# Bartram Decision Clarifies Statute of Limitations in Florida Mortgage Foreclosure Cases

**November 04, 2016**

The Florida Supreme Court issued its opinion Thursday, November 3 in the much-anticipated case of *Bartram v. U.S. Bank*. At issue was the question of whether a previous involuntarily dismissed foreclosure action triggered application of the statute of limitations to prevent a subsequent foreclosure based on payment defaults occurring after the dismissal of the earlier foreclosure action.

The Court answered that question in the negative, affirming a lower court's decision, thereby allowing a foreclosure action based on defaults occurring subsequent to a previously dismissed foreclosure action.

The opinion provided by the Court held that:

1. A mortgagee is "not precluded by the statute of limitations from filing a subsequent foreclosure action based on payment defaults occurring subsequent to the dismissal of the first foreclosure action, as long as the alleged subsequent default occurred within five years of the subsequent foreclosure action."

2. "When a mortgage foreclosure action is involuntarily dismissed pursuant to Rule 1.420(b), either with or without prejudice, the effect of the involuntary dismissal is **revocation of the acceleration**, which then **reinstates** the **mortgagor's right to continue to make payments** on the note and the right of the mortgagee, to seek acceleration and foreclosure based on the mortgagor's subsequent defaults. Accordingly, the statute of limitations does not continue to run on the amount due under the note and mortgage." (emphasis added).

3. "[W]ith each subsequent default, the statute of limitations runs from the date of each new default providing the mortgagee the right, but not the obligation, to accelerate all sums then due under the note and mortgage."

Further, in its holding, the Florida Supreme Court specifically praised the "excellent amici briefs submitted by the Business Law Section of the Florida Bar . . . at the request of the Third District in *Deutsche Bank Trust Co. Americas v. Beauvais*, 188 So. 3d 938 (Fla. 3d DCA 2016)" (see footnote 2). This brief was authored by McGlinchey Stafford Member Manuel Farach.

## ***Bartram's*** **Impact**

***Foreclosure Actions***

*Bartram's* explicit approval of the right to seek foreclosure based on a new default despite there being a previously dismissed foreclosure action, should dispense the uncertainty that existed surrounding the impact of a dismissal on the acceleration of the loan balance. The Court specifically held that the dismissal simply placed the parties back in the same contractual relationship as before the dismissal, and the acceleration declared in the unsuccessful foreclosure action is revoked by reason of the dismissal. Thus, mortgagees may file suit for additional foreclosure actions, as long as they are based on a new default date that occurred within five years of filing the new foreclosure action.

***Consumer Debt Collection Actions***

This opinion should also be particularly impactful in the consumer claims context where borrowers file Federal Debt Collection Practices Act (FDCPA) and Florida Consumer Collection Practices Act (FCCPA) claims based on alleged debt collection activities after the dismissal of a foreclosure action. The typical claim involves a borrower, after obtaining a dismissal of a foreclosure action, receiving some type of communication from the mortgagee or its servicer, seeking payment for all past due amounts on the debt. The borrower's argument has been that any amounts past due beyond five years are barred by the statute of limitations, and thus are not valid debts. By sending communications seeking to collect those amounts, the mortgagee or servicer is violating the FDCPA and FCCPA by seeking to collect on a debt it should have known was barred by the statute of limitations and therefore not valid.

With the Court's holding in *Bartram*, this argument will be much more difficult. In applying its reasoning to the facts in *Bartram*, the Court stated that "[o]nce there were future defaults, however, the Bank had the right to file a subsequent foreclosure action**—and to seek acceleration of all sums due under the note—**so long as the foreclosure action was based on a subsequent default, and the statute of limitations had not run on that particular default." Based on the Court's analysis, the past due amounts being sought by the mortgagee or its servicer after the dismissal of a foreclosure action, including all amounts due beyond five years, would still be recoverable and would constitute a valid debt. Therefore, the mortgagee or servicer should not be liable for violating the FDCPA or FCCPA in seeking to collect the full amount due on the loan, because such amounts constitute a valid debt.

We are hopeful that as the full impact of the *Bartram* opinion begins to filter down through the trial courts, these types of consumer claims will become a thing of the past. Of course, there will always be individuals who will not accept the explicit holding of *Bartram,* and nonetheless continue to file claims as discussed above. With the Florida Supreme Court's opinion in *Bartram*, however, mortgagees and servicers now have a strong weapon in their arsenal to combat these claims.

## Facts and Procedural Background

*Bartram* involved a borrower, who, following a divorce, obtained two mortgages on his property in order to buy out his ex-wife's interest in the property. The first mortgage loan was for $650,000 and held by a Bank, and the second mortgage loan was for $120,000 and held by his ex-wife.

The Bank's first mortgage loan involved a standard residential form mortgage, which required the Bank "to give the borrower notice of any default and an opportunity to cure before the [Bank] could proceed against the

secured property in a judicial foreclosure action." The standard residential form mortgage "also granted the borrower a right to reinstate the Note and Mortgage after acceleration if certain conditions were met, including paying the [Bank] all past defaults and other related expenses that would be due 'as if no acceleration had occurred.'"

The borrower eventually stopped making payments on both mortgage loans, which led to the Bank filing a foreclosure action against the property. This action was eventually involuntarily dismissed by the trial court due to the Bank's failure to appear at a case management conference. After the dismissal, the borrower filed a motion seeking to cancel the note and release the Bank's lien on the property. In denying the borrower's motion, the trial court noted that the "involuntary dismissal under Rule 1.420(b) was an adjudication on the merits and the case has been closed." The Bank did not appeal the trial court's dismissal.

Approximately a year after the dismissal, and six years after the filing of the Bank's initial foreclosure action, the borrower filed a cross-claim for declaratory judgment against the Bank in a separate foreclosure action brought by the ex-wife on the second mortgage loan. The cross-claim again sought "to cancel the Mortgage and quiet title to the Property, asserting that the statute of limitations barred the Bank from bringing another foreclosure action." The borrower's argument was essentially that Florida's five-year statute of limitations ran from the filing of the Bank's first foreclosure action and had expired, thereby barring the Bank from bringing another foreclosure action.

The trial court agreed with the borrower, and held that the Bank could no longer enforce its rights under the note or mortgage, which were the subject of the Bank's dismissed foreclosure action; cancelled the note and mortgage; and released the Bank's lien. The Bank appealed this ruling to the Fifth District Court of Appeal, which reversed the trial court's ruling, and certified the question answered by the Florida Supreme Court in *Bartram* regarding the application of Florida's five-year mortgage foreclosure statute of limitations.

## Analysis of the Court

The Supreme Court of Florida relied heavily on its prior holdings in *Singleton v. Greymar Associates*, 882 So. 2d 1004 (Fla. 2004), that "when a second and separate action for foreclosure is sought for a default that involves a separate period of default from the one alleged in the first action, the case is not necessarily barred by res judicata," and that an "acceleration and foreclosure predicated upon subsequent and different defaults present a separate and distinct issue than a foreclosure action and acceleration based on the same default at issue in the first foreclosure action."

The Court went on to cite with approval multiple decisions of Florida's First, Third, and Fourth District Courts of Appeal and the federal courts for the Southern and Middle District of Florida, applying the reasoning in *Singleton* "to determine that the five-year statute of limitations did not bar a subsequent foreclosure action when the mortgagee had brought an initial foreclosure action that accelerated all sums due under the mortgage and note, on that same mortgage outside of the statute of limitations window." In applying *Singleton's* reasoning, these courts dismissed actions seeking to cancel a note and mortgage "premised on the expiration of the statute of limitations after an initial foreclosure action that sought acceleration was dismissed."

The Florida Supreme Court further explained:

"[T]he statute of limitations on the balance under the note and mortgage would not continue to run after an involuntary dismissal, and thus the mortgagee would not be barred by the statute of limitations from filing a successive foreclosure action premised on a "separate and distinct" default. Rather, 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**" (emphasis added).

The Court then went on to explain that the type of dismissal, with prejudice or without prejudice, was not material to the statute of limitations analysis. The Court also clarified that while the type of dismissal may be relevant to a mortgagee's ability to proceed with a foreclosure action based on past defaults, it did not impact the scenario where there was a subsequent default, because each subsequent default accruing after the dismissal of foreclosure action "creates a new cause of action, regardless of whether that dismissal was entered with or without prejudice."

The Court found that the standard mortgage reinstatement provision was further support for its reasoning as it "granted the mortgagor, even after acceleration, the continuing right to reinstate the Mortgage and note by paying only the amounts past due as if no acceleration had occurred." Therefore, the Court held, "[i]n the absence of a final judgment in favor of the mortgagee, the mortgagor still had the right under paragraph 19 of the Mortgage, the reinstatement provision, to cure the default and to continue making monthly installment payments."

Accordingly, the Supreme Court of Florida indicated its approval of the Fifth District Court of Appeal's ruling extending the Florida Supreme Court's reasoning in *Singleton*, to the statute of limitations context in a mortgage foreclosure action.

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