

FL. COURT OF APPEAL AFFIRMS STATUTE OF LIMITATIONS

In *Evergrene Partners, Inc. v. Citibank, N.A.*, 39 Fla. L. Weekly D1342, 2014 WL 2862392 (Fla. 4th DCA June 25, 2014) Florida's Fourth District Court of Appeal affirmed dismissal of a complaint which sought to cancel a residential mortgage by alleging that the statute of limitations had run following dismissal of a failed foreclosure effort by the lender

It has become increasingly common for borrowers to seek to quiet title or cancellation of mortgages once the applicable statute of limitations for foreclosure has expired following a voluntarily or involuntarily dismissed foreclosure action. The borrowers' theory is that because the foreclosure complaint purports to accelerate the debt, the entire debt is subject to a single limitations period following the foreclosure lawsuit, regardless of whether the lawsuit is dismissed or not.

This theory has failed to gain traction in federal courts, and numerous complaints alleging the above theory have been dismissed with prejudice. See e.g. *Kaan v. Wells Fargo Bank, N.A.*, 981 F. Supp. 2d 1271 (S.D. Fla. 2013); *Dorta v. Wilmington Trust Nat. Ass'n*, 5:13-CV-185-OC-10PRL, 2014 WL 1152917 (M.D. Fla. 2014). However, no appellate decision in Florida had ruled on the issue, until now.

With *Evergrene Partners*, the Fourth District Court of Appeal specifically approved the decision in *Kaan*, and applied the Florida Supreme Court's decision in *Singleton v. Greymar Associates*, 882 So. 2d 1004, 1005 (Fla. 2004) (holding that *res judicata* principals would not bar foreclosure after dismissal of foreclosure with prejudice if those claims were predicated on new breaches of contract which occurred after the old case was dismissed) to affirm the trial court's order of dismissal. The rationale for such a decision is the holding in *U.S. Bank Nat. Ass'n v. Bartram*, 39 Fla. L. Weekly D871, 2014 WL 1632138 (Fla. 5th DCA April 25, 2014), which applied *Singleton* to the issue of the statute of limitations and held that new breaches of contract following dismissal of the foreclosure trigger a new cause of action for foreclosure which carries a new five year statute of limitations. In *Evergrene Partners* the Fourth District Court of Appeal reasoned that since both *Singleton* and *Bartram* hold that claims for foreclosure can accrue following dismissal of a foreclosure lawsuit, allegations that the entire debt is time-barred by virtue of acceleration in a

prior dismissed foreclosure action cannot state a claim to invalidate a mortgage.

This decision should make securing dismissal of similar claims in both state and federal court much easier. It should be noted that the decision in *Bartram* certified an issue of great public importance to the Florida Supreme Court, so this may not be the last word on the issue. However, barring an unexpected reversal of *Bartram* (and therefore *Evergrene Partners* by implication) there can be no question that such claims should be dismissed under the presently existing law in Florida.