

July 27, 2010

Honorable Peter D. Blanc
205 N. Dixie Highway
Room 5.2500
West Palm Beach, FL 33401

RE: Foreclosure lawsuits in Palm Beach County

Chief Judge Blanc:

I do not believe that I've ever had the opportunity to meet you. I am Mark Stopa, a foreclosure defense attorney. I am counsel in hundreds of cases in our great state and have a lot of experience in this area of law. I am writing this letter in my respectful attempt to convey my concerns about the manner in which the Fifteenth Judicial Circuit is handling foreclosure cases, particularly after I saw a 103-page, "rocket docket" of foreclosure hearings scheduled for August 2, 2010. I also wanted to address your concerns about the "backlog" of foreclosure cases in your circuit and your belief it "is important to clear the foreclosure cases so that vacant and dilapidated homes can go back on the market," as you recently told a local reporter. I appreciate you taking a few moments to hear me out.

First off, I understand you are dealing with an unprecedented volume of cases, frustrating the Court's ability to operate. However, I respectfully submit that the solution to this problem is not to "push through" foreclosure cases at a faster rate. In fact, for reasons I explain below, I believe the solution is precisely the opposite. I also believe that "pushing through" these cases in the present manner will have drastic consequences that you may not have envisioned.

As I see it, the reason your court is bogged down with so many foreclosure cases is that those cases almost never settle out of court. I'm sure you'd like foreclosure lawsuits to settle. Why don't they? Contrary to what you may think, it's not because settlements aren't possible. I've talked to thousands of homeowners facing foreclosure. Let me assure you – most homeowners want to make payments but can't ever get a person in authority with the bank to listen. I've heard countless stories of homeowners trying desperately for a modification, for months on end, yet getting nowhere. Many other homeowners will consent to a foreclosure if they avoid a deficiency (which many banks are not pursuing anyway). But the banks won't settle. Why? In my view, the answer is clear. Too many judges, including the judges in your circuit, have made it clear that they will "push through" foreclosure cases, rarely if ever ruling for homeowners, even when the law so requires. If that sounds harsh, it's not so intended. My point is this - why should banks settle when they can get all relief they are seeking in court?

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The mediation process has successfully resolved lawsuits in Florida courtrooms for decades. Mediation works for two reasons: the parties (1) avoid expense (attorneys' fees) and (2) eliminate their risk of loss. Anyone who has ever been to a mediation has heard the old adage that mediators give - "you never know what the jury/judge is going to do". But that's precisely the problem in foreclosure cases; everyone knows what judges are going to do - enter another foreclosure judgment. Until this dynamic changes, and banks start to perceive that they could lose a foreclosure case, the backlog of cases in your court is not going to change. Banks will just keep filing more foreclosure lawsuits for years on end, never settling those lawsuits because they perceive no risk of loss by proceeding through the court system. Lest you disagree, I respectfully suggest you talk to some bankers or their lawyers. Banks have thousands and thousands of foreclosure cases "on hold" – cases they're just waiting to file (but have held off on filing because they don't want all of the homes on the market all at once, a topic I discuss below). Respectfully, you're never going to get through this backlog by cramming through foreclosure judgments – the court system simply cannot keep up with the volume. A different approach is in order. Judges have to be willing to rule for the homeowner when the law requires, creating an atmosphere where banks have some incentive to settle these lawsuits out of court. As most litigators know, judges do this all of the time in most lawsuits – why not foreclosure cases?

I know what you're thinking. "How can we rule for homeowners when they haven't paid their mortgage?" Candidly, before I began practicing in this area of law, I thought the same thing. "How can homeowners have a defense when they haven't paid?" Years later, though, I've seen that many homeowners have legitimate defenses, be it lack of standing, failure to fulfill conditions precedent, or outright fraud by the banks.¹ In fact, if I went to trial next week on all of my (hundreds of) cases, I'm confident I should win at least 30-40% of them. If you question how that could be, I encourage you to contact me and I will explain why.

You told the local reporter something to the effect that "it's important to clear the foreclosure cases so that vacant and dilapidated homes can go back on the market." Respectfully, I cannot disagree more. Homeowners are not the reason these homes are dilapidated. I know this from years of experience – my clients are living in their homes, maintaining their homes, doing everything possible to remain in their homes. The last thing most homeowners want is to leave their homes. Do you know who is causing homes to be vacant and dilapidated? Banks. If you disagree, I encourage you to check your Court's dockets *vis a vis* the scheduling and cancellation of foreclosure sales. If you do, you'll see countless instances where a bank scared a homeowner into vacating possession, obtained a foreclosure

¹ Whenever I mention fraud in foreclosure cases, I get the sinking feeling that many people think I'm crazy or paranoid. But I've seen it, over and over again, with my own eyes. Banks lie to homeowners (and, many times, the lies are documented in writing). Banks file an "original" note on the same property in two different cases (which is, of course, necessarily impossible and proves that the "original" notes are often printed via laser printer). Banks regularly sign assignments of mortgage conveying properties to themselves. I'm not making these statements as some sort of radical activist – this is what's happening in my cases on a regular basis.

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judgment with little or no opposition, but refused to go forward with a foreclosure sale for many months or even years. Unfortunately, banks often make an economic decision not to set a foreclosure sale (i.e. because they don't want to be responsible for taxes, insurance, etc.). That is what causes homes to be "dilapidated" – when banks scare the homeowner away but refuse to set the foreclosure sale. What results is the property remains in limbo – the homeowner has left, knowing a foreclosure is coming, but the bank won't set the foreclosure sale, so title remains with the homeowner and nobody else can move in. Before you disagree, ask the judges in your circuit how many Orders they sign where a bank requests that a foreclosure sale be cancelled (for no apparent reason).

Also, please take a moment to think about this scenario. Suppose that in the next 60 days, it was somehow possible for your Court to enter a foreclosure judgment and conduct an execution sale on every single property currently in foreclosure. If that happened, and all of those homes went on the market all at once, who is going to live in all of those homes? Who is going to buy them? We're not talking about 500 or 1,000 homes; we're talking about, what, 50,000 homes? Who is going to buy 50,000 these houses? Who is going to move in? For me, the answer is clear – nobody. There simply aren't 50,000 families to move into these homes. Hence, by "pushing through" foreclosure cases at a faster rate, you're not helping to eliminate abandoned homes from the real estate market – you're just causing more homes to be abandoned. In other words, the faster these foreclosure cases get pushed through, the more you're increasing the rate at which abandoned homes flood the marketplace. If you still disagree, I encourage you to investigate the frequency with which banks obtain foreclosure judgment, cancel the sale, and don't re-set the sale for many months.

Another significant aspect of this is the lasting consequences that the Court's current practice will have on the court system, the title insurance industry, and the economy as a whole. To illustrate, what's going to happen when the wrong plaintiff is granted a foreclosure and the correct plaintiff later steps forward with the original note? Where does that leave the original homeowner, the person who purchased the property from the bank or at the foreclosure sale, and the title insurance company that issued a title insurance policy? All of these individuals would be up the creek without a paddle, to no fault of their own. The original homeowner would face another lawsuit, even after being foreclosed, the BFP would lose the property to the mortgagor, and the title insurance company would be forced to pay on a title insurance claim. All three would be harmed despite being completely innocent. If and when that happens on a regular basis, title insurance companies are not going to be willing to write title insurance policies any more, especially based on foreclosure sales. Are we headed down a path like with tax deed sales, where title from a foreclosure sale is not marketable for four years unless the purchaser prosecutes a quiet title lawsuit? That's what I fear, and I'm not alone in that regard.

On a related note, I'm extremely concerned about all the foreclosure cases where banks are effectuating service by publication and pushing through foreclosure judgments yet the service is improper. Yes, I realize it is technically possible to serve by publication, but banks rarely do so correctly and often abuse the process (resorting to service by publication when the law does

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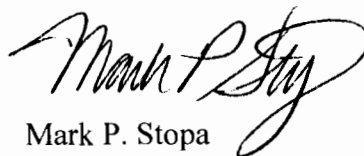
not allow, presuming that nobody is ever going to question them on it). I'm not sure if you're familiar with the requirements for service by publication, but, candidly, they are brutal. Let's put it this way - when I represent plaintiffs in my litigation cases, I never serve defendants by publication because it is so easy to get that service vacated. Anyway, the problem is that judgments entered without valid service are void (not voidable, void), and void judgments may be vacated at any time, even years after the fact. What's going to happen when some of these homeowners who've been served by publication realize that service upon them was improper and move to vacate a final judgment of foreclosure? The law will require that motion be granted, which begs the question - what will then happen to the person who purchased the property from the bank or the title insurance company that wrote a title insurance policy based on the foreclosure sale? Again, these individuals would be harmed to no fault of their own. Respectfully, our courts should not be "pushing through" foreclosure cases where the Defendant was served by publication.

Throughout this process, I've seen the integrity of our profession, and our court system in general, fall by the wayside. Young lawyers, fresh out of law school (who routinely represent banks) think it's okay to submit ex parte Orders on contested matters, without a hearing and without even copying opposing counsel on the cover letter. Unfortunately, these lawyers do this because they've never been trained differently and because, time and time again, they get away with it. What are we teaching these lawyers by allowing - even blessing - this conduct? Where will our profession be when this foreclosure crisis is over? Are these lawyers going to think it's okay to obtain relief ex parte? To unilaterally set a summary judgment motion on a mass-motion calendar even though the motion should reasonably be heard at a 30-minute hearing because judges will "push through" their case?

I could write about these issues all day long, and I suspect by this point you've heard enough. So let me sum it up this way. I understand your concerns about "clogged dockets." However, I respectfully submit that the approach being implemented by your Court with respect to these foreclosure cases is not the best way to eliminate the logjam and, in the long-run, is causing more harm than good.

If you would like to discuss these issues in more detail, I welcome you to call me at the number listed below. I would welcome the opportunity to speak with you.

Respectfully,
STOPA LAW FIRM



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