

6th Cir Upholds Rejection of "Robo-Signing" Challenge to Foreclosure

The U.S. Court of Appeals for the Sixth Circuit recently rejected a borrower's "robo-signing" challenge to his foreclosure. In so ruling, the Court also held that a Michigan state court's issuance of a preliminary injunction against a mortgagee in a foreclosure action did not bar subsequent removal and entry of summary judgment in favor of the mortgagee by a federal district court.

A copy of the opinion is available at: [Link to Opinion](#)

The borrower obtained a mortgage loan, and the mortgage was later assigned. The new mortgagee continued to send the borrower his monthly statements. After the borrower defaulted, the mortgagee initiated foreclosure proceedings and a sale date was set.

The borrower filed suit against the mortgagee in Michigan's Wayne County Circuit Court claiming that the signatures on the assignment of mortgage were forged by "robo-signers", or that the signers had no authority to execute the assignment, and that the deficiencies in the assignment violated Michigan state law regarding nonjudicial foreclosure-by-advertisement.

The matter was set for hearing on the borrower's request for a preliminary injunction. However, the mortgagee did not attend that hearing and a preliminary injunction was issued. The borrower later filed a "Default Request, Affidavit, and Entry" form requesting the entry of a default judgment. The lines titled "Date" and "Court Clerk" on the form were left blank. The state-court docket did not display any entries concerning a default judgment.

The mortgagee removed the case to federal court on the basis of diversity jurisdiction on the same day the borrower filed his request for an entry of default in state court. The district court denied the borrower's motion to remand to state court, and later granted the mortgagee's motion for summary judgment. The borrower appealed citing supposed procedural errors and a supposed misapplication of state law.

On appeal, the Sixth Circuit held that district court did not misapply Michigan substantive law because the borrower was not prejudiced by the alleged "robo-signing" deficiencies in the assignment of mortgage.

The Court noted that, under both *Kim v. JPMorgan Chase Bank, N.A.*, 825 N.W.2d 329 (Mich. 2012) and *Conlin v. Mortg. Elec. Registration Sys., Inc.*, 714 F.3d 355 (6th Cir. 2013), Michigan law treats defects in a foreclosure proceeding as voidable not void ab initio, and accordingly, borrowers must show that they were prejudiced by the failure to comply in that they would have been in a better position to preserve their interest in the property absent the mortgagee's noncompliance with Mich. Comp. Laws § 600.3204.

The Sixth Circuit held that the allegations of "robo-signing" in *Conlin* were similar to the borrower's allegations in this case, and that the borrower here also failed to meet the burden of demonstrating he was prejudiced. The Court noted that the borrower introduced no evidence that he would be subjected to double liability and merely made conclusory statements without supporting facts. Furthermore, the Court also noted that the borrower here failed to show that the assignment deficiencies placed him in a worse position to protect the interest in his home. In addition, the Sixth Circuit held that the assignment deficiencies could not have caused the borrower confusion as to whom he should pay, because he received his monthly mortgage statements from the mortgagee both before and after the assignment.

The Sixth Circuit also disagreed with the borrower's assertion that the mortgagee was required to move to set aside the state court's default judgment and preliminary injunction before the district court could issue a summary judgment order. In so ruling, the Court reasoned that a default judgment was never in fact entered in state court, and therefore there was no requirement to set aside the judgment before the district court could issue a summary-judgment order.

The Sixth Circuit further held that the state court's issuance of a preliminary injunction did not preclude the federal district court's summary judgment order. The Sixth Circuit ruled that Federal Rule of Civil Procedure 81(c) governs the mode of proceedings in federal court after removal, and that the mortgagee was not bound by state court procedures to challenge the entry of the state court's preliminary injunction.

The Court explained that a preliminary injunction maintains the status quo until a case can be deciding on its merits. Accordingly, the Sixth Circuit held that "a final order on the merits extinguishes a preliminary injunction." Thus, although the Court found that the state court issued

preliminary injunction survived removal, the issuance of the summary judgment order by the district court was a final order that immediately extinguished the injunction. Therefore, the Court held that the mortgagee was not procedurally obligated to move to set aside the preliminary injunction before the district court could grant summary judgment.

The Sixth Circuit also held that the district court did not err in denying the borrower's motion to remand. The Court found that because a default judgment was never in fact entered in state court, it could not render the district court's denial of Borrower's motion to remand erroneous. Furthermore, the Court found that 28 U.S.C. § 1450 explicitly contemplated instances where an injunction was issued prior to removal. Under 28 U.S.C. § 1450, the state court's preliminary injunction remained effective and did not bar removal of the case.