

California Court Says Bank Needs to Keep Promises

Written by Lucky
Thursday, 02 June 2011 00:00

Most everyone who has been exposed to day-to-day conversations about short sales and loan modifications has heard countless stories of bank errors, misstatements, bad faith, and downright duplicity. More often than not, such tales are told with an air of exasperated resignation. “What are you going to do?”

It is no small pleasure, then, to report on a successful challenge – upheld by the courts – to a particularly egregious case of lender bad faith. The case is that of *Aceves v. U.S. Bank*. It was decided by California’s Second Appellate District Court of Appeal. Here is what happened.

Claudia Aceves obtained a loan, secured by a deed of trust, from Option One Mortgage Corporation in April of 2006. It was an adjustable rate loan in the amount of \$845,000 at an initial interest rate of 6.35%. Beginning payments were \$4,857.09. After two years, the rate would begin to adjust.

In January of 2008, Aceves could no longer afford the payments. In March of that year, Option One transferred its interest to U.S. Bank who immediately filed a notice of default (NOD). Shortly after the NOD was filed, Aceves filed for protection under Chapter 7 of the Bankruptcy Code. She planned to convert her case to Chapter 13 under which, with the help of her husband’s financial resources, she could work out a repayment plan that would enable her to keep her home.

Aceves contacted U.S. Bank and was told that, once her loan was out of bankruptcy, they “would work with her on a mortgage reinstatement and loan modification.” Some months later, the servicing company, American Home Mortgage, contacted Aceves’s attorney and requested permission to contact her directly in order to “explore Loss Mitigation possibilities.” When Aceves spoke to American Home’s counsel, she was told that they could not speak to her before their motion to lift the bankruptcy stay (of foreclosure) had been lifted.

According to the court record, “In reliance on U.S. Bank’s promise to work with her to reinstate and modify the loan, Aceves did not oppose the motion to lift the bankruptcy stay...” The stay was lifted on Dec. 4, 2008. “On December 9, 2008, although neither U.S. Bank nor American Home had contacted Aceves to discuss the reinstatement and modification of the loan, U.S. Bank scheduled Aceves’s home for public auction on January 9, 2009.

On December 23, after Aceves had submitted documents in support of a loan modification, American Home informed her that a negotiator would contact her on or before January 13 – four days after the scheduled auction. In fact, she was contacted January 8 – the day before the auction -- and offered a modification. The new balance would be \$956,926.22; the monthly payments would be more than \$7,200; and a \$6,500 deposit was due immediately. Aceves could not accept the offer, and the home went back to the bank at auction the next day.

California Court Says Bank Needs to Keep Promises

Written by Lucky

Thursday, 02 June 2011 00:00

Aceves brought suit in April of 2009. The causes of action listed a number of technical errors in the foreclosure proceedings and also a claim of promissory estoppel and fraud. The bank demurred, and the trial court agreed with the bank. The case was dismissed with the trial court saying, "There's no promissory fraud or anything that deluded [Aceves] under the circumstances."

Aceves appealed. The appellate court agreed with the trial court that the procedural mistakes were not consequential; but it reversed on the other claims. The court noted that the elements of a promissory estoppel claim are "(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance."

It found that all of those elements were present in this case. The bank had promised to negotiate with her as long as she kept the property out of bankruptcy, which she did. The fact that the bank made its last-minute unilateral offer did not constitute a negotiation. In the court's view, "U.S. Bank never intended to work with Aceves to reinstate and modify the loan." It said, "The elements of fraud are similar to the elements of promissory estoppel, with the additional requirements that a false promise be made and that the promisor know of the falsity when making the promise... Aceves has adequately alleged those facts."

For technical reasons this ruling does not void the foreclosure; but it does allow Aceves's suit to proceed against the bank.

From Bob Hunt - Realty Times