The Eleventh Lawyer

Being the eleventh lawyer consulted is ordinarily a clue that a case lacks merit. But if you like challenges, a case in consumer law is usually full of them.

Our new client faced foreclosure of her home, a process that can take as few as 22 days and is about as one-sided as any in civil law. The dreaded occasion was only ten days away. (I feel obliged to say at this point that I have authored a couple of deeds of trust, for use by financial institutions, before I morphed into a borrower's last resort.)

That was just enough time to beat the statutory requirement that a borrower give five days' notice before seeking to enjoin foreclosure. It seemed scarcely enough time to marshal a case for a restraining order.

Good fortune intervened, though. A couple of the preceding lawyers had gathered essential information that the client brought with her, along with a friend who was helping her in managing her modest amount of money. The other lawyers had also managed to postpone the sale for several months while trying to find a way both to prevail and to earn an award of attorney fees from a trial judge acting under one of several statutes.

Our new client was obviously crazy, though a stroke partially explained her behavior. Her children would not speak to her, and the friend would have to serve as the plaintiff. Still, testimony from a physician or psychologist would ultimately be necessary if we were to assert the borrower's lack of capacity when signing the promissory note and deed of trust.

The friend had records to prove that almost all of the mortgage payments had been made. Though it takes just one failure to create a default, many a judge would frown on foreclosure under such circumstances. Especially if the payments were offered just a few late, and the lender refused to accept them.

Bonus! The client had not obtained the proceeds of the loan. Instead they went to another *ex*-friend who had a few troubles of her own and had persuaded a Detroit mortgage company that my client's home was adequate security for a loan. It came as no surprise when my trusty research assistant, Mr. Google, revealed that the founders of the company had been convicted of defrauding Fannie Mae, the giant mortgage lender to whom it regularly sold loans it originated.

Voila, we had a case. The judge agreed and issued first a restraining order and later a temporary injunction. Most significantly of all, he accepted our client's affidavit of indigency, enabling her not only to defer payment of court costs but to avoid posting a bond in case the defendant lost money as a result of the injunction being issued. She could live payment-free in her home during the lawsuit.

It didn't take long for a Dallas mortgage pool, the subsequent holder of the mortgage note, to retaliate. It employed a large Chattanooga firm with a junior lawyer assigned to the case. Learning rapidly the art of producing an impressive array of pleadings with extensive briefs to match, the young lawyer quickly proved her mettle. I was mildly concerned that she might actually win on the technical ground that our most promising arguments could only be used

against the original lender, now defunct, and not her client, the supposedly innocent purchaser of the mortgage note.

I responded with my own set of arguments about how the fraudulent circumstances of the original loan could be used defensively by the borrower, if not offensively. This is an argument that, despite its merits, is a trifle hard to understand. I was worried what the trial judge would think. Then fate intervened again. The other lawyer had committed a cardinal sin: billing for substantial time without getting instant results. The new holder replaced the young lawyer with a Chattanooga bulldog of the old school.

Pit bull might be a more accurate description. He seemed especially pleased to be asked to replace the large firm. He quickly advised me that Rule 11 loomed if I couldn't back up my client's claims. Then he brought in another party, a still later holder of the loan, and fashioned a clever argument so as to remove the case to federal court. Too clever. The federal judge instantly remanded the case to state court. The attack lawyer too was fired by his client.

The aggregated legal fees were about to surpass the amount of the loan, a fact not lost on its latest owner, a New York bank that was among the largest in the nation. It surrendered on the ground that settlement was cheaper than litigation. The preceding owner was still a defendant, and its regular law firm also wanted to negotiate, professing a lack of knowledge of Tennessee law. It apparently had little knowledge of ethics either, demanding that I agree not to take another case against its client as a condition of an otherwise favorable settlement. When I raised the ethics issue, the silence was protracted, the objectionable language removed, and the money exchanged.

Then a godsend came our way when we finally located the ex-friend who had pocketed the original loan proceeds. She still had some of them and a lawyer who thought she was a short step away from jail unless she showed a trace of remorse. She too settled.

The upshot was that our client actually made a profit off the loan and, surprise, her children began to visit her. We too turned a nice nickel for our efforts. Being the eleventh lawyer consulted can occasionally be a charm.

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