

## **NO HARM TO HOMEOWNERS BECAUSE OF INVALID ASSIGNMENT**

The U.S. Court of Appeals for the Eighth Circuit recently held that two **borrowers did not have standing to challenge an allegedly invalid mortgage assignment between creditors, because THE BORROWERS COULD NOT SHOW HARM FAIRLY TRACEABLE TO THE ALLEGEDLY INVALID ASSIGNMENT.**

Additionally, the Court held that the borrowers failed to state a plausible claim for relief for allegedly failing to comply with the notice of intent to accelerate provisions in their mortgage.

A copy of the opinion is available at: [Link to Opinion.](#)

The plaintiff borrowers alleged that their mortgage loan servicer did not have authority to foreclose on their home because (1) due to an allegedly invalid assignment of the mortgage to the servicer, the servicer supposedly did not have legal title to the mortgage on the plaintiff borrowers' home; and (2) the servicer's predecessor supposedly failed to comply with the terms of the mortgage in giving the plaintiff borrowers notice of its intent to accelerate the loan.

The trial court granted the defendant servicer's motion to dismiss, concluding the borrowers did not have standing to challenge the assignment, and that the claim of a defective notice of intent to accelerate failed to state a plausible claim for relief. The plaintiff borrowers appealed.

As you may recall, to establish standing, a plaintiff must show a concrete and particularized injury that is fairly traceable to the challenged conduct that is likely to be redressed by a favorable judicial decision.

The Eighth Circuit found that the plaintiff's invalid assignment claim was nearly identical to the claim two homeowners asserted against a foreclosing lender in *Quale v. Aurora Loan Services, LLC*. In *Quale*, the Eighth Circuit held that **the homeowners in that case did not have standing to raise an invalid assignment claim because THEY WERE NOT INJURED BY THE ASSIGNMENT and any harm to the homeowners was not fairly traceable to the allegedly invalid assignment.** See *Quale*, 561 F. App'x 582, 582-83 (8th Cir. 2014) (unpublished per curiam). **THE COURT HELD THAT THE ASSIGNOR, NOT THE HOMEOWNER, IS THE PARTY INJURED BY AN IMPROPER ASSIGNMENT.**

Accordingly, the Eighth Circuit here held that the borrowers lacked standing to bring an invalid assignment claim.

The Court then addressed the claim that the defendant servicer's predecessor had not complied with the terms of the mortgage in sending its notice of intent to accelerate. The Court noted that, in the event of an uncured default, Paragraph 22 of the plaintiff borrowers' mortgage authorizes the mortgagee, at its option, to accelerate the amounts due on the loan "without further demand and . . . invoke the power of sale and any other remedies permitted by" law. Before doing so, the Court also noted, the mortgagee must give the borrowers notice by certified mail and an opportunity to cure the default.

The plaintiff borrowers acknowledged they received a notice of intent to accelerate from the prior servicer by certified mail dated April 29, 2011. However, they alleged the notice supposedly failed to specify the action required to cure the default, supposedly failed to apprise them of their unconditional right to resistance, and supposedly failed to give the requisite 30-day's notice of default.

The Eighth Circuit rejected the borrowers' argument, holding that the prior servicer's notice was sufficient to comply with Paragraph 22 of the plaintiffs' mortgage, as the letter not only notified them that their default resulted from missed payments, but also calculated the total amount in monthly and late charges the borrowers would need to pay to cure the default.

The Court also noted that **THE MORTGAGE DOES NOT GIVE THE PLAINTIFF BORROWERS AN UNCONDITIONAL RIGHT TO REINSTATE, such that the notice could not be deficient in failing to apprise them of such a right.** Instead, the Court noted, **the mortgage expressly states that the plaintiffs must meet certain conditions for reinstatement.**

Finally, the Eighth Circuit found that the notice was dated April 29 and required the plaintiff borrowers to cure the default by exactly 30 days later on May 29. The borrowers alleged that they did not receive 30-day's notice because the letter could not have been delivered until after April 29, when it was dated.

However, the Court noted that **the mortgage expressly states that any notice is deemed to have been given when mailed.** The plaintiffs did not allege that the prior servicer failed to send the notice on the date indicated nor did the borrowers otherwise challenge the date of mailing. Thus, the Court held that the plaintiff borrowers failed to state a plausible claim for relief.

In sum, the Eighth Circuit found that the plaintiff borrowers did not have standing to bring an invalid assignment claim, and their notice of intent to accelerate allegations failed to state a plausible claim for relief, and accordingly affirmed the ruling of the trial court.