

Court Rejects Borrower's Attempt to Permanently Enjoin Foreclosure Due to Cancellation of Prior Foreclosure

The U.S. Court of Appeals for the First Circuit recently held that the cancellation of a foreclosure sale prohibits a borrower from obtaining a permanent injunction to bar a foreclosure, as they would not suffer irreparable harm.

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

In 2005, the plaintiff borrowers obtained a refinance mortgage loan on their home. The borrowers defaulted on their mortgage in 2007 and again in 2009. The loan was modified but the borrowers still had not made a mortgage payment since 2009. Between 2011 and 2013, the borrowers negotiated to again modify the loan. The negotiations were unsuccessful and a foreclosure sale was scheduled for September 2013.

The borrowers then filed an action in state court and obtained a preliminary injunction barring the foreclosure sale from moving forward. The foreclosure proceedings were subsequently cancelled, but the borrowers' lawsuit remained pending.

The mortgagee removed the action to federal court and the borrowers amended their complaint to seek a permanent injunction barring the mortgagee from foreclosing, as well as damages premised on an alleged breach of mortgage provisions obligating the lender to provide the borrower with a detailed notice of default and right to cure prior to foreclosing.

The trial court granted summary judgment in favor of the mortgagee. The trial court held that because the foreclosure proceedings were cancelled, the borrowers could not show they would suffer irreparable harm in the absence of injunctive relief, and that the borrowers had not suffered compensable monetary damages. The borrowers then appealed.

The borrowers argued they were entitled to injunctive relief because a foreclosure could occur again at any time, even though the mortgagee supposedly had not complied with the notice requirements. The First Circuit found this argument to be without merit, as it did not account for the fact that the foreclosure proceedings were cancelled.

The First Circuit also held that the borrowers did not face irreparable harm in the absence of any foreclosure proceedings, affirming the trial court's decision.

The borrowers argued that the trial court erred by relying “exclusively” on representations made by the mortgagee, outside the summary judgment record. The First Circuit again disagreed, finding that the trial court’s exchange at oral argument with the mortgagee was merely an attempt for the trial court to clarify its understanding of the posture of the foreclosure proceedings.

Moreover, the First Circuit found that any suggestion that the trial court improperly relied on the mortgagee’s representations was disproven as the summary judgment record established the relevant facts beyond dispute.

In addition, the borrowers argued that the trial court erred by granting summary judgment in favor of the mortgagee on their breach of mortgage agreement claim. The borrowers maintained that although they did not seek monetary damages, they could have sought nominal damages at a later stage.

However, the First Circuit held it need not consider whether nominal damages were possible as the issue was waived. The Court noted that, when directly asked at oral argument, the borrowers’ counsel indicated they were not seeking nominal damages. Thus, the Court held, the borrowers could not assert this claim on appeal and waived the right to seek nominal damages.

The First Circuit accordingly affirmed the trial court’s judgment granting summary judgment in favor of the mortgagee.