

COA Opinion: Court Sets Aside Foreclosure Sale Where Assignee Of Mortgage Failed To Record Its Interest Prior To Sale

January 13, 2012, by Nicole Mazzocco

On January 12, 2012, the Michigan Court of Appeals issued its opinion in *Kim v. JP Morgan Chase Bank, No. 302528*. The foreclosure-by-advertisement statute, MCL 600.3204, provides, “If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.” MCL 600.3204(3). In *Kim*, the defendant was the assignee of the mortgage, and it failed to record its ownership of the mortgage before foreclosing by advertisement. Thus, the Court held that the foreclosure sale was invalid because the defendant had not complied with MCL 600.3204’s requirements.

The defendant argued that it should be exempt from MCL 600.3204’s recording requirements because it acquired the mortgage by operation of law. The trial court had upheld the foreclosure sale on that ground. The Court rejected this argument for two reasons. First, the Court held that receiving a mortgage by operation of law does not exempt an assignee from the statute’s requirements. The plain language of the statute permits no such exception. Second, the Court held that the defendant did not even receive the mortgage by operation of law. The defendant purchased the mortgage from the Federal Deposit Insurance Corporation (the “FDIC”). The FDIC had acquired the mortgage by operation of law as the receiver for Washington Mutual Bank. That the FDIC received the mortgage by operation of law did not mean that the defendant also received the mortgage by operation of law. Rather, the defendant bought the mortgage from the FDIC. Consequently, the Court reversed and remanded.