Reality Check for Florida Attorney Matthew Weidner in AHMSI v Bednarek 2D12-2099

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Executive Summary

Bob Hurt reviews Matt Weidner's devastating loss in Florida's 2nd DCA Bednarek opinion, and explains why Matt could never win such a battle unless he bought or drugged the judges. Then he directly addresses Matt (and all Foreclosure pretense-defense attorneys), explaining how they could win money, possibly a lot of it, for 90% of their foreclosure victim clients.

Bednarek Case Overview

Attorney Matthew Weidner's Foreclosure Pretense Defense crew buzzed with excitement as they prepared to litigate against the beastly American Home Mortgage Servicing, Inc (AHMSI) on behalf of poor old Lucy Bednarek.

Lucy borrowed money, signing the note and mortgage security instrument, and mortgaging her property, pledging it as collateral to secure the note. She agreed to give it up to foreclosure sale if she failed to make timely payments.

Then Lucy breached the note by failing to pay timely. Servicer AHMSI filed a foreclosure complaint on 4 April 2006 (see docket report) foreclosed. Lucy hired Attorney David Thorpe of Tampa to save her rental house from foreclosure. He succeeded in getting the case dismissed for lack of standing.

AHMSI filed its appeal on 27 September 2007. Lucy hired St. Petersburg FL attorney Matthew (Matt) Weidner to defend against the appeal (see docket report). The case drug on for 6 years. Then the Florida 2nd District Court of Appeal issued a scathing denunciation of Weidner's case

in a curt opinion on 30 October 2013 with these fateful words:

> "American Home Mortgage Servicing, Inc. (AHMSI), 1 appeals a final order dismissing its foreclosure action against Lucy Bednarek for lack of standing. Because The original plaintiff in this foreclosure action was American Home Mortgage Servicing, Inc., a Maryland corporation (AHMSI-Maryland). The appellant,we conclude the trial judge erred in finding that AHMSI did not establish its standing to foreclose under McLean v. JP Morgan Chase Bank National Ass'n, 79 So. 3d 170, 173 (Fla. 4th DCA 2012), we reverse.
>
> "On May 31, 2005, Ms. Bednarek executed a note and mortgage in favor of American Brokers Conduit for the purchase of real property. Thereafter, the loan was sold to Deutsche Bank. On March 30, 2006, American Brokers Conduit assigned the mortgage to the bank's servicing agent, AHMSI-Maryland. In September 2007, AHMSI-Maryland filed a complaint for foreclosure alleging it was the owner and holder of the underlying promissory note. With the complaint and the amended complaint, AHMSI-Maryland filed copies of the mortgage, the promissory note showing a blank endorsement, and the 2006 assignment of mortgage. In April 2008, AHMSI purchased AHMSI-Maryland, acquiring the company's servicing rights. In 2009, AHMSI filed the original note and mortgage with the trial court.
>
> "At the nonjury trial, AHMSI presented the testimony of its foreclosure special assets specialist, Krystal Kearse. Relying on computerized business records, Ms. Kearse traced the history of the loan from its inception until AHMSI received the documents to proceed with foreclosure proceedings. At the close of testimony, counsel for Ms. Bednarek made an oral motion to involuntarily dismiss the action, arguing AHMSI had no standing to foreclose because it was not the original plaintiff and not the owner and holder of the note. Relying on McLean, the trial court granted the motion on the ground AHMSI had failed to prove it was the owner and holder of the note and mortgage.
>
> "A party seeking foreclosure must establish that it had standing to foreclose at the time it filed the complaint. McLean, 79 So. 3d at 173. A foreclosure plaintiff has standing if it owns and holds the note at the time suit is filed. Id. A plaintiff may also establish standing to foreclose by submitting evidence of a special endorsement on the note in favor of the plaintiff or a blank endorsement, an assignment from the payee to the plaintiff, or an affidavit of ownership. Id. at 174.
>
> > "*Because a promissory note is a negotiable instrument and because a mortgage provides the security for the repayment of the note, the person having standing to foreclose a note secured by a mortgage may be either the holder of the note or a nonholder in possession of the note who has the rights of a holder.*
>
> "Stone v. BankUnited, 115 So. 3d 411, 413 (Fla. 2d DCA 2013) (quoting Mazine v. M & I Bank, 67 So. 3d 1129, 1131 (Fla. 1st DCA 2011)).
>
> "Here, both the complaint and the amended complaint reflect that AHMSI-Maryland, the original plaintiff, was the owner and holder of the note at the time the complaint was filed. An assignment of mortgage was attached to the complaint which provided that the original

lender, American Brokers Conduit, assigned the mortgage to AHMSI-Maryland on March 30, 2006, more than one year prior to the filing of the original complaint. Also attached to the complaint and amended complaint was a copy of the note showing a blank endorsement. Because AHMSI possessed the original note, endorsed in blank, it was the lawful holder of the note entitled to enforce its terms. See id.; see also BAC Funding Consortium, Inc. ISAOA/ATIMA v. Jean-Jacques, 28 So. 3d 936, 938 (Fla. 2d DCA 2010) ("The proper party with standing to foreclose a note and/or mortgage is the holder of the note and mortgage or the holder's representative."); - 3 -Mortg. Elec. Registration Sys., Inc. v. Azize, 965 So. 2d 151, 153 (Fla. 2d DCA 2007) ("The holder of a note has standing to seek enforcement of the note.").

"Accordingly, we reverse the involuntary dismissal of AHMSI's foreclosure action and remand for further proceedings."

What Matt Weidner Wrote About the Case

I imagine Matt salivating over the prospect of winning this case this case as he wrote in his blog:

http://mattweidnerlaw.com/my-next-exciting-appeal-bednarek-v-american-home-servicing-inc/

********** Start of Matt's Blog Entry **********

My Next Exciting Appeal: BEDNAREK v. AMERICAN HOME SERVICING INC

June 22, 2012

by Matthew Weidner

Foreclosure Defense Florida , Foreclosure Laws And Foreclosure Appellate Court Opinions , General Information And Stories That Ameicans Should Follow, Litigating Your Foreclosure Case- FIGHTING FOR YOU! , Mortgage Modification

7 Comments

They’re keeping me busy on appeals these days...the more they lose, the more the banks are forced to appeal.

Now this attorney did a really good job of fighting his case and frankly he does the best job he can with the facts he has....

Now read through the brief and the appellate record.....

appellantBrief

03222012AmericanHomeMortgage

********** End of Matt's Blog Entry **********

And, I imagine Matt's chagrin over losing what he probably considered that simple slam-dunk appeal as he wrote this:

http://mattweidnerlaw.com/important-appellate-case-client-wins-trial-reversed-appellate-court-move-rehearing/

********** Start of Matt's Blog Entry **********

A Most Important Appellate Case, My Client Wins At Trial, Then Is Reversed By Appellate Court – I Move For ReHearing

November 13, 2013

by Matt Weidner

Foreclosure And The Challege To Our Judicial System, The Bigger Issues In The Battle to Save Americas From Bank Abuse

1 Comment

This case truly is one of the most bizarre…and most important foreclosure cases that I've yet handled.

A foreclosure is filed against a sick and elderly woman.

At trial, I demonstrate all the problems with the banks case….and because the case was tried by a very good and very thoughtful trial court judge….

THE FORECLOSURE DEFENDANT WON HER TRIAL!

The bank appealed, and, in a most unsettling and bizarre opinion….the appellate court reversed. Reversed not just me and my client…but the trial court judge.

Here's the problem….(full disclosure…it's just one of many problems)…the appellate opinion ignores so much of what happened at trial…and what the trial court judge found…

The consequences of this opinion have implications that go far beyond mere foreclosure cases….the red headed step children of the legal world.

We can only hope that the appellate court will recognize the error of this opinion….and issue a new, and corrected opinion…..

Motion for Rehearing- Bednarek

Answer Brief

appellantBrief

********** End of Matt's Blog Entry **********

Bob Hurt's Perspective

But most of all, I imagine Lucy Bednarak's poor wallet meowing and wailing over the amount of money it cost her to hire two feckless attorneys to defend her against an indefensible foreclosure. Pool Lucy constitutes only ONE MORTGAGE VICTIM among hundreds of thousands like her across the USA whom clueless attorneys have bilked out of fortunes for failing, pointless foreclosure defenses like this one. Lucy lost in trial court and then lost again in appeal court because she trusted lawyers who should have told her the truth to begin with:

> "Lucy, you have a snowball's chance in hell of beating this foreclosure. Keep your money. I won't take your case because I don't know how to save the house for you. All I can do is delay the inevitable, and talk nicely to you as I peel thousands of dollar off that wad of money in your purse."

To Matt and Other Foreclosure Pretense-Defense Attorneys:

Matt, after 2.5 months of contemplation you must know that your lack-of-standing argument HAD to fail because AHMSI obtained the note, endorsed in blank, prior to filing the complaint. That complied with the McLean v JP Morgan opinion. What else has relevance here in the face of a valid loan and lending process? What did you expect to happen?

To me it seems axiomatic that if your client took out a valid loan, then failed to pay timely, she has to forfeit the collateral house. The court MUST make certain of that. See Article 1 Section 10 of the Florida Constitution - "no law impairing the obligation of contracts shall be passed," and Section 21 "All persons shall have access to the courts for redress of injury, and justice shall be administered without sale, denial, or delay."

You knew when you took the case, and you know now, (don't you?) that Lucy must eventually lose the subject property to foreclosure sale. You could only hope to postpone it through a purely dilatory foreclosure "pretense" defense. Well, I guess you accomplished that, didn't you? And now Lucy must give up the property.

Maybe if you had addressed the VALIDITY of the loan you would have won some financial compensation or set-off for Lucy Bednarek, or convinced AHSI to settle out of court. You might have won a rescission and Lucy would now have her property free and clear. In other words, you might have presented HER injury to the court for redress.

DID you examine her mortgage for evidence of underlying tortious conduct, contract breaches, or legal errors by the lender or lender's agents? If not, WHY not?

Tell you what, Matt. I have a deal for you. You or any of your lawyer buddies pick up the phone and CALL me, and I'll explain patiently to you how to find the evidence that the lender or lender's agents injured, and in many cases CHEATED your foreclosure victim clients. I'll SHOW you how 9 out of 10 of your clients constitute not merely foreclosure victims, but, worse than that, MORTGAGE VICTIMS.

I'll meticulously explain how you can discover how, through tortious conduct, contract breaches, and legal errors, the lender or lender's agents HORNSWAGGLED your client, often conning them into paying more for a property than they should, or investing in a property they never should have bought.

I'll teach you how to find the causes of action underlying the mortgage so you can WIN FINANCIAL COMPENSATION for your clients, instead of lying to your clients by telling them you "won" when you only delayed the loss of their property through a temporary dismissal of the foreclosure complaint, as in Bednarek's case.

If you think right now "I don't care what Bob Hurt says. I'm a lawyer, I run my ship here, I know what to do, I can win for my clients," maybe you should think again about such a fatuous, specious attitude or claim. Maybe you should make up a compendium of your own foreclosure defense cases, and write down how many of your foreclosure victim clients have ended up keeping their home or receiving compensatory or punitive damages because of your work exposing the lender's crimes and injuries against your client. Want some help with that? I can tell you in advance, without even looking: ZERO. You have won ZERO damages and ZERO homes for your foreclosure victim clients because you have not yet come to grips with this one salient reality:

Fight the foreclosure battle and LOSE.
Fight the <u>mortgage</u> battle and WIN.

All these years you have fought precisely the WRONG BATTLE, and as a consequence you have bilked your foreclosure victim clients out of enough money to put your kids through college. Many of them might have an excellent legal malpractice case against you because they came to you for help fighting a breach of contract accusation, and you didn't even bother examining that contract and the surrounding circumstances and associated documents to see whether the lender or lender's agents breached it first or engaged in some other illegal or tortious acts that hurt your client. If you don't do that, how can you call yourself a lawyer?

Don't get me wrong here, Matt. I don't mean to single you out for excoriation because you took a case you should have rejected, and you gave Lucy false hope while relieving her of much of the weight in her purse, or because you routinely take foreclosure defense cases without a rapacious hunt for injuries against your client at the loan's inception. You only do the same

thing that Tom Ice, Randall Reder, Greg Clark, Mark Stopa, Neil Garfield, and thousands of other foreclosure pretense-defense attorneys do to their equally clueless mortgage victim clients. But just because so many commit the same malpractice sins, that doesn't mean I should let YOU off the hook. It just means I should put all of your cronies and pretense-defense colleagues on the same hook on which I put you.

The beauty of this zany never-win-a-foreclosure-pretense-defense-case situational pickle of yours lies in the fact that now you've had a reality check, and you know you can get out of the pickle. To do that you need only start examining the mortgage of every foreclosure victim client who comes your way, then for those with no causes of action, you sell them a loan mod or help them with a short sale or deed in lieu of foreclosure and forgiveness of any deficiency. But for all the rest, you attack the lender or agents for the causes of action underlying the mortgage, and work furiously to get some financial compensation fore you clients.

Do they come to you for any other reason? Would they sing your praises hither and yon for WINNING a money settlement or judgment for them, maybe a house free and clear now and then, maybe even monumental compensatory and punitive damages with a BOATLOAD of legal fees and costs for your trouble?

Yes they would. You could get used to winning instead of losing and calling it a win. Best of all, you'd get filthy rich on banker's money rather than client money. And you could look at your face in the mirror with pride instead of shame as you scrape the stubble from your face in the morning.

Now, just in case you don't have the competence to examine all of the documents related to the mortgage and find all the causes of action hidden like Easter eggs there, don't despair. You can call me and I'll guide you to the perfect solution.

Call me right now, Matt. I'll help you see the light. FREE! Meanwhile remember:

Fight the foreclosure battle and LOSE.
Fight the <u>mortgage</u> battle and WIN.

Bob Hurt **Blog 1 2 3** **f t**
2460 Persian Drive #70
Clearwater, FL 33763
EmailCall: (727) 669-5511
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