Navigating the Maze of Court Procedures:

Brief regarding Foreclosures and Court Enforced Collections

Hopefully this will find you before that "wish I knew then what I know now" stage. If an action has been initiated against you by a credit granting institution (*or its lawyers*), then certain procedures become very important. These are universal in virtually every civil jurisdiction.

It's not only important to be correct on substance but you must avoid being deficient on procedural rules. So long as you were or remain in default of your alleged mortgage or loan payments, you literally have no defence nor do you have any right as your defence to demand the nominal lender produce and deliver any original documents to prove the substance of the alleged loan or of its enforceability.

Up until one second before they attempt to close on a forced sale of your property, or seize an asset, or accept payment from any source, you are technically in default of any arrears, and like all mortgage or loan agreements, while it is in arrears, they are not obligated to prove <u>anything,</u> except that it was (*or is*) in arrears.

ANYTHING other than payment, or proof of prior payment, that you may offer as defence, or that you may attempt to demand in defence, is irrelevant, immaterial to the issue of your default, and simply disregarded within the legal system as such. (***More on this point - see end of article*.)

All of your documents (*if any*) that they have undoubtedly attempted to convince you were "of no legal force and effect", are in fact of the same force or effect as all of theirs. Just like yours, ALL of their correspondence that was issued by letters, phone calls, or by the original loan agreements or contracts at any time <u>prior to the commencement of legal action</u>, was also "of no legal force or effect", unless and until it was attached to an affidavit and submitted to court in support of an application of foreclosure due to your default.

AND so long as you remained in default, and so long as those documents were entered in support of their case against you regards the said default, they were

perfectly entitled to use copies of the originals, or copies of copies, or even just plain sworn suspicions, to support their case - their case of your being in default.

Likewise ALL of your documents (*if any*) merely required being attached to an affidavit in support of a proper application of one thing or another, but not as part of a defence against foreclosure for your default, and then all of your documents would have (*or will as the case may be*) become of full legal force and effect for your benefit in a proceeding against them. And just like them, you could use copies of originals, or copies of copies, or even your own sworn suspicions, which if entered in support of YOUR proper application (*not as defence against your default*) would also then have been or will be, of full legal force and effect.

Their application for foreclosure due to your default of payments, was not defensible by way of your documents or by any application, save but two possible types:

- one being an application to prove you were not in default because you possessed receipts evidencing payment, meaning they simply made an administrative accounting error; or

- two being an application offering to make conditional payment, either in an amount to catch up the arrears, if your application was made prior to the expiry of their redemption period (*or prior to them commencing a foreclosure action or collection proceeding*), or an application offering to make conditional payment in the full amount alleged outstanding, but either way, your application to pay being your offer to pay, is subject to you releasing that offered payment upon their production and delivery of the original signed debt instruments, loan applications, mortgage agreements, etc. (*You must actually be able to prove capacity to make the conditional payment you have offered, otherwise your application is without substance and pointless.*)

Please also note that in most loan or mortgage applications and resulting documents, there will ultimately be either an actual “promissory note” which is the *de facto* evidence of indebtedness, in addition to there being the standard

loan agreements and security agreements, or there will be the effective legal wording of a promissory note contained within either or any of the documents such as the original application(s), or loan contract(s), or maybe even in the collateral security documents. In any event, at least one document within your nominal lender's package of documents will contain the required wording that legally constitutes the "evidence of indebtedness" (*your signature promising to pay a sum certain to a specific party by a date certain*).

Remember you are not in a position to defend your payment default, unless you can pay. Payment or offering to pay, is your ONLY legally valid defence. Only by making a new offer - a new conditional offer, can you put them on the defensive. If you put them on the defence by offering payment, they can no longer rely upon copies or evidence of your default to sustain their foreclosure application; in fact, their foreclosure action is now an unrelated matter, none of which is of any legal force or effect against the demand(s) contained within your conditional offer to pay.

They must now produce your original debt instrument documents in order to accept payment. And this must not be confused with enforceability of copies. Many times copies can be legally enforced (*that's a whole other discussion*).

Remember you cannot bind them by demanding anything from them while you are in default, until you can establish you're no longer in default. You must ignore attempting to defend your default, and rather make demand from them, wherein they must produce and deliver your original debt instruments in response to your demand, so as to prove that they have not sold or transferred your original debt instruments to an unknown third party, which in and of itself, may or may not be fraudulent.

However, if they manipulate the situation such that they enable themselves to get paid twice for the one alleged loan, then they have committed fraud. This is what you want to prevent, and this is your only "defence". (*You are not actually defending, nor are you necessarily accusing; rather you as the applicant, are putting the onus on them to prove they are not attempting to cause you or the court to enable them to commit another fraud. They effectively become the defending party to your application in spite of what they are "named" in the style of cause.*)

Because if they have so sold or transferred your debt instruments to an unknown third party, and if you then subsequently paid them without determining this, or if the court subsequently ordered you to pay them without determining this, then they would have effected being paid twice, and it is this being paid twice that is a brand new potential fraud that you are concerned about.

Thus it is their legal obligation to prove they are not attempting to commit this brand new fraud that they must defend. For this they have NO defence. They will be unable or unwilling (*same resulting implication*) to produce and deliver your original debt instruments, in order to prove they did not get, or will not get paid twice.

You, and or you and the court could be held as complicit with enabling this fraud, or being a party to it, if you had reasonable grounds to suspect it, and you did nothing to prevent it. Thus it is with great sincerity and importance that you condition your offer to pay them, on their proof they will not be causing you to enable them to get paid twice, and of course, this will also concurrently prove they will not be causing the court to inadvertently enable them to commit such a fraud by ordering such a second payment.

Your affidavit in support of your application can and should contain references to well known and very public cases (*US and Canada*) where banks have been caught “robo-signing” and forging replacement debt instruments, evidence of mortgage backed securities on the public market, which by their very existence, proves at least some banks have sold mortgages to these unknown third parties, etc.

By stopping your futile efforts to defend their application to foreclose or collect due to your default, and by focusing on a brand new application, being an offer to pay conditional upon proof they are not attempting to commit a brand new fraud, you have changed places with them. You are no longer in the losing role of defendant - they are. Unless of course they can and do produce all of your original documents, which is highly unlikely, since your bank, like most have already sold your debt instruments to an unknown third party - and therefore have already been paid once.

This is your pro-active defence - they have already been paid once, unless they can prove otherwise. Your defence is NOT simply that you demand they produce and deliver original documents because only originals can be enforced. The simple truth is that the only thing the originals could prove, is that your bank did not already sell them, they do not prove there was an actual debt, or that such an alleged debt is enforceable, therefore you must demand them as consideration for your new offer to pay them, because you wish to ensure the bank does not get paid twice.

** *If you cannot accommodate making an offer of payment of arrears or payment in full because you don't have the capacity, then you may still have one hope left at the very end. If you co-operate, meaning don't oppose the foreclosure action, and don't oppose the application for conduct of sale, you may and probably will retain the right to approve the sale that the bank arranges. If you refuse to approve the sale without good cause, i.e., it is a fair price, etc., the court will no doubt simply order the sale and order your signature or approval be dispensed with. Here is where you don't want to be.*

*What you rather do want, is to accept the sale on your conditions. It always comes back to offer and acceptance. Your conditional acceptance is essentially a brand new offer. In point of fact, when they foreclose, that action has come to a complete end once they accept a third party sale. Their acceptance of that third party sale of your property, is actually them opening a brand new offer to you at the moment they apply to the court for an order to have you accept that sale. As mentioned, this application of theirs requires your approval, or having the court order your approval dispensed with, thus by definition, it is a new offer that you must accept (*or foolishly object to and then be forced into accepting*).*

*Since you not only have the right to accept, you actually have the legal obligation to do so (*the court requires your consent or must find cause to order your consent be dispensed with - which ironically happens at the instant you refuse*), then you also enjoy the inherent right to accept the offered sale conditionally.*

Your condition is simple. You inform the court that you accept the bank's offer to sell ***your property*** *- meaning upon your approval/acceptance of their offer, it is NOW your money being offered, and you are therefore approving your money*

being offering on the condition that they now produce and deliver the original debt instruments and documents, in order to prove to the satisfaction of yourself and the court, that your payment will not enable or cause them to have been paid twice, because their compliance to your conditions will prove they did not already get paid on this loan by having sold it to an unknown third party. And their compliance as stated, is the ONLY form of proof that would satisfy the matter of this potential fraud.

You would not like to be complicit with such a fraud and you are certain the court would not want to be found enabling such a fraud either. You are now at the very end, capable of paying which satisfies your default, because it is YOUR property they are selling, thus you can again put them into the losing role of being the defendant - the party that must now prove they have not already sold the alleged debt, and thus not already have been paid for it.