

## **THE GOLD-RUSH TO BANKRUPTCY**

BORROWERS BEWARE!!! Many Consumer Bankruptcy Lawyers Are In On “The Game” Colluding With Foreclosure Mills To Sell-Out Their Clients... Far too often, borrowers rush to bankruptcy to fight or stall a foreclosure action rather than fight the action in state court. In the state of Georgia, a non-judicial foreclosure state, many borrowers go directly into bankruptcy rather than seek a TRO and fight the banks first. Bankruptcy courts should be your last resort, not your first!

In fact, we have been 1000% successful with the lawyers we work with in Georgia in obtaining TROs over the past few years and have kept people in their properties for over 3-years, even after eviction. We’ve taken cases all the way to the GA Supreme Court where the court ruled that even after foreclosure and eviction, we have a right to sue the lender for unlawful foreclosure, fraud, and other torts!

This same approach applies to judicial foreclosure in states like Florida, South Carolina, New York, and Illinois. **DO NOT GO DIRECTLY TO BANKRUPTCY!** Fight the foreclosure action first! In the vast majority of cases, you will have serious grounds and defenses. Fight first and go to bankruptcy last. Now, if you decide that bankruptcy is your best or only option, then please read the remainder of this article carefully before you select a bankruptcy lawyer to represent you.

Several years ago, I met with a female friend in Atlanta who was a bankruptcy attorney looking for new business. I told her about all the new and wonderful defenses and attacks she could have in Federal Bankruptcy Court and how she could become a leader in fighting the banks. Mind you, this was before our good friend and colleague, Max Gardner, started his great bankruptcy boot camps.

[\(http://www.maxbankruptcybootcamp.com/\)](http://www.maxbankruptcybootcamp.com/)

I was attempting to give her the opportunity to be a forerunner and leader in battling foreclosure, mortgage servicing, and securitizations fraud in bankruptcy court. She was a bit intrigued and arranged a meeting with her partner and another litigator at my conference room in Atlanta.

They came in one afternoon and for three hours, I educated them about all the frauds, abuses, and scams and how these pretender lenders were not secured creditors and how the foreclosure mills and servicers simply made up account and servicing records as well as assignments. After my lengthy presentation and a bit of give and take, she told me that what I found was wonderful and that she wished they could use my strategies.

When I inquired as to why she could not use them, she turned to me and said, *“in all honesty Nye, these are all great ideas and strategies and we could fight these things tooth and nail with what you have. However, the reality is that we need to get these folks in and out of bankruptcy as soon as is practically possible. I also need to keep my relationships with the foreclosure mill firms in order that they will work with me on*

*future workouts with other clients. If I take it to the mat with one client and fight hard and win, the foreclosure mill firms will blackball me and not work with me in the future. That will hurt what we do for all our other clients. We need to work and get along with the banks and their lawyers. That's just the process and the system."*

Needless to say - - I was dumbfounded, but alarmed nonetheless when she added "well, they owe the money to someone, so I am just trying to help them get on with their lives." She explained that it was pretty much a flat fee factory like operation and what I was asking her to do was to do real legal work that she would never get paid for nor that her clients could ever afford since they had no money and that's why they went bankrupt.

I tell you this story in that despite the numerous revelations and positive court rulings in the past year, especially in Federal bankruptcy courts, the mindset and practices of many consumer bankruptcy lawyers and firms are still the same. Many lawyers still think the best line of attack is to get their clients in and out while forgetting about the law, the borrower's rights, due process, standing or if in fact, the borrower owes the money or if the obligation is secured.

Their marching mantra is file and push paper as fast as you can and don't call a fraud a fraud since you need to get along with your colleagues on the other side. If you think I am joking about this, I am not. Most recently in several cases of friends, family, clients, and partners, I have come across incompetent and even arrogant bankruptcy counsel who didn't want to talk to me or investigate the real facts of their own bankruptcy case.

When I analyzed the records in their court files, I found there were backdated assignments; allonges not attached or lawfully executed; assignments dated months after the foreclosure, bankrupt and non-existent mortgage companies and banks bringing about the foreclosure and bankruptcy; and a plethora of other issues.

In one case in the South, a bankruptcy firm had advised the borrower, who owned multiple properties, that he needed to go ahead and take default judgments on over \$15 million worth of property since he didn't have any claims or defenses. Once they got the judgments, the firm would "work out a plan" pre-bankruptcy wherein the client would pay a substantial portion of the deficiency. The bankruptcy lawyer and firm told this man to take judgments without reviewing the papers or the pleadings to see the obvious fact that in the foreclosure actions, the assignments of mortgage to the alleged creditors came weeks to several months after the actions were commenced. In other words, they said he had no defenses when in fact, the mortgage companies had no right to be in court whatsoever since they didn't have standing on the date they filed each action.

After we got involved, we got the foreclosure sale stopped with the simple filing of a motion for fraud on the court without ever having a hearing. This was done just days before the scheduled foreclosure sale after default judgment. The lawyer we worked with simply filed a motion to vacate judgment for fraud upon the court at 4:15 PM on a Wednesday afternoon that was faxed to opposing counsel at 4:45 PM. Opposing counsel received the motion and immediately called the borrower's attorney at 5:15PM screaming

and hollering about the borrower's new attorney calling the foreclosure mill attorney, who verified the complaint with his signature, a fraudster.

After the borrower's attorney went over the complaint line-by-line with the foreclosure mill attorney and then asked him to look at the assignment, dated months later, the foreclosure mill attorney agreed to stop the foreclosure and "vacate" the judgment. Not-so-fast! Why would the borrower's new attorney vacate the judgment when we had the lawyer, his firm, and client on the hook for fraud upon the court?

When we refused to allow an easy vacating of the judgment and decided to push the matter before the judge, the borrower's bankruptcy lawyer came whining and crying to the borrower's new foreclosure counsel. "You can't do this, I have to work with these people. How dare we call his friend (the foreclosure mill lawyer) a fraudster," he said. He added... "I know this man and he's a good man. You're going to damage the borrower's ability to do a work out with him and that's not the way we do these things."

Did you read the above carefully? The borrower's own bankruptcy lawyer, that he had paid tens of thousands to, complained and whined to the borrower's new foreclosure attorney for doing the right thing in calling out the fraud. A fraud, that not only had the bankruptcy lawyer chosen to ignore, but told his client he had no defenses to and to take a default judgment so the bankruptcy attorney could work it out with his friend, the "friendly" foreclosure mill lawyer!" Would you want this man in your foxhole? Certainly, not I! The borrower's foreclosure attorney promptly informed the bankruptcy attorney to stay out of it, that he had mal-practiced enough already.

In fact, in meeting with mal-practice lawyers and specialists afterwards, they all agreed that any lawyer practicing bankruptcy today, let alone a lawyer practicing foreclosure defense, who chooses to ignore and challenge the frauds that are obvious from a simple reading of the pleadings, would be liable for mal-practice claims.

In another recent case here in Florida, I found a totally "blank" affidavit supporting a motion for summary judgment of over \$4 million loan. The foreclosure mill, Albertelli in Florida, put forth the affidavit with the name on the affidavit in blank; the title of the executive in blank; the signature and witness name lines in blank; and last, but certainly not least, the notary stamp space and notarization in blank as well. This was an alleged \$4 million note! The affidavit stated that Washington Mutual Bank F.A. was the owner, but they've been out of business now for a few years.

When we made a phone call to Chase, the servicer, they claimed that Chase owned the note and that the original note was in their custodial files. Yet, in the foreclosure action, Washington Mutual's lawyers claimed they filed the "original note" with the court, when in fact it was far from the original, according to Chase's own representations.

Yet, despite these obvious facts, a judge ruled in favor of the summary judgment and the lawyer did not fight the obvious frauds aggressively. The lawyer said to his client, "well, you admit you owe the money to someone!" Now, this borrower is entering bankruptcy

and his new lawyer tells him “well, the bankruptcy judges in this district don’t take kindly to these types of arguments and the reliefs of stay are typically perfunctory. You’re can’t argue for a free house, the judge’s won’t listen to that argument.” These incompetent lawyers don’t get our point or arguments. None of us are saying that our clients don’t owe any money or that they want a free house - - even though on some occasions this is a valid “legal” argument.

What we are promulgating is the position that yes, there is money owed to an unknown lender as defined in the note. However, the amount owed, after damages to the borrower and payments by third parties to the note are accounted for; as well as equity needs to be determined by the judge. Then, this debt needs to be declared an un-secured debt.

With what we know today, every bankruptcy lawyer must analyze the facts and if there are questions or fact issues surrounding the assignment, note, allonge, perfection of lien, standing of a securitized trust, and other related issues, you must list the alleged note obligation as a contested “un-secured” debt. The debt listed should be of an unknown amount due to Does and Roes to be determined. This places the burden of proof upon the pretender lender/creditor and makes them prove up their secured status via evidence and testimony you can attack.

Far too many lawyers are lazy and don’t want to rock the boat or push the envelope. They’re content in the ways things have been done for a dozen or more years and are concerned more about their money and time, rather than your home, life, and property. Stay away from those types of lawyers! Find lawyers like Tom Ice, Matt Weidner, Max Gardner, April Charney and others who wear their hearts on their sleeves and will go to war for you, not the lawyer that only says “show me the money!”

As for bankruptcy lawyers, I would not choose a bankruptcy lawyer that has not been trained in one of Max’s bankruptcy boot camps. To find such a lawyer go to <http://www.maxbankruptcybootcamp.com/find-graduates>.

In conclusion, I’m reminded of the old Ronald Regan quote with regards to the USSR and nuclear missile reduction, “trust, but verify.” Due to the massive amounts of fraud, forgery, and fabrication of evidence in today’s mortgage market, the mantra for every consumer foreclosure and bankruptcy attorney should be distrust every document, signature, and figure a mortgage servicer or lender gives you and make them verify, validate, and prove each signature, amount, claim and allegation. Ignoring or doing otherwise may subject a lawyer to potential malpractice claims.

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