

DISTRESSED REAL ESTATE



Statute of limitations missed in foreclosure, they argued

Michael L. Cotzen
Cotzen Law, P.A.

Ronnie Bronstein
Gary N. Mansfield
Jennifer M. Murillo
Mansfield Bronstein, PA

The Peninsula Condominium Association got a windfall in May when a judge ruled US Bank had waited too late to refile a foreclosure case, missing the statute of limitations by 10 days.

The association, which had already foreclosed on a vacant unit to recover unpaid association fees, was able to take clear title of the \$1.3 million condo.

Michael Cotzen, Ronnie Bronstein, Gary Mansfield and Jennifer Murillo of Mansfield Bronstein in Hollywood argued the statute of limitations started running when the bank accelerated the mortgage on Nov. 9, 2007. The bank filed a foreclosure case in February 2008, but it was dismissed when the bank's attorneys didn't show up for trial in 2011.

The bank refiled the foreclosure on Nov. 19, 2012, and argued the date

the first foreclosure was filed was the date when the statute began running.

In May, Miami-Dade Circuit Judge Peter Lopez ruled the second foreclosure action was time-barred. The case was complicated by a lack of case law because banks never used to wait so long to foreclose, and in the rare instances when they did they didn't appeal for fear of creating bad precedent, Cotzen said. The bank did not appeal in this case.

"We see cases unfortunately all the time that have been going on for years and years," Mansfield said. "Part of the problem is the sheer number of foreclosure cases."

The delays have made it difficult for the associations to collect their dues.

"The reason this is such a significant case is because a lot of these associations find themselves between a rock and a hard place," said Bronstein, noting condominium and homeowner associations used to just wait for the bank to foreclose on a property that had been abandoned. Now, associations are increasingly foreclosing on the properties.

The association had been renting the unit since it took title in 2010. Now, with no threat that the bank will try to take



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the three-bedroom, three-bath condo, the association is free to sell it.

One side benefit for the association — delinquency rates in the Aventura building have dropped to 1 percent, Mansfield said.

Before the association began foreclosing on delinquent units, 20 percent of the building was behind on dues.

Partners Bronstein and Mansfield handled the transactional part of the case and partner Cotzen and associate Murillo litigated it.