Nevada Court Stops Bank of America Foreclosure

January 28, 2011 - Earlier this month, we informed our readers about a Massachusetts Supreme Court Case that reversed many bank foreclosures within the state. The case has not received much national coverage but as we mentioned at the time, it is likely to have national ramifications because the foreclosure procedures used in Massachusetts are no different than the procedures banks have been using in other states. Now there is a ruling from a court in Nevada in which the court found problems similar to those in Massachusetts. As a result of the court's finding, it has placed a restraining order on a Bank of America subsidiary, halting a foreclosure that was already in process.

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As in the Massachusetts case, the problem in Nevada was for B of A's subsidiary (ReconTrust) was proving that the bank actually the right to foreclose. The bank was not able to produce a contract that showed that the plaintiff in the case, Suzzane North, actually had a contractual relationship with regard to a promissory note and a deed of trust. Without these documents, the bank can't show that the plaintiff was actually obligated to pay.

Judge Robert Lane of the Nye County District Court said that there was "substantial likelihood" that Ms. North would prevail at trial because of the bank's missing documentation. He ruled, "to prevent the irreparable injury to the Plaintiff that would result from the unlawful nonjudicial foreclosure being carried out by Defendant ReconTrust Company against the Plaintiff, and to allow the court to render effective relief if the Plaintiff prevails at trial." The ruling amounts to an injunction against the bank, preventing them from moving forward with the foreclosure.

Bank of America and ReconTrust faced a similar case in Utah last year. In that case a state court ordered ReconTrust to halt all foreclosures within the state. That ruling was later overturned in federal court.

The Nevada ruling is different from the ruling in Utah in that it only impacts a single foreclosure, but it is important because the state of Nevada is a nonjudicial foreclosure state. This means that unlike in Massachusetts, no judicial review is required for a lender to foreclose. The exceptions to this are if the person being foreclosed upon actually files suit, or if that person files for bankruptcy. There are similar cases moving through other state court systems which we believe are likely to have similar outcomes.

In an interview which ACCESS conducted with Katherine Porter, a Harvard educated attorney and professor at the University of Iowa, in 2008 we were told that in roughly 40% of foreclosures banks were unable to prove they had the authority to foreclose. As more of these cases move into court it is becoming apparent that lenders have done little over the past two years to improve their record keeping.
byJim Malmberg
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