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QUARTERLY

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National

U.S. Supreme Court Weighs-in on the FDCPA's Ticking Timer

By: Lauren Riddick, Codilis & Associates, PC

In *Rotkiske v. Klemm,* 2019 U.S. LEXIS 7521, the United States Supreme Court resolved a dispute between the federal appellate circuits regarding when the statute of limitations begins to run under the Fair Debt Collection Practices Act (FDCPA or Act).

A statute of limitations is the amount of time permitted to bring a particular court action—in other words, it's the ticking timer. Typically, once that countdown ends, or in legal terms, the limitations period expires, the right to sue expires along with it.

The FDCPA, which is a federal act designed to keep debt collectors in-check, permits suits "within one year from the date on which the violation occurs." 15 U.S.C. §1692k(d). Although this language appears to be rather clear-cut, in law, shadows can often be created out of seemingly transparent passages.

In *Mangum v. Action Collection Serv, Inc.,* 575 F.3d 925 (9th Cir., 2009), the Ninth Circuit Court of Appeals held that all federal statutes of limitation, including the FDCPA's, begin to run "when the plaintiff knows or had reason to know of the injury." Id. at 940. This rule, otherwise known as the discovery rule, sets the clock to begin ticking only upon the detection, rather than the occurrence of the violation, despite the contradicting language of the FDCPA itself, thereby greatly expanding the timeframe to litigate for many possible suits.

However, in a later case, the Third Circuit Court of Appeals declined to follow this path, reiterating that the FDCPA statute of limitations

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National

Supreme Court Offers Ruling on Bankruptcy Appeals Case

By: Linda St. Pierre, McCalla Raymer Leibert Pierce, LLC

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, the Supreme Court rendered a decision in the case of *Ritzen Grp., Inc. v. Jackson Masonry, LLC* (*In re Jackson Masonry, LLC*), 906 F. 3d 494, 2018 U.S. App. LEXIS 29009 (6th Cir. Tenn. Oct. 16, 2018), which held that an order granting relief from the automatic stay that entered without prejudice was final and immediately appealable.

In its decision, the court did not rule on whether an order denying a motion for relief from stay without prejudice is a final order noting that further developments might change the stay calculus under any such ruling.

This decision stems from the case of *Ritzen Grp., Inc. V. Jackson Masonry, LLC,* 2020 U.S. LEXIS 526. Ritzen Group, Inc. (Ritzen) sued Jackson Masonry, LLC (Jackson) in state court for breach of a land-sale contract. Thereafter, Jackson filed for Chapter 11 bankruptcy protection which followed by Ritzen's filing of a motion for relief from the automatic stay seeking an order from the Bankruptcy Court allowing the trial to proceed in state court. After a hearing on Ritzen's motion, the Bankruptcy Court denied the motion. Pursuant to 28 U.S.C. §158(c)(2) and Fed. Rule Bkrtcy. Proc. 8002(a), parties are required to appeal from a final order "within 14

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States: Connecticut

Connecticut Supreme Court Adopts Federal Rule of Evidence Standard on Business Records and Establishes how a Creditor Proves Ownership of a Guaranty

By: Geoffrey Milne, McCalla Raymer Leibert Pierce, LLC

The Connecticut Supreme Court issued an opinion on January 10, 2020, in *Jenzack Partners, LLC v. Stoneridge Associates, LLC,* 334 Conn. 374 (2020), directing judgment for a foreclosing lender and reversing the Appellate Court regarding its interpretation of the business records exception to the hearsay rule. The court also established that ownership of a guaranty may be by way of an assignment, or that a guaranty can follow ownership of a promissory note. Both parts of this decision provide good news for creditors in managing their litigation portfolios.

In *Jenzack,* the Appellate Court had reversed a trial court foreclosure judgment, concluding that a debt record exhibit had been improperly admitted under the business records exception to the hearsay rule, because that record had only been received by the foreclosing party, rather than made in the ordinary course of business. The lender filed a Petition for Certification to the Connecticut Supreme Court, which was granted. Thereafter, the Connecticut Supreme Court—largely in reliance on the decision issued in *United States Bank Trust v. Jones,* 925 F. 3d 534 (1st Cir. 2019)—reversed the Appellate Court and directed judgment for the foreclosing lender.

During the trial, the foreclosing lender, *Jenzack Partners,* offered evidence of the debt

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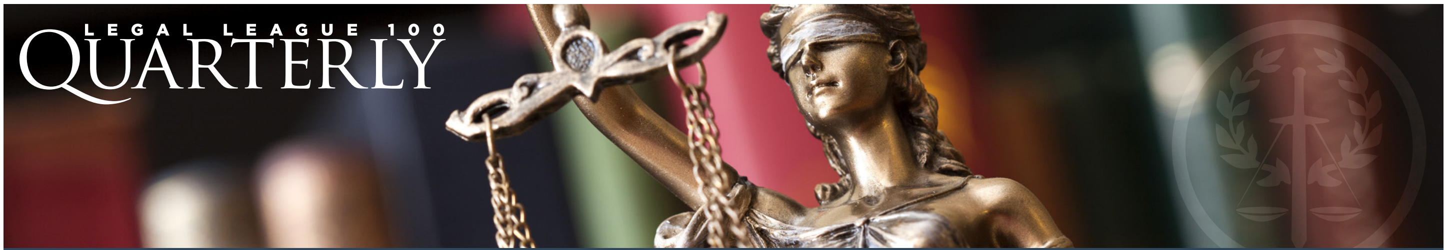

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FROM THE CHAIR

We find ourselves in the midst of extraordinary circumstances due to the current COVID-19 pandemic, and I want to assure you that both myself and the entire Legal League Advisory Council are working diligently on behalf of our membership to ensure that you are kept informed and that we are advocating for our industry. While the unexpected and rapidly changing nature of this situation presents many challenges, there are also areas of opportunity for firms to extend their expertise to assist our servicer partners with the impending influx of necessary loss-mitigation and forbearance work as all parties work to protect both the system of American homeownership and impacted homeowners.

As one of those initiatives, Legal League 100, the American Legal & Financial Network, and the United States Foreclosure Network worked together to draft a white paper regarding the potential unintended consequences of a blanket foreclosure moratorium. Together, we sent a letter to U.S. Department of Housing and Urban Development and Federal Housing Finance Agency outlining our concerns and recommendations.

You can read the letter, white paper, and addendum here: https://legalleague100.com/covid-19/

Already, this health crisis has hit home as we have been forced to cancel our Legal League 100 Spring Summit that was scheduled for May 13-14 in Dallas. While we were excited to bring the membership together with government representatives and top mortgage servicer executives for a day of collaborative dialogue, ultimately both the Legal League 100 and Five Star Global's paramount commitment is to the health and safety of our members. We hope to see you again at the Fall Summit during the Five Star Conference & Expo in Dallas, Texas, scheduled for September 13-15 at the Hyatt Regency.

Finally, as you know, the Legal League 100 is strengthened by membership participation, including your contributions to the LL100 Quarterly, which provides members the opportunity to share knowledge. We are always open to hearing ideas and proposed initiatives and welcome participation with the Special Initiatives Working Group, and if you are interested in participating, please contact lindsay.wolf@thefivestar.com. We hope you will reach out in the months to come and share your voices and perspectives with us as we all work together to navigate this turbulent time.

Sincerely,

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Diaz Anselmo Lindberg, P.A.

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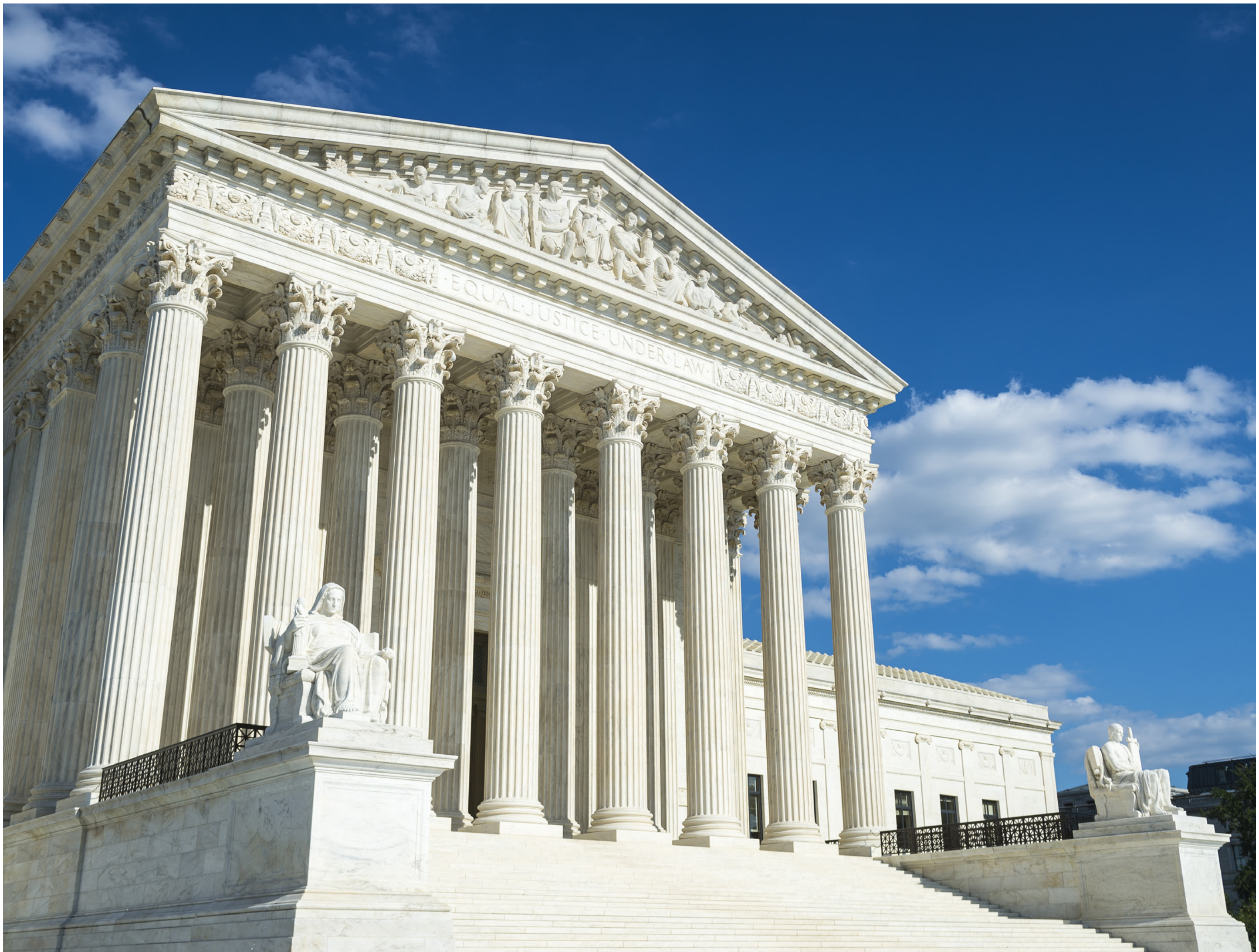
Roy Diaz has been a member of the Florida Bar since 1988, concentrating his practice in the areas of real estate, litigation, and bankruptcy. For more than 20 years, he has represented lenders, servicers of both conventional and GSE loans, private investors, and real estate developers, with an emphasis on the mortgage servicing industry.



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runs from "the date on which the violation occurs." *Rotkiske v. Klemm,* 890 F.3d 422 (3rd Cir., 2018) In doing so, the court directly rejected the Ninth Circuit's approach and refused to apply a broad discovery rule to all federal limitations periods.

To silence its squabbling children, the U.S. Supreme Court agreed to weigh-in—legally phrased as granting certiorari to resolve an appellate conflict—and deemed the Third Circuit the victor. The court held that "[t]he FDCPA limitations period begins to run on the date the alleged FDCPA violation actually happened. We must presume that Congress 'says in a statute what it means and means in a statute what it says…'" *Rotkiske v. Klemm,* 2019 U.S. LEXIS 7521, *8. In appearing to chastise the Ninth Circuit, the high court went on to state that "[i]t is not our role to second-guess Congress' decision to include a 'violation occurs' provision, rather than a discovery provision…[w]e simply enforce the value judgments made by Congress." Id. at *10.

However, a door to widening the limitations period was left distinctly ajar, as the Supreme Court carefully stated that it was not deciding whether the application of "equitable doctrines" would be permissible. According to the court, this issue wasn't properly presented, and therefore wouldn't be determined. Nonetheless, the court distinctly acknowledged the existence of something known as the "fraud discovery rule." Id. at *11.

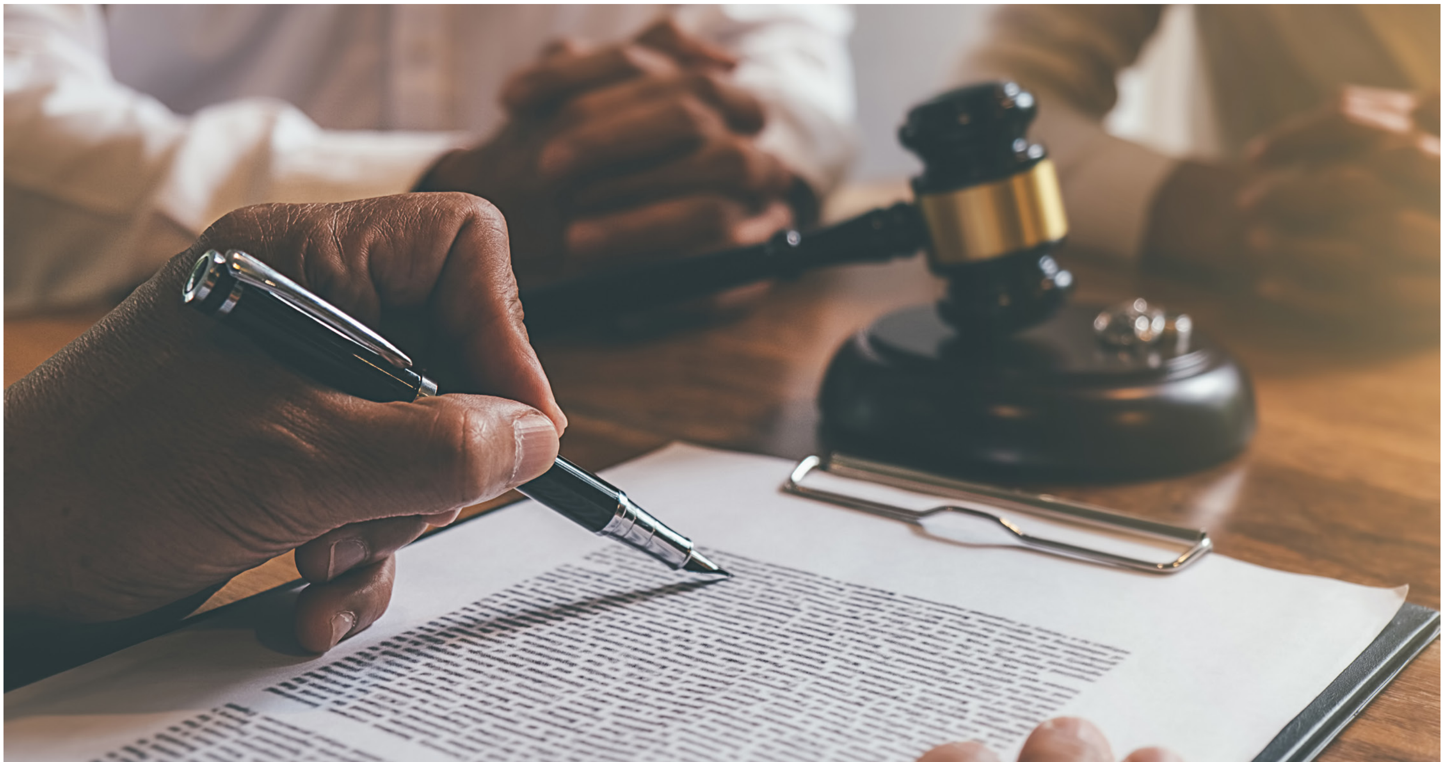
The fraud discovery rule, a close cousin to the similarly worded "discovery rule," states that "where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute [of limitations] does not begin to run until the fraud is discovered." Id. at *13-14. More simply stated, under the fraud discovery rule, a delayed clock start time is permitted when fraud exists.

In dissent, Justice Ginsburg, although agreeing with the Supreme Court's disallowance of the general discovery rule, argued that the fraud discovery rule was properly presented and should have been ruled upon. Moreover, she stated that she would have held that "the [fraud discovery] rule governs if either the conduct giving rise to the claim is fraudulent, or if fraud infects the manner in which the claim is presented." Of course, fraud allegations must typically be pled with particularity, so specific facts regarding the fraud would still be needed.

Regardless, absent allegations of fraud, it's now clear that the ticking timer for FDCPA suits really does begin on the date of the violation, just as the FDCPA dictates, which finally brings long-awaited certainty to the interpretation of already definitive language.

Lauren Riddick, Attorney, Codilis & Associates P.C.

Lauren Riddick handles contested foreclosure matters as a member of the Codilis & Associates, P.C.'s Contested Litigation Unit and also assists with title matters. She joined the firm in August 2013. Prior to joining the firm, she was an Adjunct Professor of Law with several colleges and a Securities Attorney for a large broker-dealer in Florida. Riddick is a member of the Illinois and Florida Bar Associations. She received her Juris Doctor in 2001 from the University of Florida Levin College of Law, and her Bachelor of Science in 1998 from the University of Florida.



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days after entry of the …order being appealed." Ritzen did not appeal from the order denying relief from stay within that 14 day period, instead, Ritzen proceeded with filing a proof of claim in the underlying Chapter 11 bankruptcy case in pursuit of his breach of contract claim. Only after Ritzen's Proof of Claim was disallowed did Ritzen filed an appeal in the District Court for the Middle District of Tennessee seeking to challenge the order denying relief from the automatic stay.

On appeal to the District Court, the District Court rejected Ritzen's appeal of the order holding that under §158(c)(2) and Fed. Rule Bkrtcy Proc. 8002(a), the time to appeal expired 14 days after entry of the bankruptcy order. Ritzen thereafter filed a further appeal to the Court of Appeals for the Sixth Circuit wherein it affirmed the District Court's decision. Thereafter, the United States Supreme Court granted certiorari to resolve whether the orders granting relief from stay were final appealable orders under §158(a)(1).

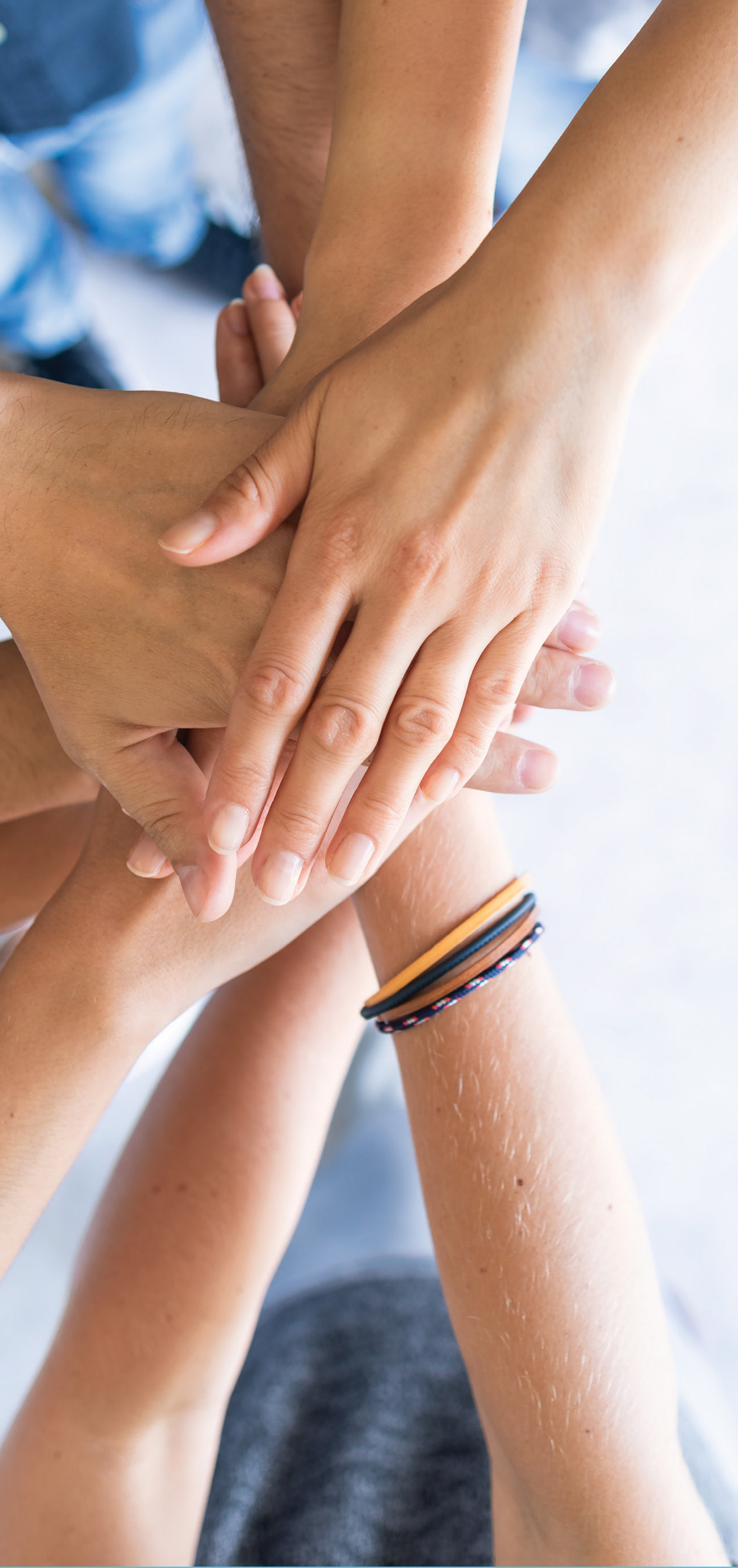
Under review by the Supreme Court was the question of the finality of the order granting relief from stay and therefore the time allowed for appeal from that order. Ritzen argued that denial of stay relief determines nothing more than the forum for claim adjudication and is nothing more than a preliminary step in the claims adjudication process. The court rejected that argument. In its analysis, the court determined the applicability of §158(a)'s finality requirement together with its opinion in *Bullard v. Blue Hills Bank,* 575 U.S. 496, 135 S. Ct. 1686, 191 L. Ed. 2d 621. In the *Bullard* case, the court held that an order rejecting a proposed plan was not final because it did not conclusively resolve the relevant "proceeding" and that "proceeding" would continue up to the time the plan was approved. Id. At 502, 135 S. Ct 1686, 191 L. Ed. 2d 621, Pg. 6. In applying *Bullard* to its analysis in this case, the court had to determine how to define the immediate appealable "proceeding" in the context of a relief from stay motion. Under this analysis, the court determined that motions for relief from stay are considered a discrete proceeding which disposes of a procedural unit anterior to, and separate from, claim-resolution proceedings which occurs before and apart from the proceedings on the merits of a creditor's claim.

Unlike in *Bullard* where the court held that an order denying a proposed plan did not resolve the relevant proceeding, the relief from bankruptcy's automatic stay presents a "discrete dispute qualifying as an independent proceeding within the meaning of §158(a) which terminates a procedural unit separate from the remaining case, not whether the bankruptcy court has preclusively resolved a substantive issue." The court went on to say that it is common for bankruptcy courts to resolve discrete controversies definitively while leaving the underling bankruptcy case pending. Delaying appeals of these controversies would postpone appellate review of fully adjudicated disputes until termination of the entire bankruptcy case causing an "untoward consequence." Early reversals of incorrect decisions would allow a bankruptcy court to unravel later adjudications rendered in reliance on the earlier decision. See *Ritzen Grp., Inc. V. Jackson Masonry, LLC* at page 6. In rejecting Ritzen's argument that the denial of stay relief determines nothing more than the forum for claim adjudication and is nothing more than a preliminary step in the claims adjudication process, the court argued that resolution of a motion for stay relief can have large practical consequences including isolating the claim from creditors in lieu of going it alone outside of bankruptcy and that leaving the stay in place can cause value decline and collection delay.

Because the underlying "proceeding" in the *Ritzen* case was adjudication of a motion for relief from the automatic stay, that denial order was final with nothing more for the bankruptcy court to do in that proceeding. The decision of the Court of Appeals was affirmed.

Linda St. Pierre, Partner, Connecticut Bankruptcy, McCalla Raymer Leibert Pierce, LLC

Linda St. Pierre focuses her practice primarily on the representation of secured creditors, equity holders, and investors in cases pending under all chapters of the United States Bankruptcy Code. St. Pierre manages MRLP's Connecticut bankruptcy team and assists with the firm's New York office. St. Pierre has over 18 years of bankruptcy and foreclosure experience including representation of Chapter 7 trustees in contested and uncontested bankruptcy matters in all chapters.



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States: New Mexico

New Mexico Courts Follow Adverse New York SOL Decision

By: Andrew Yarrington, Rose L. Brand and Associates, P.C.

The financial crisis of 2007 to 2009 created a boom in foreclosure filings in 2010 to 2013 for which lenders and the New Mexico judicial system, which requires that mortgages be foreclosed judicially, were not prepared. Lengthy delays in these cases were caused by the national "robo-signing" scandals and Department of Justice investigations. In 2014 several appellate decisions heightened the pleadings standards in these cases, leading to increased delay and a high volume of voluntary and involuntary dismissals of foreclosure case, many of which then had to be refiled. Because many of the case were litigated for years before they were ultimately dismissed, the refiling of the case often occurred after the presumptive statute of limitations had run for the loan.

Prior to the foreclosure crisis, the issue of deceleration of installment mortgage contracts was rare, and there is no case law that establishes whether a dismissal of previously-filed foreclosure action decelerates the loan, or whether an affirmative act to decelerate the loan is required. The recent influx of refiled foreclosure cases has led to increased litigation regarding this issue. Lender's counsel cite Florida cases, such as *Deutsche Bank Trust Co. Americas v. Beauvais,* 188 So. 3d 938, (Fla. 3d DCA 2016) and *Bartram v. U.S. Bank Nat. Ass'n,* 211 So. 3d 1009, (Fla. 2016), for persuasive authority that the dismissal of a prior foreclosure case automatically decelerated the loan for subsequent defaults. Lender's counsel could also joyfully cite the finding from *Beauvais* that, among the judicial foreclosure states, none have determined that some affirmative act following dismissal must be taken to "decelerate" an accelerated loan, with the lone exception of New York. *Beauvais*, 188 So. 3d 938 at 951.

These policy arguments were made in a New Mexico case that is now on appeal. In that case, a foreclosure complaint was filed in 2009, voluntarily dismissed in 2015, and then refiled in 2016. The borrower immediately moved to dismiss with prejudice based on the statute of limitations and the failure to decelerate the loan. The motion to dismiss was denied, with the court relying on the reasoning of *Bartram's* and *Beauvais's* touchstone case, *Singleton v. Greymar Assocs.,* 882 So. 2d 1004, 1008 (Fla. 2004). The borrower moved to reconsider, arguing that the court should follow New York law, rather than Florida law, citing *FNMA v. Melbane* 618 N.Y.S. 2d 88 (N.Y.App. Div.2 1994). Lender's counsel argued that Florida law was more in line with New Mexico law, and that the New York cases were outliers, noting that in any event the New York cases did not address the contractual provision that provided for reinstatement of the loan at any time prior to the entry of judgment, which would make true "acceleration" of the loan impossible until judgment, citing *Nationstar Mortgage, LLC v. MacPherson,* 56 Misc. 3d 339, 54 N.Y.S. 3d 825. The court granted the motion to reconsider and dismissed the case with prejudice, finding that the new briefing established the New York body of law as more persuasive than the *Singleton* line of cases from Florida. The lender appealed the decision and the case is now pending before the New Mexico Court of Appeals.

What the District Court did not decide in that case was whether, as determined by the New York court in *MacPherson*, loans with the reinstatement provision, such as FNMA and FHLMC standard mortgages, cannot be accelerated until entry of the judgment. However, if New Mexico courts continue to follow New York law on this issue, reliance on that argument to overcome a statute of limitations defense may be unsuccessful since *MacPherson* was abrogated by the decision in *New York Mellon v. Dieudonne,* 171 A.D.3d 34 (NY App. Div. Second Dept., March 13, 2019), as discussed by Richard P. Haber in "Industry Loses MacPherson SOL Argument in New York," *Legal League 100 Quarterly,* Fall 2019. Of particular note, the New Mexico District Court Judge who rendered the unfavorable decision was appointed to the New Mexico Supreme Court this year, thus increasing the likelihood that New Mexico will follow New York's lead when it comes to setting policy in foreclosure cases. With a small foreclosure bar, New Mexico defense counsel are aware of the adverse statute of limitations decision and have raised the defense in a number of cases, which is finding a receptive audience in the District Court judges. New Mexico lenders' counsel will be carefully monitoring the District Court decisions on this issue and the outcome of the pending appeal, and lenders need to work closely with local counsel regarding options for mitigating any statutes of limitations issues in their cases.

Andrew Yarrington, Senior Litigation Attorney, Rose L. Brand and Associates, PC

Andrew Yarrington graduated from the University of New Mexico, School of Law in May 2002 and was admitted to the New Mexico Bar in September 2002. Prior to attending Law School, Yarrington received his Bachelor's degree in History with a Minor in Business Administration from the University of New Mexico in 1998. Yarrington is a Senior Litigation Attorney, specializing in bankruptcy, at Rose L. Brand & Associates, P.C. Yarringon has been instrumental in defining New Mexico law on foreclosure matters, namely, standing to enforce a note in both bankruptcy court and state court, through his arguments and briefings. He is admitted to practice law in the State of New Mexico as well as the U.S. District Court for the district of New Mexico.

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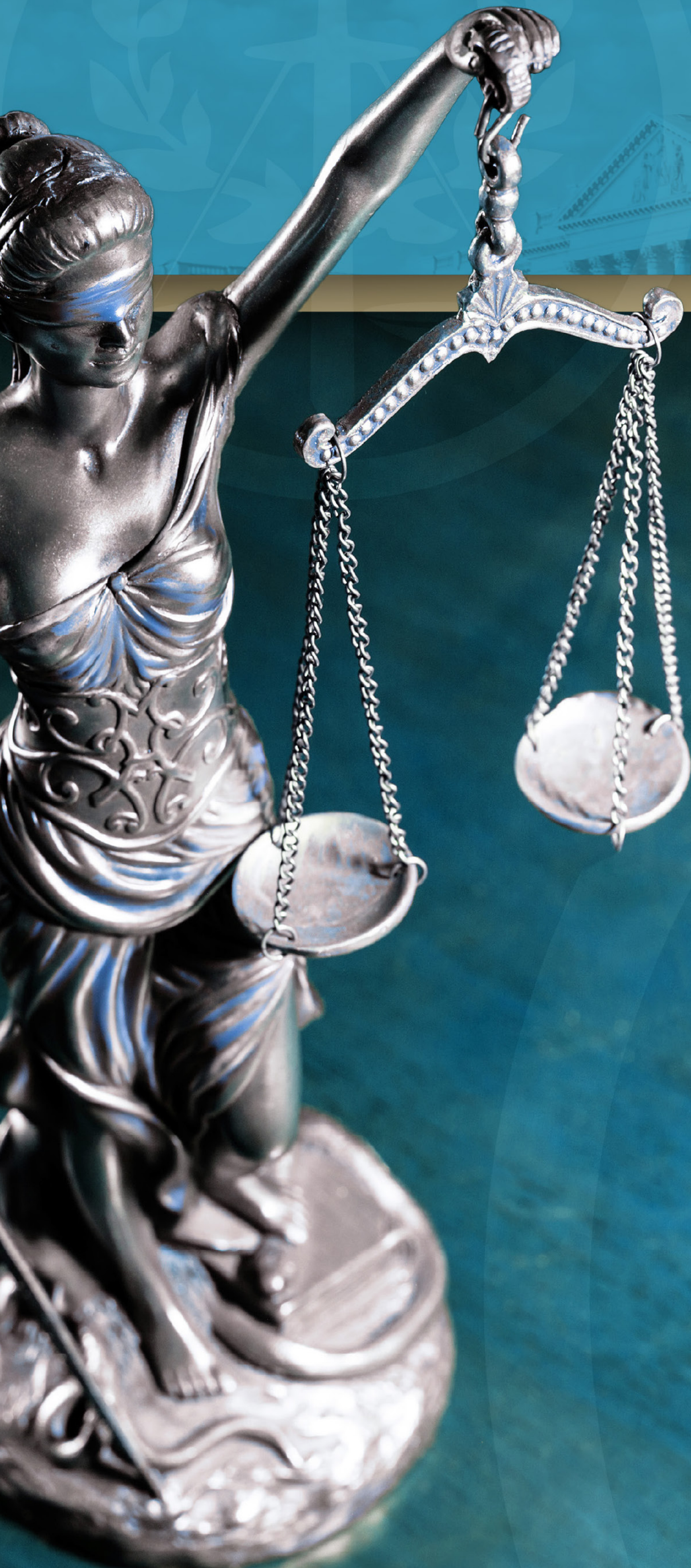

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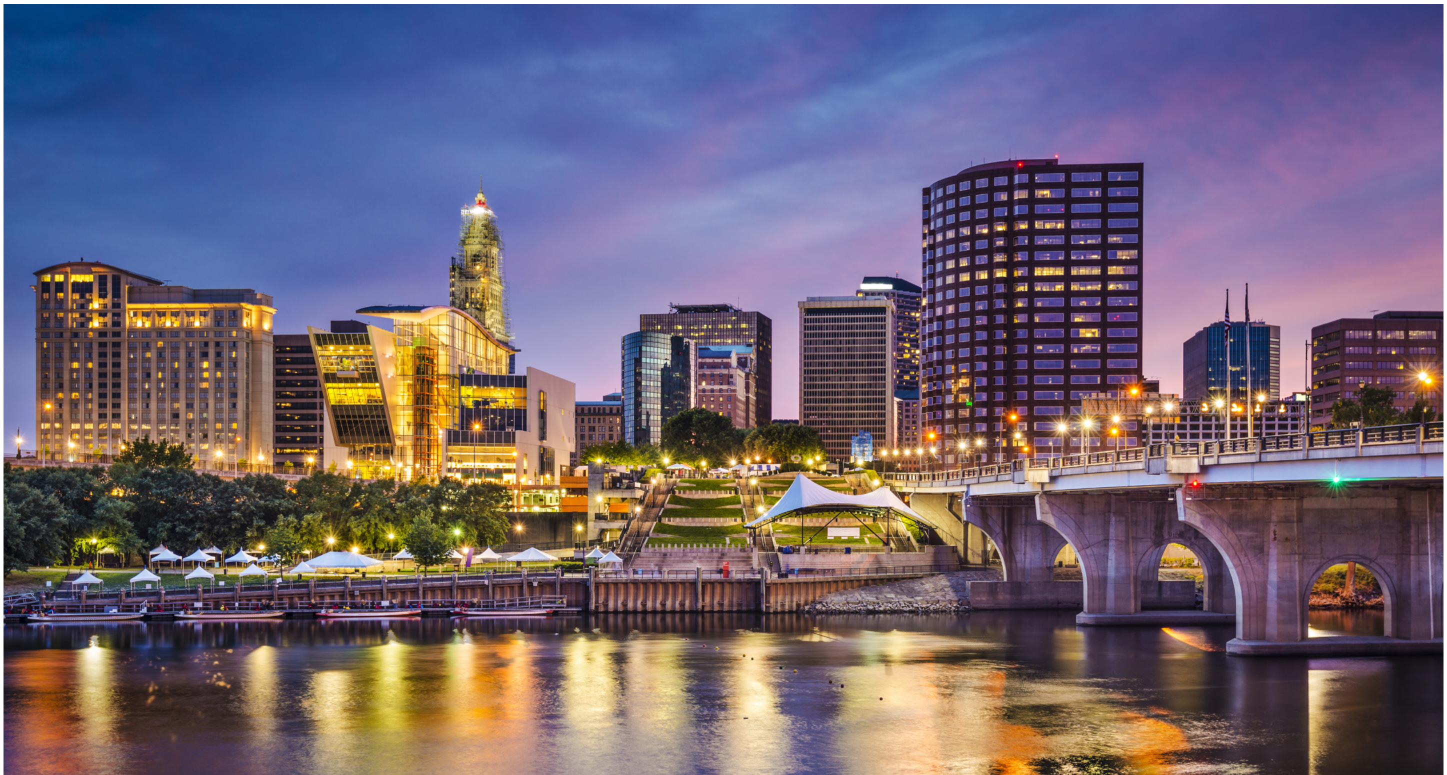

"Connecticut" continued from Page 1

by way of its own record as purchaser of the loan, that incorporated an initial entry that the prior lender, Sovereign Bank, had provided to *Jenzack* as part of the loan sale. Jenzack did not offer debt evidence in the form it was actually received from Sovereign. The borrower claimed that the debt record was hearsay, without evidence that *Jenzack* accurately recorded the amount of the debt provided by Sovereign.

The Connecticut Supreme Court noted that this was not an instance where the business record of the assignor was being offered into evidence to prove the debt. Rather, the assignee was attempting to use its own business record-which incorporated the assignor's information on the debt as evidence at trial. Recognizing this issue as a matter of first impression in Connecticut, the Supreme Court relied heavily upon the decision issued in *United States Bank Trust v. Jones,* 925 F. 3d 534 (1st Cir. 2019). In Jones, the First Circuit Court of Appeals affirmed the admissibility of integrated business records under Federal Rule of Evidence 803(6). In that case, the lender offered into evidence at trial of a computer printout which contained a summary of transactions on a mortgage loan account. Three servicers were involved in the loan, and the entity that offered the business record, Caliber Home Loans, was not the servicer for all transactions set forth in the document. The lender's counsel in *Jones* established a foundation for the admission of the computer debt record as noted by the First Circuit Court of Appeals:

Based on the facts presented here, we cannot say that the District Court abused its discretion in finding Exhibit 8 with its integrated elements reliable enough to admit under Rule 803(6). Facts in the record, including testimony provided by an employee of Caliber … establish that the servicer relied on the accuracy of the mortgage history and took measures to verify the same. As the District Court explained, the witness testified that Caliber incorporated the previous servicer's records into its own database and "plac[ed] its own financial interest at stake by relying on those records," and that "Caliber's acquisition department took steps to review the previous servicer's records in a way that assured itself of the accuracy of the records." 330 F. Supp. 3d 530, 543 (D. Me. 2018); see Trial Tr. 28:3-6, 60:17-19. The District Court also soundly noted that Jones did not "dispute the transaction history by claiming overbilling or unrecorded payments," as she surely could have done if the records were inaccurate. 330 F. Supp. 3d at 544; see Fed. R. Evid. 803(6)(E). Nor has Jones contested the District Court's conclusion that the data revealed "no discrepancies" giving rise to doubt that the business records were trustworthy.

Relying on that precedent, the Connecticut Supreme Court found that *Jenzack* incorporated the amount due on the loan into its business records and then calculated the accumulating debt from that point forward by applying its own interest rate, thereby placing its own financial interest at stake by relying on that information. That evidence was sufficient to support the admissibility of the initial debt entry. Finally, the Court noted that none of the debtors disputed the accuracy of the debt records.

The decision is also important because it established a test to prove standing to enforce a guaranty. The guaranty in *Jenzack* was not assigned to the foreclosing lender. The court held, however, that based on the express terms of the guaranty, the party which owned the note also owned the guaranty. Although the lender carried the day, transactional counsel are well advised to include broad assignment language in loan sale documents to avoid litigation on standing issues related to guarantees. This is a very helpful opinion for lenders and their trial counsel.

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Geoffrey Milne is the Managing Litigation Partner of the Connecticut Litigation Group for McCalla Raymer Leibert Pierce, LLC. With over 25 years' experience, Milne has represented banks, mortgage companies, and servicers in lender liability, business torts, mortgage fraud, title insurance and consumer related claims under truth in lending, fair credit reporting, and fair debt collection matters through trial and appeal in Connecticut and Federal Courts. Milne extends his expertise in these matters at various national litigation conferences. In addition to this, Milne has been recognized as a Connecticut Super Lawyer involving business and creditor's rights litigation from 2011-2019. He is a co-author of Connecticut Foreclosures, an Attorneys Manual of Practice and Procedure, *Caron and Milne, a treatise routinely cited by the trial and appellate courts in Connecticut.*

States: Ohio

Equitable Assignment of Mortgage in Ohio: Avoid the Disaster of First Legal Delays

By: Joshua Epling, Padgett Law Group

At the outset of a foreclosure case, one of the most important first steps is to ensure that the lender has standing to file the complaint. However, in foreclosure cases, lenders often do not have all of the documents relating to the subject property properly recorded at the time it is necessary to file suit. Accordingly, it is crucial to examine how a lender can establish standing, while also complying with first legal filing deadlines. One of the most effective strategies for achieving standing, without sacrificing compliance with first legal deadlines, is the demonstration of an equitable assignment of mortgage.

Generally, in order to have standing to file a lawsuit in a court of common pleas, the plaintiff must have a personal interest in the outcome of the dispute, and have suffered an injury that is capable of resolution by the court[1]. Notably, if a lender lacks standing at the commencement of a foreclosure action, the complaint must be dismissed[2]. In fact, the Ohio Supreme Court has specifically held that a lender does not have standing when it fails to establish an interest in the note or mortgage at the time it files suit[3]. Ideally, lenders should cause the note to be properly endorsed and negotiated, and obtain a valid, recorded, assignment of mortgage before initiating a foreclosure action. However, this is not always possible before the expiration of first legal deadlines. In this case, one of the lender's best strategies, if available, is to establish standing by asserting that there is an equitable assignment of mortgage.

The law in Ohio is clear that, when a promissory note is secured by a mortgage, the promissory note constitutes the evidence of the debt, and the mortgage is a mere incident to the obligation[4]. Therefore, the negotiation of a promissory note operates as an equitable assignment of the mortgage, even when the mortgage itself is not assigned or delivered[5]. Further, "the physical transfer of the note endorsed in blank, which the mortgage secures, constitutes an equitable assignment of the mortgage, regardless of whether the mortgage is actually (or validly) assigned or delivered."[6] In sum, the lender can assert that, because it is in possession of the original promissory note, and the mortgage follows the note as an incident to the borrower's obligation under the promissory note, a valid assignment of mortgage is not necessary in order to proceed. Rather, courts in Ohio have held that a lender has standing to foreclose by virtue of being the holder of the promissory note.

In order to raise the issue of an equitable assignment of mortgage effectively, the lender must be in possession of the original note which has been properly endorsed (either specifically or in blank) and negotiated prior to filing the complaint. The lender must also set forth the argument in its complaint, as well as any additional required pleadings.Specifically, the complaint, as well as any affidavit in support of judgment and motion for summary judgment, must clearly establish that the lender was in possession of the original note, which had been properly endorsed and negotiated, at the time the complaint was filed. This is the only way to establish standing through an equitable assignment of mortgage. Notably, this argument, as with any legal argument, is not without risk. There are certain appellate districts in Ohio that tend to rule frequently in favor of borrowers, and may not be as receptive to the assertion that the lender is a real party in interest to a suit where the recorded assignment of mortgage is not obtained prior to the commencement of the lawsuit. However, these risks should not discourage lenders from asserting an equitable assignment of mortgage in order to meet first legal deadlines where the opportunity properly presents itself.

In sum, it is not always possible for lenders to possess both the promissory note, as well as a valid, recorded, assignment of mortgage, at the time they are filing a complaint in foreclosure. However, because the law in Ohio is clear that the mortgage follows the promissory note and is incidental to the obligation under the promissory note, lenders have a strong argument that they have standing to pursue a claim based on an equitable assignment of mortgage. Accordingly, when set forth properly, the assertion of an equitable assignment of mortgage is one of the most effective strategies for establishing standing, meeting first legal filing deadlines, and potentially avoiding dismissal of the case.

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1 Federal Home Loan Mortgage Corp. v. Schwartzwald, 134 Ohio St.3d 13, ¶ 37-40, 979 N.E.2d 1214 (2012).
2 Id.
3 Id. at ¶ 28.
4 Edgar v. Haines, 109 Ohio St. 159, 164, 141 N.E. 837 (1923).
5 Kernohan v. Manss, 53 Ohio St. 118, 133, 41 N.E. 258 (1895).
6 Bank of Am., N.A. v. Jones, 11th District Geauga County No. 2014-G-3197, 2014 Ohio App. LEXIS 4855, ¶ 26 (Nov. 10, 2014).