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First Circuit Requires District Court of Rhode Island to Justify Foreclosure Stay

In a significant decision for servicers and owners of residential mortgage loans in Rhode Island, the U.S. Court of Appeals for the First Circuit (in an opinion written by David H. Souter, Associate Justice (Ret.) of the Supreme Court of the United States) has ordered the U.S. District Court for the District of Rhode Island to make a determination of whether its stay of activity relating to foreclosure cases meets the standards required for an injunction and, if so, "to establish specific limits of time and expense if the reference for mediation is to remain in effect."?

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In *Fryzel v. Mortgage Electronic Registration Systems, Inc., et al.*, No. 12-1526, the First Circuit considered the district court's November 2011 imposition of a stay of all activities (including eviction and foreclosure activities) relating to nearly all residential foreclosure cases pending before the court and its subsequent appointment of a special master to mediate such cases. The district court imposed the stay after a magistrate judge recommended dismissal of two actions brought by borrowers challenging the foreclosures of their mortgage loans, on the basis that the borrowers lacked standing to challenge the assignments of the original mortgagees' interests. Rather than act on the magistrate's recommendation, the district court imposed the stay, after which (the First Circuit noted) the "trickle" of foreclosure cases into the district court became a "deluge." At the time of the briefing of the case to the First Circuit, nearly 700 cases were pending in the district court subject to the stay.

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The First Circuit rejected the argument advanced by borrowers that the stay was not an "injunction," finding the stay order "can only be read as forbidding mortgagees to foreclose," accompanied by "threatened sanctions for violations." The First Circuit held, for the injunction to be continued, the district court would have to make "findings that the party to be favored has a substantial likelihood of success in the pending action, would otherwise suffer irreparable harm and can claim the greater hardship in the absence of an order, which will not disserve the public interest if imposed." The First Circuit noted that, in making such an inquiry, the court would "reach the subject of the magistrate's year-old recommendation to dismiss the specific case for the mortgagor's lack of standing to object to the assignment to the named foreclosing party" and that the burden for proving the standards required for an injunction would fall on the borrowers.

The court did not immediately vacate the stay order because it "fear[ed] that the practical effect...would be chaos" and decided to "tolerate the status quo long enough to give the parties time to plan for contingencies." Significantly, the court also found that the district court's "omission" of safeguards "against unreasonable delay and expense" resulting from the stay "was error" and required that, if the stay were to be continued, "time and cost limits should be set," followed by "formal, periodic reconsideration if any further mediation is not concluded within them."

In compliance with the First Circuit's ruling, the district court has set a hearing on the question of whether the stay met the requirements for the issuance of an injunction and has invited suggestions from the parties as to time and expense limitations for the mediation process in the event the stay is continued.

The First Circuit's ruling represents a significant victory for mortgage lenders and servicers seeking to enforce their rights in Rhode Island.

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