DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

PHH Mortgage Corporation v. Eric V. Schreiber a/k/a Eric Schreiber and Kathy Schreiber

PHH Mortgage · No. 5D21-1377 · Decided July 15, 2022

SUMMARY

The Florida Fifth District Court of Appeal affirmed a final judgment for Eric and Kathy Schreiber in a second mortgage foreclosure action brought by PHH Mortgage Corporation. The court held that collateral estoppel barred relitigation of whether PHH complied with HUD regulations before initiating foreclosure, while noting that res judicata did not bar the action because it involved a different default period. The court also rejected the borrowers' request to permanently bar future foreclosure proceedings.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	Per Curiam; Evander, J.; Harris, J.; Sasso, J.
JURISDICTION	Florida
DECIDED	July 15, 2022
DOCKET	5D21-1377
DISPOSITION	affirmed
PROCEDURAL POSTURE	PHH Mortgage Corporation appealed a final judgment entered after the trial court granted summary judgment for Eric and Kathy Schreiber in a second mortgage-foreclosure action. The borrowers cross-appealed, arguing that the lender should be forever barred from foreclosing on the mortgage.
STANDARD OF REVIEW	Not expressly stated; the appeal concerned review of a final judgment entered on summary judgment.
PRECEDENTIAL VALUE	Published opinion
PARTIES	PHH Mortgage Corporation v. Eric V. Schreiber a/k/a Eric Schreiber, Kathy Schreiber

TOPICS

foreclosure | summary judgment | res judicata | civil procedure | appellate procedure

PRACTICE AREAS

mortgage foreclosure | civil procedure | appellate procedure | preclusion

QUESTIONS PRESENTED

1. Whether collateral estoppel barred relitigation of the issue of the lender's compliance with HUD regulations before initiating foreclosure.
2. Whether res judicata barred the second foreclosure action because it involved the same parties and mortgage as the earlier foreclosure action.
3. Whether an involuntary dismissal of a foreclosure action permanently bars the mortgagee from later seeking acceleration and foreclosure.

HOLDINGS

1. Collateral estoppel barred relitigation of whether PHH Mortgage Corporation complied with HUD regulations before initiating foreclosure because the identical issue had previously been fully litigated and determined between the same parties in a final decision by a court of competent jurisdiction.
2. Res judicata did not bar the second foreclosure action because the second complaint alleged a different default period, including more recent defaults than those alleged in the first foreclosure case.
3. When a mortgage foreclosure action is involuntarily dismissed under Florida Rule of Civil Procedure 1.420(b), with or without prejudice, the dismissal revokes the acceleration, reinstates the mortgagor's right to continue making payments, and preserves the mortgagee's right to seek later acceleration and foreclosure based on subsequent defaults.
4. The lender abandoned any argument challenging the trial court's application of collateral estoppel because it did not present an argument explaining why that ruling was incorrect.

KEY QUOTATIONS

> *"When a mortgage foreclosure action is involuntarily dismissed pursuant to Rule 1.420(b), either with or without prejudice, the effect of the involuntary dismissal is revocation of the acceleration, which then reinstates the mortgagor's right to continue to make payments on the note and the right of the mortgagee, to seek acceleration and foreclosure based on the mortgagor's subsequent defaults."* (at 2)

FACTUAL BACKGROUND

PHH Mortgage Corporation brought a second foreclosure action against Eric and Kathy Schreiber concerning the same mortgage. The lender's compliance with HUD regulations before initiating foreclosure had been litigated between the same parties in an earlier foreclosure case. The second action alleged a different and more recent default period than the first action.

PROCEDURAL HISTORY

The borrowers prevailed on summary judgment in the second foreclosure action. The trial court concluded that the action was barred by res judicata and that collateral estoppel barred relitigation of whether the lender complied with applicable HUD regulations before initiating foreclosure. The District Court of Appeal agreed that collateral estoppel supported summary judgment, but held that the trial court erred in concluding that res judicata barred the second action because it involved a different, more recent default period. The court affirmed the final judgment and rejected the borrowers' cross-appeal.

DISPOSITION

affirmed

CASES CITED

- Paresky v. Miami-Dade Cnty. Bd. of Cnty. Comm'rs, 893 So. 2d 664, 665–66 (Fla. 3d DCA 2005)
- Provident Funding Assoc., L.P. v. MDTR, 257 So. 3d 1114, 1119 (Fla. 2d DCA 2018)
- Bartram v. U.S. Bank, N.A., 211 So. 3d 1009, 1012 (Fla. 2016)
- Doe v. Baptist Primary Care, Inc., 177 So. 3d 669, 673 (Fla. 1st DCA 2015)

OPINION

PER CURIAM.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED PHH MORTGAGE CORPORATION, Appellant/Cross-Appellee, v. Case No. 5D21-1377 LT Case No. 2019-CA-868-A ERIC V. SCHREIBER A/K/A ERIC SCHREIBER AND KATHY SCHREIBER, Appellees/Cross-Appellants. ________________________________/ Opinion filed July 15, 2022 Appeal from the Circuit Court for Citrus County, Carol A. Falvey, Judge.

Michael Smith, of Burr & Forman LLP, Orlando, for Appellant/Cross-Appellee. David La Croix, McAlpin, for Appellees/Cross-Appellants. PER CURIAM. In this second foreclosure action between the same parties, PHH Mortgage Corporation (“Lender”) appeals a final judgment entered in accordance with an order granting summary judgment in favor of Eric and Kathy Schreiber (“Borrowers”).

We affirm. The trial court correctly concluded that collateral estoppel barred re-litigation of the issue of whether Lender complied with HUD regulations before initiating foreclosure because that same issue was previously litigated by the same parties and decided in the prior case. See, e.g., Paresky v. Miami-Dade Cnty. Bd. of Cnty. Comm’rs, 893 So. 2d 664, 665–66 (Fla.

3d DCA 2005) (“[C]ollateral estoppel applies when the identical issue has been litigated between the same party and the particular matter was fully litigated and determined in a contest that results in a final decision of a court of competent jurisdiction."). 1 In their cross appeal, Borrowers argue that the trial court erred by not forever barring the Lender from seeking to foreclose on the subject mortgage.

This argument is without merit: 1 We agree with Lender that the trial court erred in concluding that the second foreclosure action was barred by res judicata. See, e.g., Provident Funding Assoc., L.P. v. MDTR, 257 So. 3d 1114, 1119 (Fla. 2d DCA 2018) (holding second foreclosure complaint alleging default period overlapping alleged default period in first foreclosure case not barred by res judicata because second default period included more recent defaults).

2 When a mortgage foreclosure action is involuntarily dismissed pursuant to Rule 1.420(b), either with or without prejudice, the effect of the involuntary dismissal is revocation of the acceleration, which then reinstates the mortgagor's right to continue to make payments on the note and the right of the mortgagee, to seek acceleration and foreclosure based on the mortgagor's subsequent defaults.

Bartram v. U.S. Bank, N.A., 211 So. 3d 1009, 1012 (Fla. 2016). AFFIRMED. EVANDER and HARRIS, JJ., concur. SASSO, J., concurs in result only with opinion. 3 Case No. 5D21-1377 LT Case No. 2019-CA-00868-A SASSO, J., concurring in result. I agree with the result reached by the majority, but for a different reason.

Although Lender correctly asserts this action was not barred by res judicata because it alleged a different default period, Lender failed to challenge the court's reliance on collateral estoppel as a basis for summary judgment.

As a result, Lender has abandoned any argument as to whether the court properly applied the collateral estoppel defense. See Doe v. Baptist Primary Care, Inc., 177 So. 3d 669, 673 (Fla. 1st DCA 2015) ("A trial court's decision is presumed correct, thus an appellant who presents no argument as to why a trial court's ruling is incorrect on an issue has abandoned the issue." (internal citations omitted)).

With that alternative basis for affirmance uncontested, I agree the final judgment should be affirmed. 4