

PUBLICATION

Big Win for our Florida team in *U.S. Bank N.A. v. Bartram*

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In *U.S. Bank N.A. v. Bartram*, ____ So.3d ____, 2014 WL 1632138 (Fla. 5th DCA April 25, 2014), the Fifth District Court of Appeals for the State of Florida reversed a decision from the Circuit Court of St. Johns County addressing whether the acceleration of payments due under a note and mortgage in a dismissed foreclosure action triggers application of the statute of limitations. Reversing the trial court, the Fifth DCA held that the statute of limitations did not prevent a foreclosure action based upon a subsequent and separate default, even if the statutory period had expired.

The District Court of Appeals relied in large part on *Singleton v. Greymar Associates*, 882 So.2d 1004 (Fla. 2004). The *Singleton* Court held that a dismissal of prejudice in a mortgage foreclosure action does not bar a subsequent foreclosure action on the same mortgage, even if the mortgagee accelerated the note in the first suit. The Fifth District Court notably determined that:

"... if a new and independent right to accelerate exists in a *res judicata* analysis, there is no reason it would not also exist via-a-vis a statute of limitations issue. A new and independent right to accelerate would have to mean that the new defaults presented new causes of action, regardless of the fact their due dates had been accelerated in a prior suit."

U.S. Bank v. Bartram, 2014 WL 1632138, at *6 (Fla. 5th DCA April 25, 2014).

Because a "subsequent, separate default creates a new and independent right to accelerate payment in a second foreclosure action where the lender triggered acceleration of the debt in the prior [foreclosure action]," a Bank may bring a second foreclosure action so long as it is brought within the new limitations period. *Id.* at *6. This is a big win for financial institutions across Florida as they continue to foreclose on loans that defaulted more than five years ago.