In *LNB-017-13, LLC v. HSBC Bank USA, N.A.*, 14-cv-24800-UU, 2015 WL 1546150 (S.D. Fla. April 7, 2015), Judge Ursula Ungaro revisited the familiar topic of the statute of limitations for mortgage foreclosure and previously dismissed foreclosure actions. In two prior opinions on the subject, Judge Ungaro dismissed efforts to quiet title to mortgages where the borrowers had alleged the expiration of the statute of limitations as grounds for removing valid mortgage liens from title. *See Lopez v. HSBC Bank, N.A.*, 1:14-cv-20798-UU, 2014 WL 3361755, at *1 (S.D. Fla. Apr. 28, 2014); *Torres v. Countrywide Home Loans, Inc.*, Case No. 14-20759-CIV, 2014 WL 3742141, at *1 (S.D. Fla. July 29, 2014). However, *LNB* was Judge Ungaro's first opportunity to revisit the issue since the Third District Court of Appeal issued its opinion in *Deutsche Bank Trust Company Americas v. Beauvais*, No. 3D14-575, 2014 WL 7156961 (Fla. 3d DCA Dec. 17, 2014) which found that only a dismissal with prejudicewill serve to reset the clock for statute of limitations purposes. In *LNB*, the prior foreclosure was dismissed without prejudice, and five years had passed since the filing.

Previously Judge Ungaro had utilized *Singleton v. Greymar Associates*, 882 So. 2d 1004, 1008 (Fla. 2004) and *U.S. Bank, National Association v. Bartram*, 140 So. 3d 1007 (Fla. 2d DCA 2014) to hold that claims for quiet title based on the statute of limitations for mortgage foreclosure failed to state a claim where most future claims for foreclosure were not time-barred by virtue of new breaches creating a new cause of action for foreclosure – with a corresponding new five year limitations period within which to file suit. *See Lopez*, 2014 WL 3361755; *Torres*, 2014 WL 3742141. In *LNB*, Judge Ungaro reaffirmed her position that the statute of repose for mortgage liens, not the statute of limitations for foreclosure, dictates when the passage of time is grounds to remove a mortgage lien from title. *See* 2015 WL 1546150 at *3.

However, in *Beauvais*, the Third District Court of Appeal held that in absence of an adjudication on the merits, such as a dismissal with prejudice, the acceleration occasioned by the first foreclosure lawsuit means that no future causes of action for non-payment will accrue in the absence of some separate act of reinstatement or modification of the mortgage's repayment obligations. The Third District Court of Appeal certified a conflict between *Beauvais* and *Evergrene Partners, Inc. v. Citibank, N.A.*, 143 So. 3d 954, 956 (Fla. 4th DCA 2014). *See Beauvais*, 2014 WL

7156961 at *10 (certifying conflict with *Evergrene Parterns*). In *Evergrene Partners*, the Fourth District Court of Appeal held that a dismissal without prejudice also served to rescind the lenders prior election to accelerate and, therefore, allowed future causes of action for mortgage foreclosure to accrue. *See* 143 So. 3d at 956. Until *LNB*, Judge Ungaro had not had the opportunity to revisit the issue subsequent to the issuance of the conflicting opinions in *Beauvais* and *Evergrene Partners*.

In *LNB*, Judge Ungaro applied the holding in *Beauvais* that expiration of the statute of limitations is not a basis to quiet title, but also made clear that she felt the opinion in *Beauvais* regarding the significance of dismissal with, as opposed to without, prejudice was an outlier in Florida jurisprudence, siding instead with the logic of *Bartram* and *Evergrene Partners*. In denying leave to amend and a stay during the pendency of the *Bartram* appeal, Judge Ungaro held that:

"The Court recognizes that whether such a claim is viable is on appeal before the Supreme Court of Florida due to the question certified in *Bartram* and it is possible that that court could overrule years of precedent finding that such a claim should be dismissed; however, as the law currently stands, the majority of cases addressing this claim have rejected it. As a result, the Court finds that an amendment would be futile and this action must be dismissed with prejudice."

2015 WL 1546150 at *5.

While the Florida Supreme Court's ruling in *Bartram* and any future appeal of *Beauvais* will no doubt be the final word on the subject, Judge Ungaro's opinion is encouraging for lenders and their attorneys as *Beauvais* has yet to garner much support amongst jurists presented with the opportunity to choose between the competing rationales in *Evergrene Partners* and *Beauvais*.