

## Hawaii News from the Honolulu Star-Advertiser - Borrowers lost out to banks, suits say - Hawaii News - Honolulu Star-Advertiser

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### Borrowers lost out to banks, suits say

Homeowners should have seen their properties sold for higher prices, according to the plaintiffs' court filings

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Hundreds of Hawaii residents should have received higher prices for their properties sold through nonjudicial foreclosure auctions during the past four years, according to lawsuits recently filed on behalf of borrowers who allege unfair and deceptive practices by four major banks.

A fifth lawsuit alleges that a Washington law firm, Routh Crabtree Olsen (RCO), and others that assisted in the auctions committed multiple violations of the state nonjudicial foreclosure laws during those years and interfered with the residents getting the highest price for their properties.

### ABOUT THIS SERIES

#### Sunday

Hawaii's nonjudicial foreclosure law leaves the foreclosure process in chaos, with many cases halted.

#### Monday

A lawmaker wants to revisit the foreclosure law to change the rules on publishing public foreclosure notices.

The amount of losses for the residents in the five suits totals in the millions of dollars, their lawyers said.

The lawsuits are fallouts from the state nonjudicial foreclosure system aimed at allowing lenders a quicker, less costly alternative to foreclosures handled by state courts.

The suits against the banks, however, allege a widespread practice that they advertised and conducted nonjudicial foreclosure auctions for quitclaim deeds but provided the winning bidders more valuable limited warranty deeds. The banks allegedly advertised auctions for quitclaim deeds, which means the properties are sold "as is" and clear title is not guaranteed. The winning bidders, however, received limited warranty deeds, which are considered more valuable and help ensure fee-simple title, according to the suits.

The practice of advertising quitclaim auctions discouraged bidders, lowered the amount of winning bids and left the borrowers with higher deficits, the suits said.

"Shame on them," said Barabara-Ann Delizo-Lima, whose Pearl City high-rise apartment went through a nonjudicial foreclosure auction in 2009. "We could have been in a better place if they did their job."

Her lawyers estimate she and her husband would have gotten at least \$50,000 more if the sale had been

for a limited warranty deed.

"It's like they came to my house and took money away from my wallet," husband Lionel Lima Jr. said.

The couple are the named plaintiffs in a lawsuit against Deutsche Bank National Trust Co. It seeks certification as a class action suit to represent hundreds of other borrowers whose property went through nonjudicial foreclosure by the bank.

Three similar lawsuits were filed against Bank of America, U.S. Bank N.A. and Wells Fargo Bank N.A.

The fifth suit alleges RCO and other defendants who assisted in the auctions also violated the unfair and deceptive practices law as well as the nonjudicial foreclosure law.

RCO is a professional service corporation in Washington state and with offices in Hawaii, Alaska and other Western states. The others named in the suit are RCO-Hawaii LLLC, Foreclosure Expeditors/Initiators LLC and Stephen Routh, a shareholder of RCO and a member manager of Foreclosure Expeditors. RCO-Hawaii successfully lobbied the Hawaii state Legislature this year to loosen Hawaii's foreclosure notice publication requirements.

John Perkin, a Honolulu lawyer representing the residents in the RCO lawsuit, called the practices by RCO and its civil co-defendants "outrageous."

"They came here as robotroops for these big mainland lenders and proceeded this wholesale violation of our Hawaii statutes," he said.

The suit alleges RCO and the others violated the state nonjudicial foreclosure law when they:

- » Did not publicly announce postponements of auctions.
- » Did not use licensed attorneys to conduct the auctions.
- » Filed false affidavits about the transactions.
- » Delivered the limited warranty deeds in violation of the notices that the sale would be for the properties "as is."

The companies' actions, the suit said, were "immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers, (many) of whom were divested of record title to real property as a consequence of defendants' conduct."

Routh violated the state law by formulating and implementing the practices and policies of the defendants, the suit alleges.

Routh, a lawyer admitted to the Alaska and California bar associations, is a founding partner of the RCO and a 1972 graduate of the University of Hawaii, according to the law firm's website.

He and the others named in the suit did not respond to requests for comment.

The suit seeks class action status for the estimated 700 to 800 residents whose nonjudicial foreclosures were assisted by RCO and the co-defendants.

Perkin said the losses for each runs into the thousands of dollars and, in some cases, tens of thousands of dollars.

"Every one of them has been damaged," he said.

In the four lawsuits against the banks, the plaintiffs seek to represent close to 3,000 borrowers whose properties went through the nonjudicial foreclosures.

The suits allege the banks violated their duties to get the best possible price for the properties and should have auctioned limited warranty deeds.

An advertisement for a quitclaim deeds "dooms the sale," said James Bickerton, an attorney for several plaintiffs. "It drives the price down."

The advertisements, the suits said, "had the foreseeable effect of discouraging potential buyers and caused the auction prices to be lower than they would have been if the sales had been advertised as conveying the interest in the property that (plaintiffs) had pledged with the mortgage, i.e., with at least a warranty deed."

Two of the banks essentially said they were not involved with the foreclosures.

Teri Charest, a spokeswoman for U.S. Bank, said the bank was the trustee and that the conduct in the lawsuit relates "entirely to foreclosures."

"Although foreclosures are commonly brought in the name of a trustee for legal reasons, the trustee is not involved in initiating or managing foreclosure activity," she said.

"Loan servicers are solely responsible for all loan-servicing activities, including conduct relating to foreclosures and subsequently the sale of foreclosed property on behalf of the trust."

Wells Fargo communications manager Elise Wilkinson said the bank acts as a trustee for residential mortgage backed securities, or RMBS. She said Wells Fargo "has no contractual responsibility for the servicing of the individual mortgage loans included in the RMBS trust or for enforcement or foreclosure proceedings."

"The RMBS trustee does not direct the loan servicer's actions in connection with the servicing of the mortgage loans."

The other banks did not respond to requests for comment.

In the lawsuits against the banks, the borrowers were entitled to the best price when the banks chose to avoid the judicial foreclosure process, Bickerton said.

He said the price for a limited warranty deed on average would be 5 to 10 percent higher than a quitclaim deed, although in some cases it could be even higher.

For Barbara-Ann Delizo-Lima and Lionel Lima Jr., the amount is at least \$50,000, Bickerton said.

The couple purchased a one-bedroom apartment at Century Park Plaza in 2005 for \$169,000 and obtained a second mortgage of \$42,400.

Lionel, a 47-year-old maintenance supervisor, has been out of work since 2003 because of a disabling injury, and his 41-year-old wife has been plagued by a work-related neck injury that also left her disabled from her administrative assistant job.

They fell behind in payments and started to move out when they came home in late May 2009 and found

the locks had been changed and they couldn't get into the apartment. They have been unable to recover furniture and personal belongings, such as photographs, documents and clothes, the couple said.

The winning bid for the quitclaim deed was \$129,000, but Deutsche Bank gave the winning bidder a limited warranty deed, according to Bickerton. The winner, a known buyer of foreclosed properties, sold the apartment within four months for \$197,000, Bickerton said.

The bank forgave the deficiency on the mortgage, but that resulted in the couple owing \$14,000 in federal taxes, the couple said.

They still are faced with paying off the second mortgage, they said.

"We could have paid off some bills," Lionel said. "We wouldn't be in debt. It hurts."

The two are still disabled, and they and their three children, ages 4 to 19, live with Barbara-Ann's parents in Ewa Beach.

"Everybody got money off other people's pain," Barbara-Ann said.

The five lawsuits are limited to nonjudicial foreclosure sales dating four years from the filing of the complaints from May to July because of the four-year statute of limitations.

The five suits seek millions of dollars in damages, which, if the residents prevail, would be tripled under the state's unfair and deceptive practices law.

The residents are represented by three teams of lawyers: Perkin and Brandee Faria; Bickerton and Stanley Roehrig; and Raymond Cho and Van-Alan Shima.

## **DETAILS OF THE PENDING LAWSUITS | NONJUDICIAL FORECLOSURES**

*Five lawsuits seeking class action status allege unfair or deceptive trade practices by four banks and companies that assisted in the nonjudicial foreclosure auctions.*

*The suits seek to represent all those with similar claims to the named plaintiffs.*

**1**

**Ilar v. Routh Crabtree Olsen P.S. (RCO); RCO Hawaii LLLC; Foreclosure Expeditors/Initiators LLC, a Washington company, and Stephen Routh**

### **SUMMARY OF PLAINTIFF'S ALLEGATIONS**

Gloria Macadangdang Ilar purchased a Waipahu home in 2006 with a mortgage of \$680,000. U.S. Bank moved to foreclose in 2010. RCO, counsel for U.S. Bank, filed a notice that the auction would be for property "as is" on April 7, 2010.

But the auction was postponed.

Foreclosure Expeditors/Initiators, which was given the responsibility of announcing postponements, did not do so. The auction was held April 7, 2011. Lava Rock Properties LLC was the high bidder at \$465,000.

No licensed attorney from RCO or RCO Hawaii conducted the auction. A nonattorney from FEI is believed

to have conducted the auction. An attorney with RCO filed an affidavit with the Bureau of Conveyances saying the winning bidder received a quitclaim deed. But U.S. Bank gave a limited warranty deed to Lava Rock. Suit filed May 30.

**2**

### **Degamo v. Bank of America N.A., successor to BAC Home Loans Servicing**

#### **SUMMARY OF PLAINTIFF'S ALLEGATIONS**

Milagros Junan Degamo purchased property in Waipahu with a \$550,400 mortgage in 2007. At the nonjudicial foreclosure auction for the property "as is," BAC was the high bidder with a credit bid of \$612,922.

Degamo was left with a second mortgage on the property owing more than \$100,000. If the property was sold at market price, Degamo's debt would have been reduced or eliminated by additional proceeds. More than 1,000 owners were subjected to nonjudicial foreclosure proceedings by BAC since 2008. Suit filed June 8.

**3**

### **Gibo v. U. S. Bank National Association, also known as U.S. Bank N.A.:**

#### **SUMMARY OF PLAINTIFF'S ALLEGATIONS**

Evelyn Jane Gibo obtained a mortgage for \$400,792 for an Ewa Beach residence in 2005 U.S. Bank moved to foreclose and sell the property "as is" or with a quitclaim deed.

A couple submitted the high bid of \$326,772. Gibo had a second mortgage of more than \$100,000, which is still outstanding. More than 600 owners of Hawaii property have been subjected to nonjudicial foreclosure by U.S. Bank since 2008. Suit filed June 18.

**4**

### **Lima v. Deutsche Bank National Trust Co.**

#### **SUMMARY OF PLAINTIFF'S ALLEGATIONS**

Lionel Lima Jr. and Barbara-Ann Delizo-Lima purchased their Pearl City apartment with a \$169,000 mortgage. They also took out a second mortgage of \$42,500. Deutsche moved to foreclose and advertised that the property would be sold by a quitclaim deed. At the auction the successful bidder bid \$129,000.

Deutsche gave the bidder a limited warranty deed. The bidder sold the apartment for \$197,000 within four months. More than 700 owners were subjected to nonjudicial foreclosure by Deutsche since 2008. Suit filed June 4.

**5**

### **Bald v. Wells Fargo Bank**

#### **SUMMARY OF PLAINTIFF'S ALLEGATIONS**

David Emory Bald and his wife, Susan, obtained a mortgage in 2007 for Honolulu property at Iwaho Place for \$535,000. The mortgage was assigned by Wells Fargo in 2008.

At the nonjudicial foreclosure auction in 2009, Wells Fargo submitted the high bid for \$372,000. Wells Fargo executed a quitclaim deed and later sold the property through a limited warranty deed for \$399,000. More than 500 owners of Hawaii property have been subjected to nonjudicial foreclosure by Wells Fargo since 2008. Suit filed July 23.

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