

Disabled couple fights foreclosure of their home

A lawsuit claims that the paperwork that led to the auction of a home in Brownsburg wasn't up to snuff, and that the folks who live there can't be evicted.

A Brownsburg couple living on disability checks and a small state pension has filed suit to keep a bank from throwing them out of their home.

The suit was filed last month on behalf of Herbert and Diana Thorne in Rockbridge Circuit Court by Blue Ridge Legal Aid staff attorney Shawna Cheney.

The Thorne's home, at 44 Hays Creek Road, was foreclosed and allegedly sold to the mortgage-holder at the courthouse in December 2012.

In February, the trustee filed an "unlawful detainer" in Rockbridge General District Court to have the Thornes evicted.

Herbert Thorne has been in a wheelchair for the last 17 years after losing one of his legs when a tree fell on him.

After the accident, the house was modified to accommodate him with a wheel chair ramp, accessible bathroom and door openings wide enough so the chair can roll through them.

The Thornes took out a \$90,000 mortgage on the property with Wilmington National Finance. It called for a monthly payment of \$536.56, with an additional \$166.32 set aside each month for insurance and taxes.

Wilmington assigned the loan to CitiFinancial Mortgage Company. And ultimately, it was assigned to REMIC Certificates. The Thornes aren't sure how many other parties held the mortgage before REMIC got it.

"For several years," says the suit, "Mrs. Thorne supported the family by working until she too was injured and unable to work."

The suit goes on to note that once Mrs. Thorne was no longer able to work, "She applied for disability and had to wait for the benefits to be approved."

And, it goes on as follows:

While she was unable to work and before her benefits were approved, Mr. and Mrs. Thorne suffered extreme financial difficulties, including medical bills, and they were unable to make the loan payments for their home.

Once Mrs. Thorne was approved for disability benefits, Mr. and Mrs. Thorne were able to make the monthly payments on the loan, but still had many other debts and arrearage on this home loan that was beyond their means to pay in one lump sum.

On March 20, 2012 ... [the Thornes] were granted a Chapter 7 bankruptcy discharge that removed their liability for their other debts and made it possible to pay both their monthly payments and make payments on the arrearage to REMIC Certificates.

The combination of the bankruptcy discharge of prior debts and the approval of Mrs. Thorne's disability payments removed all financial barriers to Mr. and Mrs. Thorne being able to afford their monthly payment and some reasonable plan to make up the arrearage.

REMIC Certificates, through its debt collector, refused to accept their monthly payment and required the whole arrearage to be paid before it would accept monthly payments going forward.

From that time forward, Mr. and Mrs. Thorne have been ready, willing, and able to pay their monthly payment and the only reason REMIC Certificates did not receive these funds was because of its own decision to refuse the payments.

In July 2012, Mr. and Mrs. Thorne applied for a loan modification so that they could remain in their home. They wanted the loan modification so their monthly payments would be accepted by REMIC Certificates and so they would be provided with an affordable way to pay the arrearage that had accumulated.

REMIC Certificates, through its debt collector, repeatedly requested that Mr. and Mrs. Thorne provide it with financial information.

Mr. and Mrs. Thorne repeatedly provided the requested financial information.

They were helped in this process by concerned citizens who did not want to see a disabled couple made homeless through an unnecessary foreclosure. This group of people ensured that all requested financial information was sent.

For instance, on November 29, 2012, a request was made by an employee of CitiFinancial, acting for REMIC Certificates, for a specific list of documents, and those documents were provided on December 2, 2012. [Those documents included tax returns, a pension statement, bank statements, a "hardship affidavit" and other items.]

Despite Mr. and Mrs. Thorne repeatedly sending the

requested information, REMIC Certificates' debt collector claimed that all the required information had not been sent.

Based on this false information provided by its debt collector to it, REMIC Certificates did not approve the loan modification.

The suit asks the court to set aside the foreclosure.

It claims that REMIC "knowingly misrepresented that Mr. and Mrs. Thorne did not supply all the requested documentation for a decision to be made on their loan modification request."

The suit also alleges that the papers appointing a substitute trustee on the loan — one of the first steps in the foreclosure process — were not signed by the rightful owner of the loan.

And it accuses REMIC of breaching a contract "covenant of good faith and fair dealing" by "repeatedly requesting the same financial information from ... [the Thornes] and then rejecting their loan modification request by using the false assertion that ... [they] had not submitted the requested information."

And it notes, "In the interest of anyone concerned about property values, and in the interest of Mr. and Mrs. Thorne, setting aside the foreclosure will accomplish the goal of immediately returning value to the investors' loans while preserving families in their homes, and will remove one more foreclosed property from the glut of foreclosed properties that are hindering economic recovery."



"Caring for Your Most Precious Sense"

Helen Fure

Doctor of Optometry

Medical and routine eyecare
 Contact lens fittings
 Great selection of fashion frames

www.lexeyecare.com
 For appointments call 463-1600

NIKO'S!

Nick needs a new foot-stool.

(Don't ask why).

**There's a very nice
 donation plate by the
 register. Cash preferred.**



*Serving
 breakfast (all day),
 lunch and dinner.*

DAILY SPECIALS

HOURS:

Tues.-Thurs. 7 am - 9 pm
 Fri.-Sat. 7 am - ???
 Sun. 7 am - 3 pm
 Closed on Mondays

167 South Main Street, Lexington
 Phone: 540-464-9499
 Fax: 540-464-1226
www.nikosgrille.com
 Follow us in Twitter @NikosGrille