

Utah Homeowner Wins Lawsuit Against Bank of America in Illegal Foreclosure Action by Morgan Skinner, KCSG News

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(St. George, UT) – Utah Fifth District Judge Jeffrey Wilcox listened to Sam Adamson tell his story on the witness stand about the illegal foreclosure conducted on his home by ReconTrust Company over four years ago. After taking the case under advisement Judge Wilcox issued a ruling stating that the foreclosure sale on Adamson’s home was void and never happened. “Judge Wilcox listened to all of the testimony and carefully reviewed case law and made the appropriate ruling,” Attorney John Christian Barlow, who represents the Adamsons, told KCSG news. ([Judge Wilcox Decision and Order](#))

This ruling is significant because it renders ReconTrust foreclosure action invalid as if it never happened. For years Utah homeowners have battled Bank of America ([NYSE: "BAC"](#)) and its subsidiary ReconTrust Company over the validity of the bank’s foreclosure actions in Utah, Barlow said.

Adamson challenged ReconTrust’s foreclosure action, which under Utah law only a title insurance company or an attorney can legally foreclose on real property (UCA 57-1-21). The Bank of America used ReconTrust to foreclose on homes in Utah up until approximately 2012 when the Utah Supreme Court ruled (Fed. Nat. Mortgage Ass’n v. Sundquist 2013 UT 45, 311 P.3d 1004) that ReconTrust did not qualify under Utah Law to conduct foreclosure sales. However, the Utah Supreme Court left open the question of what happens to the homeowners and homes that were foreclosed by ReconTrust.

Judge Wilcox answered that question for the Adamsons when he ruled the foreclosure sale conducted by ReconTrust was invalid and never happened and the trustee’s deed issued by ReconTrust is void.

Barlow said, “The most significant damages that individuals can recover when analyzing the harm caused by Bank of America and ReconTrust Company for the illegal foreclosures is the increased cost of obtaining credit due to the bank reporting of the foreclosure to the credit bureaus.” A foreclosure reported to the credit bureau is a negative remark, and lenders charge substantially more interest to someone who has a foreclosure on his credit than someone who

doesn't have a foreclosure reported.

"I have many clients who now want to sue ReconTrust Company for damages. Damages that could include unlawful foreclosure, the cost of relocation, the cost of obtaining credit with a foreclosure reported and evicting the current occupant of the home from which the foreclosed homeowner was evicted," said Barlow.

Does this ruling provide a way for people foreclosed upon by ReconTrust to evict the current home occupant and allow a foreclosed homeowner to move back into their home? Barlow thinks it may, but said: "It's unlikely that any judge would evict an innocent third party, a judge may make ReconTrust and Bank of America pay the illegally foreclosed homeowner compensatory damages for the illegal foreclosure and subsequent injuries." Barlow continued, "People need to be reasonable and remember that obtaining justice does not include inflicting emotional or monetary harm on innocent third parties that purchased their home after the foreclosure sale."

Sam and Courtney Adamson purchased their home in 2003. They refinanced it with Countrywide in 2007. Bank of America became the loan servicer shortly thereafter. In 2010 Adamson applied for a loan modification. In his dealings with Bank of America he was told to miss a payment by a bank representative. Adamson had been struggling financially and the transmission in his work vehicle had just gone out, so the statement from the Bank of America representative was welcome news. The Adamsons were unable to obtain the modification on their own and paid \$3,500.00 to Fortified Financial Services of Utah to modify the mortgage. Fortified Financial went out of business and declared bankruptcy shortly thereafter.

The Adamsons were unable to make up the arrearage because of the additional fees and penalties Bank of America added onto the amount due. After many unsuccessful attempts at mortgage modification, in 2010, the Adamsons were foreclosed upon by ReconTrust. Bank of America bought the home back at auction and then filed an unlawful detainer action against the Adamsons. That is when they sought legal help of Attorney John Christian Barlow in St. George who sued the bank. The judge let the Adamsons stay in the home pending the outcome of litigation. The bank's attorneys had no idea what to do and simply let the case be dismissed. The Adamsons continued to negotiate with the bank to be reinstated and have their mortgage modified, but were shut out.

Four years later the home was transferred by a quit claim deed to a shell entity called Distressed Asset Solutions Fund, LLC. The Adamsons again were faced with an unlawful detainer action. Distressed Asset Solutions, represented by Lundberg and Associates, filed an unlawful detainer action against the Adamsons in early 2014. Again, Barlow was hired to defend that Adamsons. Judge Jeffrey Wilcox heard initial arguments and allowed the Adamsons to stay in the home during the pending litigation. Finally, during a hearing Sam Adamson got his chance to tell his story in court and judge listened.

Now the Adamsons are in the process of removing the negative credit remarks placed there by the bank and again negotiating with the Bank of America to reinstate and modify the mortgage.

Attorney Barlow was the first Attorney in the Nation to obtain an injunction against Bank of

America stopping foreclosure action against the bank in 2010 for a home owned by Peni Cox in St. George. Barlow can be reached at (435) 634-1200, or e-mail JCB@JohnChristianBarlow.com.

http://www.kcsg.com/view/full_story/25831345/article-Utah-Homeowner-Wins-Lawsuit-Against-Bank-of-America-in-Illegal-Foreclosure-Action?instance=more_local_news1

Copy of the Judicial Order:

<http://voidjudgements.net/inthenews.htm#recon>