

One Minute Memo[®]



DC Court of Appeals Puts Deed of Trust Trustees on Notice: Trustees May Be Liable for Intentional Interference with Business Relations

On May 24, 2012, the District of Columbia Court of Appeals reviewing the *Onyeoziri v. Spivok* case determined that trustees under a deed of trust may be liable for interference with business relations if the trustees prevent the debtor from curing the default in a foreclosure proceeding.

In this case, days before the scheduled foreclosure under a deed of trust, the debtor presented a copy of a contract of sale of the secured property to the trustees together with a letter prequalifying the buyer for a loan in an amount sufficient to pay off the secured indebtedness.

The Court of Appeals determined that the evidence, taken in the light most favorable to the debtor, supported a finding that by following through with the foreclosure sale after the trustees were made aware of the debtor's contract to sell the property, the trustees intentionally interfered with the contract for sale in a manner that, a jury could find, was unnecessary to protect the security interest. Specifically it was the trustees' "unreasonable refusal" to permit the debtor to go forward with his contract for the sale of the property, and the trustees' insistence on proceeding with the foreclosure sale that "interfered with [debtor's] business relations with the prospective purchaser." Although the Court acknowledged the right of a secured party to protect its interest in its collateral, it decided that the trustees clearly knew that they were impeding the debtor's ability to perform the contract to sell the property, which would have covered the indebtedness and negated the necessity of the foreclosure sale.

By: *Ronald S. Gart*

Ronald S. Gart in a partner is Seyfarth's Washington, D.C. office. If you have further questions, please contact your Seyfarth Shaw attorney or Ron Gart at rgart@seyfarth.com.