

Transcript of Radio Interview of Amanda Lundergan of Ice Legal, P.A.

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Hello I'm Matt Gallaway. This is the Friday edition of *The Current*.

It's hard to imagine a more unceremonious disposal of what is for most people their most important possession. But each day sandwiched between parking stripes auctioneers peddle the foreclosed dreams of hundreds Valley homeowners. Though most of the investors here know each other by name, the deals are nothing personal, to everyone that is except Joe Zito. "They're vultures as far as I'm concerned. They're circling waiting for the prey to die and then they come in."

That's a frustrated foreclosed home owner in a US News report from more than three years ago. The collapse of the housing market in the United States thanks in part to dubious subprime mortgages triggered the Great Recession of 2008 and in the wake of that market failure there were many stories about families finding themselves foreclosed and out of their homes. It was also around then that the practice of robo-signing was first exposed. Mortgage lenders who discovered they could no longer keep track of all the proper documentation to foreclose simply hired companies to manufacture that paperwork. They're not robots. They're low level staff putting their signatures on affidavit after affidavit.

The banks swore off this practice when it first came to light in 2010, but not only are foreclosures back in the news now and on the rise, but robo-signing may have been replaced by a practice call robo-witnessing. This time, hired staff are not only signing, they're actually giving expert testimony in court involving foreclosure cases. The catch is they have questionable experience if any experience whatsoever.

Amanda Lundergan is a Florida lawyer who spends a lot of time in the legal trenches of foreclosure cases. She is with the firm Ice Legal in Royal Palm Beach, Florida. We reached her there today.

Matt: Good morning to you.

Amanda: Good morning Matt.

Matt: Explain if you would, we've heard a little bit of a kind of thumbnail sketch of it, but all this new robo activity, what is robo-witnessing is you understand it.

Amanda: Yeah, it's really been a shift in the last couple of years they've moved away from the affidavits when they got caught red-handed. But the same quality of employees that the bank was utilizing to execute their affidavits are now the employees who are coming into court and testifying live about the same things: who owns this mortgage, how much money is owed. And it's interesting to hear Lynn's description of these

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people because that's the same experience we've had. These are people who a couple weeks ago, months ago, were bagging groceries or working at the mall. And now they're Vice President of Loan Documentation and they've been trained—in fact we've got into that in some of our trials—about what kind of training they undergo and they do role playing and they have scripts about what they have to say. And they're trained to come into the courtroom and testify about the evidence that the bank has to foreclose. And these witnesses this is their sole job and many of them don't have offices in the banks. They spend their time flying around the country going from trial to trial. And their familiarity with the loan is usually acquired on their flight over here to Florida.

Matt: Vice President of Loan Documentation?

Amanda: Yeah other they're given these titles that on paper sound like they should be the person who has knowledge of how this loan was acquired or how much money is owed. But when you dig deeper into the testimony and you get them off script, you realize that they really don't have the knowledge that they say they do. And it's exactly what Lynn said. It's the exact same situation as it's been since 2008. Nothing has changed in the Florida Courts other than the mechanism by which the bank is trying to prove its case has gone from paper to live testimony.

Matt: So they're, I mean, they're in a court, they're testifying, they know nothing beyond what's on the piece a paper in front to them about the case that the issue that they're talking about?

Amanda: They really provide nothing additional to the court. It's not anything that you are I couldn't glean just by reading the court file ourselves. The person who comes to court is supposed to have a knowledge of how these documents were created, how the documents were stored. Otherwise, they're not admissible into evidence. But these witnesses have been trained to answer certain questions and sound like they potentially have knowledge of the documents, but as soon as you start digging deeper and asking them about, you know, how they were created; ask them to verify the numbers. They can't verify the numbers. They don't know where this loan came from and who was the previous owner in a chain or how they acquired it or when they acquired it. They really just don't have any of the knowledge and that's undermining our legal system.

Matt: How quickly does it collapse when you start to cross-examine them?

Amanda: It collapses very quickly. The unfortunate part is the majority like always the majority of foreclosure cases go undefended. There's nobody on the other side appearing or at least no counsel appearing to dig deeper and cross-examine these witnesses, and so while there maybe in any given day fifty trials set in front of one judge, there may be only two or three that are contested. And so that only two or three of those witnesses

who are cross-examined and the level of their knowledge exposed, and so for the bank it's always an odds...you know, a numbers game. If they can get ninety nine percent of them passed through and one percent of them is contested, you know that's still a good day for the bank.

Matt: Do they actually say this is what I was told to read from the script? I mean is it is it that blatant or do they try at least to be actors and portray the role of the witness that they're supposed to be?

Amanda: They try to be actors and they try to keep giving the same answer they've been taught to give, but if you ask them to define basic legal terms, you know, well what's a mortgage, they don't know. What is it what does it mean to be the servicer versus the owner of the loan? They don't know.

Matt: They don't know what a mortgage is?

Amanda: A lot of them don't understand the concept of what a mortgage is versus what a promissory note is and so it's really quite shocking when you start going beyond the rehearsed answers that they have as to what knowledge they really do have about this loan and usually its next to nothing.

Matt: The judge must be able to see right through this.

Amanda: It's unfortunate here in Florida there's a lot of political pressures on our judges to fast track these cases through.

Matt: Well, what do you mean by that?

Amanda: Well they've been given the mandate from our legislature and the politician that this is a drain on our legal system. That we still have a backlog of cases, although they've made a lot of headway through them, to clear these cases and have to, they have goals of certain numbers of cases they have to clear within a certain amount of time. And so the judges will say to us, you know, We won't get more funding if we don't clear these cases. And so our court system has been turned into a results-oriented system. Instead of being a system that protects the process and make sure due process happens and everyone is protected. Instead we've turned to a results oriented legal system where the end result is to clear these cases and the way that they clear these cases is by entering judgment and settings sale dates. There are a lot of deep-rooted prejudices about clients getting free homes and they shouldn't be able to get a windfall because the bank can't put on its case. And so unfortunately it still does happen.

Matt: As a lawyer, what's it like for you to encounter this?

Amanda: It's very disheartening. I'll say I'm still a young attorney, I've only been practicing for about five years. And I think all of us came into the profession wanting to believe that our legal system had certain protections and procedures in place. And seeing this so quickly degrade for the sake of expediency is really disheartening.

Matt: What needs to be done then? I mean, a lot of people listening to this scratching their heads thinking how is something like this possible in 2014 and how can something that this be ended, so what needs to be done to offer those protections?

Amanda: I think the message needs to come from above from the funding from the legislature that "we want to ensure the process." Regardless of how much time it takes to clear this backlog, we need to ensure the process, that every "i" is dotted every "t" is crossed, a proper plaintiff comes, the proper documentation is shown, and then at the end of the day, if they're entitled to the foreclosure, they're entitled to the foreclosure, but it really starts to erode our legal system and our confidence in our legal system if we shortcut that and if we place the result of the foreclosure sale above the process itself.

Matt: You took an argument to the Florida Supreme Court to try and protect consumers from the sort of thing. Is that what needs to be done? And do more people need to do that to try and protect, as you say, the consumers from this?

Amanda: I think it's inevitable that the appellate system will be facing these issues. Our firm is very involved in other appeals. We have hundreds of them pending before the Florida courts, and I think that's inevitable because I think we have our trial judges who are in the trenches every day and a lot of them don't know what to do with these cases. And so we look to the appellate courts to give some guidance on this. And so I think that's what does need to happen. There unfortunately are not enough attorneys out there challenging these rulings in front of the appellate courts, but I think we are looking for guidance from the appellate courts and potentially from the Supreme Court again on what do we do with the situation and how do we ensure the process.

Matt: And if it disappears, will there be a robo something else down the road?

Amanda: You know, it hasn't changed so far. So every time, you know, they've gotten caught doing one thing they just adapted and done the same thing in another forum. And so I think, yes, we'll continue to face these types of issues if we don't address it head on.

Matt: Good to talk to you, thank you.

Amanda: Thank you.

Matt: Amanda Lundergan is a lawyer with Ice Legal in Royal Palm Beach, Florida.

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