

Illinois Supreme Court Rules in High Profile Mortgage Post-Foreclosure Case

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In a case of interest to Illinois mortgage lenders and their title underwriters, the Illinois Supreme Court recently issued an opinion addressing the applicability of laches and the bona fide purchaser doctrine to post-foreclosure jurisdictional challenges.

In *PNC Bank, National Association v Jerzy Kusmierz et al.*, former mortgagors sought to unwind a prior foreclosure more than six years after completion of the underlying proceeding. The challenge was premised upon an alleged service defect. In the interim, the foreclosing lender sold the property to a young couple who built a new home for their growing family.

Kusmierz is one of dozens of like challenges filed in northeast Illinois beginning in 2018. Attorneys in the cases theorize that one or two non-lawyers combed through court records to identify service defects in completed foreclosures and then contacted former mortgagors to offer assistance in unwinding the proceedings. If successful, the challenges serve to divest new owners and their mortgage lenders from their interests in the previously foreclosed property.

In affirming the trial court's dismissal of the jurisdictional challenge, the Illinois Supreme Court found that both laches and the bona fide purchaser doctrine were proper defenses to the mortgagors' challenge notwithstanding the fact Illinois law recognizes no limitation on when a jurisdictional challenge may be raised.

Plunkett Cooney represented two of the successful appellees in the case.