

## Appealability of Foreclosure Judgments to be Governed by Federal Law

The U.S. Court of Appeals for the Seventh Circuit recently held that as a matter of federal procedural law, **A JUDGMENT OF FORECLOSURE IS NOT A FINAL AND APPEALABLE JUDGMENT**, even if state foreclosure law might provide otherwise.

Here, the Court held that a Wisconsin judgment of foreclosure was not final and appealable when obtained in a federal district court, even though Wisconsin law treats a foreclosure judgment ordering a sale as final and appealable.

A copy of the opinion is available at: [Link to Opinion](#).

A mortgagee filed suit to foreclose a residential mortgage in Wisconsin. The borrowers removed the case to federal court based on diversity of citizenship, and after a bench trial the judge found in favor of the mortgagee and entered judgment of foreclosure. The judgment precluded the mortgagee from collecting a deficiency judgment.

The borrowers filed a notice of appeal. Due to the recent Seventh Circuit ruling in *HSBC Bank USA, N.A. v. Townsend*, 793 F. 3d 771 (7th Cir. 2015), the parties were asked to brief the issue of appellate jurisdiction.

*Townsend* held that a judgment of foreclosure applying Illinois Law was not a final, appealable judgment. The majority in the case reasoned that three factors meant the foreclosure judgment ordering sale of the property was not final. First, the owner of the property retained statutory rights to redeem or reinstate the mortgage before a judicial sale. Second, if a judicial sale occurred, it would need to be confirmed in a future judicial proceeding. Third, the amount of any deficiency judgment could not be determined until the sale was held and the parties had an opportunity to contest its fairness.

The foreclosure judgment in the instant case was similar to the characteristics of the non-appealable foreclosure judgment in *Townsend*. The foreclosure judgments in both cases determined the total amount owed to the plaintiff bank as of the date of the judgment. The judgments also allowed the mortgagee to seek additional costs incident to the sale. Finally, the judgments ordered the sale of the properties at a sheriff's auction.

The one difference between the two judgments was that the judgment in this case provided that no deficiency judgment may be obtained against any defendant, such

that the plaintiff's recovery would be limited to the proceeds from the foreclosure sale. Thus, only two of the *Townsend* factors were met.

The Seventh Circuit held that *Townsend* controls the issues of appellate jurisdiction in this case, regardless of the difference concerning deficiency judgments.

Another difference the Seventh Circuit found between this case and *Townsend* concerns the way the Illinois and Wisconsin state courts handle the issue of when a foreclosure judgment becomes final and appealable.

The *Townsend* case involved an Illinois property, and in the Illinois courts, a foreclosure judgment ordering a sale is not final and appealable. However, Wisconsin courts treat a foreclosure judgment ordering a sale as final and appealable.

The Seventh Circuit acknowledged that, by applying *Townsend* to this Wisconsin case, it would create a significant difference between federal and state practice and procedure in mortgage foreclosure cases. "Appellants in the state courts would lose their right to appeal by following our holding applicable to federal cases."

However, the Seventh Circuit held that "*Townsend* applied a federal standard of finality, a procedural issue governed by federal law." The Court noted that, if it did not apply *Townsend* to the Wisconsin foreclosure at issue here, the Court would open up conflict within the circuit on a question of federal procedural law. The Seventh Circuit believed it should be consistent in applying federal procedure.

Accordingly, the Seventh Circuit found that *Townsend* is binding precedent in its circuit and dismissed the appeal for lack of appellate jurisdiction.