Glaski, Erobobo, Saldivar Brouhaha

Red-Herring Foreclosure Defeats for PSA Flouters

Table of Contents

Introduction

Securitization haters have gone giddy or berserk with the news of the Glaski, Erobobo, and Saldivar opinions denouncing foreclosure on the basis of broken chain of assignment of the note. Courts have said assignment into the securitization trust did not occur because it missed the cutoff date prescribed in the Pooling and Servicing Agreement (PSA).

Someone do a securitization audit, QUICK!

Securitization audit scammers absolutely LOVE this news because now they can more easily con foreclosure victims into wasting hard-earned money on overpriced and useless securitization audits.

My comments below show why the subject opinions constitute nothing more than red herrings. I also show the only way to WIN against the banks in a foreclosure situation.

For reference, see these opinions from Texas, California, and New York:

- Saldivar - http://scholar.google.com/scholar_case?case=17032488610176060422
- Glaski - http://www.courts.ca.gov/opinions/documents/F064556.PDF
- Erobobo - http://scholar.google.com/scholar_case?case=10786261344843042275

We Don't Live in an Ideal World

Actually, I believe in the ideal of a clean and tight chain of owners of beneficial interest (OOBIs) in the note. But, we don't live in an ideal world. To wit:

1. Often the loan originator has become bankrupt and no longer exists.
2. And then the buyer of the originator's assets and liabilities has no ability to testify as to the cleanliness of the origination.
3. Let us not forget that the REASON to examine the mortgage and related documents inheres in the reality that lenders and their agents have cheated 9 out of 10 single family home mortgagors, rendering the note void or voidable, and thereby undoing the mortgage.

   Someone do a mortgage examination, QUICK!
4. And then there's the philosophic question of how anybody could track the chain of OOBIs for a note indorsed in blank which anybody holding it can enforce.
5. And even if someone can properly track *that* OOBI chain throughout the life of the note, OOBIs in the chain might have violated myriad laws and contracts (starting with the note itself) in the process of transferring ownership.
6. In fact, some OOBIs might have stolen the note or found it "in a ditch" the way I found some things as an unruly teen scofflaw. Oh, wobbly woes.

UCC to the Rescue

You see, folks, the UCC in Article III Part 3 makes short shrift of many of these concerns by allowing

enforceability of the note in spite of OOBI-related confusion. Right. Read this (from the Florida Statutes UCC) and weep, Glaski, Erobobo, and Saldivar:

> **673.3011 Person entitled to enforce instrument.—**The term "person entitled to enforce" an instrument means:
> (1) The holder of the instrument;
> (2) A nonholder in possession of the instrument who has the rights of a holder; or
> (3) A person not in possession of the instrument who is entitled to enforce the instrument pursuant to s.673.3091 or s. 673.4181(4).
>
> A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

You see, while I have used the term OOBI for simplicity, the UCC uses the term "HOLDER" because it does not matter who OWNS the note, because

1. the HOLDER can enforce it, and
2. so can a nonholder possessor, and
3. so can a nonholder nonpossessor, and
4. so can a non-OOBI, and
5. so can a possessor finder or thief.

I'll save you the trouble of reading the UCC on enforceability of bearer instruments like mortgage notes indorsed in blank. You know what it provides.

Cool, huh? Curious how Glaski's CA 5th District appellate panel didn't quite get those nuances of enforceability. In particular, an assignment from one entitled to assign it HAS validity. And assignment to the trustee for the benefit of certificate holders in violation of the PSA becomes an assignment to the trustee in its *personal* capacity. The assignment happened. It just did not happen as intended. And that's why so many courts have shunned the bogus "assignment did not occur" theory of the rulings in question.

The Common Sense of a Mortgage Exam

If we philosophers want to become fastidious, pedantic, anal-retentive sticklers regarding note enforcement, we ought also to become even more anal about determining and challenging the validity of the note.

I promote a comprehensive mortgage examination service by a competent professional knowledgeable in law for PRECISELY that reason.

A good mortgage exam can result NOT ONLY in proving the void or voidable nature of the mortgage note in a settlement negotiation or in court, but also in a HUMONGOUS award of compensatory and punitive damages and legal fees and costs related to exposure of the breaches, errors, fraud and other torts underlying the mortgage. See this stark example of the benefits of the methodology.

NO securitization audit can ever bring such a benefit. Well, honestly, a securitization audit cannot bring any benefit at all, as I see it, particularly not in contrast to a comprehensive. professional mortgage examination.

Do you see the beauty of the mortgage exam yet? By proving that the loan had fraud at its base, the mortgage victim opens the door to monumental monetary awards and possibly to rescission of the loan

and getting the house free and clear, while stopping the foreclosure dead in its tracks. Securitization audits and arguments cannot open that door at all, not even a tiny little crack, not even a teeny weeny peep hole.

The mortgage exam exposure of fraud in the mortgage itself can blow the foreclosure into oblivion with no effort at all, and obliterate any reason to peer into the murky smog of the OOBI chain.

Validity Matters More than OOBI Chain

Back to the main point here. Regardless of the relevance of assignments in the OOBI chain, NOTHING has relevance like the validity of the note itself. And only a comprehensive mortgage examination can provide the mortgagor with the tactical nuke that will prove invalidity of the note and blow that OOBI chain and foreclosure to smithereens.

If Glaski's lawyer had only understood this, Glaski would probably have his house free and clear now.

Ultimate Result in Glaski, Erobobo, Saldivar

Okay, okay, I know you want to talk about Wells Fargo v Erobobo and In re Saldivar, both of which, like Glaski, deal with non-compliance with the Pooling and Servicing Agreement. SO, let's talk.

First of all, take note that courts all over the USA have spurned the legal theory that the PSA has ought to do with the validity of OOBI assignments of the note. I have cited some in a prior article. But you can conclude from the paucity of appellate opinions like that in Glaski that similar approaches generally fail.

Second, what do you suppose will happen in any or all of these cases if the bank pursues them to the ultimate end? Do you think the mortgage and the foreclosure will suddenly disappear forever? Do you imagine the mortgagor's signatures on note and mortgage mean nothing or that the court or trustee will not eventually force forfeiture of the mortgaged collateral, the HOUSE?

If you do, guess again. Just like Judge Shack's and Boyko's foreclosure complaint dismissals in New York and Cleveland in bygone years, plaintiffs will correct their paperwork and refile. Every one of those foreclosures will go through to completion, and the trustee or court will kick the mortgagors out of their homes, AS THEY SHOULD. Or the mortgagor will stupidly take a scam loan mod in which they indemnify the lender for past injuries by the lender.

Why the FCIC Report Can't Rescue

My use of the phrase "as they should" does not mean I endorse the widespread predatory lending and destruction of homeowner equity over the past decade, still in full swing through loan modification programs. It simply means that the mortgagor must proffer evidence that the mortgagee's specific predatory acts injured the borrower as part of the predatory lending and mortgage meltdown conspiracy.

I don't know of anyone who has successfully done that. Getting a court to acknowledge it in rulings beneficial to mortgagors has about as much chance as getting them to acknowledge that descendants of Mayer Amschel Rothschild engineered the Federal Reserve System, own the Federal Reserve Banks,

and caused the assassination of JFK.

Who in his right mind would encourage broke foreclosure victims to fight a half-decade battle against foreclosure only to lose the house in the end at great expense in time, money, and mental stress? I certainly will not advocate that.

I wish I could advocate attacking the lenders and government for the predatory lending scheme wreaked upon America through the past 15 years, but I consider the battle as losing and any victory Phyrric.

The ONLY Opportunities for Glaski, etc

Regarding the very subject line of this message, Erobobo, Saldivar, and Glaski provide these opportunities:

1. Scam lenders will sell loan modifications to the foreclosure victims after the mortgagee corrects the paperwork and comes back to hammer the victims with foreclosure again;
2. Scam securitization auditors will con hapless foreclosure victims into wasting money on useless audit reports.

Those rulings provide NO OTHER opportunities UNLESS Saldivar, Erobobo, Glaski, and others like them get their mortgages comprehensively examined for causes of action in the loan itself. Then the victims can turn the opportunity into an award or settlement in the form of a low-balance refinance, cash, or the house free and clear.

Because of the wasted energy, time, and money by Glaski, Erobobo, and Saldivar, I consider their temporary defeats of foreclosure as nothing more than Red Herrings.

My Choice of Method, and Why

For all of the foregoing reasons, I have settled rationally on this method: attack the validity of the individual mortgage loan as follows:

1. Get a comprehensive mortgage examination by a competent professional who has knowledge of all the related areas of law AND consummate litigation skill. Then,
2. Use the discovered causes of action to force a settlement for money or refinance, or sue for compensatory and punitive damages and legal fees and costs.
3. If no causes of action exist, walk from the house as you should, with a short-sale or deed-in-lieu-of-foreclosure deal.
4. Do not EVER accept a loan modification, for all are just scams to increase your debt, increase the likelihood of foreclosure, and deprive you of the right to sue over prior predatory lending injuries.

If anybody can find any fault with my choice of methods, please let me know and show me some proof of the fault.

Meanwhile, any who want to discuss how to avail themselves of a comprehensive mortgage exam by a renowned professional examiner with consummate knowledge of related law and 35 years of winning

litigation experience, may contact me immediately for a FREE consultation, and tell me your story. I charge no money. I don't work for a living. I have no business relationship with any service provider. I have no vested interest in your success or failure. I do not practice law or anything else except guitar. I like to help people. And I don't hide.

727 669 5511. bob at (you guessed it) bob hurt dot com

--

Bob Hurt **Blog 1 2 3** **f** **t**
2460 Persian Drive #70
Clearwater, FL 33763
Email; Call: (727) 669-5511
Law Studies: Donate Subscribe
Learn to Litigate with Jurisdictionary