

## Practice Update

# Akerman Team Supports Shellpoint Successfully Reversing Texas Trial Court Opinions Voiding Liens Based on Statute of Limitations

May 14, 2021

Akerman recently obtained judgments from Texas's 9th and 14th courts of appeals on behalf of Shellpoint Mortgage Servicing reversing Harris and Jefferson county district court judgments invalidating its liens based on the expiration of the state's statute of limitations. The rulings reflect these courts' alignment with other jurisdictions on the principles of statute of limitations, tolling, and abandonment of acceleration.

In *CitiBank N.A., as Trustee and NewRez LLC v. Pechua, Inc.*, the Texas 14th court of appeals reversed the Harris county district court's judgment voiding Shellpoint's lien and barring it from foreclosing judicially or non-judicially. The appellate court modified the judgment reflecting the reversal and that plaintiff take nothing from Shellpoint and mortgage CitiBank.

The property owner sued to stop a foreclosure it claimed was barred by the state's four-year statute of limitations. The trial court agreed. Shellpoint appealed arguing the borrowers' multiple bankruptcies tolled the statute of limitations when automatic stays were in place. It also argued prior servicers abandoned acceleration by sending two notices of default before limitations expired,

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restoring the note's maturity and resetting the limitations period as if there had been no acceleration.

The 14th court of appeals agreed with both points. In noting neither it nor the Texas Supreme Court had expressly addressed the bankruptcy tolling issue in a published, precedential opinion, the 14th court joined its sister courts and the fifth circuit holding Texas common law tolling principles are incorporated through 11 U.S.C. § 108(c) and the automatic bankruptcy stay tolls limitations.

The 14th court of appeals also held notices of default conclusively established an abandoned acceleration because they (1) demanded payment of only the past due amount and not the full accelerated amount, and (2) stated if the borrowers failed to pay the demanded amount, it would accelerate the maturity date of the note.

In *Shellpoint Mortgage Servicing and MTGLQ Investors, L.P. v. Beverly and James David Salvagio*, Texas's 9th court of appeals reversed the Jefferson county district court's judgment granting borrowers' declaratory relief on a statute of limitations claim and voiding and extinguishing Shellpoint's lien.

The borrowers sued to stop a foreclosure, arguing in part, the statute of limitations to foreclose expired and the lien was void and unenforceable. The trial court agreed. Shellpoint appealed, arguing claim preclusion barred the borrowers' statute of limitations argument because limitations allegedly expired during the fourth year of an earlier, six-year long lawsuit the borrowers brought against the prior servicer. Shellpoint argued the borrowers could, and should have, asserted any limitations claim during the earlier suit and before the court dismissed that suit with prejudice.

The 9th court of appeals agreed claim preclusion barred the borrowers' statute of limitations claim because the borrowers could have asserted it two

years before judgment was rendered in the earlier suit. It relied on a recent fifth circuit decision holding preclusion barred debtors from raising statute of limitations when they could have raised it in an earlier suit.