



## There's No Going Back: The Finality of Mortgage Foreclosures



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In New York, it is settled precedent that a judgment of foreclosure and sale is final as to all questions at issue between the parties<sup>[1]</sup>. Thus, once a final judgment is entered, both parties have no recourse or ability to raise a new defense or counterclaim. A recent case from the Supreme Court of New York illustrates this point.

In *Jones v. Flushing Bank*, the plaintiff, Monique Jones (“Jones”), executed a note secured by a mortgage covering real property. Both the note and the mortgage were executed in March of 2005 in favor of Flushing Bank (the “Bank”). Jones then conveyed the property to Big Time Holdings, LLC (“Big Time”) in June of 2005. In July, 2014, Jones defaulted under the note and mortgage by failing to make the payments due thereunder. That November, the Bank commenced a foreclosure action on the property and labeled the complaint “Commercial Mortgage Foreclosure Action.” Jones and Big Time asserted an affirmative defense stating that the property was not a commercial property. The Bank moved for summary judgment on the complaint. Jones and Big Time then cross-moved for leave to amend their answer to assert additional counterclaims. In September, 2015, the Supreme Court for Queens County, New York granted the Bank’s motion for summary judgment, in essence denying the cross motion.

In December of 2016, the court granted the Bank’s motion for a judgment of foreclosure and sale of the property, denying a motion from Jones and Big Time asking for leave to reargue the Bank’s motion for summary judgment and to remove the action from a commercial foreclosure. The court issued an order and judgment of foreclosure and sale which was not appealed by either Jones or Big Time.

In December of 2018, Jones and Big Time sued the Bank to recover damages for negligence, fraud, breach of contract, and violation of New York’s General Business Law in connection with the mortgage – alleging that Jones applied for a residential mortgage loan and that the Bank failed to disclose that it had placed the request as

a commercial mortgage loan. The Bank moved to dismiss the action, stating that the claim was barred by *res judicata* and collateral estoppel. The court granted the Bank's motion. Jones and Big Time appealed, bringing the case to the Supreme Court of New York, Second Department (the "Court"), to decide whether Jones and Big Time were estopped from bringing the action.

The Court upheld the decision, reminding the parties that the doctrine of *res judicata* provides that "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy."<sup>[2]</sup> The Court also stated that for foreclosure actions, a judgment of foreclosure and sale is final as to all questions at issue and concludes all matters of defense which might have been raised in the action. The Court concluded that Jones and Big Time were barred from bringing these new actions because they were either raised or could have been raised in the previous action.

This case reaffirms the long held precedent that a judgment of foreclosure is final. It also serves to remind us that certainty in the law is a paramount principle that we rely upon in the commercial community.

<sup>[1]</sup> *Jones v. Flushing Bank*, 212 A.D.3d 791, 793 (N.Y. App. Div. 2023)

<sup>[2]</sup> *Jones v. Flushing Bank*, 212 A.D.3d 791, 793 (N.Y. App. Div. 2023) (quoting *Chapman Steamer Collective, LLC v. KeyBank N.A.*, 163 A.D.3d at 761, 81 N.Y.S.3d 501)