

## **NON-COMPLIANCE WITH TEXAS FORECLOSURE RULE DID NOT VOID FORECLOSURE**

The U.S. Court of Appeals for the Fifth Circuit held that the trial court had jurisdiction to hear a case based on a final foreclosure order entered in Texas state court, and that the borrowers' due process rights were not violated where the state court entered a foreclosure order without first having a hearing, in violation of the state statute.

Because the foreclosure order was valid, the trial court correctly found the foreclosing mortgagee was entitled to quiet title. Accordingly, the Fifth Circuit affirmed the ruling of the trial court entering summary judgment in favor of the defendant mortgagee and against the plaintiff borrowers.

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

The borrowers obtained a loan secured by a mortgage on their property. The note and mortgage evidencing the loan were assigned to the defendant bank.

The borrowers defaulted on the loan in 2011, and on July 11, 2011 the bank notified the borrowers of its intent to accelerate the debt if they did not cure the default. The borrowers failed to do so, and the bank filed a foreclosure suit in Texas state court in October 2013.

The borrowers filed an answer in the foreclosure suit, and the matter was set for hearing on Dec. 20, 2013. However, the Texas state court issued an order ("foreclosure order") permitting the bank to proceed with foreclosure of the loan and sale of the property on Dec. 13, 2013.

On Dec. 20, 2013, the borrowers moved to vacate the foreclosure order and reopen the case, which motion was granted on Jan. 9, 2014 ("vacating order"). Nonetheless, on April 10, 2014 the bank sent a copy of the foreclosure order and a notice of sale to the borrowers. The bank foreclosed on the property on May 6, 2014, and purchased the property at a foreclosure sale.

On June 4, 2014, the borrowers filed suit in a different Texas state court asserting claims for trespass to try title, violation of the Texas Civil Practice and Remedies Code, and request for preliminary injunction. The bank removed the action to federal court, and filed a counterclaim seeking a

declaratory judgment, quiet title, and judicial foreclosure based on breach of contract.

In granting summary judgment in favor of the bank, the federal trial court declared that the May 6, 2014 foreclosure sale was valid and entered an order granting quiet title to the property to the bank. The borrowers moved for reconsideration, which was denied. The borrowers appealed.

On appeal, the borrowers made three arguments: (1) that the federal trial court's assumption of jurisdiction violated the Rooker-Feldman doctrine, (2) that the federal trial court erred in granting summary judgment to the bank because the state court's vacating order was proper, and thus the foreclosure order was invalid, and (3) their due process rights were violated under the Texas and U.S. Constitutions when the state court entered the foreclosure order without first holding a hearing as required by Texas law.

In affirming the ruling of the federal trial court, the Fifth Circuit first reviewed the Texas foreclosure law that formed the basis of the case, Texas Rule of Civil Procedure 736. A Rule 736 proceeding is not "an ordinary lawsuit," but rather "a faster, more streamlined alternative to judicial foreclosure." Under Rule 736, once a petitioner files an application for foreclosure and the respondent files a response, the matter is set for an evidentiary hearing. After an order is obtained, the person may proceed with the foreclosure.

A Rule 736 order "is without prejudice and has no res judicata . . . or other effect in any other judicial proceeding." Rule 736 also provides an exclusive procedure for challenging an order, stating that "[a]ny challenge to a Rule 736 order must be made in a suit filed in a separate . . . proceeding in a court of competent jurisdiction."

The Fifth Circuit then addressed the issue of jurisdiction. The borrowers argued that the federal trial court exceeded its jurisdictional authority in "unilaterally reviv[ing] the vacated foreclosure order and modif[ying] the final disposition of the foreclosure in the Trial Court" in violation of the Rooker-Feldman doctrine.

As you may recall, "the Rooker-Feldman doctrine holds that inferior federal courts do not have the power to modify or reverse state court judgments' except when authorized by Congress." The doctrine applies to final judgments.

In analyzing the issue, the Fifth Circuit first noted there were two potentially applicable orders: the foreclosure order and the vacating order. The bank argued that the vacating order was improper because Rule 736 prohibits parties from challenging Rule 736 foreclosure orders in the same proceeding.

The Fifth Circuit agreed and held that the Rooker-Feldman doctrine was inapplicable to the bank's counterclaim, because: (1) the vacating order was not a final order, and (2) the vacating order was void under Texas law, and Rooker-Feldman does not preclude review of void state court judgments.

In ruling that the vacating order was void, the Fifth Circuit determined that because a challenge to a Rule 736 order must be made in a separate proceeding, the state trial court had no jurisdiction to review the foreclosure order, and the borrowers' motion to vacate was an impermissible challenge to the foreclosure order.

Because the vacating order was void, the foreclosure order was the final order in the state court case. Thus, there was a question regarding whether the federal trial court had jurisdiction to consider an attack on the foreclosure order.

In ruling that Rooker-Feldman did not apply, the Fifth Circuit noted that it generally does not apply "to state decisions that would not be given preclusive effect under doctrines of res judicata and collateral estoppel." Here, that was not the case.

After determining that it had jurisdiction, the Fifth Circuit next turned to whether the federal trial court correctly entered summary judgment in favor of the bank.

The borrowers argued that the foreclosure sale was invalid and therefore the bank did not hold valid title to the property. The crux of their argument was that the state court properly vacated the foreclosure order. The Fifth Circuit disagreed, again ruling that the state court did not have jurisdiction to enter the vacating order.

The borrowers further argued that the foreclosure order was void. The Fifth Circuit again disagreed, noting that although the state court erred by failing to hold a hearing before entering the foreclosure order, the order was not void, but merely voidable.

Thus, the Fifth Circuit ruled that the federal trial court correctly granted summary judgment in favor of the bank.

Finally, with respect to the borrowers' argument that the state court's issuance of the foreclosure order without hearing denied them procedural due process, the Fifth Circuit held that the borrowers' claim failed on the merits because "Texas law afforded [the borrowers] an adequate process for challenging" the foreclosure order.