

Puerto Rico Supreme Court Rules that a Foreclosure Judgment could be Null and Void if the Case was Not Mediated First

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An McV Bankruptcy & Debt Restructuring Alert

October 21, 2016

In Banco Santander de Puerto Rico v. Brenda Correa Garcia, 2016 TSPR 201, the Puerto Rico Supreme Court interpreted the mediation provisions created by Act 184-2012, the “Law for Compulsory Mediation and Preservation of your Home in Foreclosure Proceedings involving a Principal Residence.” The Act imposes a jurisdictional requirement that foreclosure cases involving the debtor’s principal residence be referred to compulsory mediation before the trial courts may enter judgment or order the sale of the property at public auction. Nevertheless, certain contradictory terms within the Act seemingly allowed trial court judges to refer the cases for mediation only when they deemed it necessary or useful.

The Supreme Court interpreted these provisions and held that once the defendant has filed an answer to the complaint, the act of referring the case to mediation is a jurisdictional requirement which must be met when the creditor seeks to foreclose the debtor’s principal residence. The only two exceptions to this rule are (1) cases where default has been entered against the debtor, or (2) cases where the debtor’s pleadings have been stricken from the record. If the court does not comply with this requirement, it will lack jurisdiction to enter judgment or sell the property at public auction.

After the case is referred to mediation, the court may continue with the judicial proceedings when: (1) the creditor appeared at the mediation but the debtor did not; (2) both parties appeared at the mediation but no agreement was reached; or (3) the debtor did not comply with the agreements reached during the mediation.

This rule is applicable to all cases filed after the date of the opinion (September 16, 2016); to cases pending before the courts of first instance in which no judgment has been entered; and to judgments issued by the courts of first instance after July 1, 2013 (the date when Act 184-2012 became effective) which have not become final and unappealable.

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The Court also held that the provisions of Act 184-2012 are applicable to any mortgage creditor, including individuals, and are not limited to banking or financing institutions.

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