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QUEENS HOMEOWNER BEATS BACK HSBC'S ATTEMPT TO FORECLOSE

Queens Case Reveals Murky Nature of Mortgage Ownership

Rhoda Carter, a Queens homeowner, beat back HSBC Bank's attempt to foreclose on her home in Springfield Gardens when a judge dismissed the case, finding that HSBC, as trustee for a residential mortgage-backed security trust, did not own the note or the mortgage and therefore had no legal standing to foreclose.

Elizabeth Lynch, an attorney with MFY Legal Services, a non-profit legal services provider that defends homeowners in Queens and Staten Island, found that HSBC could not trace its ownership of Ms. Carter's note through the complicated securitization process and filed a motion in Queens County Supreme Court to dismiss the case.

Ms. Carter had refinanced her mortgage in 2006, the heyday of mortgage securitization, when thousands of mortgages were hastily made and quickly bundled, split and resold to various investment banks as mortgage-backed securities. Two years later she lost her job but managed to keep up her payments by liquidating a retirement account, borrowing against a life insurance policy and selling an heirloom coin collection. She missed only one payment before getting another job that enabled her to make her payments.

HSBC's case against Carter was compromised because the Mortgage Electronic Registration Systems Corporation (MERS), a private mortgage registry that has all but replaced the nation's public land ownership records, could not prove who owned Ms. Carter's note. MERS holds title to half of the home mortgages in the nation although it has not invested a dollar in a single loan. The court refused to recognize HSBC's after-the-fact explanation of the paper trail that contradicted the statements made in its original foreclosure court papers.

"The company's own records show that it does not own the note or the mortgage," said Ms. Lynch. "This case exemplifies the dangers of the system of bundling mortgages into securities with little attention to obligations to homeowners and with an equal disregard for 400 years of settled property law regulating how transfers of real property are made and recorded."

Elise Brown, supervising attorney with MFY Legal Services, believes the case can help other homeowners. "In Queens, thousands of subprime loans and other risky loans were made solely for the purpose of fuelling the securitization market, and these loans were transferred to MERS. Homeowners in foreclosure are likely being sued by a bank that cannot prove that it owns the loan.

They should seek legal help to make sure that the bank that is trying to foreclose has legal standing to do so.”

Meanwhile, Ms. Carter, with MFY’s help, is trying to figure out who actually owns her mortgage so she can send in her payments and keep her home.

-30-

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