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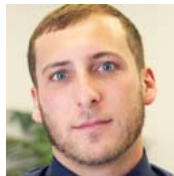
Judge sanctions Chase Home Finance for trying to delay foreclosure

Jose Pagliery
 Daily Business Review | January 04, 2011

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Lester Langer
 Photo by Richard M. Brooks



Michael Schimmel
 Photo by J. Albert Diaz

A Miami-Dade judge has moved out of the mainstream by imposing sanctions on a bank for attempting to delay finalizing a foreclosure — a tactic seen by the defense as a way to avoid taking title and becoming responsible for the payment of association fees.

Shortly before the Christmas holiday, Miami-Dade Circuit Judge Lester Langer **denied Chase Home Finance's request** to delay its foreclosure of a unit at Aventura's two-tower Coronado Condos, instead ordering a \$100-a-day fine unless it moves the case forward. The lender has until Jan. 15 to proceed with a trial or get a summary judgment hearing before the penalty would be assessed.

The order was a victory for the condo association and its Miami law firm, Toyne & Mayo, which ironically has its office in a Chase Bank building.

Michael Schimmel, the Toyne associate handling the foreclosure case, acknowledged, "It's not going to topple the world, but it could at least give judges and litigants pause."

Until Langer's Dec. 15 ruling, Miami-Dade judges have largely rejected sanctions on banks delaying foreclosures, according to some condo association attorneys. Banks cite a 3rd District Court of Appeal decision in 2009 which voided sanctions against U.S. Bank over unpaid condo association

fees.

In his ruling, however, Langer said allowing the bank to delay "departs from the essential requirements of law" because the stay "will not preserve the status quo and will only be prejudicial to the condo association."

Bank attorney David Cramer of Shapiro & Fishman did not return calls for comment by deadline.

Ross Toyne, who also works alongside Schimmel, described Chase's foreclosure case against Herald Freyberger as a typical one. Chase filed its case Jan. 21 of last year, and Schimmel said Freyberger abandoned his unit. Since then, the road has been a clear one with no one to contest the bank's foreclosure action or the condo association's counterclaim. By June, the association had a judgment against Freyberger.

"It could have been one 30-second hearing," Schimmel said.

But it wasn't.

At the bank's request, the case was taken off the trial calendar and prepared for a final summary judgment hearing Nov. 8. But the bank slammed on the brakes, asking for time to review the affidavits it had used to move the case forward.

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In the case concluded with similar efforts by banks nationwide as all 50 state attorneys general began probing allegations that lenders, mortgage servicers and law firms misused the courts while pushing people out of homes.

Schimmel said Chase's actions made little sense. If the bank wanted to avoid relying on affidavits, it could have gone to trial and obtained testimony from an employee familiar with Freyberger's file. But instead it asked for a summary judgment hearing, where affidavits are required, Schimmel noted.

"Rather than go to trial, they went through this circular charade of continuances and whatnot," Schimmel said.

I. Barry Blaxberg, whose firm Blaxberg Grayson Kukoff & Twombly represents other condo associations, sees Langer's ruling as an attempt to stop what he views as gamesmanship.

"Judge Langer's shown some courage to assist in a situation that associations have been placed in, particularly after the Tadmore decision," the 2009 decision from the 3rd DCA, he said.

Blaxberg noted other Miami-Dade judges have cited the Tadmore case when denying condo association demands for banks to pay maintenance fees, leaving his clients "without a remedy."

"We're all scrambling for some way to keep associations from choking," Blaxberg said.

David Arnold, whose Association Law Group in North Bay Village represents condo associations, also welcomed Langer's ruling.

"He understands that every month that passes, the association loses another month of assessments. This isn't profit. This is money it takes to operate the association. If the bank is relieved, the other unit owners have to make the difference. They didn't make the bad mortgage, but they're paying for it," Arnold said.

But both Blaxberg and Arnold question whether Langer's decision will hold up if it is appealed. Schimmel said he does not know whether the bank will take that route.

"We're going to sit back until Jan. 15 and see what happens," he said.

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