Honor Thy Notice Of Appearance

If You Try To Shortcut The System, It Could Cost Your Company Plenty

BY BRUCE J. BERGMAN

Understandably, one of the most compelling lenders or servicing imperatives is moving the foreclosure case along as quickly as possible.

Bruce J. Bergman

... of appearance ...

Demanding notice

... among the typical and advised modes for response to a foreclosure complaint is the notice of appearance. Interposing that document entitles a defendant to actual notice of all subsequent proceedings in the foreclosure action.

In turn, this means that every plateau in the case must proceed upon notice of motion. Additionally, a referee's hearing to compute is mandate. All this easily grafts months on to the progress of the case. That is, it causes delay.

So, from a defendant's point of view, the case proceeds more slowly (certainly an advantage to some defendants) while at the same time assuring scrutiny of the plaintiff's actions – accurately computing the mortgage debt conspicuous among them.

Obviously, though, from the ...

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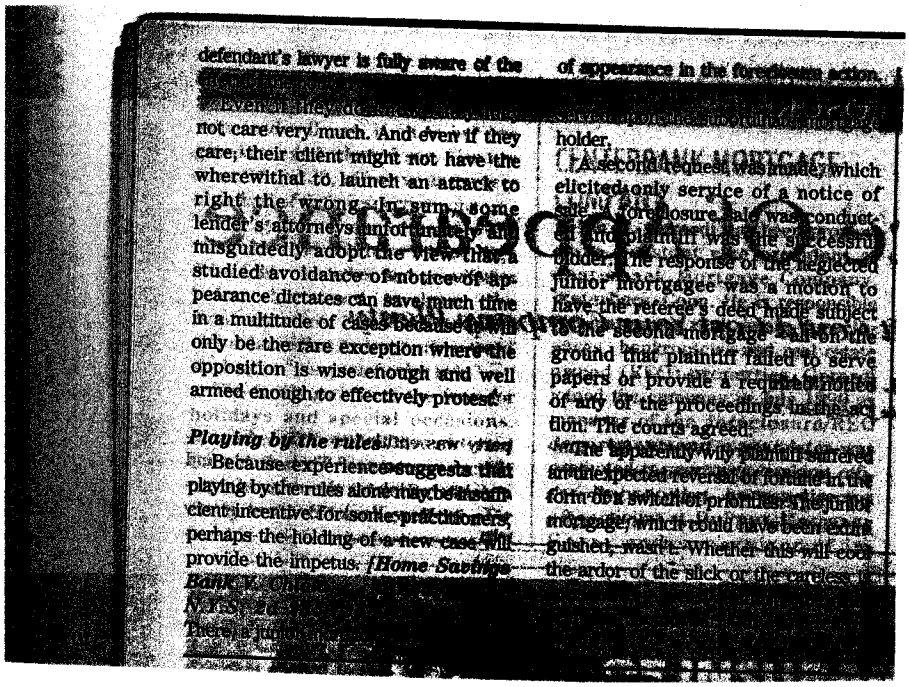

defendant's lawyer is fully aware of the
of appearance in the foreclosure action.
not care very much. And even if they
care, their client might not have the
wherewithal to launch an attack to
right the wrong. In sum, some
lender's attorneys unfortunately
misguidedly adopt the view that a
studied avoidance of notice of ap-
pearance dictates can save much time
in a multitude of cases because only
only be the rare exception where the
opposition is wise enough and well
armed enough to effectively protest.
holder.
A second request was made, which
elicited only service of a notice of
sale. A foreclosure sale was conduct-
ed and plaintiff was the successful
bidder. The response of the neglected
junior mortgagee was a motion to
have the referee's deed made subject
to the second mortgage and on the
ground that plaintiff failed to serve
papers or provide a requested notice
of any of the proceedings in the ac-
tion. The courts agreed.
form of a switch of priorities, the junior
mortgage, which could have been extin-
guished, was it. Whether this will cool
the ardor of the slick or the careless
Playing by the rules
Because experience suggests that
playing by the rules alone may be insuffi-
cient incentive for some practitioners,
perhaps the holding of a new case will
provide the impetus. *[Home Savings
Bank v. Chin*
N.Y.S.2d
There's