

4th DCA bars affidavit over failure to verify

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In a ruling favoring two Palm Beach County homeowners, a state appeals court Wednesday disallowed an affidavit submitted to a trial judge in support of a foreclosure case. The court found a loan servicer failed to verify the amount owed on a delinquent mortgage.

Tom Ice, the attorney who represented homeowners Gary and Anita Glarum, said the 4th District Court of Appeal ruling could benefit thousands Florida homeowners facing foreclosure.

Ice said he believes the decision is the first by a Florida appeals court in a case concerning flawed affidavits in foreclosure cases.

Ruling calls "robo-signing" into question



Meenu Sasser
Photo by Melanie Bell

Ice had argued that Palm Beach Circuit Judge Meenu Sasser last year erred in granting a judgment to LaSalle Bank based on an affidavit signed by a person who had no personal knowledge of who owned the Glarums' note and how much the couple owed.

The decision says, "We are not going to put up with that, and we are insisting that you have personal knowledge,?? " Ice said. "This court ruled against robo-signing."

Robo-signing is when bank or loan-servicing employees sign foreclosure affidavits in support of summary judgments without personal knowledge of the cases. That violates state court rules.

When the robo-signing controversy broke a year ago, foreclosures across the country almost came to a halt as lenders sought to sort out their document handling processes.

Robo-signing has played a key role in the ongoing foreclosure crisis.

"This is a major battleground that we see all the time in the foreclosure cases, not just with summary judgments but also at trial," Ice said.



Judge Meenu Sasser



4th District Court of Appeal

In a foreclosure suit, the lender's affidavit outlines how much the homeowner owes, asserts that there are no unresolved disputes between the lender and borrower and that the home is legally ready to be sold.

Judges rely on the affidavits as critical evidence when they hand down a summary judgment in favor of the lenders, which in turn paves the way for the sale of a property at a foreclosure auction. Since most foreclosure cases are unopposed, the validity of the affidavits and compliance to the rules have rarely been questioned. When a summary judgment is denied — because an affidavit is flawed, among other reasons — the homeowner can proceed to trial against the lender.

Automated Systems

Lenders and loan servicers use electronic tracking systems to collect information on note ownership and amounts owned.

In the Glarums' case, Ralph Orsini, a specialist with loan servicer Home Loan Services, which handled the foreclosure case for LaSalle Bank, signed an affidavit asserting that the couple owed more than \$340,000 on a delinquent mortgage.

During a deposition related to the appeal, Orsini said that he had obtained the information from the company's computer and had no idea who had entered the data and could not verify the accuracy of the information, according to Wednesday's ruling. The appellate court said LaSalle violated Florida Rule of Civil Procedure 1.510(c), because Orsini could not explain how the amount owed was calculated.

"We find that Orsini's affidavit constituted inadmissible hearsay and, as such, could not support LaSalle's motion for summary judgment," according to the opinion. "Because LaSalle presented no competent evidence to show \$422,677.85 in damages, the amount of the judgment to which LaSalle is entitled remains at issue."

Attorneys Thomasina F. Moore and Dennis W. Moore, with the firm Butler & Horsch in Orlando, represented LaSalle in the appeal. They did not respond to a phone call and email for comment.

LaSalle has 20 days to request a rehearing with the 4th DCA before the ruling is final.

Ice said financial institutions could cure the problem by filing affidavits from multiple witnesses who can prove they know who owns the note and the payment history of the loan.

"For some reason, they don't think that they should be annoyed by having to file more than one affidavit and more than one person testifies about these things," he said.

Sanctions Lifted

The 4th DCA also tossed out a disciplinary action against Ice and his firm, Legal Ice in Royal Palm Beach.

Ice had presented an affidavit from a document review expert that didn't sit well with Sasser. The expert testified that it was hard to prove if the note presented by the lender at the hearing was the original document, as required by law. Ice asked the judge for more time to make a technical analysis of the note to determine that it wasn't a "mere" copy of the original document, he said.

"Judges across the state have a tendency to believe that when they see blue ink on a signature, that is the original note" and make a decision based on a document that could be a copy, he said.

Sasser rejected Ice's argument and entered sanctions against Ice Legal at the request of LaSalle, which called the action a frivolous claim.

The judge ordered Ice Legal to pay the lender's attorney fees. The 4th DCA reversed the sanctions against the Ice firm.

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