Foreclosure

Homeowner files fraud suit against firm, lawyer

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By: Paola Iuspa-Abbott

David Stern, whose law firm has helped lenders foreclose on tens of thousands of Florida homes, has been named as a defendant in a proposed class action lawsuit that alleges foreclosure actions filed on behalf of banks contained misleading information.

In order for the case to be a class action, a federal judge would have to certify it.

Read the lawsuit

The suit claims that Stern and his Plantation firm violated the Racketeer Influenced and Corrupt Organizations Act as they pressed foreclosures against distressed homeowners.

The suit, filed Monday in U.S. District Court, alleges that Stern employees and attorneys filed fraudulent court pleadings, filed suits on behalf of lenders that didn't own debt on the homes targeted for foreclosure and concealed plaintiffs' lack of standing to foreclose on properties.

Stern did not return a call seeking comment.

Attorney Jeffrey Tew of Miami's Tew Cardenas, who represents Stern, said neither his client nor the law firm did anything wrong.

"We don't think there is any merit to it," Tew said of the lawsuit.

The suit seeks billions of dollars in damages for homeowners who lost their houses in foreclosures handled by Stern's law firm.

Fort Lauderdale solo practitioner Kenneth Eric Trent filed the lawsuit and is seeking class action status.

Since launching his legal career 16 years ago, Stern has built his business into one of the largest foreclosure firms in the country. The firm handles 20 percent of the foreclosures filed in the state of Florida, according to the St. Petersburg Times.

In addition to his firm, Stern is also chairman and chief executive officer of Plantation-based DJSP Enterprises, a company founded in 1994 that went public early this year.

The company (Nasdaq: DJSP) provides nonlegal services to law firms that represent banks in foreclosures. Stern's law firm is a major client of DJSP, which employs about 1,200 people. DJSP recently posted a first quarter profit of $8.7 million on revenue of $71.6 million.

The new suit is the latest in a series of legal controversies involving cases filed against Stern's law firm.

An unrelated class action suit filed in 2007, which claims Stern's firm overcharged borrowers, is pending in Palm Beach Circuit Court. Judge Thomas Barkdull recently certified the case as a class action. The suit claims the firm charged excessive fees to borrowers being foreclosed by Wells Fargo, a Stern client.

The lead plaintiff is Loren Banner, who sought to pay the bank the money he owed and get his mortgage reinstated. Stern's firm sent him a reinstatement letter that included charges for services his firm didn't provide, according to the suit.

Stern is appealing Barkdull's class action decision to the 4th District Court of Appeal. Tew Cardenas also represents him in that case.

"We hope it will be affirmed and we will proceed to trial," said Banner's attorney, Louis Silber in West Palm Beach.

Florida homeowners with Wells Fargo mortgages who received mortgage reinstatement letters between January 2003 and February 2009 could qualify as mem bers of the class.

While the most recent complaint targets Stern and his Plantation firm, it also challenges the legality of a practice used by many law firms that have churned out hundreds of thousands of foreclosure cases on behalf of bank clients since the economic crisis started three years ago.

"I hope and believe that this action will spawn some other type of actions or will be amended so that the ultimate result will be that the foreclosure litigation industry, as we know it in Florida, is shut down," Trent said.

Trent's client is Ignacio Damian Figueroa of Oakland Park. In the lawsuit, Trent said Stern's firm engaged in "a pattern of racketeering activity," including "mail or wire fraud."

“What I am ultimately trying to accomplish is that people will no longer be foreclosed upon by plaintiffs who don’t have any right to foreclose,” Trent said.

The complaint also named the Mortgage Electronic Registration Service Corp., or MERS, as co-defendant.

MERS is an electronic mortgage registration system created by major U.S. banks in 1995 to track servicing rights and ownership of mortgage loans in the U.S.

MERS is considered the mortgagee of record as a mortgage travels through the banking system. When the note goes into default, MERS assigns the mortgage to whomever owns the debt to file a foreclosure action against the borrower.

Trent’s lawsuit claims MERS was created to hide the true ownership of mortgages, which were often re-packaged as bonds and sold to investors.

“[MERS is] a truly effective smokescreen, which has left the public and most of the judiciary operating in the dark through the present time,” according to the complaint.

Morgan Lewis & Bockius attorney Robert Brochin, who represents MERS, said the complaint lacks “any merit.” He declined further comment.

The suit claims that assignment of mortgages from MERS to Stern’s plaintiffs — including some of the nation’s largest financial institutions — are often “fraudulent” because they were signed by Stern employees on behalf of MERS. Stern’s employees had MERS’ authorization to sign the assignment. Still, Trent said MERS has no power to assign a mortgage that it doesn’t own.

“Just like MERS, the assignments were meaningless shells,” according to the lawsuit.

Some judges across Florida, one of the states with the highest number of foreclosures, have questioned the validity of assignments of mortgages in cases brought to court on behalf of Stern clients and the clients of other firms specializing in foreclosure actions.

In March, Pasco Circuit Judge Lynn Tepper threw out a case over an assignment that an employee of Stern’s law firm “fraudulently backdated” to “mislead the defense and the court,” according to Tepper’s ruling.

Last year, foreclosure defense lawyer Tom Ice of West Palm Beach compiled 21 assignments of mortgages that he asserted had been backdated by Stern’s staff. At a May 2009 deposition, in a case unrelated to the most recent suit — Ice confronted Stern’s operations manager, Cheryl Samons, with the assignments, some of which she had signed.

“If you just look at the document itself, you will see that the expiration date [of the notary seal] is more than four years after the execution date,” he said, adding that notary seals expire every four years. “Unless they are capable of time travel, [Stern employees] couldn’t have used that stamp that wasn’t going to be issued until after this document was executed.”

In her response, Samons attributed the backdating to “sloppiness.”

The accuracy of court documents filed by foreclosure law firms has been questioned before.

In May, the Florida attorney general launched an investigation over allegations Tampa-based Florida Default Law Group falsified legal documents to expedite foreclosure cases filed by its lender clients. That investigation is pending.

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