# MESSING WITH MORTGAGES

## PREDATORY LENDING PRACTICES & LOANS AIMED AT SUBPRIME BORROWERS

## (A FEW) CASES AND STATUTES

**Richard I. Isacoff, Esquire**
**100 North Street, Suite 405**
**Pittsfield, MA 01201**
**413.443.8164/413.443.8171 FAX**
rii@isacofflaw.com

Despite the onslaught of publicity about Predatory Lending and a veritable plethora of decisions in the Bankruptcy Courts dealing with the aftermath thereof, there is a dirth of decisions on the state and non-bankruptcy federal levels, particularly in the First, Second, and Third Circuits. Additionally, states are just now responding to the problems by passing law with a prospective effect, which will, hopefully, if not stop the practice of Predatory Lending, at least slow the Predators. The discussion which follows skims the highlights of state laws and of non-Bankruptcy Court decisions. (Per Westlaw, as of June 15, 2008, there are fewer than 100 cases in Federal District and Circuit Courts dealing with the issue)

## DEFINITIONS

Before continuing on, it is important to understand some terminology:

1. There is no such thing as a "Predatory Loan"- even the statutes deal with **Predatory Lending** or, another misnomer, subprime loans. Loans are neutral; what is a good loan product for one borrower may be the financial undoing of another. Next, again except by recent statutes (discussed later), there is no such product as a "Sub-Prime Loan". There are Sub-prime Borrowers[1] and even that label is artificial. Until the current "crisis" a so called "Sub-Prime Borrower" was a person who had a FICO (credit) score below FNMA or FHLMC guidelines (varying from 640 to 680).

[1] FDIC Press Release PR 9-2001, 1-31-2001

2. “High Cost” Loans are typically those where the total of points and fees exceed 5% of the total loan amount, or have an interest rate of more than 8% over the US Treasury Securities with a maturity equal to that of the loan, or in some cases equal to that of the adjustment period.[2]

3. A high-cost or high-rate loan made to a sub-prime borrower, in the media, is being called a Predatory Loan.[3]

All of the states in the First Circuit have enacted essentially the same laws regarding Predatory Lending, so-called subprime loans, and the penalties levied against those who make such loans to borrowers. The penalties apply with only a few exceptions, the most common being a borrower’s high level of financial sophistication.[4]

## OTHER STATUTES AND ENACTMENTS

Each of the statutes in the 1st Circuit has, in addition to adding a statute governing “Predatory Lending” in particular, passed laws dealing with the related problems confronting both Borrowers and Lenders.

1. Assignees/Purchasers of Mortgages Subject to Borrowers Defenses (No BFP exception)

The protection afforded loan purchasers, in the past, from the foreclosure defenses of mortgagors, is being quickly eroded. If the Foreclosure defense in a particular situation is Predatory Lending practices, an assignee/purchaser will not be able to rely on BFP status automatically. The purchaser will have to show that it requires its originators and Sellers to certify

---

[2] Rhode Island Title 34 Chapter 34-25.2 through 25.8 “Rhode Island Home Loan Protection Act”
Massachusetts General Laws Chapter 183c §2
Maine Title 9A §8-103

[3] FDIC Press Release (infra)

[4] Mass MGL 183c and 93A; Maine M.R.S. 9-A §8-206; New Hampshire Title 35 Ch 397, Title 48 Ch 479, RSA 358-A; Rhode Island Title 34 Ch 34-25,2 et seq.

that no High-Cost High-Rate Loans are being sold by that Seller. Additionally the assignee/purchaser must certify that it will not knowingly purchase any such loans. Finally, the assignee must actually audit its purchased portfolio to deal with any high-cost and high-rate loans it holds.[5]

2. Foreclosure Prevention Companies

Exempting attorneys either by specific statutory exclusion or by oversight agency missive, many states nationwide, and all states in the Circuit are regulating "foreclosure consultants" or foreclosure rescue entities. Unfortunately many of these companies are preying on the very borrowers who have been the victim of a Predatory Lending practice, or who have just had bad luck or poor planning and cannot afford their mortgage payments.

The most common scheme is to have the Borrower convey the property to the foreclosure rescuer, without realizing what is happening. The pitch to the Borrower about to lose his/her home, is that he/she can rent from the rescuer for a brief period of time until the Borrower's credit is better, and then re-purchase the property. The variations are numerous but the result is the same most of the time: The home is lost to the Borrower, who also loses his/her equity, while the rescuer resells the house for a profit, stripping the equity for him/herself.

The behavior of the "fixers" is now prescribed or proscribed with significant penalties for deviations[6]

3. Licensing Loan Originators

Until recently, loan originators, especially those not working for an insured financial institution, did not have to be licensed: in fact they did not even have to spend five (5) minutes learning the job. There was no mandated education, no testing, no CLE requirement (not unlike some state bars), and no regulation. In nearly all cases nationally, the only education came from

[5] Rhode Island - Title 34 Ch 34-25, 2-7; Massachusetts - MGL 183C §15; Maine - MRS 9-A §8-209;

[6]Rhode Island Title 5 Chapter 5-79; New Hampshire Title 48 Chapter 479-B; Massachusetts 940 CMR 25.01 et seq ; Maine

the lender(s) with whom the mortgage broker dealt. IndyMac Bank, Bank of America, FHA, to name a few, had training sessions for originators. Most "Lenders" did not train, but they were actually intermediaries, using a credit line to fund loans, with the loans having been pre-sold to an "end Lender" which either took the loan into portfolio or resold it for securitization. The majority of first tier Lenders, did not keep what they wrote, and sold without recourse, so they cared little about Loan quality, or matching products to Borrowers. Think about it: the person selling someone else's house, the realtor, has to be licensed; the homebuyer's agent has to be licensed; in many states now home inspectors must at least be registered; yet the money person has gone without ANY oversight, training, regulation, or accountability, except for profit.

______As it now stands, either the originator must be licensed independently, but work for a broker or other supervised entity, or the broker or supervised entity is fully responsible for the actions of the originator.[7]

4. Miscellaneous

Massachusetts has also enacted a law which, effective, May 1, 2008 amends the states foreclosure law (*MGL Ch 244 §35A*) by requiring lenders to give mortgagors a 90 day right to cure a default. The lender is specifically prohibited from accelerating the note "or otherwise enforce the mortgage" until after the 90 cure period. The statute goes on to prescribe exactly what notice must be give, information that must accompany the notice, and significantly "the name and address of the mortgagee, or anyone holding thereunder, and the telephone number of a representative of the mortgagee whom the mortgagor may contact..." Further, the mortgagor "shall not be liable for any

---

[7]Massachusetts - effective 11-1-2008 all mortgage originators must be licensed and must work only for one (1) mortgage broker or licensed financial institution MGL 255 F

Rhode Island - Title 19 Chapter 19-14-3 effective 3-31-2008 for existing originators and 1-1-09 for new licensees.

Maine - Catagorizes "originators" as "loan officers". They must work for a supervised entity. MRS 9A §1-301 @ 22-A, 9A §8-103, 9A § 10-303-A

New Hampshire - Requires originators work for only one broker or Lender (licensee) and the Licensee is supervised by the Commissioner of the Department of Banks Title 35 Ch 397A:1, A:5

attorneys' fees related to the mortgagor's default that are incurred by the mortgagee or anyone holding thereunder prior to or during the period set forth in the notice required by this section"

## COURT DECISIONS

### STATE COURTS - 1ST CIRCUIT

Commonwealth of Mass v Fremont Investment & Loan, Mass Appeals Court, 08-J-118

Fremont Investment & Loan ("FIL"), based in California, was marketing loans throughout the country.

On 10-4-07 the Commonwealth alleged unfair and deceptive practices, violating MGL 93A §2. On 12/28/07 the Commonwealth moved for a preliminary injunction to prevent foreclosures during the pending action. Further, all sales, assignments, or pooling of such loans, was also enjoined as was the transfer of servicing.

Four key loan characteristics were found, by the Superior Court Judge, to make loans "unfair" under the common law and statutes: (1) the loan is an adjustable note with initial period of 3 years or less (2) the loan has teaser rate at least 3% lower than the note when fully indexed (3) the borrower has debt to income ratio that would have exceeded 50% if the debt was measured under the fully indexed rate (4) loan to value ratio is 100% or the loan has substantial prepayment penalty."

To effect interim relief, the judge categorized loans into "presumptively unfair" and "not presumptively unfair". If all 4 characteristics are met, the loan is presumptively unfair. If loan is not presumptively unfair, then FIL must give the Attorney General an opportunity to dispute whether loan should be in this category. If it is unfair, then Fremont must give the Attorney General 45 days notice of the proposed foreclosure and explain why foreclosure is reasonable.

FIL argued, unsuccessfully, that the judge had to find that loans were high cost loans under MGL 183c which regulates fees, debt to income ratio, does not permit prepayment penalties, et al. In fact, the Judge did not find any of the loans to be high cost loans, this triggering MGL 183c which

is the Massachusetts Predatory Lending statute. Rather, he looked to find if FIL's loans were unfair under MGL 93A, the Mass Consumer Protection statute.

In essence, the judge looked to common law principles of unfairness, and determined that it is well established that it is unfair for a lender to make home mortgage loans that the lender does not reasonably believe can be paid and the homeowner avoid foreclosure.

FIL's protestations that they had done nothing illegal, that they were acting "under laws as administered by a regulatory board or officers of the Commonwealth or the United States" were parried by the Court. The judge considered "whether FIL's conduct could be found to be unfair even if the "four (4) loan characteristics in question were and are legal": "The judge correctly relied upon established case law holding "the fact that a particular conduct is permitted by statute should be considered but it is not dispositive on the question of fairness" Shuback v Household finance 375/133, 137(1978)""

Interestingly, and of major importance, is that it appears that no other court in the Circuit, federal (non-bankruptcy) or state, has taken any position (as of June 15, 2008) on what actually is a "Predatory Lending practice" in everyday life versus legal theory.

## OTHER CIRCUITS

### 2ND CIRCUIT

**Connecticut** - In Bank of NY Trust Co successor to JP Morgan Chase v Ester GBEH et al, Superior Court of Connecticut District of Litchfield CV075002495S 2/28/2008

In this case, Mortgagors raised a number of defenses to foreclosure, most of which were rejected by the Court. The overlay was the theory of Predatory Lending Practices perpetrated by the Plaintiff on the Defendant.

A Motion for Summary Judgement in the foreclosure action was filed by the Plaintiffs, and answered by the Defendants with five (5) special defenses: breach of good faith and fair dealing; unconscionability of the mortgage; unclean hands; violations of TILA (Federal); and that the lending practices violated the Connecticut Unfair Trade Practices Act (CUTPA).

The Plaintiff argued for Summary Judgement stating that the defenses were legally insufficient and that legally invalid special defenses did not preclude Summary Judgment.

After dealing with important state procedural issues, the Court discussed the Plaintiff's case:

Plaintiff had presented credible evidence of a facially sufficient mortgage, mortgage note, and proof of non-payment. Essentially a prima facie case for foreclosure.

Connecticut law had been decided in 2001 in New Haven Savings Bank v La Place 66 Conn Appl 10, 783A.2d 1174 (2001) and later in LaSalle Nat'l BK v Freshfield Meadows LLC 69 Conn App. 824 835 (2002) that special defenses "alleging a breach of implied covenant of good faith and fair dealing ...are not equitable defenses to mortgage foreclosure".

1.) As to unconscionability, of the mortgage: it " ... cannot be assessed against a successor in interest to the mortgage unless the assignee participated or had reason to know of the misconduct" The Court allowed amended pleadings.

2.) Unclean hands:" The Defendants allege that if the Plaintiff knew or should have known that at the time of the refinance the mortgagors could not afford the mortgage then it engaged in predatory lending. The Court countered by stating that the Defendant must show that they did have clean hands that the defense is a defense for the protection of the Court. Further, a mere allegation is not sufficient. The party invoking the doctrine must demonstrate the other's unclean acts. The Court granted leave to amend.

3.) TILA - The issue being Notice of Recision Rights, the Plaintiffs provided signed copies of the disclosures. It was deemed insufficient for the defendants to plead that they never received the disclosures. Further, the Court stated that such violations do not attack the validity or enforceability of the note or mortgage, but relate to the conduct of the lienholder. The defense was legally insufficient.

4.) CUTPA - Defendants did not allege specific facts of unfair and deceptive acts, just the general assertion. The Court granted leave to amend pleadings.

It is apparent here that the Court, though willing to entertain complaints to stop foreclosures for predatory practices, is not going to permit mortgagors to use broad generalities. Specific acts prohibited under CUTPA, or proof of an alleged wrong, not the mere possibility will be required. That the Plaintiff could not prove the Defendants received the recision notice, the Court moved the burden to the Defendant to prove they did not.

**New York** - Supreme Court - Nassau County, NY New York - Alliance Mortgage Banking Corp, Wilshire Credit Joanne S. Dobkin 10625/06 3/28/08

Here, the Defendant, as her foreclosure defense, claimed that she was the victim of Predatory Lending. The Court stated "However, absent some violation of some statute or other

relevant legal principle, the law does not permit judges to simply ignore payment obligations voluntarily taken on by mortgagers even if it should have been evident to both the lender and borrower that the loan was likely beyond the borrowers ability to reply" (emphasis needed)

The Court goes on to discuss that there is no demonstration of actual fraud. Its analysis went further calculating the amounts which would trigger protection under HOEPA and NY Banking Law § 6-1. Neither threshold was met. The Court found for the Plaintiff.

**New York -** Supreme Court Richmond, County NY LaSalle Bank NA as Trustee MLMI Trust Services c/o Wilshire Credit v David Sharon et al

Plaintiff brought action for summary judgment to foreclosure. The original lender Liberty Capital Mortgage d/b/a HCI Mortgage Company through a broker accepted Defendant Mortgagors' application. The Mortgagors' AGI was $30,000 +/-. The Sharons were shown a house with a price of $335,000 ( the P&S reflected $355,100 with a seller concession of $20,100)

Rather than a single loan, Sharons were "sold a first mortgage for $284,000 and a second for $71,000".

As a defense Sharons alleged

1. Excessive financing was approved to 106% of the purchase price.
2. No due diligence of Sharons' ability to pay.
3. Intentional placement into sub-prime loan products with high rates and longer terms.
4. No TILA disclosures, disclosure regarding costs, no counseling services offered nor disclosures concerning balloon payments (of which the would be one).
5. Forgeries on documents, especially the Application.
6. Coercive tactics.

Sharons allege Predatory Lending under NY Banking Law §6-L et seq. Specifically a high cost loan. The Plaintiff argued that the interest rates of 7.65% and 10.5%, were well under usury rates and therefore not high cost.

The Court dissected the Plaintiffs loan finding numerous violations of the statutes, most importantly a lack of the required due diligence regarding ability to pay. Additionally, after being promised a fixed rate loan with a maximum of 10.59%, the loan adjusted to 14.09%.

Making matters worse, no evidence was provided that the required disclosures were present

at any time

The Court denied Plaintiff's Motion For Summary Judgment.

**3rd CIRCUIT**

**Pennsylvania** - Reginald McGlawn, Petitioner v Pennsylvania Human Rights Commission, Respondent, The Commonwealth Court, 891 A.2d 757 Jan 2006

This was a case of first impression for the Court and is the first such case in the 1st, 2nd and 3rd Circuits. It involves ***REVERSE REDLINING***, where poor and primarily minority neighborhoods are targeted by Lenders as "ripe" for selling loans. After all, "why pay rent if you can own. Don't worry about the rate going up - you will refinance before then." This is the patter of the Lenders who truly practice Predatory lending. The market/demographic provides potential borrowers who have hope, want home ownership, but who do not have access to normal credit markets, and normally are unsophisticated.

***THE CASE (SYNOPSIS) PRESENTED BELOW SPEAKS FOR ITSELF***

Mortgage Broker and chief officer petitioned for a review of a decision finding them in violation of Human Relations Act due to Reverse Redlining.

Holdings: The Commonwealth Court, Nos. 2763 C.D. 2004 and 6 C.D. 2005, Simpson, J., held that:

(1) As a matter of first impression, Act encompassed claims of reverse redlining;
(2) evidence was sufficient to support determination that broker and officer engaged in brokering activities that resulted in predatory and unfair loans;
(3) evidence was sufficient to support finding that broker engaged in predatory brokering activities which resulted in a predatory and unfair refinancing loans;
(4) evidence was sufficient to support finding that broker engaged in intentional discrimination;
(5) evidence was sufficient to support finding that broker's business activities had a disparate impact on African Americans and African American neighborhoods;
(6) broker's predatory lending in connection with African Americans was not a legitimate practice;
(7) Commission had authority to award borrowers reimbursement for monies paid to mortgage broker; and
(8) evidence did not support Commission's finding that prevailing mortgage interest rate of 5% was available to borrowers.

"In its decision, the Commission found that Broker engaged in predatory brokering activities regarding all Complainants. Those actions resulted in unfair and predatory mortgage loans. It also found Broker engaged in an aggressive marketing plan targeting African Americans and African American neighborhoods in the Philadelphia area. Nearly all of Complainants contacted Broker in response to radio, television and newspaper advertisements."

".....Broker's predatory practices, the Commission noted, included arranging loans containing onerous terms such as high interest rates, pre-payment penalties, balloon payments and mandatory arbitration clauses. In addition, Broker charged Complainants high broker fees, undisclosed 4 yield spread premiums and various other additional closing costs. Broker's predatory practices also included falsification of information on loan documents, failure to disclose information regarding terms of the loan, and high pressure sales tactics."

"..... the Commission contends this is a housing discrimination case. Section 3 of the Act recognizes an individual's civil right to obtain any housing accommodation without discrimination because of race. 43P.S. § 953. The Act is an exercise of the Commonwealth's police power "for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth ...."Sec 2( c) of the Act,43 P.S.§952( c)."

**"Reverse redlining is a recognized, if new, form a housing discrimination**. Hargraves." *(Emphasis added)* ....Section 5(h)(4), the loan provisions, prohibits discrimination "against any person in the terms and conditions of any loan of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodation[s]..." 43 P.S. §955(h)(4).

"Broker arranged a 30-year mortgage loan for Taylor with Delta Funding Corporation (Delta) in the amount of $20,500.00 with a 13.09% interest rate. R.R. at 681-82a. Taylor was not given an opportunity to review any of the documents before signing them. R.R. at 381-82a. Taylor was told to sign the documents. R.R. at 382a."

"The Commission found Taylor's loan transaction had several predatory characteristics. Taylor's was charged $4,276.60 in total settlement costs or approximately 20% of the loan. FN20 R.R. at 682a. Two days after Taylor signed the loan documents, her uncle reviewed them and advised her to cancel the loan. R.R. at 382-83a. Taylor called Aaron McGlawn, a Broker employee, and stated she did not want the loan. He did not advise Taylor she could legally rescind the loan within a three-day period; rather he told Taylor she could cancel the loan if she had the money to pay the people Broker already paid. R.R. at 383a."

The record also indicates Broker's business activities have a disparate impact on African American neighborhoods. This can be established by statistical evidence. Hargraves. The Commission accepted the testimony of the Radcliffe Davis, a Commission investigator (Investigator). In response to Taylor and Poindexter's complaints. Investigator visited Broker's office and reviewed 100 customer loan applications for things such as refinancing, debt consolidation and home improvement. R.R. at 524a. Of those 100 applications, 66 identified the race of the applicant. Id. Of those 66 applicants, 65 were African American. R.R. at 524-25a.

In addition, Complainants' second expert testified he prepared a document mapping the 11 properties involved in this matter. R.R. at 1001a. Nine of these properties were in the areas that have at least a 90% African American population. R.R. at 1002-03a. The other two areas have a 50-75% African American population. Id.

**New Jersey** - NowosLeska v Steele & Dorsey 400 NJ Supo 297, 946 A.2d 1097 5/19/08

This is the prototypical foreclosure scam case, but one that has been adjudicated, unfortunately after the loss of the property. The Case was to Vacate Default against Defendants who were victimized by Foreclosure Rescue scheme where rescuers,"Property Vestors", paid $155,000 of Borrowers' (Defendants) debts, took a deed in lieu of foreclosure without Borrowers knowing and then selling the home for $265,000 which was reconveyed for $402,000 *(the timing qualified as a flip*). The Court vacated default, permitting the Defendants, the former homeowners, to proceed to obtain a recovery from the "rescuer".

## FEDERAL DISTRICT COURTS

The first case to be mentioned is United Cos. Lending Corp. V. Sargeant 20 F.Supp. 2d 192 D. Mass 1998. What is remarkable is that this 10 year old case touches on every issue with which we are dealing today.

The Plaintiff made and sold first lien residential mortgage loans. It operated in the "subprime market". The Court discussed the higher costs to the lender due to credit risk, and the components that establish the risk factor. The Court elaborates and details the cost of securitization being higher because most of the loans are non-conforming.

Sargeant borrowed $134,700.00 with an adjustable rate of 11.99% (with a 6% increase cap). The APR, however, was 13.556%. "Broker Fees" were $13,461 to United and $4,150 to an intermediary broker. Sargeant's payment went from $956 per month to $1281 due to the $23,029 in closing costs - 17% of the total loan.

The points/fees were undisclosed until closing, thus violating the then applicable state law. Disclosure would have put the lender/broker in a good position, unless there was as unreasonableness to the amount charged. The Court cited a host a state and federal decisions supporting the unreasonableness of the charges

The case was decided based on a federal standard of Unfair and Deceptive practice enunciated and approved in Federal Trade Comm v. Sperry Hutchinson Co. 405 US 233, 244, 92 S.Ct. 898 (1972) The test established whether the practice 1) causes substantial injury to consumers, 2)violates established public policy, or 3) is immoral, unethical, oppressive or unscrupulous. The FTC, in 1980 gave a more detailed explanation of "injury to consumers.

The Court then gives a treatise on the unscrupulous behavior of brokers and lenders engage in "Predatory Lending" practices that included offering high rate high fee loans to borrowers who lacked access to mainstream banks, had marginal credit history and had limited financial sophistication"

In the end, Sargeant won a significant victory .The origination fee charged by United constituted an unfair and deceptive trade practice as the points charged substantially deviated from industry-wide practice in Massachusetts. Therefore, Sargeant is entitled to actual damages of $13,461.40 plus interest. McIntyre was not entitled to a brokerage fee as he failed to provide Sargeant with the requisite disclosure. Such failure to disclose constitutes an unfair and deceptive trade practice in violation of Mass. Gen. Laws ch. 93A, § 2(a) and a violation of the disclosure requirements of Mass. Gen. Laws ch. 183, § 63. Therefore, Sargeant is entitled to actual damages of $4,150.00 plus interest. Sargeant is also entitled to reasonable attorney's fees in prosecuting to her Chapter 93A claims. See Mass. Gen. Laws ch. 93A, § 9(4). ADDITIONALLY Sargeant was granted the RIGHT OF RECISION, only having to pay the then owed principal -no back interest, costs, fees etc.

The second case is Stone v. Household International Inc. and Beneficial Finance (9/22/05 Westlaw only 2005 WL **3728718** D. Mass.

The Plaintiffs had obtained a home-equity loan from Beneficial. The loan agreement called for arbitration in the case of a dispute. The Plaintiffs argued that the arbitration clause, itself, was unenforceable under the basis of unconscionability, fraud, and undue influence. The Court, taking each theory separately, found there was no cause of action except for unconscionability.

Under Massachusetts law, an unconscionable contract is one "such as no man in his senses and not under delusion would make on the one hand, and no honest and fair man would accept on the other " (quoting from Waters v. Min Ltd. 412 Mass. 64, 69 (1992). The Court found that there was no unfair surprise, no language hidden in the text, that itself was improper, and the Plaintiffs had adequate time to review the agreement. Further, there was no allegation that the Arbitration clause was a contingency for the loan. The Court found for the Defendants, affirming its prior decision.

The critical issue for both Debtors' and Creditors' Counsel is that the boilerplate Arbitration clause might withstand scrutiny, but the Court in this case laid out the formula for unconscionability . Further, the Court dealt, in adequate detail, with the other grounds alleged to render the Arbitration clause unenforceable. This follows the reasoning in a 3rd Circuit case Salley v. Option One Mortgage regarding arbitration issues.

**OTHER CASES WORTH READING**

In Re Ocwen Loan Servicing, LLC Mortg. Serv. Lit., (Appeal of Ocwen), U.S. Ct. App. 491 F.3d 368, 2007 (7th Cir) Ocwen tries, unsuccessfully dismiss this class action by arguing that the Office of Thrift Supervision ("OTS") only allows certain claims and that state law based claims are preempted.

Parker v Long Beach Mortgage Company, 534 F. Supp. 2d 528 (E.D. Pa 2008). Plaintiffs obtained 4 mortgages on townhouses. The documents received as "early disclosure" showed figures differing from the Truth in Lending Disclosure signed at closing. Further, they claimed that they did not know that the package was an 80/20 loan, rather than one loan. It is important to take

note that as a part of the transactions, the Parkers received $850,000 cash from closing. As the Court aptly put it, “ The dispute the Parkers have...embody many of the factors identified with predatory, subprime mortgage loans: an aggressive broker, balloon payments, prepayment penalties, and negative amortization. As distasteful as the practices may be, that odor of opportunism is not enough to save the Parkers, relatively sophisticated borrowers, from themselves”

The point, which is missed in the general press and sometimes by us, the Bar, , is that the current mortgage mess is just an exacerbation of what had gone before. We have new loans and regulations but the more things change...