

Objection, Interrupted

APPELLATE & TRIAL SUPPORT | MARCH 23, 2018



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It's a cardinal rule that to preserve an argument at trial, counsel must make a contemporaneous objection. Even cardinal rules, however, have their exceptions.

In *US Bank National Association v. Tranumn*, No. 1D16-491, 2018 WL 267276 (Fla. 1st DCA Jan. 2, 2018), the Florida First District Court of Appeal acknowledged such an exception. There, the trial court entered a "Final Judgment" that denied US Bank the relief of foreclosure, instead ordering the borrowers to pay the bank a money judgment. The trial court also awarded the borrowers' counsel attorney's fees. The bank appealed. Although the First District found the Final Judgment to be a non-appealable non-final order due to a pending counterclaim, it granted the bank's petition for certiorari and reviewed the Final Judgment.

The bank argued that the borrowers' counterclaims, which the trial court had severed, were inextricably intertwined with the bank's complaint for foreclosure. As a result, the bank argued, the trial court's severance of the counterclaims departed from the essential requirements of the law.

The borrowers argued that the bank failed to preserve the issue because it did not make a contemporaneous objection to the severance. The First District disagreed, finding that counsel for the bank had attempted to address the issue of severance, but was cut off by the trial judge. Logically, the court concluded, the bank would have objected had it been allowed to continue. As a result, the First District found the issue preserved for purposes of US Bank's petition. It granted the writ, quashed the judgment, and remanded for all the claims to be tried together.

Preservation Issue

- “[A]n issue may be preserved without a contemporaneous objection if ‘it appears from the record that the trial court may have interrupted a proper objection.’”

Tip:

- We advise making contemporaneous and specific objections, whenever possible. But there are times where the failure to do so may not be fatal. This case presents one such example. In a similar vein, section 90.104 of the Florida Evidence Code presents another. See 90.104, Fla. Stat. (if a court makes a definitive ruling on the record admitting or excluding evidence, you do not need to renew objections on that point to preserve it for appeal).