

Florida Court Recognizes Need To Show Prejudice To Establish Defense Of Failure Of Conditions Precedent Under Paragraph 22 Of The Mortgage

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As part of its defense at trial in a foreclosure action, the defendants asserted that the plaintiff bank failed to satisfy the condition precedent of providing notice and an opportunity to cure before filing its complaint, as required by the mortgage. Specifically, the defendants argued that, because paragraph 22 of the mortgage required that the notice provide a 30-day period to cure the default—and the letter notice provided only 29 days—the foreclosure action should be involuntarily dismissed. The Fifth District rejected the argument, noting that the defendant failed to show prejudice, and that, “[a]bsent some prejudice, the breach of a condition precedent does not constitute a defense to the enforcement of an otherwise valid contract.” The defendants nevertheless ultimately prevailed, as the Court reversed the final judgment of foreclosure based on a lack of evidence of standing by the plaintiff. The decision, *Gorel v. Bank of New York Mellon*, 5D13-3272 (Fla. 5th DCA May 8, 2015), is not yet final.

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