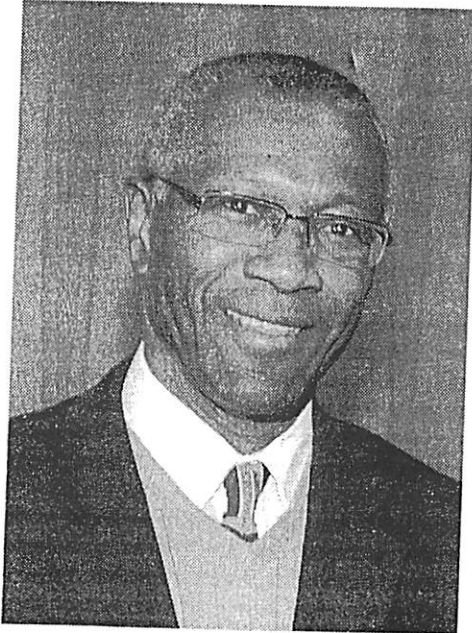


FLORIDA LAW REVIEW

Court told to examine postage mark in foreclosure



J. ALBERT DIAZ

Miami-Dade Circuit Judge Jerald Bagley must determine if a postage meter mark is evidence of timely service.

by John Pacenti
jpacenti@alm.com

A state appellate court wants a trial judge to determine whether a motion in a foreclosure case was timely served based on a private postage-meter mark.

The Third District Court of Appeal said Wednesday that the issue appears to be one of first impression in deciding JPMorgan Chase Bank & Co.'s appeal of a directed verdict in favor of Jade Winds Association.

Chase sued in 2009 to foreclose on a mortgage secured by a condominium unit owned by Svitlana Bigley at the Jade Winds complex in North Miami Beach.

Chase also named the association as a defendant and maintained its lien was superior to the association's interest in the property.

Chase filed a motion for summary judgment in 2010, but Jade Winds in a separate action took title to the unit by foreclosing its lien for unpaid assessments.

Michael Schimmel, a partner at Toyne & Mayo in Miami who represented the association, said the unit was appraised at less than \$35,000 and mortgaged for \$110,580 in 2005.

After a nonjury trial in 2011, Miami-Dade Circuit Judge Jerald Bagley granted a directed verdict in favor of the association and issued final judgment Jan. 25, 2012. Chase filed a motion for reconsideration Feb. 6.

The certificate of service indicated it was served by mail Feb. 6, but the Pitney-Bowes postage meter indicated the envelope was stamped Feb. 7, the court's opinion noted. A hard copy was filed with the clerk's office Feb. 13.

Jade Winds argued Chase's motion was untimely because it was served one day beyond the 10-day deadline for serving such a motion. Chase maintained the certificate of service signed by Chase's counsel constitutes proof that the deadline was met.

The three-judge panel ruled Bagley should hold an evidentiary hearing to

consider the date issue. Bagley was directed to resolve the following question: "In determining whether a motion was timely served by mail, can a private postage-meter mark constitute competent substantial evidence to rebut the prima facie proof of mailing evidence by the date contained in the certificate of service?"

If Bagley finds the motion was timely filed, the panel said he should then consider the merits of Chase's argument for reconsideration.

The appeal panel consisted of Judges Leslie B. Rothsberg, Kevin Emas and Ivan Fernandez.

"It may be one of the last Florida cases involving 'snail mail' since we've transitioned to e-filing and e-service," Schimmel said.

Attorney Susan Capote, an associate at Wargo & French in Miami representing Chase, declined comment.

John Pacenti can be reached at (305) 347-6638.