UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Rose v. Select Portfolio Servicing, Inc.

No. 19-50598, United States Court of Appeals for the Fifth Circuit (December 10, 2019)

SUMMARY

The Fifth Circuit held that 11 U.S.C. § 362(c)(3)(A) terminates the automatic stay only with respect to the debtor, not with respect to property of the bankruptcy estate, adopting the majority interpretation. Under Texas Civil Practice and Remedies Code § 16.035, the four-year statute of limitations for foreclosure is tolled during bankruptcy stays; because the debtor's successive bankruptcy filings did not terminate the stay as to the property, the 269-day tolling period rendered the lender's counterclaim for judicial foreclosure timely. The court affirmed summary judgment for the defendants, rejecting the debtor's quiet title and declaratory judgment claims based on an expired limitations period.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Priscilla R. Owen; Leslie H. Southwick; Don R. Willett
JURISDICTION	Federal
DECIDED	December 10, 2019
DOCKET	19-50598
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Western District of Texas; summary judgment
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Sharon D. Rose v. Select Portfolio Servicing, Inc.; US Bancorp

TOPICS

statute of limitations · foreclosure · bankruptcy · automatic stay · summary judgment

PRACTICE AREAS

Civil Procedure · Real Estate · Bankruptcy

QUESTIONS PRESENTED

1. Whether the statute of limitations had expired on Defendants' power to foreclose on Rose's property, specifically whether the bankruptcy stays tolled the limitations period sufficiently such that the counterclaim for judicial foreclosure was timely filed.

HOLDINGS

1. The statute of limitations does not bar the counterclaim because the bankruptcy stays tolled the limitations period for at least 269 days, and the counterclaim was filed within that tolling period.

KEY QUOTATIONS

> *"Under Texas Civil Practice and Remedies Code § 16.035(a), '[a] person must bring suit for the recovery of real property under a real property lien or the foreclosure of a real property lien not later than four years after the day the cause of action accrues.'"* (p. 4)

> *"Similarly, '[a] sale of real property under a power of sale in a mortgage or deed of trust that creates a real property lien must be made not later than four years after the day the cause of action accrues.'"* (p. 4)

> *"As the First Circuit aptly noted in In re Smith, § 362(a) 'operates as a stay of certain actions in three categories: against the debtor, the debtor's property, and property of the bankruptcy estate.'"* (p. 6)

> *"Congress knew how to terminate the entire stay, and in fact did so in the very next section of the statute."* (p. 6)

> *"We are not convinced that this plain meaning interpretation substantially harms creditors."* (p. 7)

FACTUAL BACKGROUND

In 2005, Rose and her husband purchased property with a purchase-money mortgage later assigned to US Bank, with SPS servicing the loan. After their 2010 divorce, Rose's husband was awarded the home subject to a lien requiring conveyance to Rose upon default. No payments were made since March 2011. Defendants sent a Notice of Default in October 2013 and a Notice of Acceleration in March 2014, setting a May 2014 foreclosure sale. Rose filed a state court action blocking the sale, which was removed and dismissed with prejudice. Over the next three years, Defendants sent multiple Notices of Acceleration, each time Rose filed for bankruptcy just before the scheduled sale, totaling at least 269 days of bankruptcy stays.

PROCEDURAL HISTORY

Rose initially sued in Texas state court in 2014 to enjoin foreclosure; removed to federal court; dismissed with prejudice by stipulation. After multiple bankruptcy filings and additional foreclosure attempts, Rose sued again in state court in 2018 to quiet title, claiming statute of limitations had expired. Defendants removed, counterclaimed for judicial foreclosure. Both sides moved for summary judgment; district court granted defendants' motion and entered final judgment of foreclosure.

DISPOSITION

affirmed

CASES CITED

- Shepherd ex rel. Estate of Shepherd v. City of Shreveport, 920 F.3d 278 (5th Cir. 2019)
- DeVoss v. Sw. Airlines Co., 903 F.3d 487 (5th Cir. 2018)
- Germain v. US Bank Nat'l Ass'n as Tr. for Morgan Stanley Mortgage Loan Tr. 2006-7, 920 F.3d 269 (5th Cir. 2019)
- FDIC v. Dawson, 4 F.3d 1303 (5th Cir. 1993)
- HSBC Bank USA, N.A. v. Crum, 907 F.3d 199 (5th Cir. 2018)
- Peterson v. Tex. Commerce Bank-Austin, Nat'l Ass'n, 844 S.W.2d 291 (Tex. App. 1992)
- In re Smith, 910 F.3d 576 (1st Cir. 2018)
- In re Gautreaux, No. 14-10226, 2014 WL 4657433 (Bankr. E.D. La. Sept. 16, 2014)
- In re Williford, No. 13-31738, 2013 WL 3772840 (Bankr. N.D. Tex. July 17, 2013)
- In re Scott–Hood, 473 B.R. 133 (Bankr. W.D. Tex. 2012)
- In re Rinard, 451 B.R. 12 (Bankr. C.D. Cal. 2011)
- In re Holcomb, 380 B.R. 813 (B.A.P. 10th Cir. 2008)
- In re Paschal, 337 B.R. 274 (Bankr. E.D.N.C. 2006)
- In re Reswick, 446 B.R. 362 (B.A.P. 9th Cir. 2011)
- In re Alvarez, 432 B.R. 839 (Bankr. S.D. Cal. 2010)
- In re Jones, 330 B.R. 360 (Bankr. E.D.N.C. 2006)
- In re Jupiter, 344 B.R. 754 (Bankr. D.S.C. 2006)
- In re Baldassaro, 338 B.R. 178 (Bankr. D.N.H. 2006)
- In re Charles, 332 B.R. 538 (Bankr. S.D. Tex. 2005)
- In re Condor Ins. Ltd., 601 F.3d 319 (5th Cir. 2010)
- Smith v. Me. Bureau of Revenue Servs., 590 B.R. 1 (D. Me. 2018)

CITED IN

- Rose v. Select Portfolio Servicing, Inc., Rose v. Select Portfolio Servicing, Inc., 945 F.3d 226 (5th Cir. 2019)
- Rose v. Select Portfolio Servicing, Inc., Rose v. Select Portfolio Servicing, Inc., 945 F.3d 226 (5th Cir. 2019)
