

Lawyer at forefront of 'robo-signers' foreclosure issue

Thomas Ice
Ice Legal

Thomas Ice's defense of a financially troubled home owner has put the South Florida attorney at the forefront of efforts to stop poorly documented foreclosure actions.

California-based IndyMac Federal Bank foreclosed on a mortgage loan to Palm Beach County resident Israel Machado in November 2008 after Machado stopped making payments. But Ice later proved in court that IndyMac didn't own the loan. The judge dismissed the case without prejudice, which means the lender is barred from foreclosing on Machado again.

Exactly who owns the defaulted mortgage loan was still unclear more than a year after the judge dismissed the IndyMac case. "Ever since that dismissal, no one has stepped forward to say they are the owner [of the loan]. No one has brought a suit against Mr. Machado. It's in limbo," Ice said in an interview. It is possible that Germany-based Deutsche Bank owns the loan to Machado, "but we only had to prove that IndyMac didn't own it."

Judge Meenu Sasser dismissed IndyMac's foreclosure action in Palm Beach Circuit Court in September 2009. She ruled that IndyMac [now known as OneWest] lacked legal standing to seize Machado's home. The judge also ordered IndyMac to pay Machado's legal fees, about \$38,000. "Every penny got reimbursed," said Ice, who has a law firm in Royal Palm Beach called Ice Legal.

The discovery phase of the case was a two-step process. Ice first obtained affidavits with statements describing IndyMac policies for handling loan documents, then deposed people who worked for IndyMac to uncover a pattern of internal policy violations.

Ice conducted a pivotal deposition in the summer of 2009 with an executive of IndyMac named Erica Johnson-Seck,

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who admitted she improperly signed thousands of mortgage documents on a weekly basis, without carefully reviewing them first.

"She didn't read anything, and she did not have personal knowledge" of Machado or other borrowers named in the loan documents, Ice said, referring to her as a "robo-signer." During deposition, "she didn't mince words. She said, 'Yeah, that's wrong.' She was honest about it. Really, the problem is the machine the banks have set up for her and the other 'robo-signers' to sign 10,000 documents a month."

Among other documents, Johnson-Seck signed an affidavit of indebtedness implying that IndyMac owned the mortgage loan to Machado. She also signed an assignment of the Machado mortgage from IndyMac to MERS, or Mortgage Electronic Registration Systems, a custodial entity that lenders have created to store loan documents in a digital format. After Ice obtained a subpoena to gain access to MERS records, he said he discovered that the Machado loan that IndyMac claimed to own "apparently had gone to Deutsche Bank. That's what the MERS records show."

The dismissal of the IndyMac foreclosure against Machado was among the first in a wave of similar court actions. In 2009, "MERS told us that we were the only people in the entire nation asking for this kind of information," Ice said. "I found that staggering, considering there

were hundreds of thousands people in foreclosure."

Ice said that since he got the Machado case dismissed, he and his team of attorneys have taken similar cases and have obtained similar results for clients, typically dismissal of a foreclosure action based on improper documentation.

Ice has been posting depositions of "robo-signers" such as IndyMac's Johnson-Seck on his law firm's Web site. By providing useful evidence for other attorneys representing defendants in foreclosure cases, Ice said he has helped other defendants win dismissals of foreclosure actions.

His deposition of an employee of the Law Offices of David J. Stern, P.A., in May 2009 revealed a similar "robo-signing" pattern at the Plantation-based law firm. In August, the state attorney general began an investigation of possible improper document production from the Stern firm and several other Florida law firms that have helped lenders foreclose on a mountain of mortgage loans.

Late this year, so-called "robo-signing" problems led Fannie Mae, Freddie Mac, Bank of America, JPMorgan Chase and GMAC Mortgage to suspend their foreclosure actions while they review their internal procedures. In October, attorneys general in all 50 states launched a joint investigation of lenders' handling of mortgage loan documents.