

FLORIDA COURT ALLOWS COMMON LAW DEFICIENCY ACTION AFTER COMPLETION OF FORECLOSURE

The Court of Appeal for the Third District of the State of Florida recently held that the trial court had subject matter jurisdiction to hear a common law action to recover a deficiency judgment after an earlier residential mortgage foreclosure action in the same court was already completed.

The Court reasoned that the applicable statute expressly provided for such a common law action, and although the foreclosure judgment reserved jurisdiction to adjudicate any claim seeking a deficiency, it neither granted nor denied it.

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

A mortgage loan servicer obtained a final judgment of foreclosure, which retained jurisdiction as to any claim for a deficiency. After the foreclosure sale, the judgment and note were assigned to the plaintiff debt buying company, which filed a separate common law action in the same court seeking a deficiency judgment.

The borrower failed to respond and a clerk's default was entered. Thereafter, the borrower filed a motion to dismiss, arguing that the trial court lacked subject matter jurisdiction over the deficiency action because: (a) the prior mortgagee sought deficiency relief in its foreclosure complaint; and (b) in the foreclosure judgment, the trial court expressly retained jurisdiction to adjudicate the deficiency.

The trial court rejected the borrower's argument and entered a final default judgment in favor of the plaintiff, from which the borrower appealed.

On appeal, the Third District turned to section 702.06, Florida Statutes, which governs deficiency claims in foreclosure actions. The relevant portion of this statute states that "[t]he complainant shall also have the right to sue at common law to recover such deficiency, unless the court in the foreclosure action has granted or denied a claim for a deficiency judgment."

Rejecting the language in two court rulings relied upon by the borrower as dicta, the Court reasoned that under Florida Supreme Court precedent "[w]hen the clear and unambiguous language of a statute commands one result, as here, while dicta from case decisions might suggest a different

result, [the Court] must apply the statute so as to give effect to legislative intent,” which is determined by first looking to the plain language of the statute.

The Court concluded that section 702.06 as drafted was clearly written, and because the foreclosure court had neither granted nor declined to grant a deficiency judgment, “a plaintiff may pursue deficiency relief in a separate action.” Accordingly, the Court held that the trial court had jurisdiction over the plaintiff’s deficiency claim, and the trial court’s judgment was affirmed.