

Third District Court of Appeal

State of Florida, January Term, A.D. 2010

Opinion filed June 23, 2010.

Not final until disposition of timely filed motion for rehearing.

No. 3D09-161

Lower Tribunal No. 05-15300

LPP Mortgage LTD., f/k/a Loan Participant Partners, LTD., etc.,
Appellant,

vs.

Barbara J. Tucker,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Gisela Cardonne Ely, Judge.

Liebler, Gonzalez & Portuondo, P.A., and Dora F. Kaufman, for appellant.

Mesa & Associates, and Manuel Arthur Mesa, for appellee.

Before RAMIREZ, C.J., GERSTEN, J., and SCHWARTZ, Senior Judge.

PER CURIAM.

LPP Mortgage LTD., etc. (“LPP”) appeals an adverse final summary judgment entered in favor of Barbara J. Tucker (“Tucker”). We affirm.

The issue for our consideration is which statute of limitations applies in this foreclosure action. LPP contends that 28 United States Code section 2415(c) (1996) applies. Tucker asserts that 28 United States Code section 2415(a) (1996) applies. We agree with Tucker and affirm.

A statute of limitations is a procedural statute that prevents the enforcement of a cause of action that has accrued. See Houck Corp. v. New River, Ltd., Pasco, 900 So. 2d 601, 603 (Fla. 2d DCA 2005). The United States Code provides a six-year statute of limitations for the U.S. Government to foreclose on a mortgage. See 28 U.S.C. 2415(a) (1996). The United States Code also provides unlimited time for the U.S. Government to bring an action to establish the title to, or right of possession of, real or personal property. See 28 U.S.C. 2415(c) (1996). Mortgages are not interests in real property. See Shavers v. Duval County, 73 So. 2d 684 (Fla. 1954); Seminole County v. M.G. Invests. of Orlando, Inc., 714 So. 2d 1066 (Fla. 5th DCA 1998); United of Fla., Inc. v. Illini Fed. Sav. & Loan Ass'n, 341 So. 2d 793 (Fla. 2d DCA 1977).

LPP relies on LLP Mortgage Ltd. v. Cravero, 851 So. 2d 897 (Fla. 4th DCA 2003) to urge this Court to apply 28 United States Code 2415(c). In Cravero, LLP sued to foreclose on a mortgage that a government agency assigned to it. The trial court found that the cause of action was barred by Florida's five-year statute of limitations. The Fourth District reversed, holding that the assignee of a promissory

note by a federal agency is not subject to the state statute of limitations. Cravero, 851 So. 2d at 898.

Here, the trial court did not apply a state statute of limitations. Instead, the trial court properly applied 28 United States Code 2415(a), the federal statute of limitations applicable for an action to foreclose a federal agency mortgage. Thus, the trial court was correct to find that LPP was time barred for bringing this foreclosure action against Tucker.

Affirmed.