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The 3-month limitation on deficiency claims:

Life Sav. Bank v Wilhelm, 2000

Roger Bernhardt

Foreclosing lienholder's 3-month deadline for filing for deficiency judgment is statute of limitation that cannot be avoided on ground of excusable neglect.

Life Sav. Bank v Wilhelm (2000) ___ CA4th ___, 100 CR2d 657

Life Savings Bank (Life) lent the Wilhelms \$184,000 secured by a deed of trust on separate parcels of improved real property. When the Wilhelms defaulted on their notes, the parties stipulated to a judgment of judicial foreclosure, and the Wilhelms agreed to their liability for both the defaulted amounts and a possible deficiency judgment. Life obtained the properties on a bid at the foreclosure sale, but filed its motion for a deficiency judgment fair value hearing 11 days after expiration of the 3-month period permitted by CCP §726(b). The trial court ruled that the statutory 3-month period is a statute of limitations and rejected Life's motion for relief for excusable neglect.

The court of appeal affirmed. Although CCP §473(b) allows a court to relieve a party from the legal consequences of "his or her mistake, inadvertence, surprise, or excusable neglect," it does not provide relief from errors that result in the running of the applicable statute of limitations. "Statutes of limitations are distinguished from procedural limits governing the time in which parties must do an act because they fix the time for commencing suit." 100 CR2d at 660. Accordingly, under the plain language of CCP §726(b), a party entitled to a deficiency judgment must file an application within 3 months of the foreclosure sale or no deficiency judgment can be obtained.

Life argued that §726(b) cannot be construed as a statute of limitation because a judgment of judicial foreclosure is a multi-part judgment comprising both the judgment for the sale of the security and the judgment for the deficiency. The court rejected this argument, noting that a deficiency judgment is not a necessary part of a judicial foreclosure. Rather, the court found that, for the purposes of the statutes of limitation that apply to them, a judgment for judicial foreclosure and the deficiency judgment are the products of separate actions. Hence, relief was not available for excusable neglect under CCP §473.

►**THE EDITOR'S TAKE:** It is ironic for a court to hold that a judicial foreclosure judgment and a deficiency judgment "are the product of separate actions" in light of the fact that the provisions for both of these proceedings are contained in CCP §726, our "one action" statute (or, if you want to be technical about it, our "one form of action" statute). For all other purposes, the entire foreclosure-deficiency process is regarded as constituting a single action leading to an interlocutory judgment of foreclosure and, thereafter, when appropriate, a final judgment for money. A separate action, initiated by a separate complaint, for a money judgment after a judicial foreclosure sale would not have a ghost of a chance of survival.

The court of appeal probably felt it necessary to make the "separate actions" assertion in order to conclude that the 3-month period for fair value hearings was a statute of limitations rather than a procedural time period in an ongoing action. The most common role of CCP §473 is to allow

parties to avoid the consequences of having missed some statutory deadline, and it would clearly apply to the 3-month fair value deadline unless the court were able to call it a statute of limitations deadline instead (which is what required it to say that the foreclosure was really two separate actions rather than one). Had this time period been treated like all other time periods within a single action, the court would have had discretion to forgive the 11-day delay committed by the bank.

Given the typical judicial response to lender missteps, however, I am not so sure that judicial discretion would have helped the lender very much. Neglect by a bank will probably never be regarded by a judge as excusable. Our courts treat violations of CCP §726's one action rule as per se cardinal sins. An improper setoff or foreign attachment or omission of some of the security is not a correctable blunder when committed by a secured lender. The sanction for such misconduct can result in the entire loan balance being uncollectible (or unsecured), regardless of how much or how little the debtor may have been hurt by the blunder or would be enriched by the sanction. Debtors' prisons may have been abolished, but lenders' prisons may be on the horizon. *Roger Bernhardt*