

## **Massachusetts Appeals Court Clarifies Demand Letter Ruling**

Recently, in U.S. Bank, National Association as Trustee v. Milan, the Massachusetts Appeals Court provided further clarification on when the Pinti rule may be inapplicable. As those who are familiar with recent Massachusetts case law may recall in Pinti v. Emigrant Mortgage, Co., the Massachusetts Supreme Judicial Court in 2015 ruled that a **FORECLOSURE WOULD NOT BE VALID IF THE DEMAND LETTER REQUIRED BY THE MORTGAGE DID NOT STRICTLY COMPLY WITH THE MORTGAGE PROVISIONS.** So as to not invalidate foreclosures that had already occurred, the Pinti court held that it applied prospectively to new foreclosures or to any previous foreclosure so long as the demand letter issue had been raised in a court action before Pinti was decided.

In Milan, the Appeals Court held that a Pinti defense was not timely raised where the plaintiff fully set forth a challenge to the foreclosure sounding in forgery but failed to plead any specific Pinti challenge prior to July 17, 2015. A copy of the decision in Milan can be found by clicking

The plaintiff in Milan commenced the underlying action in 2012 seeking to evict the defendants following a foreclosure on the subject property. At the outset of the eviction action, defendants filed a form answer on which they checked a box indicating that plaintiff did not have a “superior right of possession.” During discovery, defendants disclosed that their defense challenging plaintiff’s right to possession flowed from alleged forgery at origination. In fact, all pleadings filed by defendant’s counsel prior to the Pinti decision (July 17, 2015) presented a defense based on forgery only. It was not until after the Massachusetts Supreme Judicial Court issued its decision in Pinti that defendant’s counsel amended defendants’ answer to include a claim that plaintiff failed to strictly comply with the terms of the mortgage prior to acceleration. The Northeast Housing Court dismissed plaintiff’s complaint pursuant to Pinti and plaintiff appealed.

The Appeals Court decision in Milan comes after the Massachusetts Supreme Judicial Court issued another decision in Federal National Mortgage Association v. Marroquin which allowed the Pinti decision to be applicable to all cases where a defense based on failure to strictly comply with the acceleration requirements of the mortgage was properly raised prior to July 17, 2015. As such, the decision in the instant case is limited to

whether a Pinti defense was timely raised in the lower court. The Appeals Court declined to decide whether checking a box on a form answer challenging plaintiff's right to superior possession alone is enough to properly raise a Pinti defense. Instead, the court focused on defendants' responses to discovery and pleadings filed after their answer. Each such pleading specified the basis of their defense sounded in forgery and neglected to specify any defense resembling a Pinti defense. In a footnote, the Milan court stated: "We reject the Milans' contention that their amended answer should be treated as having raised the Pinti claim because, under Mass.R.Civ.P. 15(c), 365 Mass. 761 (1974), it 'related back' to the date of their original answer. For purposes of Marroquin, the issue is not whether the claim 'relates back' but whether U.S. Bank was placed on notice of the claim in real-time before the date established in Pinti for applicability of the Pinti rule."

Practically, this decision will be helpful to local counsel that have been responding to a myriad of new arguments from former owners attempting to expand the applicability of the Pinti rule.