

REVERSE MORTGAGE SOLUTIONS, INC., Plaintiff(s), v. THE UNKNOWN HEIRS, BENEFICIARIES, DEVISEES, GRANTEES, ASSIGNEES, LIENORS, CREDITORS, TRUSTEES AND ALL OTHERS WHO MAY CLAIM AN INTEREST IN THE ESTATE OF RUBY LEE HAYES a/k/a RUBY L. HAYES a/k/a RUBY HAYES, Deceased, et al., Defendants.

Circuit Court, 11th Judicial Circuit in and for Miami-Dade County. Case No. 2014-24174-CA. December 23, 2016. Migna Sanchez-Llorens, Judge.

ORDER ON DEFENDANTS' MOTION
FOR INVOLUNTARY DISMISSAL

THIS CAUSE came before the Court for a non-jury trial on Plaintiff Reverse Mortgage Solution, Inc.'s (“*Plaintiff*” or “*Reverse Mortgage Solutions*”) Complaint against Defendants The Unknown Heirs, Beneficiaries, Devisees, Grantees, Lienors, Creditors, Trustees and All Others Who May Claim an Interest In The Estate Of Ruby Lee Hayes A/K/A Ruby L. Hayes A/K/A Ruby Hayes, Deceased, et al. (collectively, “*Defendants*”). The Court, having heard testimony, received documentary evidence, having heard argument of counsel, and being otherwise fully advised in the premises, hereby FINDS as follows:

BACKGROUND

On October 26, 2007, Ruby Lee Hayes entered into and executed a Home Equity Conversion Mortgage with Countrywide Bank, FSB. Ruby Hayes' daughter, Judith Hayes, signed the mortgage on Ruby's behalf as her attorney in fact. The mortgage was recorded on January 6, 2008 in the Public Records of Miami-Dade County, Florida, and encumbered the property described in said mortgage with all advanced amounts due and payable on November 25, 2079. The property encumbered served as Ruby Lee Hayes' homestead.

On May 21, 2008, Ruby Lee Hayes died testate and 100 percent of her home was devised to her daughter, Judith Hayes. On July 6, 2009, Countrywide Bank filed a Complaint to foreclose on Ruby Lee Hayes' reverse mortgage. The Complaint stated that the borrower had died the previous year, cited the acceleration provision of the mortgage and accelerated the mortgage. The 2009 foreclosure Complaint was dispensed with in 2013.

The following year, Reverse Mortgage Solutions, current holder of the mortgage Note filed an action to foreclose on the encumbered property dated September 18, 2014. The Complaint alleged a default date of May 21, 2008, the date of Ms. Hayes' death and cited to the acceleration provision of the mortgage agreement as grounds for

accelerating the debt. Two years after the filing of the instant Complaint, Judith Hayes, the daughter and heir to the decedent, received an order from the Probate Circuit Court of Miami-Dade County granting homestead status of the real property inherited from the decedent on May 9, 2016.

Now, Reverse Mortgage Solutions asks the Court to direct foreclosure of the Mortgage and sale of the encumbered property to satisfy Ruby Lee Hayes' debt to Plaintiff. Judith Hayes seeks dismissal of the instant Complaint on grounds that this suit is barred by the five-year statute of limitations. Reverse Mortgage Solutions alleges that Judith Hayes does not have standing to assert a statute of limitations defense as such defense is personal in nature.

LEGAL ANALYSIS

In Florida, “all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants, so that a complete decree may be made binding upon all parties.” *Oakland Prop. Corp. v. Hogan*, 96 Fla. 40, 117 So. 846 (1928). “[A] court cannot properly adjudicate the matters involved in a suit when it appears necessary and indispensable parties to the proceeding. . . are not in some proper way actually or constructively before the court.” *Id.* at 48. An indispensable party in a suit to foreclose a mortgage is “one who holds legal title to mortgaged property.” *Davanzo v. Resolute Insurance Company*, 346 So. 2d 1227, 1228 (Fla. 3d DCA 1977). A defendant may not assert a statute of limitations defense if the defendant has no relation of privity with the party who has the defense. 51 Am. Jur. 2d § 56 (2016). However, “when there is privity between a person who could, if sued, plead the statute [of limitations] and the party offering to plead it, the latter may plead it to save his or her property. *Id.*”

Florida statutes provide that an action to foreclose a mortgage must be filed within five years of the cause of action accruing. See § 95.11(2)(c), Florida Statutes (2016). “A cause of action accrues when the last element constituting the cause of action occurs.” *Linares v. Universal Prop. & Cas. Ins. Co.*, 141 So. 3d 719, 719 (Fla. 3d DCA 2014) [39 Fla. L. Weekly D1394].

Judith Hayes has standing to plead a statute of limitations defense in response to the foreclosure action because she is the legal titleholder of the encumbered property and is an heir to the deceased borrower. A decree and sale in a foreclosure suit has no legal effect if “the owner of the legal title of land covered by a mortgage is not a party.” *Berlack v. Halle et ux.*, 22 Fla. 236 (1886).

Judith Hayes was in privity with Ruby Lee Hayes as the sole heir of the encumbered property. In particular, Judith Hayes was devised 100 percent legal title of the

deceased borrower's property and has a clear and compelling interest in the outcome of the foreclosure action. Furthermore, Judith Hayes was afforded the constitutional homestead exemption for the encumbered property: “ADJUDGED FURTHER that, as of the decedent's date of death, the Property was validly devised to and the constitutional exemption from the claims of decedent's creditors insured to the following persons: Judith Hayes.” (Def.'s Mem. of Law Ex. D). Thus, because Judith Hayes was in privity with the deceased borrower, inherited the encumbered property and has a substantial interest in the outcome of the foreclosure action, she has established standing to assert a statute of limitations defense.

Reverse Mortgage Solutions filed its second foreclosure Complaint more than five years after the dismissal of the original foreclosure action. When a mortgage declares the entire indebtedness due upon default of certain of its provisions or within a reasonable time thereafter, the statute of limitations to a foreclosure claim begins to run immediately when the default takes place. § 95.11(2)(c), Fla. Stat. (2016).

Courts will examine the duration between foreclosure actions and the types of default that triggered those actions when determining whether a second foreclosure claim amounts to a statute of limitations violation. *See Singleton v. Greymar Assocs.*, 882 So. 2d 1004 (Fla. 2004) [29 Fla. L. Weekly S481a]; *Deutsche Bank Tr. Co. Ams. v. Beauvais*, 188 So. 3d 938 (Fla. 3d DCA 2016) [41 Fla. L. Weekly D933b]. “While a foreclosure action and an acceleration of the balance due based upon the same default may bar a subsequent action on that default, an acceleration and foreclosure predicated upon subsequent and different defaults present a separate and distinct issue.” *Singleton* at 1007. Additionally, the dismissal of a foreclosure action accelerating payment on one default does not bar a subsequent foreclosure action on a later default “if the subsequent default occurred within five years of the subsequent action.” *Deutsche Bank Tr. Co. Ams.* at 944. The claimant in *Singleton* filed their initial foreclosure action against the defendant predicated on an alleged default that the mortgagors had failed to make payments due from September 1, 1999 to February 1, 2000. *Singleton*, at 1005. The initial action was dismissed with prejudice and claimants filed a subsequent action alleging a default that the mortgagors had failed to make payments from April 1, 2000, onward. *Id.* Despite the dismissal of the first suit, the court found that because the second foreclosure action alleged a subsequent and separate default from that alleged in the first foreclosure action, the doctrine of *res judicata* did not bar the second foreclosure action. *Id.* at 1008.

Reverse Mortgage Solutions second foreclosure Complaint is barred by the statute of limitations as the incident of default was the same in both Complaints (Ruby Lee Hayes' death), and the second Complaint was filed more than five years after the initial Complaint.

In paragraph 9(a)(i) of the Reverse Mortgage Solutions agreement between Ruby Lee Hayes and Countrywide Home Loans, the contract permits acceleration of the debt upon the death of the borrower. (*See* Def. Mem. of Law Ex. A.) The first foreclosure action was filed on July 6, 2009 and alleged that the borrower (Ruby Lee Hayes) died the previous year (May 21, 2008) and cited to the acceleration provision of the mortgage and demanded payment of the debt. This action was later dismissed and Plaintiff filed a second foreclosure action on September 18, 2014, alleging the same date of default as the initial action.

As the dates of default in both foreclosure Complaints are the same, it is unlikely that the actions allege subsequent and different defaults as laid out in *Singleton*. Additionally, because the defaults are the same, the statute of limitations would still apply to any subsequent actions. Because the claimant's second foreclosure action was filed more than five years after the date of default and the defaults were the same (the date of Ruby Lee Hayes' death), the instant foreclosure action is barred by the statute of limitations.

CONCLUSION

Judith Hayes, who is an heir to the borrower and record title owner of the property at issue, has established standing to assert a statute of limitations defense against a foreclosure claim because she was in privity with the borrower under the mortgage and has received homestead protection on the property in question. Moreover, because Reverse Mortgage Solutions' current foreclosure action was filed more than five years after the date of default and states the same date of default as it did in its initial foreclosure action, Plaintiff failed to establish a continuing default for the purposes of resetting the statute of limitations. Thus, Judith Hayes has established standing on the basis of being in privity with the borrower and has prevailed on her statute of limitations defense.

A reverse mortgage, unlike a traditional, installment loan mortgage with a monthly payment obligation, does not have successive events of default where the basis for acceleration is death of the borrower. Accordingly, the loan cannot be decelerated.

Accordingly, based on the above, Final Judgement is entered in favor of Judith Hayes.

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