

**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)

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