

THIRD PARTY PURCHASING PROPERTY DURING FORECLOSURE HAD NO STANDING TO APPEAL

The District Court of Appeal of Florida, Second District, recently dismissed the appeal of a foreclosure judgment by a third party purchaser of the collateral property, where the third party purchased the collateral property while it was the subject of a foreclosure proceeding and a recorded lis pendens.

In so ruling, the Appellate Court confirmed a third party purchaser has no standing to appeal a final judgment of foreclosure where the purchaser did not appeal a prior denial of its motion to intervene, even though the third party purchaser's name was erroneously placed in the style of the uniform final judgment of foreclosure

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

A mortgagee filed a foreclosure complaint and recorded its lis pendens on residential property owned by a borrower. Thereafter, a third party purchaser moved to substitute as a real party in interest or to intervene, and alleged the borrower sold the property to the purchaser.

The trial court denied the third party purchaser's motion in an order that also provided the purchaser would be served with future pleadings and orders. The third party purchaser did not appeal this final order.

The trial court also refused to allow the third party purchaser to participate at trial, due to the mortgagee's objection that the purchaser was not a party. The trial court entered a uniform final judgment of foreclosure with the third party purchaser's name erroneously placed in the style of judgment.

The third party purchaser appealed the final judgment and the mortgage assignee moved to dismiss the appeal. The Appellate Court held the appeal must be dismissed because the third party purchaser was not a party and lacked standing.

As you may recall, the general rule is that a non-party is a stranger to the record who cannot transfer jurisdiction to the appellate court.

In addition, in *Market Tampa Invests., LLC v. Stobaugh*, 40 Fla. L. Weekly D2047 (Fla. 2d DCA Sept. 2, 2015), the Appellate Court previously held that an owner who obtained title during a foreclosure proceeding and was denied intervention could appeal the denial of intervention, but could not challenge the merits of a final judgment.

The third party purchaser relied on several opinions, including two where the appellant was the current owner of the property, but not the original borrower subject to the foreclosure lawsuit.

The Appellate Court distinguished these two opinion, however, as: (1) *Clay County Land Trust No. 08-04-25-0078-014-27, Orange Park Trust Services, LLC v. JPMorgan Chase Bank, National Ass'n*, 152 So. 3d 83 (Fla. 1st DCA 2014), provided no indication of a dispute regarding the appellant's status as a party in the trial court, and (2) *Portfolio Investment Corp. v. Deutsche Bank National Trust Co.*, 81 So. 3d 534, 536 (Fla. 3d DCA 2012), involved unique circumstances that gave standing, including the appellant's active participation in the trial court proceedings without objection and with the acquiescence of the lower court.

The Appellate Court also concluded the remaining cases cited by the purchaser were not sufficiently analogous to support standing to appeal.

Accordingly, the Appellate Court dismissed the third party purchaser's appeal.