FLORIDA SUPREME COURT REFUSES TO RECONSIDER LANDMARK STATUTE OF LIMITATIONS FOR MORTGAGE FORECLOSURE

On March 16, 2017, the Florida Supreme Court denied motions for rehearing and/or clarification filed by petitioners Lewis Brook Bartram, the Plantation at Ponte Vedra, and Gideon M.G. Gratsiani. All three petitioners requested the Florida Supreme Court reconsider or clarify its landmark November 3, 2016 opinion in *Bartram v. U.S. Bank, N.A.*, SC14-1266, 2016 WL 6538647. The Florida Supreme Court's opinion in *Bartram* holds that the involuntary dismissal of a prior foreclosure action, be it with or without prejudice, does not prevent the filing of a subsequent foreclosure action which purports to accelerate the mortgage debt based on subsequent defaults. By virtue of the Court's order decision not to rehear the matter, **the majority opinion in *Bartram* is now final.**

The Florida Supreme Court rejected several arguments from the petitioners. For the sake of brevity, this post will not discuss each and every argument rejected by the Court. However, a few highlights merit note as they continue to be advanced in lower court proceedings by foreclosure defense counsel anxious to avoid the application of the *Bartram* majority opinion's holding, which is unfavorable to defaulting borrowers. **The Florida Supreme Court's refusal to entertain rehearing or clarify the majority opinion based on such arguments strongly suggests the arguments are disfavored by the Florida Supreme Court.**

One particular argument of note by Gideon M.G. Gratsiani asserted that an involuntary dismissal of a foreclosure action does not, in fact, return the parties to their pre complaint statute quo. Gratisiani argue that the dicta in *Singleton* should be confined to its facts, because, according to Gratsiani, "*Singleton* was not addressing the effect of all dismissals on the respective parties, but rather a specific type of dismissal that would return the parties back to the same contractual relationship when a borrower proves he or she is not in default." The Florida Supreme Court declined rehearing on this issue, which strongly suggests that the Florida Supreme Court is comfortable with its broad application of **the dicta in *Singleton* which held that dismissal placed the parties back to "the same contractual relationship with the same continuing obligation."** Majority Op. at 25.

Another argument of note, this time advanced by Lewis Bartram, was the position that an involuntary dismissal "without prejudice" could not unwind an election to accelerate, but a dismissal "with prejudice" could**. The Florida Supreme Court appears comfortable that its holding in the *Bartram* majority opinion that the**

distinction between a dismissal with and without prejudice does not affect the application of the statute of limitations for mortgage foreclosure, and that any kind of involuntary dismissal will serve to unwind an election to accelerate announced in a foreclosure complaint.

It remains to be seen if the distinction between a dismissal with prejudice, as opposed to without prejudice, will affect the amount of payments the lender can recover in a refiled action by virtue of the doctrine of res judicata. Since the *Bartram* opinion did not consider a foreclosure judgment in favor of the lender, it did not pass on the issue of precisely how much the lender may recover in such an action, even though prior precedent clearly holds that **the doctrine of res judicata does not bar the filing of an action electing to accelerate the debt based on subsequent post-dismissal defaults**. *See Singleton v. Greymar and Assoc.*, 882 So. 2d 1004 (Fla. 2004).

Finally, all three petitioners made much ado about the fact that the borrowers in the Court's prior landmark opinion *Singleton* opinion had reinstated their mortgage prior to their subsequent default, and attempted to convince the Florida Supreme Court that the opinion in *Singleton* should be distinguished from the facts of the *Bartram* case based the Bartram's failure to reinstate the mortgage. However, in light of the Florida Supreme Court's decision to decline to reconsider its majority opinion after having been presented with this fact repeatedly by all three petitioner's for rehearing, it is safe to say that the Florida Supreme Court was not convinced that such facts were a distinction with a difference for purposes of their holding in the majority opinion in *Bartram*.

In sum, **the Florida Supreme Court's decision to decline rehearing of the majority opinion in *Bartram* renders that opinion final and it can now be relied upon with confidence** that its holding will not be unfavorably revised or changed any time soon. This will come as a great relief to **mortgage lenders and loan servicers in the Florida market who can now rest assured that a continued state of default will ensure they retain the ability to file a foreclosure action, even if prior efforts to foreclose have failed**. Of course, the industry should continue to keep an eye on the Florida Supreme Court case *Bollettieri Resort Villas Condo. Ass'n, Inc. v. Bank of New York Mellon*, 198 So. 3d 1140 (Fla. 2d DCA 2016), *review granted*, SC16-1680 (Fla. Nov. 2, 2016), which will hopefully answer additional questions about the application of the statute of limitations for mortgage foreclosure which the majority opinion in *Bartram* left unanswered, such as how to properly plead a refiled foreclosure based on a subsequent default.