Bank Nat. Ass'n v. Bartram*, 140 So. 3d 1007, 1014. Mortgagee (Lender) clients could still face a statute of limitations challenge in re-filed foreclosure cases where the prior foreclosure was involuntarily dismissed with prejudice, and the date of the default upon which the new foreclosure action is based is prior to the date of the dismissal, even if it is within the five years provided for under 95.11(2)(c).

For more information on loan enforcement and foreclosure rights, please contact Thomas M. Wood at twood@slk-law.com, or Jay B. Verona at jverona@slk-law.com.

¹ Not final until time expires to file a motion for rehearing.

² The original, certified question, read as follows: Does acceleration of payments due under a note and mortgage in a foreclosure action that was dismissed pursuant to rule 1.420(b), Florida Rules of Civil Procedure, trigger application of the statute of limitations to prevent a subsequent foreclosure action by the mortgagee based on all payment defaults occurring subsequent to dismissal of the first foreclosure suit?

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