

Legal Alert

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QUESTION: HOW DID BANK OF AMERICA'S WRONGFUL FORECLOSURE TURN INTO A POSSIBLE WINDFALL FOR FIVE CALIFORNIA LAW SCHOOLS?

ANSWER: BANK OF AMERICA'S IMPROPER FORECLOSURE PROCEEDINGS WERE "HEARTLESS" AND CAUSED BY "CORPORATE CULTURE."

Kafka-esque Loan Servicing?

"Franz Kafka lives. This automatic stay violation case reveals that he works at Bank of America." So begins the opinion of Bankruptcy Judge Christopher M. Klein in *Sundquist v. Bank of America* (U.S.Bkty Ct., E.D. Cal. 3/23/17).

The impossible path to loan modification....

Erik and Renee Sundquist decided to sell their house in 2008 and move with their twin children into a less expensive home in Lincoln, California. They wanted to reduce their living expenses. Mr. and Mrs. Sundquist had a credit score above 800. (That's good.) They paid their bills on time.

The Sundquists made a down payment of \$125,000.00 and signed a promissory note for \$587,250.00 at 6% fixed interest. They wanted a lower interest rate, but their loan person told them they would be able to refinance or modify the loan immediately.

Bank of America said it would not consider any loan modification request and would not even send application forms unless the Sundquists quit making payments. Reluctantly, Mr. and Mrs. Sundquist acquiesced "in Bank of America's demand that they default as a precondition for loan modification." They thought the Bank would deal with them promptly and in good faith. "Those expectations of prompt and good-faith dealings turned out to be improvident."

Bank of America ruined the lives of the Sundquist family with a "game of cat-and-mouse."

"With one paw, Bank of America batted the Debtors between about twenty loan modification requests or supplements that routinely were either 'lost' or declared insufficient or incomplete, or stale and in need of resubmission, or denied without comprehensible explanation but without prejudice to yet another request. With the other paw, Bank of America repeatedly scheduled foreclosures."

Kafka's Josef K. meets Dickens's Mr. Scrooge!

A Bank employee actually admitted that mortgage modification was "not real." The Bank representative told Mrs. Sundquist: "The modification doesn't mean anything and it is just a way to create funds for the banks before foreclosure."

The Bankruptcy Court found that Bank of America had no incentive to modify a loan with a 6% rate of interest. "Bank of America has little financial incentive to kill a goose that keeps laying 6% golden eggs." The Court also found that the house was in a premium location and was worth more than the amount of the debt. Bank of America had no reason to deal in good faith with the Sundquist family.

Forced from their home in violation of the bankruptcy code!

“The mirage of promised mortgage modification lured the Plaintiff Debtors into a Kafkaesque nightmare of stay-violating foreclosure and unlawful detainer, tardy foreclosure recision kept secret for months, home looted while the Debtors were dispossessed, emotional distress, lost income, apparent heart attack, suicide attempt, and post-traumatic stress disorder...”

On June 14, 2010, the Sundquists filed a Chapter 13 Bankruptcy to prevent foreclosure of their home. They intended to use the Chapter 13 Plan to cure the default and modify the loan.

Bank of America admitted that it knew about the bankruptcy on June 14, 2010 and transferred the loan to its Bankruptcy Department on that day. “Despite knowing of the bankruptcy case, Bank of America did not stop the Trustee’s sale on June 15, 2010 at which it purchased the property for its own account by credit bidding the full amount of the debt (\$652,217.20).”

Knowing it was illegal and in violation of the bankruptcy stay, Bank of America started eviction proceedings and gave the Sundquists three days to leave their home.

Despite the protections of the Bankruptcy Code, Bank of America drove the Sundquist family from their home, allowed all of their appliances and property to be taken and allowed the lawn and shrubbery to die causing a \$20,000.00 home owners’ association assessment.

Damages and punitive damages for willful violations of the automatic stay.

The Bankruptcy Court found numerous willful violations of the automatic stay, including six specific violations. The Bankruptcy Court stated: “Bank of America’s agents were treating the Sundquists as criminals.” Among many intimidating tactics, the Bank’s agent beat on a sliding door next to one of the Sundquist twins who was practicing piano. The descriptions of the wrongful conduct of Bank of America continue for most of the 107 pages of the Court’s Opinion.

The Court needed to send a strong message.

Mr. and Mrs. Sundquist were awarded \$1,074,581.50 as “actual damages for the willful stay violation that Bank of America committed.”

The Sundquists got their home back. The Court reinstated the mortgage debt and fixed the balance due as \$584,893.97, plus interest at 6% simple interest since February 1, 2009. Thus, the uncertainty as to the house and mortgage were remedied and the Sundquist family had enough money to pay the mortgage and resume its life.

The Court also awarded \$45,000,000.00 in punitive damages with most of it going to provide better education in consumer law and better resources for public service consumer law organizations to combat a corporate culture in which consumers can be mistreated with “impunity”.

Conclusion.

The Sundquist case contains many insights and much factual and legal analysis. Much can be learned from the case.

Perhaps, the most important lesson is never to violate the automatic stay of the Bankruptcy Code! Punitive damages can be huge!