

Does *Bevilacqua* matter to the Average Joe?

Well, like almost everything else in law the answer is; it depends. First, before we can examine that answer we must explore some history.

In mid-October, the Massachusetts Supreme Judicial Court (SJC) decided the case of *Bevilacqua v. Rodriguez*, 460 Mass. 762, (2011). This case, along with *Ibanez* decided earlier in the year, is a continuation of the courts' struggle in untying the foreclosure knot. This "knot" was created during the heyday of the last decade. The untying of this knot is proving to be difficult.

What happened to Mr. Bevilacqua?

The background of the case is simple; Mr. Bevilacqua purchased an unclear title. US Bank previously foreclosed upon the property involved. Mr. Bevilacqua purchased the property from US Bank and then spends hundreds of thousands of dollars converting the property in condominiums. Then the ruling of *Ibanez*, which ruled that improperly executed mortgage documents affected an owner's title, also clouded Mr. Bevilacqua's title. (Apparently, US Bank began foreclosure proceedings a month before it was assigned title.) Thus, US Bank did not have clear ownership of the title it sold to Mr. Bevilacqua. Therefore, Mr. Bevilacqua brought his case to Land Court in a try title action on order to clear the title. The Land Court ruled that he did not have standing to bring the action since he did not have title. Mr. Bevilacqua appealed and the SJC upheld the Land Court's decision.

What does all this mean?

The simplest answer for Mr. Bevilacqua is that the chain of title is broken. He needs to fix the chain in order to gain ownership. How can he do this? Luckily, the SJC left open the idea of how chain of title can be repaired. There are two options with variable parts: (1) quit claim deed, or (2) another foreclosure.

The first and easiest method, legally, would be to buy a quitclaim deed for the property from the original owner who was foreclosed upon, Mr. Rodriguez. Of course, this method would depend upon how easy it is to track down the former owner. (For Mr. Bevilacqua this could be difficult since Mr.; Rodriguez never responded to any court filings.)

The second option, foreclosure, has many options depending upon who performs the foreclosure. Mr. Bevilacqua could foreclose upon the property himself, in an effort to clear the title. This option would require Mr. Bevilacqua to follow the foreclosure requirements such as sending notices. The legal fees would be in the thousands.

Mr. Bevilacqua could also use the old common law foreclosure process. This process requires the forecloser to enter the property, state that he is foreclosing and file a certificate with the registry of deeds. The waiting period after the filing is three years before the property is foreclosed.

The final foreclosure option is demanding that the bank re-foreclose on the property. This option includes another problem. Since there would be another foreclosure auction, Mr. Bevilacqua might not be the highest bidder. If that happened, there would be more legal trouble as Mr. Bevilacqua tried to recover the funds he invested in the property.

What does all this mean to the Average Joe?

Back to the original question posed at the beginning to this post: what does the mean to the average person. Honestly, not much. The average person is more concerned about retaining his home and is not too concerned about obtaining more property. Now if the Average Joe is considering purchasing property, especially if this property was foreclosed on, it might be a good idea for the Average Joe to review the title history of the property to insure that there are no *Bevilacqua* issues. It would probably be a better idea to have an attorney also review the title history in, just to make sure.