Great Point

An Educational Series
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HAUNTED TALES IN FORECLOSURE – LEARNING LESSONS FROM DASTARDLY DECISIONS

Written by Kelly Cosentino, Esq, Partner

Sometimes foreclosure cases can...

linger, or even rise from the dead, like a ghost haunting a Victorian mansion. In this spooky installment of Great Point, we'll share some frightening scenarios we've encountered over the years and what can be learned from them.

In one recent New York appellate case, service of process from 2008 was litigated 15 years later, leading to dismissal of the case after it was determined service was not properly effectuated on the defendant. This is a frightening scenario that can unfortunately occur in aged cases. One option to overcome these types of challenges is to request additional time for service and have service redone, which may mean vacating the previously granted motions and allowing time for the defendant to answer. While that may seem like an unfortunate delay to the case, the alternative is much scarier and could result in a total loss for the loan due to expiration of the statute of limitations.

Another spooky scenario occurred when a New York court determined that Plaintiff would not be allowed to collect over five years of interest after the borrower's default.The court not only ordered that the case be dismissed and interest tolled but also directed that the interest could not be collected in any future cases either. The dismissal order also impacted loss mitigation and loan modification efforts as the amount due had to be reduced by the amount tolled. Additional care must be taken when foreclosure cases are dismissed to ensure any impact from prior actions are carried over into restarted cases and the loan is adjusted accordingly.

In New Jersey, upon filing a summons, complaint, and notice of pendency it was discovered that the mortgage was discharged. It is presumed that the borrower had filed a fraudulent satisfaction and since became a "ghost" – successfully evading service by utilizing addresses that are post offices, vacant land, and other mysterious locations. It is important for counsel to be aware of potential fraud when discovering unusual circumstances on a case.

In all states, the dead and all who may have an interest in the property must not be left ignored or disregarded, even when it is not Halloween. Rather, proper research must be done to find representatives and heirs of those deceased borrowers and to ensure they are made aware of the foreclosure proceedings. Additionally, searches must be properly reviewed to determine if there are breaks in the chain of ownership that could cause relatives of the dead to haunt current foreclosures and cause title problems.

It's not all tricks though, there are some treats to be found! There have been a few recent decisions in Kings County, New York denying defendant requests for nominal damages, an indication that including proper admissible business records in motions for judgments of foreclosure and sale can lead to successful decisions awarding the amount due to Plaintiff.

We hope the lessons learned from these haunted tales can lead to future success in all cases in New York, New Jersey, and Pennsylvania and we wish everyone a Happy Halloween!