LENDERS NOT REQUIRED TO SEND SECOND NOTICE IN SUCCESSIVE MORTGAGE FORECLOSURE ACTION

In the case of *Sill v. JPMorgan Chase Bank National Association*, Michael Sill appealed a final judgment of foreclosure entered in favor of JPMorgan Chase Bank ("Chase"), in which he asserted three issues. 4D14-1014, 2016 WL 67256 (Fla. 4th DCA Jan. 6, 2016). Of note, is Mr. Sill's third contention arguing that Chase was required to send a new notice of default after it voluntarily dismissed the first suit and *before* it filed the second suit. The Fourth DCA affirmed on all issues, but it wrote an opinion to address the sole issue of whether a new notice of default was required to be sent by Chase.

In a very short opinion, the Fourth District Court of Appeal affirmed the trial court's entry of final judgment in favor of the lender finding that paragraph 22 of the mortgage did not require Chase to mail a second notice of default before filing a second foreclosure action. The court came to this conclusion after it revisited the facts of the default involved in the first suit. Mr. Sill defaulted on the loan on July 1, 2009. The court found that Chase sent Mr. Sill the requisite paragraph 22 notice of default dated August 28, 2009. Among other things, the notice of default also advised Mr. Sill that he had thirty days to cure the default or the loan would be accelerated. Mr. Sill did not cure the default, and Chase filed a foreclosure complaint against him in October 2009 ("first suit"). Chase voluntarily dismissed the first suit, without prejudice, on March 7, 2013, but just six weeks later filed a second foreclosure complaint against Mr. Sill based on the same July 1, 2009 default date ("second suit").

Rejecting Mr. Sill's argument that paragraph 22 of the mortgage required Chase to mail a second notice of default before filing the second suit, the Court relied on *Kuper v. Perry*, 718 So. 2d 859 (Fla. 5th DCA 1998) and held there was no practical purpose in requiring an additional notice. The court reasoned that because the first complaint was voluntarily dismissed without prejudice, there was no adjudication on the July 1, 2009 default date. Mr. Sill still had not made any payments between his receipt of the August 28, 2009 notice of default and the filing of the second suit in 2013. Based on this, Chase's 2009 notice of default remained valid and a second notice of default was not required before filing the second suit based on the same default.

The determinative factor, which is dispositive to the holding of the case, is the fact that the first suit was dismissed without prejudice. The *Sill* court makes clear that if the first complaint had been dismissed with prejudice, then that would have constituted an adjudication triggering the requirement for Chase to provide a new default date in the second suit by sending a second default letter to support the second complaint. This opinion is also helpful in that it shows a lender may re-file a second suit, based on the same default date alleged in the first suit, so long as there are no res judicata issues.

A copy of the opinion can be found here.