

Judicial Estoppel Leads to Complete Dismissal of Plaintiff's Wrongful Foreclosure Case

George Gaston of the firm's Mobile office obtained a complete dismissal of a borrower's wrongful foreclosure lawsuit in Hamilton County, Tennessee. Our client is a loan servicer and had been named as one of two defendants in the lawsuit based on alleged failures in the foreclosure proceedings and an alleged breach of duty of good faith in reviewing the borrower for a loan modification. In defending the lawsuit, our client asserted a judicial estoppel affirmative defense based on the borrower's prior sworn and inconsistent statements in his 2013 bankruptcy case. In his bankruptcy, which took place prior to the foreclosure, the borrower clearly took the position that he no longer owned any real estate, had no secured creditors, and the subject residence had already been foreclosed. To claim in the lawsuit against our client that his property was subsequently wrongfully foreclosed was an inconsistent and untenable position. Faced with a pending dispositive motion, the borrower dismissed his lawsuit as to all claims and defendants.

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