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5th Circuit Holds Bankruptcy Stay Tolls Statute of Limitations

by Weiner Brodsky Kider PC

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On October 17, 2018, the Fifth Circuit held (1) that a potential transfer of the deed of trust does not prove who is the owner of a note and (2) that a bankruptcy stay does toll deadlines for a Texas foreclosure action and that such tolling period must include every day that an entity is prevented from foreclosing because of a bankruptcy stay.

The consumer in this case executed a home equity note creating a lien on his home and subsequently defaulted on this note. The plaintiff is a national bank who held the note and security interest and who subsequently contracted with multiple servicers to service the loan. The two main issues before the court were whether the bank had standing to file a foreclosure suit and if so whether this suit was barred under the statute of limitations.

On the first issue, the consumer argued that the plaintiff did not have standing because it was not the owner of the note. To support this argument, the defendant stated that (1) he spoke to plaintiff's representatives about the note and they could not find record of his mortgage, and (2) a second bank had assigned the note and security interest to a servicer, meaning that at some point the plaintiff had assigned the note to the second bank. The Court found that the undisputed evidence showed the plaintiff was the owner of the note and the security instrument the entire time, and that the assignment from the second bank to the servicer was ambiguous regarding what interests were transferred. The Court further held that the consumer had not presented sufficient evidence raising an issue of material fact as to the plaintiff bank's ownership of the note, and therefore, summary judgment on this issue was correctly granted by the lower court.

On the second issue, the Fifth Circuit responded to the question of whether there is state law that suspends the foreclosure statute of limitations while a bankruptcy stay is in effect. The Court highlighted that the Texas Supreme Court has not ruled on this issue and that Texas appellate courts are split. Relying on Texas common law tolling principles, the Court held that the statute of limitations for a foreclosure is suspended by a bankruptcy stay.

Further, the Court rejected the defendant's argument that the appropriate way to calculate the tolling period was to exclude the day of the event that triggers the period and include the last day of the period. Instead, the Court held that the tolling period includes the entire time that a petition or motion is pending, from the day it is filed through the day it is resolved—i.e., it includes all days that the bank was forbidden from acting. The Court also clarified that the tolling period is measured in days and should not be shaved down to the exact hour or minute when a stay is removed.

The full opinion may be found here.

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