



Apr 29, 2019

Categories:

[Blockchain and Digital](#)

[Assets](#)

[Blogs](#)

So Many Adages So Little Time

The old adage “no harm no foul” applies to tort litigation unless there is a statute or contract that supplies liquidated damages. There is also the one about those “who do not learn from history are doomed to repeat it.” And then, there is the one about the return of a “bad penny.” Far too many idioms are available to describe the case at hand, which is clear evidence that somebody acted foolishly.

First, a little background for the young or those with short memories. In 2008–09 the United States economy entered what we now call the Great Recession. Shortly thereafter, we suffered a “housing crisis” and a blizzard of residential mortgage foreclosures. Subsequent residential mortgage foreclosure litigation exposed widespread sloppiness (some would say fraud) in residential mortgage documentation including notaries who blatantly lied by notarizing signatures they did not witness. Consider this quote from the National Notary Association:

The ‘robo-signing’ crisis and the housing market downturn caused a drop in the public’s opinion of the mortgage and finance industries as well as the government. A recent survey by ID Analytics revealed that consumers place most of the responsibility for the 2008 economic disaster and subsequent slow recovery squarely on the mortgage industry and the banks that packaged sub-standard loans and sold them to investors.

See [Public Blames Industry, Government For Housing Crisis](#) and the October 4, 2010 [New York Times](#) article titled [Flawed Bank Paperwork Aggravates a Foreclosure Crisis](#) that includes the phrase “unlikely that the notaries witnessed the signings.”

With that reminder of the recent past in the forefront, here is a sadly familiar story that I had hoped was gone for at least a generation.

Husband and Wife owned a home and had a car wash business. In February 2014, money was needed to help fund the business. Wife refused Husband’s request to execute a second mortgage on the marital home to secure the needed funds. So, Husband went to the

bank, got the loan and forged Wife's signature on the bank required mortgage. At the same time, one bank employee supposedly witnessed the Husband's and Wife's signatures and a second bank employee notarized the Husband's signature and his forgery. In other words, less than a decade after the housing crisis, the lessons about mortgage signatures and notaries were ignored.

If all had remained happy and all debts paid when due, perhaps there would be no problem. Of course, that did not happen—otherwise these facts would not be featured in a litigator's blog post. In January 2015, Husband and Wife separated. Divorce proceedings ensued. See, *Cianfaglione v. Cianfaglione*, 2019 WL 182660 (Lake Cty., Ohio App. Jan. 14, 2019)[¹] (the "Divorce Case"). The divorce was sufficiently contested that it resulted in an appellate court decision.

During the Divorce Case, Wife brought an action related to the mortgage against mortgagee Lake National Bank (now Erie Bank), Husband, Lisa Lawrence, and Timothy Flenner. *Cianfaglione v. Lake National Bank, et al.*, 2019 WL 1517667 (Lake Cty., Ohio App. April 8, 2019) (the "Bank Case"). In the Bank Case litigation, Wife asserted claims related to fraud, negligence, civil conspiracy and violation of Ohio's Consumer Sales Practices Act. In short, Wife made both common law tort and statutory claims.

During the Bank Case litigation: Timothy Flenner (then a Vice President for Commercial Lending) testified that although his name appeared on the mortgage, he did not recall being present when it was signed and was unaware that Husband had forged Wife's signature; and Lisa Lawrence testified that she "did not see either Grajzl [Wife] or Cianfaglione [Husband] sign the mortgage but notarized it since she had been requested to do so." *Id.* As a lawyer who represented banks during the mortgage foreclosure mess described above, I am disappointed and sad to say that this testimony is painfully familiar. Actions like those are why we now have unique and onerous rules in residential foreclosure cases. See, for example, <https://cp.cuyahogacounty.us/media/1919/resmortaffidavitpol.pdf> and similar rules in other courts. In more than one instance, foreclosing counsel is required to confirm the "accuracy of the

notarizations.” These rules (with their attendant cost in time and money) are self-inflicted harm by the residential mortgage industry and yet, it seems, the behavior of some in that industry has not changed.

Details of Husband’s and Wife’s finances and divorce are not relevant to this post. It must be noted, however, that the Divorce Case trial and appellate judges determined that Wife was not damaged by Husband’s receipt of the home equity loan. Those judges decided that all the inappropriate mortgage loan proceeds were used in the business and that Husband was responsible for repayment of that debt. Describing the Divorce Case, the Bank Case court said that “the [Divorce Case] court found that [Wife] failed to demonstrate that she suffered damages since the equity in the home was distributed as though the mortgage did not exist and that she was not impacted by losing a dower right.” *Cianfaglione v. Lake National Bank, et al.*, 2019 WL 1517667 (Lake Cty., Ohio App. April 8, 2019). That lack of damages resulted in the Bank Case trial court granting summary judgment to the defendants on the tort claims; the appellate court then affirmed that decision.[\[2\]](#)

The Bank Case trial and appellate courts then addressed Wife’s Ohio Consumer Sales Practices Act claims. Ohio CSPA does not require the victim to prove damages; instead, statutory damages and attorney fees are available. Ohio Rev. Code Section 1345.01, *et seq.* Unfortunately for Wife, many regulated financial institutions, including national banks like Lake National Bank, are exempt from the provisions of Ohio’s CSPA.

Despite the protection for Lake National Bank, Wife pressed her Ohio CSPA claims against Lisa Lawrence and Timothy Flenner. Affirming the dismissal of those claims, the Bank Case appellate court said:

[R.C. 1345.02\(A\)](#) provides that ‘[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction.’ Consumer transactions include the ‘sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things.’ [R.C. 1345.01\(A\)](#). ‘[I]n a consumer

transaction in connection with a residential mortgage, 'seller' means a loan officer, mortgage broker, or nonbank mortgage lender.' [R.C. 1345.01\(C\)](#).

Id. at para. 36.

Both the Bank Case trial and appellate courts then decided that Ohio's CSPA did not apply to Lisa Lawrence or Timothy Flenner because they were not "suppliers" saying "[w]hile we echo the trial court's concern with the conduct of the defendants surrounding the mortgage and loan transaction, it does not follow that the claims raised by Grajzl [Wife] have merit." *Id.* at para. 40.

Ironically, Ohio's CSPA was expanded to deal with certain residential mortgage problems that arose during the above-described housing/mortgage crisis a decade ago. That expansion, however, did not convince all in the mortgage lending industry not to witness and notarize signatures they did not see and the CSPA expansion also does not make all those activities actionable.

The lessons are direct: the mortgage industry cannot relax its training and vigilance because some document witnesses and notaries are still failing to fulfill their rather simple (but presumably important) roles; and if the Ohio legislature thinks notarizations are so important that they should be required, perhaps we need a statute that directly penalizes those who choose to abuse the privilege of being a notary.

[Vince Mauer](#) has a master's degree in Business Administration and passed the CPA exam. Licensed in Ohio and Iowa, he has represented financial institutions in litigation matters for over 30 years. For more information on this topic, contact Vince Mauer at vmauer@fbtlaw.com.

[1] This is an appeal from Lake County Court of Common Pleas, Domestic Relations Division, Case No. 2015 DR 00290. Husband apparently admitted that he signed Wife's name on the mortgage during the divorce case.

[2] The Bank Case court also said this regarding the Divorce Case and the mortgage "did not result in damages to Grajzl [Wife], as the

payments preserved her interest in the car wash and, in holding Cianfaglione [Husband] entirely responsible for the loan, Grajzl [Wife] suffers no damage from the forgery. She is not entitled to be compensated for half of the loan amount when she either retained a benefit from it or was not responsible for paying it.”

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.