# Rodriguez and Bank of America

**What must a pleading contain?**

A pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief. HN1  Fed. R. Civ. P. 8(a)(2)

**What must a complaint contain to withstand a motion to dismiss?**

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. HN1  Fed. R. Civ. P. 8(a)(2)

**When is a complaint plausible on its face?**

A complaint is plausible on its face when the plaintiff pleads factual content necessary for the court to draw reasonable inference that the defendant is liable for the conduct alleged. HN1  Fed. R. Civ. P. 8(a)(2)

**What is the statute of limitation to bring an action to foreclose real property in Florida?**

Five years. HN3 Fla. Stat. 95.11(2)(c). Further details can be obtain in the discussion section.

**Does a subsequent and separate alleged default create a new and independent right in a mortgagee to accelerate payment on a note in a subsequent foreclosure action?** Yes.

**Under Florida law, when does the statute of limitations on a mortgage foreclosure action begin to run?** When the last payment is due unless the mortgage contains an acceleration clause. HN6

**What is a statute of limitations?**

A statute of limitations is a procedural statute that eliminates a party’s right to bring a cause of action and prevents the enforcement of a cause of action that has accrued. HN7 Fla. Stat. 95.11(2)(b)-(c)

**What is a statute of repose?**

A statute of repose is a substantive statute that not only prevents the enforcement of an accrued cause of action, but may also prevent the accrual of a cause of action where the final element necessary for its creation occurs beyond the time period established by the statute. HN7

Fla. Stat. 95.11(2)(b)-(c)

**Does the five-year limitations under Florida laws affect the life of the lien or extinguished the debt?** No HN7 Fla. Stat. 95.11(2)(b)-(c)

**What must a plaintiff show to quiet title to his or her property?**

A plaintiff must show the validity of his or her title and the invalidity of the title of the opposing party. HN8

**What must a plaintiff allege under Florida law to state a valid claim for quiet title?**

A plaintiff must allege: 1) the plaintiff has title to the subject property; 2) there is a cloud on that title; and 3) the cloud is invalid. HN8

**When shall a lien of a mortgage or other real property instrument terminate?**

It shall terminate after the expiration of the following: five years after the date of maturity HN9 Fla. Stat. 95.281(1)(a), except those specified in 95.281(5).

# McGrath v. Simon (In re McGrath) – New Jersey case

**When is summary judgement appropriate?**

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.

**What does U.S. bankruptcy code 11 U.S.C.S. § 548 states with respect to the debtor’s obligations?** 11 U.S.C.S. § 548 states in part that the trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition.

**What does the trustee or debtor must establish to avoid a transfer?**

To avoid a transfer under 11 U.S.C.S. § 548 the trustee or debtor must establish: (1) that the debtor had an interest in property; (2) that a transfer of that interest occurred within one year of the filing of the bankruptcy petition; (3) that the debtor Was insolvent at the time of the transfer or became insolvent as a result thereof; and (4) that the debtor received less than a reasonably equivalent value in exchange for such transfer.

**What is a fair and proper price or reasonable equivalent value for (a mortgage) foreclosed property?** Afair and proper price, or a "reasonably equivalent value," for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the state's foreclosure law have been complied with.

**What happens when taxes are not paid?**

If taxes are not paid, the municipality is entitled to enforce this lien by selling the property. The New Jersey Tax Sale law provides a municipality with a lien on land for taxes which are assessed on such land.

**How does the tax sale process differs from a mortgage foreclosure?**

The tax sale process differs from a mortgage foreclosure and sale in several respects. When a default in payment occurs, a mortgagee has the right to institute a civil action to foreclose on the property to recover the mortgage indebtedness, including interest and costs. Upon conclusion of this action a judgment is entered which adjudicates the amount due on the mortgage with interest, costs and fees.

**Who is charged with the duty to sell?**

The person charged with the duty to sell is usually the sheriff of the county where the property is located.

**What are the differences in procedure on mortgage foreclosure and tax sale certificate foreclosure in New Jersey?**

There are significant differences in procedure on mortgage foreclosure and tax sale certificate foreclosure in New Jersey. In a mortgage foreclosure, the judgment directs the property to be sold and the sale occurs after the judgment. In a tax sale certificate foreclosure, the certificate is sold and then after a two-year waiting period, the certificate holder can obtain a foreclosure judgment which vests title directly in the holder without further sale.

**What is the market value of a piece of property?**

The market value of a piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement.

**How can the superior court bar the right of redemption?**

The superior court, in an action to foreclose the right of redemption, may give full and complete relief under N.J. Stat. Ann. ch. 54, in accordance with other statutory authority of the court, to bar the right of redemption and to foreclose all prior or subsequent alienation and descents of lands and encumbrances thereof, except subsequent municipal liens, and to adjudge an absolute and indefeasible estate of inheritance in fee simple, to be vested in the purchaser.

# Mortgage Elec. Registration v Perfido (Conneticut)

**What is a special defense?**

A special defense is an affirmative defense that must be proved by the defendant.

**What is the purpose of a special defense?**

The purpose of a special defense is to plead facts that are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action.

**Which document addresses the requirements for a special defense?**

Conn. Gen. Prac. Book, R. Super. Ct. § 10-50 addresses the requirements a defendant must satisfy when asserting a special defense.

**What are limitations on the special defenses in foreclosure actions?**

In foreclosure actions, there are limitations on the special defenses that a defendant may assert because historically, defenses to a foreclosure action are limited to payment, discharge, release, satisfaction, or if there was never a valid lien. A valid special defense at law to a foreclosure proceeding must be legally sufficient and address the making, validity or enforcement of the mortgage, the note or both. Nevertheless, a foreclosure action constitutes an equitable proceeding. In an equitable proceeding, the trial court may examine all relevant factors to ensure that complete justice is done.

**How a court does address a plaintiff’s motion to strike counterclaims and special defenses?**

A court addresses a plaintiff's motion to strike counterclaims and special defenses by examining the legal and factual sufficiency of each special defense and counterclaim, accepting the defendant's factual allegations as true and construing them in the manner most favorable to sustaining their legal sufficiency.

**What is the right of a lender?**

A lender has the right to further its own interest in a mortgage transaction and is not under a duty to represent the customer's interest. Generally there exists no fiduciary relationship merely by virtue of a borrower lender relationship between a bank and its customer.

**What is a recognized equitable defense for foreclosure actions?**

Estoppel is a recognized equitable defense in foreclosure actions.

**What are the two essential elements the doctrine of equitable estoppel requires?**

The doctrine of equitable estoppel requires proof of two essential elements. First, the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief; and second, the other party must change its position in reliance on those facts, thereby incurring injury. It is fundamental that a person who claims an estoppel must show that he has exercised due diligence to know the truth, and that he not only did not know the true state of things but also lacked any reasonably available means of acquiring knowledge.

**When can the equitable defense of latches be invoked?**

Because a mortgage foreclosure is an equitable proceeding, a defendant who is demonstrably prejudiced by a plaintiff's delay in filing a motion for a deficiency judgment may invoke the equitable defense of laches.

**What are the elements of latches?**

Laches consists of two elements. First there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant. Lapse of time, alone, does not constitute laches.

**When can a counterclaim be challenged?**

A motion to strike tests the legal sufficiency of a cause of action and may properly be used to challenge the sufficiency of a counterclaim. In ruling on a motion to strike, a court must accept as true the facts alleged in the counterclaim and construe them in the manner most favorable to sustaining their legal sufficiency.

**What does Connecticut’s law provides?**

Conn. Gen. Prac. Book, R. Super. Ct. § 10-10 provides that in any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff and cross claims against any codefendant provided that each such counterclaim and cross claim arises out of the transaction or one of the transactions which is the subject of the plaintiff's complaint. The transaction test of § 10-10 is one of practicality, and a trial court's determination as to whether that test has been met ought not be disturbed except for an abuse of discretion.

**What does a valid counterclaim in a foreclosure must attack?**

A valid counterclaim in a foreclosure action must attack the making, validity, or enforcement of the note or mortgage.

**What does the Connecticut Appellate Court states?**

The Connecticut Appellate Court states that special defenses and counterclaims alleging a breach of an implied covenant of good faith and fair dealing are not equitable defenses to a mortgage foreclosure.

**What is recognized as a valid counterclaim?**

A violation of the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq., is recognized as a valid counterclaim brought in a foreclosure action.

**How a court does evaluates a counterclaim?**

A court evaluates a Connecticut Unfair Trade Practices Act (CUTPA), Conn. Gen. Stat. § 42-110a et seq., counterclaim in accordance with the cigarette rule, which establishes the following three criteria for determining whether a party has committed an unfair trade practice: (1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise--in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; and (3) whether it causes substantial injury to consumers, competitors or other businesspersons. All three criteria do not need to be satisfied to support a finding of a violation of CUTPA.Mortgage Elec. Registration v Perfido (Conneticut)

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# Crossland Mortgage Corp v Frankel (New York)

**When can the judicial sale price of a property be set aside?**

The price of property sold by a judicial sale can be set aside when the price is grossly inadequate so as to shock conscience or is considered inadequate and is accompanied by mistake or other factors integral to the invocation of equity.

**Can a judicial sale be set aside for mere inadequacy of price?**

No, judicial sale will not be set aside for mere inadequacy of price, unless that inadequacy be so gross as to shock the conscience, or unless there be additional circumstances against its fairness. But if there be greatinadequacy, slight circumstances of unfairness in the conduct of the party benefited by the salewill be sufficient to justify setting it aside. Each case must stand on its own peculiar facts

**What percentage of a foreclosure’s sale property value has consistently been held unconscionable low?** Ten percent in New York

**What percentage of a foreclosure sale value has been consistently upheld?**

Fifty percent in New York

**What does the enactment of 1938 N.Y. Laws 510 provide?**

New York has restricted a mortgagee's right to recover a deficiency judgment by enactment of 1938 N.Y. Laws 510 to require that on timely confirmation of the referee's sale, a fair and reasonable market value of the property be ascertained, not necessarily measured by the bid price, and the deficiency, if any, is measured by the difference between the mortgage indebtedness, plus costs and expenses relating to the foreclosure and real property taxes paid by the mortgagee, less the true market value of the property. In special circumstances, the court might exercise its discretion to permit a later suit on the bond where no deficiency could be obtained in the foreclosure action.

**Which successful bidder can ascertain the test for a fair market value?**

The test for fair market value to ascertain a deficiency is equally applicable where the successful bidder is a stranger and not the mortgagee, except that the deficiency is further reduced by the amount paid to the mortgagee by way of the bid.

**In which code it is improper and a violation for affidavits to contain legal citations and arguments?**

It is improper and a violation of the N.Y. Comp. Codes R. & Regs. tit. 22, § 208.11(b) for affidavits to contain legal citations and arguments.