

BANKING ALERT - ILLINOIS

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Landmark Decision Clarifies Illinois Mortgage Foreclosure Law

Roetzel attorney **Mark D. Belongia** has secured a significant Illinois Appellate Court victory for client First American Bank. The landmark decision clarifies the Illinois Mortgage Foreclosure Law and defines the options available to banks against mortgagors who default on their payments.

First American Bank held a second mortgage on the plaintiffs' home. The first mortgage holder obtained a judgment of foreclosure, but the property did not proceed to a sheriff's sale. Thereafter, First American Bank separately sued the plaintiffs on their defaulted promissory note obligation and obtained a judgment. However, before the property was sold at a sheriff's sale, the plaintiffs found a buyer for their home in a short sale. The first mortgagee agreed to the short sale, conditioned upon agreement from First American Bank, which said it would agree to the short sale and release its second mortgage in exchange for a payment of \$6,000. The plaintiffs made the requested payment and the property was sold.

The plaintiffs then sued First American Bank, alleging that the bank violated the Fair Debt Collection Practices Act and the Consumer Fraud Act by misrepresenting that it had an existing, valid second mortgage on the property. The plaintiffs contended that the second mortgage was extinguished as a matter of law by the foreclosure judgment obtained by the first mortgage holder and also by its own judgment on the promissory note. The plaintiffs asserted that because First American Bank chose to sue only on its note and not simultaneously foreclose on the second mortgage in the same lawsuit, the judgment in the second note lawsuit barred any other or any further action to foreclose the second mortgage on the legal ground of *res judicata*.

As counsel for First American Bank, Belongia successfully moved to dismiss the complaint in the trial court. The plaintiffs appealed.

The Illinois Appellate Court for the First District upheld the dismissal in *Turczak and Lew v. First American Bank, et al.*, 2013 IL App (1st) 121964 and held that:

- A bank may proceed consecutively in actions on the promissory note and to foreclose on the mortgage; and
- Unless and until a sheriff's sale of a foreclosed property is approved by judicial order, the rights of interested parties – including those of banks holding junior mortgages on the property – are not extinguished.

For further information on the First American decision and its ramifications for foreclosures in Illinois, please contact **Mark D. Belongia** at 312.582.1605 or mbelongia@ralaw.com.