

Rare eviction ruling gains attention

In an apparent case of first impression, bank is told its eviction policy was illegal.

By Jason W. Armstrong
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In an apparently unprecedented case in California, a judge turned down a mortgage company's attempt to evict a non-paying tenant from a Los Angeles home because it flouted a federal law requiring new owners of foreclosed properties to give such tenants 90 days' notice before eviction.

After Private National Mortgage Acceptance Company LLC bought the owner's property at a foreclosure sale, the company served renter Kamie Stanke a "90 day pay rent or quit notice," contending she'd stopped paying her \$2,500 monthly term.

But in a decision last week, Los Angeles County Superior Court Judge Lawrence H. Cho granted Stanke's motion to quash the eviction complaint, finding the bank failed to give her a 90-day "notice to quit" under the 3-year-old Protecting Tenants at Foreclosure Act. The judge ruled that Private National's failure barred it from booting her — even though she'd racked up \$22,500 in back rent after not paying for nearly a year. *PNMAC Mortgage Co. LLC v. Stanke*, IIU04495 (Los Angeles County Su-

per Ct., filed 2011).

Real estate lawyers said the case could make lenders and other purchasers of foreclosed properties reassess their eviction policies when dealing with tenants living in such homes. The issue has heated up in the midst of the real estate downturn and has triggered recent state legislation, including statutes addressing premarriage service of unlawful detainers on renters in foreclosures.

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—Judge Lawrence H. Cho

In his ruling, Cho said the issues in the case appeared to be legally untested "without controlling case-law for either side." According to legal observers, such detailed court decisions analyzing statutes involving eviction matters are few and far between because judges handling such cases usually have packed calendars, and most unlawful-detainer tenants don't have lawyers.

"The fact that Judge Cho published a written opinion about this issue shows he knows he'll see this issue coming up again in the future," said Ronald Richards, Stanke's lawyer. "The Legislature has given ten-

ants broad protection, and the bank here tried to circumvent that."

Richards is a partner with The Law Offices of Ronald Richards & Associates APC.

It wasn't clear whether the bank would challenge the ruling. Deborah Bass, an attorney representing Private National, couldn't be reached for comment Monday. Bass is a partner with The Law Offices of Deborah Bass APC.

In a Feb. 27 hearing in the case, the judge and lawyers for both sides grappled with whether the bank was legally permitted to step into the landlord's shoes upon foreclosure for the purposes of evicting for past due rent. Private National's lawyers argued that it could enforce Stanke's lease post-foreclosure and had the power to evict her for nonpayment. The bank's attorneys contended the federal 90-day notice requirement applied only when a foreclosing party sought to evict based on eviction alone, not on a failure-to-pay-rent theory.

"There's never been one penny

of rent paid to our client, who has right of possession," Paul Tauger, co-counsel for the lender, told Cho in the hearing, according to a transcript. "We're the landlord by operation of the law, which means we have a right to collect rent."

Richards disagreed.

"According to counsel, landlords — or owners that buy at a foreclosed sale can say, 'Oh, you're a tenant. Okay, I'm going to — you didn't pay the 2,000 dollars this month. I'm now going to serve a three-day notice,'" the attorney told Cho at the hearing. "That's not the law," Richards said during the proceeding.

In his ruling, Cho said the 90-day notice provision is "inviolable no matter what theory of eviction a foreclosing party has available to it."

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Cho said that, after giving that notice, the bank would have the option of filing suit to pursue Stanke's back rent or of evicting her.

As part of the judge's ruling, he denied Richards' request for attorney fees and sanctions against Private National.

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