

BERGMAN ON MORTGAGE FORECLOSURES

Are There Sanctions in Foreclosures?

By Bruce J. Bergman



Bruce J. Bergman, author of the four-volume treatise, *Bergman on New York Mortgage Foreclosures* (LexisNexis Matthew Bender, rev'd 2023), is a member of Berkman, Henoch, Peterson & Peddy, P.C. in Garden City. He is a fellow of the American College of Mortgage Attorneys and a member of the American College of Real Estate Lawyers. His biography appears in *Who's Who in American Law* and he is listed in *Best Lawyers in America* and *New York Super Lawyers*.

Yes, there is authority for sanctions, but they are seldom awarded—however, a recent case actually imposed them upon a borrower!¹

The standards for sanctions are found in part 130 of *The Rules of the Chief Administrator*. For those who are particularly interested in reading about this topic, and its considerable expansion in case law, more can be found on page 3 of *Bergman on New York Mortgage Foreclosures*, § 21.09 (LexisNexis Matthew Bender, rev'd 2023).

Despite what the New York State Legislature believes, foreclosing plaintiffs are overwhelmingly dedicated to proceeding through a foreclosure action as quickly as possible for readily apparent reasons. Borrowers, on the other hand, can benefit from delay of a foreclosure by remaining at the premises, often without any actual need to make payments—including taxes, insurance, maintenance and other mortgages which may burden the property. Accordingly, it is most often a foreclosing plaintiff who is troubled by dilatory or objectionable conduct by a defaulting borrower—at least such would be the view of lenders and servicers. In the face of such tactics, lenders often wonder why sanctions are not imposed; indeed, they sometimes implore their counsel to pursue just that.

Seeking sanctions requires a separate motion (or cross-motion) although it is not so burdensome to prepare. The reality, though, is that courts are generally indisposed to imposing sanctions. One could speculate as to why, but clearly experience reveals the temerity of the judiciary in this regard.

That said, on occasion, a sanctions motion is granted whereby costs and typically legal fees are assessed. While there are any number of informative examples, one is found in the recent case cited. There, the ruling stated the standard underlying proposition that courts have discretion to award costs or impose financial sanctions against a party or attorney in a civil action for engaging in frivolous conduct. In turn, conduct may be deemed frivolous if it is undertaken primarily to delay or prolong the resolution of the litigation or to harass or maliciously injure another or if it asserts ma-

terial factual statement that are false.² (Lenders and servicers will recognize such events.)

In the noted case there were allegations made by the borrower's attorney against the referee and the plaintiff's attorneys in support of a borrower's motion to vacate an order.³ The court found these allegations to be wholly unsubstantiated and speculative and constituting an attempt to mislead the court into delaying the resolution of the action.⁴

Given those facts, sanctions were indeed imposed.⁵ While this may offer some comfort to lenders and servicers compelled to prosecute mortgage foreclosure actions, it does not change the reality that sanctions are seldom pursued with success.

Endnotes

1. *U.S. Bank National Association v. Nunez*, 208 A.D.3d 711, 173 N.Y.S.3d 627 (2d Dept. 2022).
2. *Id.*
3. *Id.* at 629.
4. *Id.* at 630.
5. *Id.*