

COURT OF APPEAL UPHOLDS DISCOVERY LIMITATIONS

In *CQB, 2010, LLC v. Bank of New York Mellon*, the Florida First District Court of Appeal provides guidance on discovery limitations in foreclosure actions. In *CQB*, the petitioner, the defendant in a foreclosure proceeding, sought certiorari review of a trial court's order that did not grant all of the petitioner's discovery requests. In the foreclosure action, the petitioner had made "very broad discovery requests related to the defenses that respondent lacked standing to foreclose; and that all mortgages on the property had been satisfied before petitioner acquired the property, as evidenced by a satisfaction of mortgage recorded in the public records."

The Court explained "the jurisdictional threshold for certiorari review of orders denying discovery requires petitioners to demonstrate evisceration of a claim or defense" and held that the petitioner had failed to demonstrate any material harm that was not remedial on appeal.

The petitioner argued that its defense, which claimed the respondent lacked standing to foreclose, would be eviscerated because the trial court's order had denied the "petitioner's broad requests for all documents in the entire chain of assignments since origination of the subject loan." The Court disagreed, noting that the trial court had in fact granted discovery of the documents demonstrating respondent's acquisition of the note. The Court emphasized that standing in Florida only requires proof that the foreclosing party held the note when it filed the foreclosure action. The foreclosing party was not required to prove a complete chain of assignments. Therefore the trial court's order, which allowed discovery documenting the respondent's status as note holder, did not eviscerate the petitioner's standing defense.

Additionally, the petitioner argued that its other defense, that all the mortgages on the property had been satisfied prior to the petitioner's acquisition of the property, was eviscerated because the trial court's order denied the petitioner's "broad requests for internal bank documents related to recorded satisfactions of the subject mortgage." Once again, the Court disagreed. While noting that some of the documents requested by the petitioner "may be relevant to the satisfaction defense," the Court noted that "lack of these internal memoranda does not effectively eviscerate the defense of satisfaction, which would be established, if at all, by public records and the discovery" that the respondent had been ordered to provide.

In sum, the Court in *CQB* upheld a trial court's right to deny a foreclosure defendant's discovery requests relating to a complete assignment chain when the foreclosing plaintiff had asserted standing as the holder of the promissory note. The Court also indicated that a trial court was permitted to deny discovery requests for the foreclosing plaintiff's policies and procedures as they relate to mortgage satisfaction when the defendant is allowed discovery relating to payment and satisfaction of the note and mortgage.