

Locke Lord QuickStudy: The Massachusetts Supreme Judicial Court Ends Confusion on Right to Reinstate Prior to ?Foreclosure

Locke Lord LLP

WRITTEN BY

Joseph A. Farside, Jr. | Krystle Guillory Tadesse | Stephanie A. Sprague | Robert J. Durant, Jr.

RELATED OFFICES

[Providence](#)

On November 25, 2020, the Supreme Judicial Court of Massachusetts (“SJC”) issued a decision in *Thompson v. JPMorgan Chase Bank, N.A.*, SJC-12798, ___ Mass ___ (2020), holding that state law overrides the requirement in the mortgage to inform the borrower of the right to reinstate after acceleration. The decision provides clarity to a First Circuit Court of Appeals decision that the First Circuit previously withdrew for reconsideration.

In *Thompson*, after the borrowers defaulted, they were sent a notice of default providing the amount past due and the date by which they could cure the default before acceleration occurred. The notice of default stated that the borrowers could “avoid foreclosure by paying the total past-due amount before a foreclosure sale takes place.” The borrowers claimed that the foreclosure was invalid because the notice of default did not strictly comply with the terms of the mortgage where it did not state that the right to reinstate after acceleration was limited to “five days before sale of the Property.” The First Circuit held that because the notice failed to include the five-day limitation specified in the mortgage, it was potentially deceptive. *See Thompson v. JPMorgan Chase Bank, N.A.*, 915 F.3d 801, 805 (1st Cir. 2019).

The mortgagee moved the First Circuit for reconsideration of the decision, and argued for the first time that the language in the notice of default concerning the right to reinstate up to the time of the foreclosure sale was required to be stated without variation, pursuant to 209 C.M.R. § 56.04. As a result of this argument, the First Circuit withdrew its earlier decision and certified the question of state law to the SJC. *See Thompson v. JPMorgan Chase Bank, N.A.* 931 F.3d 109, 111 (1st Cir. 2019).

On review of the certified question, the SJC determined that the notice of default that allowed reinstatement up to the foreclosure sale, as opposed to the five-day limitation in paragraph 19 of the mortgage, was not inaccurate or deceptive in a manner that would render the subsequent foreclosure sale void. This is noteworthy because Massachusetts generally requires strict compliance with the terms of the mortgage before initiating a foreclosure. *See Pinti v. Emigrant Mtg. Co.*, 472 Mass. 226, 240 (2015). However, the SJC held that, because the provisions of the mortgage stated that the rights and obligations contained therein were also subject to the requirements of applicable law, the regulation overrode the mortgage time limits on reinstatement.

The Court stated, “[t]hus, the language of the mortgage itself gives notice to the plaintiffs that the five-day

limitation of paragraph 19 could be extended either by the discretion of the mortgagee or, as is the case here, relevant provisions of State law.” The SJC also reiterated that strict compliance “does not require a mortgagee to demonstrate punctilious performance of every single mortgage term,” quoting *Pinti*, 472 Mass. at 235.

To ensure that title after a foreclosure sale is safe from legal challenge, “punctilious performance” is the safest course. However, where the terms of a notice vary in a way that is not deceptive to the borrower or involve rights that could be waived by the mortgagee, a borrower’s legal challenge to the foreclosure should fail. Specifically, this decision resolves uncertainty in the First Circuit whether a notice of default is defective if it does not explicitly describe the five-day limitation on the right to reinstate after acceleration stated in Paragraph 19.

RELATED INDUSTRIES + PRACTICES

- [Litigation + Trial](#)