States: Illinois

Illinois Appellate Court Reaffirms State Right to Control Foreclosures

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A recent Illinois appellate court decision emphasizes Illinois courts' ability to control their mortgage foreclosure dockets and deter frivolous pleadings and motions by foreclosure defendants. In *Wells Fargo Bank v. Roundtree,* 2018 IL App (1st) 172912 (Nov. 7, 2018), the First District reaffirmed past rulings, holding that the clock to file a motion to quash service starts ticking when a party participates in a hearing or files an appearance—regardless of whether this occurs before or after the entry of a default judgment.

Under Section 5/15-1505.6(a) of the Illinois Mortgage Foreclosure Law (IMFL), a defendant has 60 days from their initial appearance or participation in a hearing to file a motion to quash service. After 60 days, a defendant is barred from attacking service, which was the appellate court's holding in a past decisions. See, e.g., *GreenPoint Mortgage Funding v. Poniewozik,* 2014 IL App (1st) 132864; U.S. *Bank Tr., N.A. v. Colston,* 2015 IL App (5th) 140100, appeal denied, 39 N.E.3d 1012 (Ill.); *Wells Fargo Bank, N.A. v. Sanders,* 2015 IL App (1st) 141272. However, in none of these cases had a foreclosure defendant sought to quash service after an entry of default judgment.

In Roundtree's case, the the plaintiff filed a motion to approve the sale of the foreclosed property. At the hearing on the motion, an attorney appeared for the defendant and was granted time to respond; the attorney filed an appearance for the defendant a few days later. Alas, neither the defendant nor her counsel filed a response to the motion or appeared at the final hearing, and the court entered an order approving the sale of the property. Nearly 322 days after the defendant first appeared, she filed a petition to vacate judgment and motion to quash service. The plaintiff moved to dismiss the defendant's petition, and the trial court agreed with the plaintiff in holding that the petition and motion were untimely under §15-1505.6(a) of the IMFL because they were filed more than 60 days after her initial appearance.

The defendant appealed, contending she did not waive any jurisdictional challenge to the foreclosure because the default judgment was entered before she appeared—in essence, her position was that any waiver would stem from the date of the appearance going forward, but not retroactive to the default judgment. The defendant further argued that the timing of her appearance was irrelevant because void judgments can be attacked at any time. The plaintiff, on the other hand, argued that the defendant was precluded from raising a challenge to the trial court's personal jurisdiction more than 60 days after the defendant's initial appearance—regardless of whether judgment had been entered.

As Illinois courts have held, once an appearance is made, the clock starts running—a foreclosure defendant only has 60 days to move to quash service. The failure to adhere to this strict deadline results in a waiver of any objection to service. As the court notes, the reason for this strict requirement stems from the Illinois legislature's "concern over unreasonable delays in [foreclosure cases] and the desire to limit the ability to file motions to quash service," which are the bases for many such delays. The *Roundtree* court explained that the defendant had a right to prospectively challenge the court's jurisdiction by attacking the method of service on her, but that any such inquiry was irrelevant because "[she] failed to follow the very statutory procedure that would allow" the court to review the propriety of service." Quoting the Illinois Supreme Court's holding in *BAC Home Loans Servicing v. Pieczonka,* 2015 IL App (1st) 133128, the Roundtree court explained that when a "defendant's motion to quash service of process [is] untimely, we need not address the merits of his arguments regarding the propriety of . . . service."

While Illinois courts have addressed §5/15-1505.6(a) several times in the last few years, *Roundtree* is the first to hold that the strict timeline to move to quash service applies regardless of whether a defendant appears before or after the entry of a default judgment. It also reaffirms that a defendant cannot sit idly by, monitor a case, and wait until the eleventh hour to file a motion challenging service of process. Too many times in Illinois, foreclosure defendants will wait until the last possible moment to participate in litigation and seek judicial relief. The *Roundtree* decision highlights one of the often-overlooked procedural tools available in Illinois for mortgage loan servicers and their counsel to fight improper delay tactics by foreclosure defendants.

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