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Marietta woman gets to stay in foreclosed home

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Luz Mary Cardoza sits in her Marietta home, which Cobb Superior Court Judge Robert Flounroy said she could keep, ruling that Wells Fargo's sale of the house was improper.

MARIETTA - Luz Cardoza, whose home was sold at foreclosure on July 6 - the very day Wells Fargo Bank faxed her a pledge that the foreclosure would be postponed until September - gets to stay in her house indefinitely, a Cobb Superior Court judge ruled Friday.

Wells Fargo sold Cardoza's home to an investment group out of Canton, REO Funding Solutions, for \$180,000. That firm proceeded to evict her, but Cardoza hired Marietta attorney Justin O'Dell to fight back.

On Friday, Judge Robert Flounroy approved her request for an interlocutory injunction, allowing Cardoza to remain in her home during the course of the court proceedings.

Flounroy also ruled that since REO was an innocent party in that it just simply bought a foreclosed house, it had the right to get its money back from Wells Fargo.

But Flounroy had harsh words for Wells Fargo, its law firm, McCalla Raymer, and the non-legal firm it uses to process services in foreclosure matters, Prommis Solutions, LLC.

"There is great responsibility with great power, and you don't just tell people, 'Well, I don't care. I guess we just made a mistake. It's no big deal,'" Flounroy told the lawyers representing Wells Fargo.

The matter was prompted when Cardoza's husband, Cesar Cardoza, filed for divorce last fall. Luz Cardoza moved out of the family house in the St. Charles Square subdivision near the intersection of Sandy Plains and Scufflegrit roads during the divorce proceedings, a court case Flounroy also presided over. While she was staying in an apartment, her then-husband stopped making his mortgage payments to Wells Fargo without her knowledge, prompting the bank to begin foreclosure proceedings on the house.

"That's how this whole thing got started, not because she did anything wrong, but because her awful, terrible, worthless former husband did something very bad," Flounroy said. "That's why we're here today because he didn't pay the mortgage even though he had the money to pay it and even though he's a scoundrel and a scallywag for not paying it."

In May, when Luz Cardoza discovered that Wells Fargo was foreclosing on her house, she and her divorce attorney, Jessica Frost of the Marietta firm of Marsh Frost & Wolfe, contacted the bank to begin the process of getting the house out of foreclosure.

During the hearing, Frost testified that Wells Fargo associates had led her to believe that the foreclosure would indeed be put off and that her client's house would not be sold on July 6 as advertised.

In fact, the bank's own attorneys from McCalla Raymer faxed Cardoza and Frost a statement on July 6, declaring that the foreclosure had been postponed to Sept. 7.

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Frost testified that had she known Wells Fargo never intended to live up to its word, she would have requested an injunction from Cobb Superior Court to prevent the sale from occurring on July 6. And Flournoy said he would have granted her that request.

"What is so obvious to the court is that Ms. Jessica Frost was told that if she submitted the paperwork, that would accomplish a postponement of the sale," Flournoy said. "There's no question about that because all she has to do was come up here ... and I would have granted an injunction.

"It's so plain as the nose on your face. All somebody had to do is say, 'Ms. Frost, we ain't postponing nothing,' and she would have been down here and she would have gotten an injunction. She would have gotten a TRO to stop the foreclosure, I guarantee it."

Flournoy told the attorney representing REO Funding Solutions, Stephen Levinson of Woodstock, that if he wanted, he would order Wells Fargo to "immediately" pay back the \$180,000 REO bought the house for.

"There were wrongful, false, illegal misrepresentations made by Wells Fargo and/or made by McCalla Raymer and/or made by Prommis leading and lulling Ms. Jessica Frost and her client into believing that the foreclosure sale had been postponed, so your client has been damaged," Flournoy said.

Flournoy told Levinson that since REO had been damaged by buying property for \$180,000 that was worth \$275,000, it could request damages.

"So Wells Fargo's going to pay you some damages," Flournoy said.

Flournoy also ordered Luz Cardoza to pay the roughly \$13,000 owed in late mortgage payments on Sept. 1, which she said she would be able to do.

And the judge warned the attorneys for Wells Fargo, McCalla Raymer and Prommis what would likely occur if they elected to continue litigation.

"Y'all can draw this out for the next three, four, five years, if that's what you want to do," Flournoy said. "All you're going to do is end up - she's going to keep her house, number one. Two, attorneys' fees is just going to run up hundreds of thousands of dollars, and three, you're going to pay some damages to REO Solutions."

After the hearing, Wells Fargo attorney Dylan Howard with Atlanta's Baker Donelson declined to comment. Levinson, McCalla Raymer and Prommis attorneys, Thomas Howell and Steve Flynn, also declined comment.

Cardoza, meantime, was all smiles.

"I'm very happy that I'm going to be able to stay in my home," she said. "It feels very good, very good."

O'Dell said when Wells Fargo paid back federal bailout money it received, the bank issued a press release stating that it led the country in keeping people in their homes.

"I hope that they'll live up to the words of that press release in this case," he said.

This case is about fairness, O'Dell said.

"Look, the banks have the right to foreclose on people and there's no arguing about that," he said. "All we're trying to show and all that I think was said today is that if you're going to do it, do it fairly, and do it with good faith, and do it the right way because it's people's homes, and it's their livelihood, and it's where they live, where they raise their children. So at the end of the day what needs to happen is if you're going to go through the process, be honest, be fair, and do what's right by people."