>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE.
THE SUPREME COURT OF FLORIDA IS NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION, YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES, GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME COURT.
THE FIRST CASE ON THE DOCKET IS BARTRAM VERSUS UNITED STATES BANK.
YOU MAY PROCEED WHEN YOU'RE READY.
>> THANK YOU, YOUR HONOR.
GOOD MORNING.
I HAVE THE PRIVILEGE OF REPRESENTING LEWIS BARTRAM, AS WELL AS THE PRIVILEGE FOR SPEAKING FOR ALL THREE OF THE PETITIONERS IN THIS CASE.
WITH ME AT COUNSEL'S TABLE IS JOEL PERWIN AND MY PARTNERS, DAN AND MICHAEL.
WE'RE HERE TODAY IN OBVIOUSLY WHAT IS AN IMPORTANT CASE, THE STATUTE OF LIMITATIONS IN THE FORECLOSURE SCENARIO, AND IT IS A CASE THAT RESTS UPON VERY, VERY SETTLED PRINCIPLES.
WE KNOW, OF COURSE, THAT IN 1974 THE FLORIDA LEGISLATURE PASSED IN UNMISTAKABLE TERMS A STATUTE THAT PROVIDED FOR A FIVE-YEAR STATUTE OF LIMITATIONS FOR MORTGAGE FORECLOSURE.
WE ALSO KNOW THAT THE CASE LAW BEFORE AND AFTER WAS ALSO CONSISTENT, AND IT SAID THAT IN AN INSTALLMENT PAYMENT OBLIGATION THE EFFECT OF AN ACCELERATION IS TO MAKE ALL OF THE PAYMENTS IMMEDIATELY DUE.

>> SO LET ME ASK YOU THIS.
LET'S GO TO JUST THIS CASE, BUT THE ACCELERATION, WHEN THEY FILED THEIR MORTGAGE FORECLOSURE ACTION, THE CONTENTION IS -- OF THE -- OF YOUR CLIENT IS THAT THE ACCELERATION WAS EFFECTIVE.
IN OTHER WORDS, ALL SUMS WERE DUE.
IS THAT CORRECT?
>> AND THAT'S EXACTLY WHAT THE FIFTH DISTRICT SAID.
>> I UNDERSTAND THAT, BUT I DON'T NECESSARILY AGREE WITH THAT.
AND BECAUSE -- LET'S -- SO THEN SEVERAL YEARS LATER THEY DON'T -- THE MORTGAGE COMPANY DOESN'T SHOW UP.
APPARENTLY THERE'S THIS CASE MANAGEMENT ORDER THAT SAYS THERE'S -- THEY DON'T SHOW UP, YOU MAY SUFFER A DISMISSAL WITHOUT PREJUDICE.
BUT THERE'S SOMEWHERE ALONG THE LINE PARTIES SWITCH AND NOW WE'RE SAYING IT'S A DISMISSAL WITH PREJUDICE, WHICH IS THEN AN ADJUDICATION ON THE MERITS IN YOUR CLIENT'S FAVOR.
ADJUDICATION ON THE MERITS THEN WOULD BE THAT THERE WAS NO DEFAULT AND THERE WAS NO ACCELERATION AS A MATTER OF ADJUDICATION?
SO THE ACCELERATION THEN -- IF A YEAR LATER YOUR CLIENTS DECIDED THEY WERE ACTUALLY GOING TO START PAYING ON THE MORTGAGE AND THE BANK CAME IN AND SUED FOR THE ENTIRE AMOUNT, WHAT WOULD BE THE DEFENSE TO THAT?
BECAUSE IT'S WITHIN THE STATUTE OF LIMITATIONS.
WHAT WOULD HAPPEN?
WOULD IT BE, WELL, WE HAD AN ADJUDICATION, THERE'S NOTHING DUE AND THERE IS -- AND THEY CANNOT COLLECT THE WHOLE AMOUNT AND THEY CAN'T FORECLOSE?

>> IT TURNS ON WHETHER IT WAS A VALID ACCELERATION.
>> I'M ASKING YOU THAT.
IN OTHER WORDS, YOUR CLIENT CONTINUED TO PAY, BUT THE ADJUDICATION ON THE MERITS WAS AGAINST THE BANK.
SO HOW COULD THERE BE AN EFFECTIVE ACCELERATION IF THE BANK LOST?
>> WELL, BANKS CAN LOSE WITH EFFECTIVE ACCELERATION BECAUSE, FOR EXAMPLE, THEY'VE ACCELERATED.
AT THAT POINT IT'S AS IF A BANK LOST ON A DEMAND NOTE OR ON A FULLY MATURE INDEBTEDNESS.
THE EFFECT OF ACCELERATION IS TO FULLY ENSURE THE --
>> SO, AGAIN, YOUR CLIENT THEN UNDER YOUR THEORY WOULD HAVE HAD TO PAY, IF THERE WAS A LAWSUIT WITHIN FIVE YEARS, DESPITE WHAT SINGLETON SAYS ABOUT EACH DEFAULT'S A CONTINUING OBLIGATION, THEN YOUR CLIENT WOULD HAVE, UNDER YOUR THEORY, EVEN THOUGH THE ACCELERATION -- THERE WAS AN ADJUDICATION ON THE MERITS AGAINST THE BANK, UNDER YOUR THEORY, THAT THE BANK COULD COLLECT THE ENTIRE AMOUNT OF THE NOTE.
>> IF THE BANK --
>> IS THAT YES OR NO?
COULD THEY?
>> THE BANK COULD COLLECT THE ENTIRE NOTE IF THE INSTANCE OF THE FIRST ACCELERATION EVERYTHING IS DUE.
>> NO.
I'M ASKING AFTER THE CASE WAS DISMISSED WITH PREJUDICE AGAINST THE BANK.
>> WELL, THEN OF COURSE --
>> YOU'RE SAYING THE STATUTE OF LIMITATIONS RAN, MEANING WITHIN FIVE YEARS THE BANK COULD HAVE DONE SOMETHING.
WHAT COULD THE BANK HAVE DONE ON

THE ACCELERATION IF THERE WAS AN ADVERSE ADJUDICATION AGAINST THE BANK?
>> WELL, WE'RE TALKING, OF COURSE, RES JUDICATA.
THAT'S A COMPLETELY DIFFERENT QUESTION FROM THE STATUTE OF LIMITATIONS.
IF YOU'RE ASKING ME UNDER RES JUDICATA PRINCIPLES IF A BANK HAS A VALID ACCELERATION, WHICH IS NEVER WAIVED, AND THOSE ARE VERY SIGNIFICANT SCENARIOS.
THOSE ARE TWO SCENARIOS THAT SINGLETON TALKED ABOUT.
BUT IF THERE WAS A VALID ACCELERATION THAT WAS NEVER WAIVED AND THE BANK WENT TO TRIAL AND LOST, THEN YOU COULD HAVE A SCENARIO WHERE RES JUDICATA WOULD CUT OFF THE BANK.
>> BUT SINGLETON SAYS NO.
DISMISSAL WITH PREJUDICE, THERE ARE CONTINUING OBLIGATIONS WITH EACH SUBSEQUENT DEFAULT.
>> UNDER RES JUDICATA PRINCIPLES SINGLETON SAID THERE ARE TWO SCENARIOS.
AND THEY'RE PRETTY SPECIFIC ABOUT IT.
>> WHY DON'T YOU -- BECAUSE I DON'T THINK YOU'VE ANSWERED MY QUESTION.
I THINK THE ANSWER IS THAT IF THE BANK CAME IN IN A YEAR OR WITHIN FIVE YEARS AND TRIED TO SUE ON THE ENTIRE AMOUNT, SAYING THAT WE ALREADY ACCELERATED AND THEREFORE -- THEY WOULD DEFEND AND SAY, NO, IT WAS DISMISSED WITH PREJUDICE.
THAT MORTGAGE FORECLOSURE ACTION WAS NOT EFFECTIVE AS AGAINST YOUR CLIENT.
>> BUT THE FACT THAT A MORTGAGE FORECLOSURE ACTION IS NOT EFFECTIVE AGAINST A CLIENT UNDER RES JUDICATA PRINCIPLES IS FUNDAMENTALLY DIFFERENT FROM WHETHER IT CAN BE EFFECTIVE FOR

STATUTE OF LIMITATIONS BECAUSE, AS WE KNOW, ONCE IT'S ACCELERATED, EVERYTHING IS DECLARED TO BE DUE.
>> BUT WHAT IS THE EFFECT THEN OF THE DISMISSAL WITH PREJUDICE AGAINST THE BANK?
>> THE EFFECT OF A DISMISSAL WITH PREJUDICE DEPENDS ON WHAT'S LITIGATED, WHAT'S ACTUALLY LITIGATED.
>> WELL, YOU SAID ACCELERATION BECAME EFFECTIVE, SO IT MUST MEAN THEY LOST.
THE ACCELERATION WAS NOT EFFECTIVE, JUST LIKE IN OLYMPIA BANK WHERE IF THE BANK DOESN'T TAKE ALL THE STEPS, THE ACCELERATION IS NOT EFFECTIVE UNTIL THERE'S A FINAL JUDGMENT OF FORECLOSURE.
ISN'T THAT THE ANSWER?
>> IN A RES JUDICATA -- OLYMPIA DEALT WITH RES JUDICATA ONLY, WITH A SCENARIO WHERE THERE WAS A DEFECT IN ONE OF THE ACCELERATIONS.
AND THEN WITH RESPECT TO THE OTHER ACCELERATION, THERE WAS IN EFFECT A PAYMENT MADE THAT PAID OFF THE APRIL 1 MORTGAGE DEFAULT.
SO THAT WHEN A NEW ACCELERATION WAS DECLARED IN MAY, THAT WAS A VALID ACCELERATION.
THAT'S WHAT'S SUED UPON.
BUT WHAT IS DIFFERENT IN A STATUTE OF LIMITATIONS SCENARIO IS THAT THE STATUTE STARTS.
AND EVEN IF --
>> IT STARTS FROM WHAT?
>> IT STARTS FROM THE TIME OF ACCELERATION.
AND IF YOU HAVE A SITUATION WHERE FOR RES JUDICATA --
>> EVEN IF THE ACCELERATION HAS NEVER BEEN ADJUDICATED SUCCESSFULLY AGAINST THE MORTGAGE HOLDER.
>> OF COURSE, YOUR HONOR.

THE NOTION THAT AN ACCELERATION DOESN'T ACCRUE UNTIL THE CASE IS ADJUDICATED MAKES NO SENSE AT ALL.
THAT'S NEVER BEEN THE LAW.
THE LAW OF FLORIDA, INCLUDING DAVID VERSUS SUN FEDERAL, CONSISTENTLY SAYS THAT AN ACCELERATION IS EFFECTIVE WHEN NOTICE IS GIVEN TO THE BORROWER.
THAT PRINCIPLE LITERALLY SUGGESTS ACTIVE ACCELERATION DOESN'T EVEN ACCRUE UNTIL IT'S ADJUDICATED.
>> SO WHAT WAS ADJUDICATED -- SO AT THE TIME THAT THERE WAS A DISMISSAL WITH PREJUDICE AND THERE'S A STATEMENT THAT THERE WAS A DISMISSAL WITH PREJUDICE, ADJUDICATION, WHAT WAS ADJUDICATED ABOUT THE ACCELERATION?
>> WELL, IT MAY BE THAT NOTHING WAS ADJUDICATED ABOUT ACCELERATION.
THE DISMISSAL WITH PREJUDICE MAY HAVE SAID THAT AFTER THE ACCELERATION IT WAS WAIVED, WHICH IS ONE --
>> BUT THIS DIDN'T SAY ANYTHING. IN THIS CASE WE'RE DEALING WITH, DISMISSALS WITH PREJUDICE FOR BANKS NOT SHOWING UP -- AND, AGAIN, I THINK THERE'S ANOTHER ISSUE AS TO WHETHER SOMEONE'S SWITCHING AND SAYING, NO, IT WAS DISMISSAL WITHOUT PREJUDICE.
I'M NOT SURE WE GET BACK TO WHAT THAT MEANS.
BUT IF IT WASN'T ADJUDICATED, YOU'RE SAYING BUT THE BANK SHOULD HAVE BEEN ON NOTICE THAT THE ACCELERATION -- THE CLOCK WAS TICKING.
>> YES.
>> AND THAT THEY -- EVEN IF THERE WERE -- THAT THEY CONTINUED TO PAY THE MORTGAGE HOLDER SUBSEQUENTLY, THAT THEY -- THAT THE BANK WOULD HAVE TO

SUE FOR THE ENTIRE NOTE WITHIN FIVE YEARS.
>> WELL, THERE'S TWO ISSUES ON THAT.
FIRST OF ALL, SINGLETON'S ORDER -- I'M SORRY.
THE BARTRAM ORDER OF DISMISSAL DOES IN FACT SAY EXPLICITLY -- IT RECITES THE LANGUAGE OF FAILURE OF THE PARTIES TO APPEAR RESULTS IN A CASE BEING DISMISSED WITHOUT PREJUDICE, THE MOST LOGICAL, DISMISSAL WITHOUT PREJUDICE.
>> SO THAT'S A SWITCH.
>> NOT FROM OUR STANDPOINT.
>> NOW WE HAVE DISMISSAL WITH PREJUDICE.
NOW ARE YOU SAYING THAT IT'S A DISMISSAL WITHOUT PREJUDICE?
>> OUR POSITION HAS CONSISTENTLY WITHIN DISMISSAL WITHOUT PREJUDICE.
IF THERE'S AN ACCELERATION AND THE MORTGAGOR, THE BORROWER CONTINUES TO MAKE PAYMENTS POST-ACCELERATION, THAT'S A VERY DIFFERENT SITUATION AND THAT CAN CONSTITUTE A WAIVER OF THE ACCELERATION AND THROUGH THE CONDUCT OF PARTIES AND THROUGH THE CONDUCT OF WAIVER, YOU CAN HAVE AN EFFECTIVE REINSTATEMENT WHICH, BY THE WAY, IS WHAT HAPPENED IN SINGLETON, $2,000 IN PAYMENTS WERE MADE AFTER THE FIRST ACCELERATION AND THOSE PAYMENTS WERE EFFECTIVELY A REINSTATEMENT.
SO THE REASON THAT'S SO CRITICAL IS IF I ACCELERATE PROPERLY IN JANUARY AND THEN I ACCEPT PAYMENTS THEREAFTER, MY CONDUCT AS A LENDER WITH A KNOWING INVOLVEMENT OF A BORROWER IS SUCH AS IT COULD ESTABLISH A WAIVER, MEANING THE ENTIRE DEBT THAT WAS ONCE DUE IN JANUARY IS NO LONGER ENTIRELY DUE.
AND YOU CAN THEN ACCELERATE ANEW

BECAUSE YOU HAVE A REINSTATED CONDITION ON THE LOAN OBLIGATION.
>> IS THERE A DISTINCTION BETWEEN, ON ONE HAND, THE ACCELERATION OF WHAT'S DUE UNDER THE NOTE AND WHAT'S DUE UNDER THE NOTE AND, ON THE OTHER HAND, THE FORECLOSURE THAT MAY BE TAKEN PURSUANT TO THE MORTGAGE?
>> THERE IS NONE.
I MEAN, THERE'S AN EXTENSIVE BODY OF CASE LAW THAT SAYS THE MORE IT'S ANCILLARY TO THE NOTE, THE MORTGAGE FOLLOWS THE NOTE, AND SO THE ACCELERATION ON THE NOTE --
>> BUT THERE ARE TWO DIFFERENT THINGS BEING SOUGHT, AREN'T THERE?
ONE IS THE AMOUNT THAT'S ACTUALLY DUE, MONEY OWED, AND THE OTHER IS THE FORECLOSURE ACTION.
AND WHAT YOU'RE REALLY GETTING TO HERE IS WHETHER OR NOT THE STATUTE OF LIMITATIONS BARS A FORECLOSURE ACTION, ARE YOU NOT?
>> WE ARE.
BUT THERE'S --
>> AND WHAT -- DOES THAT HAVE ANY IMPACT THEN UPON THE AMOUNT DUE UNDER THE NOTE?
>> WELL, IF THE NOTE -- BECAUSE, AGAIN, THAT'S THE DEAD INSTRUMENT.
THE MORTGAGE EXISTS SIMPLY AS AN ANCILLARY INSTANT, ACCORDING TO MANY CASES.
SO IF THE NOTE IS PROPERLY ACCELERATED, THEN THE PAYMENTS DUE, FOR EXAMPLE, IN THE YEAR 2020 ARE DUE RIGHT NOW.
THEY'RE ALL DUE RIGHT NOW.
AND SO BASED ON THE ACCELERATED DEBT, THEY'RE NOT DUE IN 2020.
THEY'RE NOT DO FIVE YEARS FROM NOW.
THEY'RE ALL DUE NOW IF THE ACCELERATION IS PROPER.

SO THAT'S WHAT RUNS THE STATUTE
OF LIMITATIONS.
AND TRAVIS VERSUS MAYS IN 1948
SAID THAT.
FDIC VERSUS SMITH, IT WAS A
FEDERAL APPEALS COURT CASE, SAID
THE SAME THING.
SO THERE'S REALLY NO DOUBT THAT
IF AN ACCELERATION IS PROPER,
ALL OF THE PAYMENTS ARE DUE,
THEY'RE FULLY MATURED, THEY ARE
ACCELERATED, THEY ARE DUE AND
PAYABLE JUST AS SURELY AS IF IT
WAS A TERM NOTE.
>> SO UNDER YOUR ARGUMENT THEN,
AFTER THE FIVE-YEAR PERIOD, THE
BANK NO LONGER OWNS THE
PROPERTY?
THE PROPERTY BECOMES THE
PROPERTY OF THE MORTGAGOR?
>> IF A BANK CAN'T GET IT
TOGETHER FOR FIVE YEARS -- AND
REMEMBER, JUSTICE QUINCE, BANK
DECIDES WHETHER TO ACCELERATE.
THAT IS ENTIRELY WITHIN THEIR
PREROGATIVE IN THE FIRST
INSTANCE.
THEY DON'T HAVE TO ACCELERATE.
BUT IF THEY DO CHOOSE TO
ACCELERATE -- AND BANKS, AS WE
KNOW, HAVE A PRETTY GOOD ABILITY
TO KEEP TRACK OF WHEN SOMEBODY
IS LATE FOR TEN DAYS.
THEY CAN FIGURE OUT WHEN A
FILING DATE IS IN FIVE YEARS.
>> SO THIS CASE ACTUALLY WAS
BROUGHT TO -- I GUESS IT'S NOT
QUITE TITLE, BUT BASICALLY THE
MORTGAGOR IS SAYING THIS
PROPERTY BELONGS TO ME AND I NO
LONGER OWE THE BANK OR WHOEVER
IS THE MORTGAGEE ANYTHING.
>> JUSTICE, EVERY STATUTE OF
LIMITATIONS CUTS OFF A
POTENTIALLY VALID CLAIM.
IT COULD BE VICTIMS OF
MALPRACTICE.
IT COULD BE KAREN MONAHAN THAT
WAS ALLEGEDLY ROBBED BY HER
NIECE THAT WAS TRUSTING HER.

THERE ARE MANY, MANY VICTIMS
THROUGHOUT SOCIETY AND COUNTLESS
DOLLARS THAT ARE CUT OFF MY
STATUTES OF LIMITATIONS.
BUT THAT HAS NOT BEEN THE
CALCULUS FOR THIS COURT AND
STATUTE OF LIMITATIONS.
>> WHAT YOU'RE SAYING IS IN THE
OPINION, WHEN IT TALKS ABOUT
THAT THERE IS A SECOND AND
SEPARATE ACTION FOR FORECLOSURE,
YOUR POSITION IS THERE IS NO
SUCH THING.
THERE IS NO SEPARATE PERIOD OF
DEFAULT BECAUSE THE DEFAULT
ALREADY OCCURRED WHEN THE DEBT
WAS ACCELERATED.
>> CORRECT, UNLESS, JUSTICE,
UNLESS THAT ACCELERATION -- AND
THESE ARE THE TWO EXAMPLES THAT
SINGLETON GAVE.
AND I THINK THEY'RE VERY
IMPORTANT.
UNLESS THE ACCELERATION WAS
PREDICATED ON A LACK OF
PRE-CONDITIONS.
A LOT OF TIMES PEOPLE DON'T SEND
THE NOTICE OF ACCELERATION
PROPERLY.
OR IF THERE WASN'T AN ACTUAL
DEFAULT.
AND THEN THE OTHER EXAMPLE
SINGLETON GIVES IS THAT OR IF
THE MORTGAGEE HAD WAIVED
RELIANCE ON THE DEFAULT, SUCH AS
BY ACCEPTING PAYMENTS AFTER THE
FACT, WHICH IS WHAT HAPPENED
ACTUALLY IN SINGLETON.
SO OUR POSITION IS YES, THE
VALID ACCELERATION IN SINGLETON,
WHICH IS WHAT THE FIFTH DISTRICT
FOUND AND WHICH IS WHAT I THINK
THE RECORD'S UNCONTRADICTED
ABOUT, STARTS THE STATUTE OF
LIMITATIONS AND THE PAYMENTS
OTHERWISE DUE IN 2020 AREN'T DUE
THEN.
THEY'RE DUE RIGHT NOW.
ALL OF THOSE PAYMENTS ARE DUE
RIGHT NOW BECAUSE THAT'S WHAT AN

ACCELERATION UNMISTAKABLY
REQUIRES.
HOWEVER, THERE ARE CASES WHICH
TALK ABOUT FLAWS IN THE
ACCELERATION.
SO IF YOU HAVE A FLAW IN THE
ACCELERATION, IF IT'S NOT DONE
PROPERLY, THEN ALL THAT WOULD BE
OWED WOULD BE THE ARREARAGES,
THE BACK PAYMENTS.
>> DOESN'T THE BORROWER CONTINUE
TO BE IN DEFAULT EVEN THE
AMOUNT'S DUE AND OWING RIGHT
THEN?
DON'T THEY CONTINUE TO BE IN
DEFAULT UNTIL THE AMOUNT IS
ULTIMATELY SATISFIED BY THE
BORROWER?
>> THEY ARE IN DEFAULT ON THE
ACCELERATED AMOUNT.
IN THE CASE OF BARTRAM, IT WOULD
HAVE BEEN $650,000.
>> SO WHY ISN'T THERE A SECOND
PERIOD OF A DEFAULT PERIOD
UNSUED FOR, LIKE THE FIFTH DCA
SAID?
>> WELL, BECAUSE THE LEGISLATURE
HAS SAID FIVE YEARS IS ENOUGH,
THAT -- AND, YOU KNOW, IF THE
LEGISLATURE REALLY THINKS THAT
FIVE YEARS IS NOT ENOUGH, THERE
ARE FOLKS IN BUILDINGS NOT FAR
FROM HERE THAT COULD MAKE IT
EIGHT YEARS.
>> BUT BEYOND THE TIME WHEN THE
DISMISSAL WAS TAKING PLACE,
WOULD YOU AGREE THAT THERE WAS
AN ADDITIONAL PERIOD OF TIME
THAT THE NOTE WAS IN DEFAULT?
>> WELL, I WOULD CERTAINLY AGREE
THAT UPON ACCELERATION THE
ACCELERATED BALANCE WAS DUE AND
IN DEFAULT.
THE ENTIRE $650,000, JUST PICK
JANUARY, 2015, WAS DUE FROM
JANUARY, 2015 ONWARD.
>> OKAY.
>> AND THAT THAT ACTIVATES THE
STATUTE OF LIMITATIONS JUST AS
ANY OBLIGATION.

YOU CAN OWE MONEY AND IF YOU
DON'T MOVE ON IT WITHIN FIVE
YEARS OR IF YOU, AS HAPPENED IN
THESE CASES, YOU PROSECUTE AN
ACTION AND THEN YOU BUNGLE IT,
THERE ARE REASONS WHY YOU DON'T
GET TO CONTINUE THE PROSECUTION.
>> YOU'RE INTO YOUR REBUTTAL
TIME.
YOU'RE WELCOME TO CONTINUE, BUT
I JUST WANT TO --
>> THANK YOU, JUSTICE LABARGA.
JUST TO MENTION QUICKLY THERE'S
ALSO AN ISSUE ON THE STATUTE OF
REPOSE.
AND OUR POSITION IS DISTINCT AND
IT'S SIMPLE.
THE STATUTE OF REPOSE SAYS THAT
IF FROM THE RECORD OF IT YOU CAN
DETERMINE THE FINAL MATURITY OF
A MORTGAGE OBLIGATION, THEN THAT
LIEN CAN BE CANCELED FIVE YEARS
AFTER THE FINAL MATURITY OF THE
MORTGAGE.
IF, AGAIN, YOU CAN DETERMINE IT
FROM THE RECORD OF IT.
AND FROM THE RECORD OF IT IS
CLEARLY A RECORD NOTICE THAT'S
ESTABLISHED BY THE LIS PENDENS.
MORTGAGE FORECLOSURES ARE FILED
WITH LIS PENDENS AND IN ALL
INSTANCES THE LIS PENDENS WILL
HAVE AS PART OF THE NOTICE IT
GIVES THE COMPLAINT, WHICH SETS
FORTH THE ACCELERATION, WHICH IN
TURN ACTIVATES THE FIVE YEARS.
THANK YOU.
>> COUNSEL?
>> MAY IT PLEASE THE COURT, MY
NAME IS DAVID FINE.
I REPRESENT U.S. BANK.
I'M OWNED BY WILLIAM MCCAUGHAN.
THIS COURT SHOULD AFFIRM THE
FIFTH DCA AND ANSWER THE
CERTIFIED QUESTION IN THE
NEGATIVE.
I'D LIKE TO MOVE BACK TO A
QUESTION JUSTICE PARIENTE HAD
ASKED ABOUT THE NATURE OF THAT
DISMISSAL OF THE 2016

FORECLOSURE ACTION.
I'M LOOKING RIGHT NOW AT THE ORDER THAT THE CIRCUIT COURT ORDER ON AUGUST 30, 2011, IN WHICH THE CIRCUIT JUDGE DESCRIBED THE DISMISSAL AS BEING ONE THAT WAS AN ADJUDICATION ON THE MERITS.
HE SAID THE DISMISSAL WAS NOT DUE TO LACK OF JURISDICTION, IMPROPER VENUE OR LACK OF AN INDISPENSABLE PARTY.
THEREFORE, THE DISMISSAL ACTED AS AN ADJUDICATION ON THE MERITS.
SO I THINK THAT THAT RESOLVES THE QUESTION BECAUSE THE JUDGE WHO ACTUALLY WROTE THE ORDER FOR IT HAS NOW CHARACTERIZED WHAT HE INTENDED BY THE ORDER AND THE RULE UNDER WHICH THE ORDER WAS ENTERED FOLLOWS WHAT THE JUDGE DETERMINED.
>> BUT THAT WAS SUBSEQUENT TO THE ACTUAL ORDER OF DISMISSAL AND THE ACTUAL ORDER OF DISMISSAL SAID WITHOUT PREJUDICE, DIDN'T IT?
>> IT DID NOT, YOUR HONOR.
>> WHAT DID IT SAY?
>> WELL, WHAT THE ACTUAL ORDER OF DISMISSAL SAID WAS THAT IT WAS DISMISSED, AND HE MADE REFERENCE TO AN EARLIER NOTICE THAT HE HAD ISSUED THAT SAID NOTE FAILURE OF THE PARTIES AND/OR THEIR ATTORNEYS TO APPEAR IN PERSON MAY RESULT IN THE CASE BEING DISMISSED WITHOUT PREJUDICE.
HE DID NOT SAY THAT THAT'S WHAT HE WAS DOING.
AND HE THEN RELIED ON ORDER RULE OF CIVIL PROCEDURE 1.420B, WHICH IS --
>> BUT, YOU KNOW, THIS CASE CANNOT BE DECIDED, IN MY VIEW, ON WHAT A JUDGE SAID WAS -- HOW DID HE INTEND IT, BECAUSE THE RULE DOESN'T ALLOW FOR THE JUDGE

TO ADJUDICATE VOLUNTARY
DISMISSALS, BECAUSE NATION STAR,
WHICH YOU FILED AS A SUBSEQUENT
NOTICE, SAYS IT WAS A DISMISSAL
WITHOUT PREJUDICE.
AND I DON'T KNOW ALL AROUND THE
COUNTRY -- THE STATE WHEN BANKS
DON'T SHOW UP AT CASE MANAGEMENT
CONFERENCES, GENERALLY I THINK
-- AND THE ORDERS SAY THEY'RE
WITHOUT PREJUDICE.
SO GIVE ME -- SINCE YOU -- THE
BANK SEEMS TO BE GOING, WOW, WE
WANT THIS TO BE A DISMISSAL WITH
PREJUDICE, AN ADJUDICATION ON
THE MERITS, TELL ME -- AND YET
THERE ARE CASES THAT SAY IT
DOESN'T MATTER.
IT WAS DISMISSED, EITHER
VOLUNTARILY BY THE BANK OR
INVOLUNTARILY BECAUSE THE BANK
-- I DON'T KNOW WHY THEY DON'T
SHOW UP, BUT THEY DIDN'T SHOW
UP.
SO WHAT'S THE LEGAL SIGNIFICANCE
FOR THE RUNNING OF THE STATUTE
OF LIMITATIONS?
LET'S GO WITH BOTH SCENARIOS.
LET'S ASSUME IT'S A DISMISSAL
WITH PREJUDICE, WHICH IS NOW
WHAT THE FIFTH DISTRICT SAID,
EVEN THOUGH THE BANK WAS ARGUING
BELOW IT WAS A DISMISSAL WITHOUT
PREJUDICE.
>> YOUR HONOR, I THINK I CAN
COLLAPSE THE RESPONSE TO YOUR
QUESTION BECAUSE THE BANK AGREES
WITH WHAT YOU SAID A MOMENT AGO,
WHICH IS THAT IT DOES NOT
MATTER.
I MERELY RAISED THE POINT
BECAUSE I THINK THERE WAS SOME
CONFUSION IN THE ARGUMENT AND IN
THE RECORD.
>> BUT YOU GIVE US -- LET'S
ASSUME IT'S A DISMISSAL WITH
PREJUDICE, WHICH MEANS THAT
THERE WAS UNDER THE LAW AN
ADJUDICATION ON THE MERITS.
WHERE THERE'S TRULY NO

ADJUDICATION ON THE NOTE OR ON THE FORECLOSURE ACTION, AND WHAT DOES IT MEAN AS FAR AS ACCELERATION?
DOES IT MEAN THERE WAS AN ADJUDICATION THAT THERE WAS ACCELERATION OR THERE WAS NO ACCELERATION?
>> THERE WAS NO ACCELERATION. THE ACCELERATION WAS NOT CONSUMMATED BECAUSE IT WAS NEVER MADE PART OF A JUDGMENT.
>> WELL, MR. COFFEY SAYS THAT'S AGAINST ALL OF THE CASE LAW IN THIS CASE, THAT IS THAT THERE NEEDS TO BE A FINAL JUDGMENT OF FORECLOSURE BEFORE THERE CAN BE AN EFFECTIVE ACCELERATION.
>> YOU WON'T BE SURPRISED TO HEAR THAT I DISAGREE WITH THAT.
>> WELL, LET'S HEAR THE CASE THAT SAYS -- THE CASES THAT GO BOTH WAYS.
>> WELL, YOUR HONOR, THE CASE LAW THAT EXISTS, PREEXISTS AMONG OTHER THINGS, THIS FORM OF MORTGAGE, WHICH MAKES A DIFFERENCE.
THIS FORM OF MORTGAGE, WHICH IS A UNIFORM MORTGAGE AGREEMENT, PROVIDES THAT THERE'S A RIGHT TO REINSTATE ON THE PART OF THE BORROWER.
WHAT THAT MEANS IN ESSENCE IS THAT UP UNTIL THE TIME THERE'S A JUDGMENT OF DEFAULT, AN ACCELERATION, THE BORROWER CAN ALWAYS PAY WHAT'S DUE, WHAT'S PAST DUE, AND SIMPLY RESUME PAYING INSTALLMENT PAYMENTS.
WHAT THAT MEANS IN THE CONTEXT OF THIS CASE IS THAT THERE'S NEVER REALLY A FAIT ACCOMPLI UNTIL THERE'S A REINSTATEMENT.
MR. BARTRAM STILL HAS THAT ABILITY TO REINSTATE.
>> I'M MISSING SOMETHING HERE BECAUSE IT SEEMS RATHER STRANGE THAT YOU HAVE TO DEPEND ON AN ADJUDICATION OR A JUDGMENT.

FOR EXAMPLE, I SIGN A NOTE TO YOUR BANK AND I STOP PAYING ON IT AND YOU ACCELERATE BUT YOU DO NOT SUE ME.
SO DOES THAT MEAN THAT THERE CAN NEVER BE AN ACCELERATION OR THAT I DON'T OWE THE MONEY?
I'M A LITTLE PUZZLED BY THAT CONDITION THAT YOU SEEM TO SUGGEST MUST OCCUR BEFORE YOU CAN HAVE AN ACCELERATION, BECAUSE IT SEEMS ACCELERATION PRECEDES A JUDGMENT.
>> JUSTICE LEWIS, LET ME RESPOND IN TWO WAYS.
FIRST, GIVEN THAT IT'S A JUDICIAL FORECLOSURE STATE, GIVEN THAT THE MORTGAGE AGREEMENT ITSELF MANDATES THAT THERE IS A RIGHT OF REINSTATEMENT, IN THIS CIRCUMSTANCE AND WITH THIS DOCUMENT THERE IS NOT ACCELERATION WITHOUT A JUDGMENT.
BUT SECOND ANSWER TO YOUR QUESTION --
>> BUT IF SOMEONE DOESN'T PAY, IT'S NOT BEEN REINSTATED.
>> WELL, THAT'S RIGHT, IN WHICH CASE THE --
>> IT'S ACCELERATED BUT NOT REINSTATED.
>> IN WHICH CASE THE MORTGAGEE GOES TO COURT, FILES A COMPLAINT AND GETS A JUDGMENT OF ACCELERATION AND FORECLOSURE.
>> IF I DO NOT PAY THEN, IT'S JUST AN UNLIMITED STATUTE OF LIMITATIONS IS WHAT YOU'RE SAYING.
I'M WONDERING OUT LOUD, IT SEEMS TO ME YOU CAN HAVE AN ACCELERATION WITHOUT A JUDGMENT AND THEN THE QUESTION BECOMES WHEN DOES THE STATUTE BEGIN TO RUN?
AND YOU WOULD THEN SAY IT'S NOT UNTIL YOU GET A JUDGMENT.
THE RESPONSE IS, NO, IF IT'S A VALID ACCELERATION, IT'S FIVE

YEARS.
WE DON'T MAKE IT UP.
THE LEGISLATURE HAS DONE THAT.
AND IT SEEMS RATHER A SHORT
PERIOD OF TIME, MAYBE.
BUT I'M A LITTLE PUZZLED BY --
THE REASONING DOESN'T SOUND TRUE
TO ME.
>> WELL, YOUR HONOR, LET ME
OFFER THE SECOND POINT THAT I
WAS GOING TO MAKE EARLIER, IF I
MIGHT, AND THAT IS THAT WE OUGHT
NOT GET OURSELVES WRAPPED AROUND
THE AXLE, IF YOU WILL, BECAUSE
WE KNOW FROM SINGLETON THAT EVEN
IF THERE IS AN ATTEMPTED
ACCELERATION, IT NONETHELESS
HELD THAT THAT DID NOT IMPLICATE
THE OBLIGATION TO MAKE FUTURE
INSTALLMENTS.
>> BUT NOT ON A STATUTE OF
LIMITATIONS BASIS.
ON STATUTE OF LIMITATIONS YOU
SAY WHY ARE WE WORRYING ABOUT
ACCRUAL?
THAT'S WHAT YOU HAVE TO WORRY
ABOUT ON THE STATUTE OF
LIMITATIONS.
WHEN DID IT ACCRUE?
THAT'S HOW IT'S ALWAYS BEEN
MEASURED, ISN'T IT?
>> ABSOLUTELY, YOUR HONOR.
BUT THE ANSWER TO YOUR QUESTION
IS THAT SINGLETON, ALTHOUGH IT'S
CHARACTERIZED AS A RES JUDICATA
CASE, IS BETTER CONSIDERED TO BE
AN ACCELERATION CASE.
WHEN WAS THERE AN ACCELERATION?
WHAT WAS THE EFFECT?
THAT'S WHY SINGLETON IS SO
IMPORTANT HERE BECAUSE IN THIS
CASE FOR --
>> DID THE COURT SAY IN
SINGLETON THAT THAT'S WHAT IT
WAS DOING?
>> YES.
I THINK IT DID.
>> EXPRESSLY MADE THAT
STATEMENT?
>> EXPRESSLY, NO.

CERTAINLY BY IMPLICATION BECAUSE
THAT'S WHAT IT WAS DOING.
THAT'S WHAT IT HAD TO DO.
>> THAT'S I GUESS ONE MAN'S
INTERPRETATION OF WHAT THAT IS.
>> IT IS, YOUR HONOR, AND I HOPE
I'M NOT THE ONLY ONE.
>> OKAY.
>> THE ANSWER FOR THE QUESTION
IS FOR HIM TO BE CORRECT, ONE
WOULD HAVE TO COME TO THE
DETERMINATION THAT THE ATTEMPTED
ACCELERATION COLLAPSED THOSE
OBLIGATIONS INTO ONE LUMP SUM
AND AT THAT POINT THE STATUTE OF
LIMITATIONS ACCRUED.
THAT'S THE SAME THEORY THAT
OCCURRED IN SINGLETON.
SINGLETON SAID THAT YOU COLLAPSE
THEM ALL INTO ONE AND THEREFORE
THERE'S AN IDENTITY OF ACTIONS
BETWEEN THE FIRST AND SECOND
ATTEMPTED ACCELERATION AND
THEREFORE RES JUDICATA APPLIED.
SINGLETON TEACHES US THAT THAT
DOESN'T HAPPEN, THAT IF THERE'S
AN ATTEMPTED ACCELERATION, IT
DOES NOT IMPLICATE AND COLLAPSE
THOSE FUTURE INSTALLMENT
PAYMENTS.
IF IT WAS THE CASE WITH RESPECT
TO RES JUDICATA, IT IS LIKEWISE
THE CASE WITH RESPECT TO THE
STATUTE OF LIMITATIONS.
AND SO IT BEGINS ANEW EACH
MONTH, AS MR. BARTRAM FAILS TO
MAKE HIS INSTALLMENT PAYMENTS.
>> CAN I GO BACK TO THE
DISMISSAL WITHOUT PREJUDICE?
I DON'T KNOW WHY THIS IS HANGING
ME UP, BUT IT IS.
SO LET'S ASSUME IT'S A DISMISSAL
WITH PREJUDICE, WHICH IS WHAT
THE BANK NOW IS SAYING IT WAS.
AND IT'S AN ADJUDICATION ON THE
MERITS.
>> YES.
>> WHAT WAS ADJUDICATED IN THE
DISMISSAL WITH PREJUDICE, WHICH
WAS ADVERSE TO THE BANK?

>> WHAT WAS ADJUDICATED WAS THE BANK ASKED FOR CERTAIN FORMS OF RELIEF AND THE COURT SAID NO. ON THE MERITS YOU MAY NOT HAVE THOSE FORMS OF RELIEF.
>> THAT'S WHY I GUESS THIS IS MY FRIENDLY QUESTION, WHICH MEANS THAT AS TO THE ACCELERATION, I DON'T KNOW HOW IT COULD BE EFFECTIVE IF THERE WAS AN ADJUDICATION AGAINST THE BANK. SO THAT'S -- NOW, LET ME -- THAT'S -- DO YOU AGREE WITH THAT?
>> YOUR HONOR, I ALWAYS AGREE WITH FRIENDLY QUESTIONS.
>> OKAY.
AND YOU RECOGNIZE THEM.
SOME ADVOCATES DON'T.
NOW, ON DISMISSAL WITHOUT PREJUDICE, NOW WE HAVE -- BECAUSE WE HAVE CONFLICTS, NOT IN THIS CASE, BUT WITH BOVAY AND EVERGREEN THAT ARE MAYBE GOING TO BE BEFORE THE COURT.
WHAT IS THE EFFECT -- WHEN THE BANK SAYS I AM -- OR I'M NOT SHOWING UP BECAUSE I DON'T WANT TO PURSUE THIS FORECLOSURE ACTION AT THIS TIME, I'M DISMISSING IT, IS IT THE POSITION OF THE BANK THAT IT DOESN'T MATTER, AT THAT POINT THEY HAVE-- BY DISMISSING IT, NOT SHOWING UP, THAT THEY HAVE EFFECTIVELY GIVEN THE BORROWER ANOTHER LEASE ON LIFE BY LETTING THEM CONTINUE TO PAY ON THE MORTGAGE?
>> YOUR HONOR, THAT'S EXACTLY THE POSITION.
>> AND, AGAIN, I WANT TO MAKE SURE WE ALL UNDERSTAND THIS.
THE BANK'S NOT SAYING AS TO ALL THE AMOUNTS DUE THAT MR. BARTRAM DIDN'T PAY THAT THE BANK CAN COLLECT THOSE, CORRECT?
>> THAT'S RIGHT.
>> I MEAN, THE STATUTE HAS RUN ON ALL OF THOSE PAST DUE

AMOUNTS.
>> WELL, NOT ALL OF THEM, YOUR HONOR, BECAUSE OBVIOUSLY SOME OF THEM YOU CAN REACH BACK A CERTAIN DISTANCE.
>> BUT UP UNTIL THE TIME OF THE -- I THOUGHT THE DISMISSAL, THAT ANYTHING UP UNTIL THE TIME OF THE DISMISSAL IN THIS CASE, THOSE DEFAULTS -- THOSE AMOUNTS ARE NOT DUE.
>> THERE IS CASE LAW TO THAT EFFECT.
>> IF YOU ACCELERATE IT AGAIN, YOU CAN'T GET THE AMOUNTS THAT THEY NEVER PAID.
>> THERE IS CASE LAW TO THAT EFFECT.
ABSOLUTELY RIGHT, YOUR HONOR.
AND, YOUR HONOR, I THINK ONE WAY OF LOOKING AT THE QUESTION THAT YOU POSE ABOUT A DISMISSAL WITHOUT PREJUDICE IS TO IMAGINE THAT ACCELERATION IS A LITTLE LIKE A 5K ROAD RACE, WHICH IS YOU START THE PROCESS, YOU NEED TO GO THROUGH THE TAPE AT THE END TO GET ACCELERATION.
IF YOU DON'T GO THROUGH THAT TAPE -- AND THIS IS WHAT A LOT OF THE COURTS ADDRESSING THIS ISSUE IN THE LAST TWO TO THREE YEARS, THE DISTRICT COURTS OF APPEAL AND THE FEDERAL DISTRICT COURTS HAVE SAID.
IF YOU DON'T GO THROUGH THAT TAPE BECAUSE OF A DISMISSAL WITH PREJUDICE OR WITHOUT PREJUDICE, YOU DO NOT GET ACCELERATION.
IT DOES NOT MATTER.
THAT'S WHY THE DETERMINATION IN BOVAY, WHICH IS BEING REHEARD NEXT WEEK --
>> I'M A LITTLE CONFUSED AT WHAT YOU JUST AGREED TO THAT THE STATUTE BARS SO FAR AS MONEY OWED TO THE BANK.
COULD YOU TELL ME EXACTLY WHAT YOU JUST AGREED TO?
>> YOUR HONOR, ALL I AGREED TO

-- AND I WAS CAREFUL ABOUT THIS
--
>> I MISSED THE CAREFULNESS
PART.
>> LET ME TRY AGAIN, ESPECIALLY
SINCE THE CLIENT IS IN THE
AUDIENCE.
YOUR HONOR, WHAT I SAID IS THAT
THERE IS CASE LAW THAT WOULD
SUGGEST THAT THERE IS A LIMIT ON
HOW FAR BACK THE BANK CAN REACH.
WE DON'T AGREE WITH THAT CASE
LAW, BUT THERE IS CERTAINLY CASE
LAW IN FLORIDA TO THAT EFFECT.
>> SO PRIOR TO THIS CASE, WHAT
DOES THE STATUTE OF LIMITATIONS
BAR YOUR CLIENT FROM COLLECTING?
>> WELL, THE STATUTE OF
LIMITATIONS THAT APPLIES HERE IS
25112C AND THAT DOESN'T DEAL
WITH COLLECTIONS.
IT DEALS WITH FORECLOSURE.
AND WHAT IT SAYS IS WE CAN ONLY
REACH BACK FIVE YEARS TO FIND
THE DEFAULT THAT WILL GIVE THE
RIGHT TO FORECLOSE.
SO IT REALLY DOESN'T IMPLICATE
OUR ABILITY TO COLLECT THOSE
PAST DUE SUMS.
WHAT IT DOES IS IT IMPLICATES
OUR RIGHT TO EMPLOY A REMEDY.
>> YOU MAINTAIN THAT YOU'RE
STILL OWED THE TOTAL AMOUNT DUE
ON THE NOTE AS ACCELERATED?
>> YES.
>> OKAY.
>> YES.
BECAUSE RECALL, IF YOU WILL,
YOUR HONOR, THAT THERE IS A
SEPARATE STATUTE OF REPOSE THAT
APPLIES TO THE NOTE, WHICH TELLS
US THAT'S 95281, WHICH SAYS THAT
IF YOU CAN TELL FROM THE FACE OF
THE NOTE, FROM THE RECORD OF THE
NOTE WHEN ITS MATURITY DATE IS,
THAT IS THE MATURITY DATE AND
YOU HAVE FIVE YEARS FROM THAT
POINT.
THAT RUNS IN THIS CASE IN 2040.
NOTHING THAT HAS OCCURRED SO FAR

CHANGES ANY OF THAT.
SO MR. BARTRAM WILL STILL HAVE AN OBLIGATION ON THE NOTE.
THE ONLY QUESTION IN THIS CASE, THE ONLY QUESTION THAT THE FIFTH DCA DECIDED AND PLACED BEFORE THIS COURT, IS WHETHER WE STILL HAVE THE OPPORTUNITY TO FORECLOSE BEFORE THAT POINT.
AND THUS FAR, EVERY DISTRICT COURT OF APPEAL EXCEPT THE THIRD HAS AGREED WITH THE ARGUMENT THAT WE'VE OFFERED.
EVERY FEDERAL DISTRICT COURT THAT HAS REVIEWED THE ACTION IN FLORIDA HAS AGREED.
IN BOVAY THERE ARE NOW AMICUS BRIEFS OF THE FLORIDA BAR THAT AGREE WITH THE ANALYSIS.
AND IT REALLY IS THE ONLY WAY THAT YOU CAN READ SINGLETON.
FRANKLY, EVEN IF SINGLETON DID NOT EXIST, WE WOULD STILL BE AT THE SAME POINT, WHICH IS THERE WAS NOT A SUCCESSFUL ACCELERATION AND THEREFORE THERE WAS AN OPPORTUNITY FOR NEW DEFAULTS EACH TIME MR. BARTRAM FAILED TO MAKE HIS MONTHLY INSTALLMENT PAYMENTS.
>> YOU'RE TALKING ABOUT THE WEIGHT OF AUTHORITY, BUT IN THE AMICUS BRIEFS, WHICH ALL THE BRIEFS WERE EXCELLENT IN THIS CASE, ALL PROFESSIONAL AND CERTAINLY I APPRECIATE TRYING TO UNDERSTAND THIS COMPLICATED ISSUE.
BUT IT LOOKS LIKE FLORIDA WOULD BE IN THE MINORITY OF THE STATES IN DECIDING THAT THERE CAN BE DECELERATION AFTER A NOTICE OF ACCELERATION BY INACTION.
>> YOUR HONOR, I THINK THERE ARE TWO THINGS TO SAY TO THAT.
ONE IS CERTAINLY IN THE MINORITY OF THE JURISDICTIONS THAT HAVE DECIDED THE MATTER -- AND THERE ARE NOT THAT MANY, AND MANY OF THOSE THAT HAVE DISTINGUISHABLE

STATUTES THAT WOULD NOT BE
IMPLICATED IN FLORIDA.
AND THE OTHER THING, OF COURSE,
IS --
>> HOW ABOUT CALIFORNIA?
THAT'S ALWAYS A STATE THAT --
BIG STATE, LOTS OF FORECLOSURE
ACTIONS GOING ON.
HOW HAVE THEY DECIDED THE ISSUE?
>> YOUR HONOR, I BELIEVE THAT
CALIFORNIA HAS DECIDED THAT TO
SAY THERE IS NO DECELERATION,
BUT I'D HAVE TO CHECK, TO BE
HONEST.
>> WELL, THAT'S CORRECT.
AND HOW IS THEIR STATUTE
DIFFERENT FROM FLORIDA'S?
>> YOUR HONOR, OFF THE TOP OF MY
HEAD, I DON'T KNOW.
BUT THE OTHER ANSWER TO THE
QUESTION THAT YOU POSED EARLIER
IS THE FACT THAT A CERTAIN
NUMBER OF JURISDICTIONS HAVE
DECIDED SOMETHING IN A DIFFERENT
WAY IS ONLY PERSUASIVE IF YOU
LOOK AT THOSE OPINIONS AND
DECIDE THAT THERE'S SOMETHING
PERSUASIVE ABOUT THEM.
THE SHEER WEIGHT OF NUMBERS IS
--
>> SO THE BANK MUST BE CONCEDING
BY SAYING THAT, THAT THE WEIGHT
OF AUTHORITY IS AGAINST YOUR
POSITION.
AND I DON'T WANT TO ARGUE.
>> NO.
I THINK YOU'RE RIGHT, YOUR
HONOR.
>> YOU'RE TALKING ABOUT THE
WEIGHT OF ALL FEDERAL DISTRICT
COURT JUDGES, BUT THEY'RE
INDIVIDUAL JUDGES AND I THINK
THAT THE APPELLATE COURTS HAVE
TAKEN THEIR SIGNAL FROM
SINGLETON.
>> YES.
WELL, AND SINGLETON IS A GOOD
PLACE FROM WHICH TO TAKE A
SIGNAL FOR THOSE APPELLATE
COURTS AND WE WOULD SUBMIT FOR

THIS COURT BECAUSE SINGLETON WAS CORRECTLY DECIDED AND SINGLETON DESCRIBED FOR US WHAT THE EFFECT I HAVE THAT ATTEMPTED ACCELERATION WAS.
AND, YOUR HONOR, I WOULD GO BACK AND SIMPLY REITERATE THE POINT THAT I ALLUDED TO EARLIER.
>> BUT THEY SAY SINGLETON IS DISTINGUISHABLE BECAUSE THE MORTGAGOR HAD MADE PAYMENTS AFTER THE DISMISSAL WITH PREJUDICE AND SO THERE WAS BASICALLY AN AGREEMENT, IMPLICIT AGREEMENT, THAT THE ACCELERATION WAS NO LONGER EFFECTIVE.
WAS THAT A DISTINGUISHING FACTOR?
>> NO, IT'S NOT.
IF ONE READS THE OPINION IN SINGLETON, ONE WILL SEARCH IN VAIN FOR ANY SUGGESTION THAT THE COURT PAID ANY ATTENTION TO THAT POTENTIAL FACT IN REACHING ITS HOLDING.
IT DID NOT.
FOR ALL INTENTS AND PURPOSES, SINGLETON WAS THE SAME AS THIS CASE.
IT WAS ACCELERATION PRESENTED AGAINST THE FRAMEWORK OF RES JUDICATA.
THIS CASE IS AGAINST THE FRAMEWORK OF THE STATUTE OF LIMITATIONS.
THAT'S THE ONLY DIFFERENCE.
AND WE WOULD SUBMIT THAT SINGLETON THEREFORE CONTROLS.
>> LET ME -- TELL ME AGAIN WHY A DISMISSAL WITH PREJUDICE IS, QUOTE, BETTER FOR THE BANK THAN A DISMISSAL WITHOUT PREJUDICE.
I'M STILL -- AND, AGAIN, I SORT OF -- WHAT IS THE REASON THE BANK HAS SORT OF SWITCHED THEIR POSITION ON WHAT KIND OF DISMISSAL THIS WAS?
>> YOUR HONOR, THE BANK --
>> I MEAN, YOU DID RIGHT BELOW, WERE ARGUING IT WAS DISMISSAL

WITHOUT PREJUDICE UNTIL THE
FIFTH DISTRICT THEN IN A
FOOTNOTE, THEY GO, BUT THIS IS A
DISMISSAL WITH PREJUDICE.
>> RIGHT.
AND, YOUR HONOR, LET ME ADDRESS
THAT IN TWO WAYS.
FIRST OF ALL, WE DON'T THINK
THAT THERE'S A DIFFERENCE.
WE NOTED THE CORRECTION BECAUSE
THE RECORD WAS NOT CORRECTLY
DESCRIBED AND WE FELT IT WAS
APPROPRIATE TO CORRECT THAT.
AND SO THEREFORE THERE IS NO
DIFFERENCE.
NOW, IF ONE LOOKS AT THE
DECISION, THE PANEL DECISION IN
BOVAY, ONE MIGHT SAY THAT
THERE'S A DIFFERENCE, IN WHICH
CASE DISMISSAL WITH PREJUDICE
WOULD MATTER COURTING TO THE
THIRD DCA.
WE DON'T THINK THAT'S CORRECT.
AND WE HOPE THE THIRD DCA
REACHES A DIFFERENT CONCLUSION.
BUT THE DIRECT ANSWER TO YOUR
QUESTION, YOUR HONOR, IS THERE
IS NO DIFFERENCE.
IF THERE WAS A DISMISSAL, THERE
WAS NO EFFECTIVE ACCELERATION
AND THEREFORE THE OBLIGATION TO
MAKE INSTALLMENT PAYMENTS
CONTINUED.
AND ON THE SUBJECT OF --
>> AND THAT'S A DIFFERENT ISSUE
OF WHETHER THERE NEEDS TO BE A
FINAL JUDGMENT OF FORECLOSURE
FOR THE STATUTE TO START RUNNING
OR FOR THE ACCELERATION TO BE
EFFECTIVE, CORRECT?
>> IT IS.
IT IS.
AND IN FACT THE FACT THAT THOSE
ARE TWO SEPARATE POINTS, BOTH OF
WHICH I THINK SUPPORT OUR
POSITION, BUT NONETHELESS THE
FACT THAT THEY'RE TWO SEPARATE
POINTS INDICATE THAT IF YOU DO
NOT AGREE WITH ME ON THAT FIRST
POINT, THE DECISION OF THE COURT

COULD NONETHELESS BE TO AFFIRM
THE FIFTH DCA BECAUSE SINGLETON
WOULD TELL US THAT THAT'S THE
PROPER RESULT.
YOUR HONORS, AT THE END OF THIS
CASE WHAT WE HAVE IS MR. BARTRAM
ASKING THIS COURT TO SANCTION
THE CIRCUMSTANCE IN WHICH HE
WALKS AWAY NEVER HAVING PAID A
$650,000 DEBT WITH A FREE HOME.
THERE IS NO EQUITY IN THAT AND
THE LAW DOES NOT COMMAND IT.
SINGLETON INDEED COMMANDS
OTHERWISE.
WE ASK THAT THE COURT ANSWER THE
CERTIFIED QUESTION IN THE
NEGATIVE AND AFFIRM THE FIFTH
DCA.
IF THERE ARE NO OTHER QUESTIONS.
>> THANK YOU, SIR.
>> THANK YOU, YOUR HONORS.
>> MAY IT PLEASE THE COURT, I
WANT TO ADDRESS A COUPLE THINGS
RAISED BY SOME OF THE QUESTIONS.
JUSTICE LEWIS ASKED ABOUT THE
NOTION THAT AN ACCELERATION DOES
NOT BECOME EFFECTIVE UPON
ADJUDICATION.
THAT'S AN OXYMORON.
OF COURSE THE ACTION HAS TO
ACCRUE BEFORE IT'S BROUGHT.
OF COURSE YOUR PRECEDENTS,
INCLUDING DAVIS VERSUS SUN
FEDERAL, WHICH SITES CAMPBELL
VERSUS WARNER, HAVE ALL
INDICATED THAT AN ACCELERATION
BECOMES EFFECTIVE WHEN NOTICE IS
COMMUNICATED TO A BORROWER.
THERE ISN'T A SINGLE CASE IN THE
LAND THAT SUPPORTS THEIR THESIS.
AND TO THE EXTENT THEY ARGUE THE
LANGUAGE OF THE MORTGAGE, WHICH
I'M SURE YOU'LL HAVE AN
OPPORTUNITY TO LOOK, IT SIMPLY
SAYS THAT ON FOUR DIFFERENT
CONDITIONS, WHICH HAVE TO BE
ESTABLISHED SATISFACTORILY TO
THE LENDER, THERE CAN BE A RIGHT
OF REINSTATEMENT AFTER
ACCELERATION.

IT DOESN'T SAY SUSPENDS OR
PREVENTS ACCELERATION.
AFTER ACCELERATION THERE CAN BE
A REINSTATEMENT.
SO THE FACT THAT YOU HAVE A CURE
PROVISION AFTER A DEFAULT
DOESN'T MEAN THERE WAS A
DEFAULT.
TO SPEAK BRIEFLY TO THEIR
STATEMENT, WHICH THEY SAID THAT
SINGLETON ASSUMED A SUCCESSFUL
ACCELERATION, THAT'S JUST WRONG.
THE LANGUAGE OF SINGLETON, WHICH
DEALS WITH A BUNDLE OF JUDICIAL
RULES THAT YOU ADMINISTER, AND
YOU CAN CONSIDER EQUITABLE
CONSIDERATION.
IT'S NOT A STATUTE OF
LIMITATIONS WHERE YOU HAVE SAID
MANY TIMES IT IS THE PROVIDENCE
OF THE LEGISLATURE, STATUTES OF
LIMITATIONS ARE LEGISLATIVE
PROCESSES.
RIGHT SMACK IN THIS RES JUDICATA
CASE YOU GIVE EXAMPLES.
AND THEY'RE GOOD EXAMPLES
BECAUSE WE AGREE WITH SINGLETON
AS A RES JUDICATA MATTER.
FOR EXAMPLE, A MORTGAGOR MAY
PREVAIL BY DEMONSTRATING THEY
WERE NOT IN DEFAULT.
SO SOMEBODY GOES TO TRIAL, THEY
PROVE TO THE COURT THAT THEY'RE
NOT ACTUALLY IN DEFAULT.
THEN OF COURSE THEY CAN BRING
THAT ACTION AGAIN ON SUBSEQUENT
PAYMENTS.
THAT'S WHAT SINGLETON WAS
TALKING ABOUT.
THE OTHER EXAMPLE THEY GAVE,
WHICH IS ACTUALLY WHAT HAD
HAPPENED IN SINGLETON --
>> YOUR TIME IS UP.
GO AHEAD AND GIVE YOU A CHANCE
TO WRAP IT UP.
>> OR THAT THEY WAIVE RELIANCE
IF THERE IS A POST-ACCELERATION
WAIVER, THEN THAT CAN DO IT.
THERE'S A REASON THE VAST
MAJORITY OF STATES SUPPORT THE

RULE WE ASK FOR.
THIS IS ABOUT THE STATUTE OF LIMITATIONS.
IT'S ABOUT DEADLINES ESTABLISHED BY THE LEGISLATURE, DEADLINES WHICH HAVE TO BE RESPECTED AND DEADLINES WE WOULD ASK THIS COURT TO APPLY IN THIS CASE.
>> THANK YOU FOR YOUR ARGUMENTS.