

HOW MUCH MORE FORECLOSURE FRAUD IS UNDER SEAL?

The NYT has a fascinating story about the \$75,000 house that led to the GMAC deposition on robo-signing that finally alerted the world to the extent of the fraud behind foreclosures. It's worth reading for the description of Thomas Cox, a lawyer who volunteers at legal assistance to make right for his years of doing foreclosures, the description of the errors GMAC made even after the court started looking closely, and the detail that GMAC has now spent more on legal fees trying to foreclose on this house than the house itself is worth.

But I'm particularly interested in this:

Mr. Cox vowed to a colleague that he would expose GMAC's process and its limited signing officer, Jeffrey Stephan. A lawyer in another foreclosure case had already deposed Mr. Stephan, but Mr. Cox wanted to take the questioning much further. In June, he got his chance. A few weeks later, he spelled out in a court filing what he had learned from the robo-signer:

"When Stephan says in an affidavit that he has personal knowledge of the facts stated in his affidavits, he doesn't. When he says that he has custody and control of the loan documents, he doesn't. When he says that he is attaching 'a true and accurate' copy of a note or a mortgage, he has no idea if that is so, because he does not look at the exhibits. When he makes any other statement of fact, he has no idea if it is true. When the notary says that Stephan appeared before him or her, he didn't."

GMAC's reaction to the deposition was to

hire two new law firms, including Mr. Aromando's firm, among the most prominent in the state. They argued that what Mrs. Bradbury and her lawyers were doing was simply a "dodge": she had not paid her mortgage and should be evicted.

They also said that Mr. Cox, despite working pro bono, had taken the deposition "to prejudice and influence the public" against GMAC for his own commercial benefit. **They asked that the transcript be deleted from any blog that had posted it and that it be put under court seal.** [my emphasis]

GMAC's first response to this affidavit was a request to the judge to prevent it from being posted to the Toobz (presumably 4closureFraud.org). But the judge refused.

Stephan's deposition was taken to advance a legitimate purpose, and the testimony elicited has direct probative value to this dispute. Attorney Cox did not himself take action other than to share the deposition with an attorney in Florida. That the testimony reveals corporate practices that GMAC finds embarrassing is not enough to justify issuance of a protective order. Further, Plaintiff has failed to establish that GMAC has been harmed specifically as a result of the dissemination of the June 7, 2010 deposition transcript, given that similarly embarrassing deposition testimony from Stephan's December 10, 2009 Florida deposition also appears on the Internet, and will remain even were this Court to grant Plaintiff's motion. Accordingly, because Plaintiff has failed to satisfy its burden of persuasion under Rule 26(c), its Motion for Entry of Protective Order is denied.

There are, we are learning, depositions all over

the country showing that servicer employees committed outright fraud. But presumably, every time they're taken, the servicer attempts to hide them behind claims of trade secrets.

How much more evidence of corporate law-breaking is hiding in foreclosure courts under seal?