

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Cuyler v. Freedom Mortgage Corporation

Cuyler · No. No. 2D2025-2101 · Decided June 5, 2026

SUMMARY

The District Court of Appeal of Florida, Second District, dismissed James M. Cuyler's appeal from four nonfinal orders in a mortgage foreclosure action brought by Freedom Mortgage Corporation. The court held that the orders dismissing a counterclaim without prejudice, dismissing a punitive-damages request, granting an extension of time, and striking a jury-trial demand were not appealable under Florida Rule of Appellate Procedure 9.130.

CASE DETAILS

|                       |                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, Second District                                                                     |
| WRITING FOR THE COURT | Morris, Judge; Silberman, Judge; Black, Judge                                                                            |
| JURISDICTION          | District Court of Appeal of Florida, Second District                                                                     |
| DECIDED               | June 5, 2026                                                                                                             |
| DOCKET                | No. 2D2025-2101                                                                                                          |
| DISPOSITION           | dismissed                                                                                                                |
| PROCEDURAL POSTURE    | Cuyler appealed four nonfinal orders entered in Freedom Mortgage Corporation's mortgage foreclosure action against him.  |
| STANDARD OF REVIEW    | The court applied de novo review to the issue of whether the challenged orders were final or appealable nonfinal orders. |
| PRECEDENTIAL VALUE    | Published opinion                                                                                                        |
| PARTIES               | James M. Cuyler v. Freedom Mortgage Corporation                                                                          |

TOPICS

- appellate procedure
- interlocutory appeal
- final judgment rule
- motions to dismiss
- foreclosure

PRACTICE AREAS

- appellate procedure
- civil procedure
- mortgage foreclosure

QUESTIONS PRESENTED

1. Whether the order dismissing Cuyler's fraud counterclaim without prejudice was a final or appealable nonfinal order.
2. Whether the order dismissing Cuyler's request for punitive damages was appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(G).
3. Whether the orders granting an extension of time and striking Cuyler's jury-trial demand were appealable nonfinal orders.

## **HOLDINGS**

1. An order dismissing Cuyler's fraud counterclaim without prejudice, while allowing amendment and not requiring the filing of a new case, was nonfinal and was not appealable under Florida Rule of Appellate Procedure 9.130(a)(3).
2. The order dismissing Cuyler's request for punitive damages was not appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(G) because Cuyler had not filed a motion for leave to amend to assert a punitive-damages claim.
3. The order granting Freedom Mortgage an extension of time and the order striking Cuyler's jury-trial demand were not appealable nonfinal orders because they did not fall within Rule 9.130(a)(3)'s list of appealable orders.

## **KEY QUOTATIONS**

*"Generally, when an order dismisses a complaint 'without prejudice,' that language signifies that the order is not a final order."* (at 1)

*"An exception to this general rule arises when a dismissal is without prejudice but when it is clear from the context that the plaintiff's right to pursue the case requires the filing of a completely new case."* (at 1)

## **FACTUAL BACKGROUND**

Freedom Mortgage Corporation filed a mortgage foreclosure action against James M. Cuyler. During the litigation, the circuit court dismissed Cuyler's fraud counterclaim without prejudice and allowed ten days to amend, dismissed his request for punitive damages, granted Freedom Mortgage an extension of time, and struck Cuyler's jury-trial demand. Cuyler appealed all four orders.

## **PROCEDURAL HISTORY**

The Circuit Court for Hillsborough County entered orders dismissing Cuyler's fraud counterclaim without prejudice with leave to amend, granting Freedom Mortgage's motion to dismiss Cuyler's request for punitive damages, granting Freedom Mortgage an extension of time, and striking Cuyler's jury-trial demand. Cuyler appealed those orders to the Second District. The district court dismissed the appeal because the orders were not appealable nonfinal orders under Florida Rule of Appellate Procedure 9.130.

## **DISPOSITION**

dismissed

#### CASES CITED

- Al-Hakim v. Big Lots Stores, Inc., 161 So. 3d 568, 569 (Fla. 2d DCA 2014)
- Philip J. Padovano, Florida Appellate Practice § 23.2 (2013)
- U.S. Bank Nat'l Ass'n v. Rodriguez, 206 So. 3d 734, 736 (Fla. 3d DCA 2016)
- Keck v. Eminisor, 104 So. 3d 359, 363-64 (Fla. 2012)

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