

Warshaw Burstein Partner Obtains Favorable Decisions in Two Foreclosure Actions

Warshaw Burstein, LLP partner, [Pankaj Malik](#), successfully represented defendants in two separate mortgage foreclosure actions. Ms. Malik said, “these cases demonstrate that courts will not tolerate fraud or flouting basic procedural norms by mortgage brokers or lenders.”

The first case, *Lasalle Bank National Association, etc. v. Benjamin, et al.*, Index No. 443/09, was a mortgage foreclosure action in which plaintiff, Lasalle, moved for summary judgment against defendants. Defendant (David Benjamin) opposed the motion; the other defendant (Chittra Benjamin) defaulted. In its decision, the court stated that it would grant plaintiff’s motion, but required plaintiff to first comply — within 60 days — with certain procedural steps designed to give notice to the defendants of the decision. Plaintiff did not take those procedural steps until *five years* after having been directed to do so by the court.

At this point, Warshaw Burstein partner, Pankaj Malik, took over representation of the defendants and moved to vacate the court’s decision and dismiss the action as abandoned. The court vacated its earlier decision and dismissed the complaint. Plaintiff appealed. The Appellate Division, Second Judicial Department affirmed the lower court’s determination that plaintiff had abandoned its summary judgment motion warranting a vacatur of its earlier decision and agreed with the lower court’s determination that the complaint against Chittra should be dismissed because plaintiff failed to take steps to enter a timely default judgment against her.

Ms. Malik said, “this decision is important in the world of foreclosure defense because it amounts to a rebuke of a lender that engaged in questionable litigation tactics.” In this case, the lender (LaSalle) delayed the process of entering judgment against the borrower for five years, and as a result, was barred from entering judgment. Moreover, without any apparent justification, the lender failed to seek a default judgment against a known and indispensable party — the borrower’s wife and property’s co-owner (Chittra) — within one year.

According to Ms. Malik, “this decision is especially important from a precedential perspective, because courts typically are lenient when it comes to requests for extensions of time to meet deadlines for completing procedural filings. It may well behoove mortgage lenders to observe procedural norms and deadlines, as those deadlines may now be strictly enforced.”

The second case, *Whiteacre Funding, LLC v. Zeze Food Corporation, et al.*, Index No. 70-8437/14, pending in the Supreme Court, Queens County, also was a mortgage foreclosure action. In that case, defendants — represented by prior counsel — sought a \$100,000 home equity loan, but due to alleged fraudulent actions by the mortgage lender, signed loan documents for a loan in excess of \$500,000 secured by defendants' family owned food company. Defendants defaulted on the payments and plaintiff foreclosed, claiming it was owed in excess of \$1 million, including penalties and interest.

At this juncture of the proceedings, Warsaw Burstein partner, Pankaj Malik, took over as defendants' counsel and made a motion to vacate the default. The court granted defendants' motion, and in the interest of justice, vacated the default judgment that it had entered previously against defendants, based on the court's findings that defendants had put forward credible evidence that they had been victims of a mortgage fraud. In addition to obtaining a vacatur of the default judgment and judgment of foreclosure, Warsaw Burstein is pursuing a claim against the plaintiff for damages.

Again, this decision shows that courts will not tolerate possible fraud on borrowers and will vacate their own judgments to ensure justice is served.

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