5TH CIR HOLDS NO STATUTE OF LIMITATIONS ON TEXAS HOME EQUITY CLAIMS

The U.S. Court of Appeals for the Fifth Circuit recently held that no statute of limitations applies to a mortgage loan borrower’s claims of violations of the requirements for home equity loans contained in section 50(a)(6) of the Texas Constitution.

In so ruling, the Court recognized and applied the Texas Supreme Court’s recent ruling in Wood v. HSBC Bank USA, N.A., 505 S.W.3d 542 (2016), which reached the same conclusion, and held that the borrower did not waive the issues in Wood for purposes of the appeal. A link to the opinion in Ocwen Loan Servicing, LLC v. Berry is available at: Link to Opinion.

Following the borrower’s default on his mortgage loan, the mortgagee filed a foreclosure complaint more than four years after the loan origination. In response to the foreclosure complaint, the borrower raised as his affirmative defense and counterclaim that the mortgagee’s security interest was unenforceable due to the violations of section 50(a)(6) of the Texas Constitution. The mortgagee replied to the counterclaim asserting that the claims were barred by the applicable four-year statute of limitations, and in the alternative, that the lender was entitled to equitable subrogation.

Following cross-summary judgment motions, the trial court granted summary judgment in favor of the mortgagee based, in part, on Fifth Circuit precedent applying the four-year statute of limitations to claims and defenses under section 50(a)(6) of the Texas Constitution. See Priester v. JP Morgan Chase Bank, N.A., 708 F.3d 667, 674 (5th Cir. 2013).

The trial court further determined that the borrower waived by failing to adequately plead his arguments presented at summary judgment that even if the statute of limitations did apply, his claims were still timely under Tex. Civ. Prac. & Rem. Code s. 16.069, which allows for otherwise time-barred claims to be asserted as counterclaims to actions arising out of the same transaction or occurrence or under a theory of recoupment.

The borrower appealed. Subsequent to the trial court’s ruling, the Texas Supreme Court issued its ruling in Wood v. HSBC Bank USA, N.A., which explicitly cited and rejected the Fifth Circuit precedent applying the Texas residual four-year statute of limitations.
The parties stipulated in their arguments before the Fifth Circuit that the holding in Wood abrogated the Fifth Circuit precedent. However, the mortgagee argued that the borrower waived his arguments that Wood controlled in the present matter by failing to raise the argument in its initial brief despite the Wood opinion being released prior to the borrower’s opening brief.

The Fifth Circuit rejected the mortgagee’s waiver argument. In so ruling, the Court held that although the general rule is that issues not briefed are waived, this rule is “a prudential construct that requires the exercise of discretion.” The Court explained that because the borrower’s essential argument in the trial court and before the Fifth Circuit was that the statute of limitations did not apply that the Fifth Circuit would need to examine the issue as to the applicability of the statute of limitations and thus, the Wood opinion, based upon the borrower’s arguments. Further, the Court explained that application of Wood was “a pure question of law” for which there was “a well settled discretionary exception to the waiver rule.” Accordingly, the Fifth Circuit determined that in light of the holding in Wood, the trial court erred in determining that the borrower’s claims and defenses were barred by the statute of limitations.

The Fifth Circuit remanded the matter to the trial court for further consideration of the borrower’s assertions that the loan violated section 50(a)(6) of the Texas Constitution and consideration of the mortgagee’s equitable subrogation claims.