



Mortgage Foreclosure Action Barred by Statute of Limitations Based On Prior Involuntary Dismissal Without Prejudice

Introduction

On Dec. 17, 2014, Florida's Third District Court of Appeal (Third District) issued its opinion in *Deutsche Bank Trust Company Americas v. Beauvais*, ___ So. 3d ___ (Fla. 3rd DCA 2014), holding that an involuntary dismissal without prejudice of a mortgage foreclosure action "did not by itself negate, invalidate or otherwise decelerate the lender's acceleration of the debt in the initial action." Without reinstatement or modification following the lender's acceleration of the debt, there were no new payments due and, therefore, no new default. Accordingly, the second action—filed more than five years after the lender accelerated the debt in the first action—was barred by the statute of limitations.

The Decision In *Beauvais*

In January 2007, American Home Mortgage Servicing, Inc. (AHMS) filed a mortgage foreclosure action against Beauvais after he defaulted on his mortgage payments in September 2006 (the Initial Action). The note and mortgage were executed Feb. 10, 2006, in the principal amount of \$1,440,000 for his purchase of a condominium in Miami Beach, Fla. The action was dismissed without prejudice Dec. 6, 2010, when AHMS failed to appear at a case management conference. AHMS did not appeal and took no further action regarding its acceleration of the payments.

Following the involuntary dismissal without prejudice, Aqua Master Association, Inc., the condominium association (Association), foreclosed its lien on the property based on Beauvais' failure to pay assessments. Title to the property was issued to the Association subject to the AHMS mortgage.

Deutsche Bank, based on a mortgage assignment from AHMS, filed a subsequent mortgage foreclosure action Dec. 18, 2012, alleging that Beauvais defaulted by failing to make the payment due Oct. 1, 2006,

and all subsequent payments. The trial court granted the Association's summary judgment motion finding that (i) the action was barred by the statute of limitations because it was filed more than five years after the Initial Action in January 2007; and (2) the mortgage was null and void.

On appeal, Deutsche Bank argued the involuntary dismissal effectively "decelerated" the loan and reinstated Beauvais' payment obligations. Consequently, Deutsche Bank argued that when Beauvais failed to timely make his payment on Oct. 1, 2006, one month after the default date in the Initial Action, it was a new default, giving Deutsche Bank the contractual right to accelerate the loan payments.

The Third District disagreed with Deutsche Bank's position. First, there was no language in the note or mortgage providing that "dismissal without prejudice of the foreclosure action would negate the acceleration of the debt or otherwise reinstate the installment nature of the loan." Furthermore, no evidence was presented that Beauvais (1) sought to have the acceleration of the debt (or other enforcement of the mortgage) discontinued or modified, or (2) sought reinstatement of the installment nature of the payments or met any of the conditions necessary for reinstatement.

Second, the Third District expressly rejected Deutsche Bank's reliance on the Florida Supreme Court's decision in *Singleton v. Greymar Associates*, 882 So. 2d 1004 (Fla. 2004), holding that when a subsequent action for foreclosure is filed for a separate period of default, the action is not necessarily barred by *res judicata*. According to the Third District, the "dispositive distinction" was that, unlike the present action, the initial action in "*Singleton* involved an involuntary dismissal with prejudice . . .," which adjudicated the merits of the action (*i.e.*, it determined there was not a valid default and no valid or effective acceleration of the debt).

Thus, the Third District noted that while the *Singleton* rationale has been applied by numerous intermediate Florida appellate courts to mortgage foreclosure actions involving dismissals with prejudice, it should not be applied when the initial action is involuntarily dismissed without prejudice. In reaching this conclusion, the Third District stated that because no merits determination was made in the Initial Action, absent a contractual reinstatement or modification by the parties, there were no new payments due and no new default. Therefore, the subsequent action was based on the same accelerated debt as the Initial Action and had to be filed within the five year statute of limitations period. Because it was not, the action was barred.

The Third District's decision conflicts with the Fourth District's decision in *Evergrene Partners*, which held, based on *Singleton*, that a subsequent foreclosure action was not barred by the statute of limitations following dismissal without prejudice of the first foreclosure action. Accordingly, the Third District certified conflict with *Evergrene Partners*.¹ After affirming the trial court's ruling that the statute of limitations barred the subsequent action, the Third District stated that under the express language of Section 95.281(1)(a) of the Florida Statutes, a mortgage lien terminates five years after the maturity date stated in the mortgage. The maturity date in the recorded mortgage listed a maturity date of March 1, 2036, making the mortgage lien valid until March 1, 2041. The trial court, thus, erred in finding the

¹ In addition to the Fourth District's decision in *Evergrene Partners*, at least four Florida federal district court judges have reached the same result. See *Dorta v. Wilmington Trust Nat'l Ass'n*, No. 5:13-cv-185-Oc-10PRL, 2014 WL 1152917 (M.D. Fla. March 24, 2014); *Kaan v. Wells Fargo Bank, N.A.*, 981 F. Supp. 2d 1271 (S.D. Fla. 2013); *Ros v. Lasalle Bank Nat'l Ass'n*, No. 14-22112-CIV, 2014 WL 3974558 (S.D. Fla. July 18, 2014); *Matos v. Bank of New York*, No. 14-21954-CIV, 2014 WL 3734578 (S.D. Fla. July 28, 2014). The issue is pending in the Eleventh Circuit Court of Appeals.

mortgage to be null and void, canceling the note and mortgage, and quieting title in favor of the Association.

Conclusion

The issue of whether subsequent foreclosure actions can be barred by the statute of limitations when an initial action is dismissed with or without prejudice remains unsettled in Florida. Until these issues are resolved by the Florida Supreme Court, lenders should take prudent steps to avoid an involuntary dismissal without prejudice, and ensure, if possible, that any subsequent action is filed within the original limitations period. Otherwise the lender faces the risk that a Florida court will find that the subsequent action is barred by the statute of limitations.

Currently, the Florida Supreme Court is considering whether a subsequent foreclosure action can be barred by the statute of limitations when the initial action is dismissed with prejudice. See *Bartram v. U.S. Bank Nat'l Ass'n., etc., et al.*, Consolidated Case Nos. SC14-1265, SC14-1266, and SC14-1305.

Moreover, because the Third District has certified the conflict in the *Beauvais* decision, the Florida Supreme Court may also be soon considering the application of the statute of limitations in subsequent foreclosure actions when the dismissal of the initial action is without prejudice.

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