

Florida's Highest Court Says Each Default Resets Statute of Limitations for Foreclosure Actions

Consumer Financial Services Alert

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Bartram v. U.S. Bank National Association, et al., --- So. 2d. ---- (Fla. Nov. 3, 2016)

In *Bartram*, the Supreme Court of Florida held that acceleration of payments due under a residential note and mortgage in a foreclosure action, which was involuntarily dismissed, did not trigger application of Florida's five-year statute of limitations. In so ruling, the court explained that each monthly default of a mortgage loan resets the statute of limitations for filing a foreclosure suit, thus allowing a subsequent foreclosure action based on a separate and distinct default after dismissal of the first foreclosure action.

On May 16, 2006, the trustee and assignee of the mortgage filed a complaint to foreclose a first mortgage on the borrower's property based on the borrower's failure to make payments due from January 2006 until the date of the complaint. On May 5, 2011, the foreclosure action was involuntarily dismissed for the plaintiff's failure to appear at a case management conference. The dismissal was pursuant to Rule 1.420(b) of the Florida Rules of Civil Procedure and, therefore, operated as an adjudication on the merits. Approximately one year later, the borrower filed a claim seeking a declaratory judgment to cancel the mortgage and quiet title to the property, arguing that the five-year limitations period precluded another foreclosure action. The trial court found in favor of the borrower, cancelled the note and mortgage, and released the first mortgage lien on the property. The Fifth District Court of Appeal agreed with the trustee, holding that a new cause of action is created by a default occurring after a failed foreclosure attempt for statute of limitations purposes, even where acceleration was previously triggered and the first case was dismissed on the merits. Accordingly, the appellate court reversed the trial court's judgment and remanded the case to the trial court. It also certified the issue to the Supreme Court of Florida.

The Supreme Court of Florida agreed with the appellate court and held that absent a contrary provision in the note and mortgage, the effect of an involuntary dismissal is to return the parties to their pre-foreclosure

complaint status. If the foreclosure action is dismissed, the acceleration is revoked and both the mortgagor's right to continue to make installment payments on the note and the mortgagee's right to seek acceleration based on subsequent defaults are reinstated. Thus, with each new default after a failed foreclosure, the five-year statute of limitations begins to run and the mortgagee has the right, but not the obligation, to accelerate all sums then due under the note and mortgage.

Importantly, the court supported its ruling with the standard residential mortgage reinstatement provision that the lender's right to accelerate is subject to the borrower's continuing right to cure until entry of a final judgment of foreclosure. Thus, *Bartram* may not apply to a residential mortgage which does not contain a similar reinstatement provision.

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