

## Third Circuit Confirms 20-Year Statute of Limitations in Mortgage Foreclosure Actions in New Jersey

On September 30, 2016, in *Gordon Allen Washington v. Bank of New York (In Re Gordon Allen Washington)*, No. 15-3210, the Third Circuit issued a non-precedential decision confirming that the statute of limitations in mortgage foreclosure actions in New Jersey is twenty years

As set forth by the Third Circuit, an action to foreclosure on a residential mortgage in New Jersey shall not be commenced following the earliest of:

"a. Six years from the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note, bond, or other obligation secured by the mortgage, whether the date is itself set forth or may be calculated from information contained in the mortgage or note, bond, or other obligation, except that if the date fixed for the making of the last payment or the maturity date has been extended by a written instrument, the action to foreclose shall not be commenced after six years from the extended date under the terms

of the written instrument; ...

c. Twenty years from the date on which the debtor defaulted, which default has not been cured, as to any of the obligations or covenants contained in the mortgage or in the note, bond, or other obligation secured by the mortgage, except that if the date to perform any of the obligations or covenants has been extended by a written instrument or payment on account has been made, the action to foreclose shall not be commenced after 20 years from the date on which the default or payment on account thereof occurred under the terms of the written instrument." N.J. Stat. Ann. § 2A:50-56.1.

In February 2007, Debtor Gordon Washington purchased property in Madison, New Jersey, and signed a note and mortgage in connection with the purchase. The note identified the maturity date as March 1, 2037, although the mortgagee had the right to accelerated payment if the debtor breached. Several months after executing the note and mortgage, the debtor stopped mak-

ing payments. According to the record, a mortgage document with an effective date of November 2007 indicated that the full amount of the loan was "due and owing" -- which the debtor interpreted to be an invocation of the acceleration clause.

In December 2007, the creditors filed a foreclosure complaint, which provided that the "whole unpaid principal sum" on the subject property "shall be now due." In 2013, the state court dismissed the foreclosure action without prejudice for failure to prosecute. In 2014, the debtor filed for bankruptcy, and in that process argued that the creditors' interest in the property had been extinguished based upon the expiration of the statute of limitations. The Bankruptcy Court agreed, holding that the statute of limitations was in fact expired when the debtor filed for bankruptcy. The District Court reversed, citing N.J. Stat. Ann. § 2A:50-56.1(c) and holding that the 20-year statute of limitations had not yet expired for the creditors.

Continued on next page

To interpret the statute, the Third Circuit analyzed its text, and held that the text supported the creditors' position. While subsection (a) spoke to the maturity date of the note, it was silent on any shortening of the expiration period through demand for full payment. Here, the Court held, the maturity date of the subject Note was in 2037, and was not altered by any writing. By contrast, subsection (c) specifically addresses a default followed by foreclosure, which "fit comfortably with our facts."

The Third Circuit also noted that, in statutory construction, "every clause and word of a statute" should be given effect if possible. Applying this standard, the Court found that

subsection (c) would become a nullity under the debtor's interpretation: if the mere filing of the foreclosure triggered subsection (a), then subsection (c) would never be used.

In conclusion, the Third Circuit affirmed the District Court's decision that the statute of limitations had not yet run, because the debtor's interpretation of N.J. Stat. Ann. § 2A:50-56.1 did not follow the plain language of the statute, and "renders a portion of it superfluous." ■

---

*For more information, contact Scott Parker at [scott.parker@piblaw.com](mailto:scott.parker@piblaw.com).*

---

## D.C. Circuit Finds that the Current Structure of the Consumer Financial Protection Bureau Is Unconstitutional

**O**n October 11, 2016, in *PHH Corp. v. CFPB*, the D.C. Circuit issued an extensive opinion holding that the current structure of the Consumer Financial Protection Board ("CFPB") is unconstitutional. The complaint was filed by a mortgage lender, PHH, in response to an administrative enforcement action brought by the CFPB resulting in a \$109 million disgorgement order against PHH.

PHH sought to vacate the order by arguing that CFPB's status as an independent agency, headed by a single Director, violated Article II of the Constitution. The D.C. Circuit agreed, granting PHH's petition for review, vacating the CFPB's order, and remanding for further proceedings. The Court found that the CFPB's structure was a "gross departure from settled historical practice," in that there had never

been an independent agency before that exercised substantial executive authority that was headed by one person.

While PHH argued that the entire CFPB needed to be shut down, the D.C. Circuit did not go that far. Rather, it held that it would follow its own precedents and sever the unconstitutional "for-cause" provision in the Dodd-Frank Act from the rest of the statute, without impacting the "ongoing operations of the CFPB." The D.C. Circuit ordered that the CFPB operate as an executive agency, giving the President of the United States the power to "supervise and direct the Director of the CFPB," including the power to remove the Director at any time. ■

---

*For more information, contact Sanjay Ibrahim at [sanjay.ibraham@piblaw.com](mailto:sanjay.ibraham@piblaw.com) or Jim Berg at [jim.berg@piblaw.com](mailto:jim.berg@piblaw.com)*

### Practice Areas

Mortgage Banking    Bankruptcy    Reinsurance / Insurance    Repurchase Solutions / Mortgage Fraud

Consumer Finance    Fair Lending    Commercial Litigation    Corporate Matters

Regulatory & Supervisory Matters    General Counsel    Securities Litigation

Design Professionals    Intellectual Property

Visit [www.piblaw.com](http://www.piblaw.com) for more information.