

Third Circuit Reaffirms No SOL for Foreclosing Accelerated Loan

The United States Court of Appeals for the Third Circuit recently reaffirmed that a foreclosure action commenced more than six years after the loan was accelerated could still be within the applicable statute of limitations. See In re: Gordon Allen Washington; Gordon Allen Washington v. Bank of New York Mellon, As Tr. For the Certificate-Holders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-5, 2016 WL 5827439 (3d Cir. Sept. 30, 2016). In the case the borrower executed a mortgage and promissory note in February 2007. He defaulted soon thereafter, and the lender accelerated the loan in November 2007 and initiated the foreclosure action in December 2007. The action was dismissed in 2013 for failure to prosecute, and the borrower filed for bankruptcy in 2014. In the bankruptcy action, the borrower argued that the lender could no longer foreclose because the statute of limitations, which the borrower claimed was six years, had run. The Bankruptcy Court agreed and granted the borrower's motion for summary judgment. On appeal, the District Court reversed and found the limitations period had not run. On appeal, the Third Circuit affirmed.

Under N.J.S.A. 2A:50-56.1, an action to foreclose a residential mortgage shall not be commenced following the earliest of: (i) six years from the maturity date of the note or mortgage; (ii) 36 years from the date of the recording; or (iii) 20 years from the date of default. The borrower argued that, because the lender had accelerated the loan in November 2007 and called the entire loan due, November 2007 was the "maturity date" and the statute of limitations lapsed in 2013. The Third Circuit disagreed, however, and held that the borrower's interpretation of the statute would render the 20-year post-default statute of limitations period "a nullity" because "given that all § 2A:50-56.1 actions involve foreclosure - It is, after all, a foreclosure statute of limitations - the 20-year period from subsection 'c' would never be used." Therefore, the lender's limitations period had not expired.