

Florida Supreme Court's decision appears to have left open the narrow issue of "[w]hether the dismissal of the initial foreclosure action by the court was with or without prejudice may be relevant to the mortgagee's ability to collect on past defaults." In Bartram, the Fifth District Court of Appeal concluded "... that a foreclosure action for default in payments occurring after the order of dismissal in the first foreclosure action is not barred by the statute of limitations found in section 95.11(2)(c), Florida Statutes, provided the subsequent foreclosure action on the subsequent defaults is brought within the limitations period." U.S. Bank Nat. Ass'n v. Bartram, 140 So. 3d 1007, 1014. Mortgagees' (Lenders') clients could still face a statute of limitations challenge in re-filed foreclosure cases where the prior foreclosure was involuntarily dismissed with prejudice, and the date of the default upon which the new foreclosure action is based is prior to the date of the dismissal, even if it is within the five years provided for under 95.11(2)(c).