Reinstatement and Redemption are Different

Under California's "tender rule," a borrower suing to halt or unwind a wrongful foreclosure sale generally must allege that it tendered the amounts due on the loan before the sale. The rationale underlying the tender rule is straightforward: if the borrower could not have paid the amounts due had the sale been proper, then any irregularities in the sale could not have caused damage to the borrower.

But the amount due for tender depends on timing. **BORROWERS HAVE TWO IMPORTANT, INTER-RELATED RIGHTS TO DEFEAT A FORECLOSURE SALE: REINSTATEMENT AND REDEMPTION.** The tender rule applies very differently depending on which right is at issue.

A recent opinion from California's Third Appellate District — *Turner v. Seterus, Inc.* — addressed how the tender rule works differently in situations involving reinstatement versus redemption.

Facts: lender rejects borrower's attempted tender on defaulted loan

The borrower obtained a loan for $260,000 secured by a deed of trust on her real property. After losing her job during the Great Recession, the borrower fell into default on the payments.

The lender recorded a notice of default, which stated the amount due to cure the default was $21,139.25. The notice of default also notified the borrower of her statutory right to reinstate the loan by paying the amounts currently due at least five days before the foreclosure sale. A few months later, the lender recorded a notice of trustee's sale.

Ten days before the sale date, the borrower contacted the lender, who informed the buyer that the amount due had grown to $30,800. The borrower had recently deposited $30,000 into her bank account, and told the lender that she would like to pay off the entire amount of the default. The lender **refused to accept the payment**, saying that only borrowers in a loan modification process were allowed to cure a default, and the borrower could not receive a modification.

After the borrower's short detour through a bankruptcy proceeding, the property was ultimately sold at a trustee's sale.

The borrower sued for wrongful foreclosure, among other claims.

Trial court's ruling: no tender of entire loan amount; case dismissed

The trial court dismissed the borrower's claims by sustaining the lender's demurrer. The trial court held that the borrower failed to allege tender of the **full amount due under the accelerated loan** — i.e., the entire amount of the loan.

The borrower appealed.

Court of Appeal's opinion: reversed; borrower adequately alleged tender of amounts needed to *reinstate*

The Court of Appeal reversed the trial court's judgment and gave new life to the borrower's claim for wrongful foreclosure.

The court rejected the lender's argument (and the trial court's ruling) that the tender rule required the borrower to tender the **full** amount due under the loan. The court acknowledged that many prior cases have held that this is exactly what the borrower is required to allege, but that those cases arose in the context of ***redemption***, not ***reinstatement***.

What's the difference?

Reinstatement is governed by Civil Code section 2924c. Under that statute, a borrower has a statutory right, up to five days before the noticed foreclosure sale, to stop the sale by tendering the amount due as specified in section 2924c(a)(1). The amount due is all amounts of principal, interest, taxes, and other costs that are currently in default, but does not include "the portion of principal as would not then be due had no default occurred" (i.e., the entire accelerated balance of the loan).

When the borrower reinstates the loan by paying the amounts currently in default, all foreclosure proceedings must stop, and the loan and deed of trust are reinstated in full force and effect "as if the acceleration had not occurred."

Redemption, on the other hand, allows the borrower to **pay the debt in full** — i.e., the entire loan balance. When the borrower redeems, the debt is paid and the deed of trust must be released.

The court noted that the "tender rule arose in the context of redemption cases where the plaintiffs sought to set aside the trustee's sale for irregularities in the foreclosure sale notice or procedure." So, unsurprisingly, those cases feature language requiring the borrower to have tendered the entire amount of the loan before proceeding on a wrongful foreclosure claim. Otherwise, borrowers would be unjustly enriched — they could recoup the property while evading their lawful debt.

But in this case, the borrower's wrongful foreclosure case was not based on irregularities with the sale notice or procedure. Instead, the claim arose from the borrower's right to reinstate the loan, and the lender's refusal to accept the borrower's attempted tender that would have cured the default. But for the lender's wrongful refusal to accept the tender, the borrower "would have cured the default," which would have reinstated the loan and extinguished the basis for the trustee's sale.

The court emphasized that **under the language of Civil Code section 2924c, when the borrower makes a proper tender, reinstatement of the loan is mandatory.**

The court concluded that the borrower adequately alleged tender under the circumstances, and if the alleged facts were true, the foreclosure sale "was without legal basis and void."

Lesson

Borrowers must comply with the "tender rule" in order to state a cause of action for wrongful foreclosure. But the amount of the tender depends on whether the right of reinstatement or redemption is at issue. If there are at least five days remaining before the sale, the borrower must only tender the amounts currently due, not the entire accelerated loan balance.