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Wells Fargo Sued Over Problem Foreclosure

By Amy Yarbrough

Mikey and Zeina Kostelny's dream home became a nightmare the day they moved into it in December 2008.

With a pool and an open floor plan, the four-bedroom Altadena foreclosure property sited near hiking trails seemed like just the kind of house for which they worked holidays and scrimped for 15 years. What they claim they didn't know - and the sellers, by law, should have told them - was that they were buying a defect-plagued former marijuana grow house raided by law enforcement officers just months before they closed the deal.



Robert Levins / Daily Journal
Zeina, left, and Mikey Kostelny in front of their Altadena home.

The Kostelnys sued Wells Fargo, the trustee for the property, as well as the loan servicer, the property asset management company, the broker in charge of the sale and several contractors, which they accuse of doing repair work on the house without permits and patching and painting over dangerous mold.

The couple puts much of the blame on Wells Fargo. Although the house was sold "as is," California civil code requires a seller to disclose significant facts it knows about, or should know about, that would negatively impact the value or desirability of a home.

Jason Menke, a Wells Fargo spokesman, said the company, as trustee for the property, simply had a money-management role, and it wasn't responsible for the house.

'They pretty much went through hell and back.'

- Albert Siu

"The management and preservation of [real estate owned] properties is typically the responsibility of the mortgage loan servicer, not the trustee," Menke said in an e-mail.

Real estate owned refers to property in the possession of a lender or investor due to foreclosure.

"Wells Fargo had no role in the maintenance, marketing or selling of the house the Kostelny family purchased," he said.

But the couple's attorney, Julia S. Swanson, said Wells Fargo was in charge and should have been aware of the drug raid, mold and faulty wiring and duct work that came to light when the home was being readied for sale.

"They can say they are the trustee and not responsible, but they were ultimately the seller, so they knew everything that was going on," Swanson said. "They deny that they knew, but they knew ... or should have known."

Walter Hackett, managing attorney for Inland Counties Legal Services in Riverside, which helps low-income clients impacted by foreclosures, said the Kostelnys appear to have a strong case.

Sellers must come clean about any fact that could result in a "reasonable person deciding not to buy the property," he said, adding that the drug activity would certainly fit the bill.

"The best way to look at it is, 'What would you do?'" Hackett said. "What's a jury going to do when it hears the facts?"

Hackett said he hasn't heard of other cases quite like the Kostelnys' but suspects a number of foreclosed homes are being sold without the necessary disclosures.

The mortgage industry has become so layered, and the players aren't as experienced as they used to be, he said. The reason there aren't more lawsuits, Hackett speculated, could be that defects aren't readily apparent, and homeowners aren't discovering them until years down the road.

The Kostelnys, to their detriment, didn't have the house inspected before purchasing it, although Swanson argues that a typical home buyer's inspection wouldn't have tested for mold.

June Barlow, general counsel for the California Association of Realtors, said that while banks are required to disclose material facts about foreclosed homes in their possession, typically they know next to nothing about them.

"When it's a foreclosure, it's an institutional occupation," she said. "It's always important [for the buyer] to get a third-party inspection so you know what you're getting into."

According to the Kostelnys, they got into quite a bit. Their suit, filed in Los Angeles County Superior Court, alleges fraud, breach of contract and negligence.

Not long after the couple bought 3508 N. Marengo Ave., the suit states, they discovered *Stachybotrys* - a mold that has been linked to headaches, chronic fatigue and coughing - in the floors, carpets and walls of the home. But that pales in comparison to the danger Mikey and Zeina say they encountered the first night they slept in the house.

Mikey woke up to the sound of his wife clearing her throat, and fell out of bed on all fours, dazed for a moment before realizing there was a gas leak. He said he grabbed a wrench to shut off the gas and carried his wife to safety.

All Zeina said she remembers is waking up in the garage feeling woozy and nauseous enough to vomit.

"Every time I think about it, I smell it and taste it," she said.

After the leak, Mikey said, he would get startled by every sound in the house, and began habitually checking the appliances.

"It's like you don't trust the house anymore," he said.

The gas leak was not a new problem. Swanson said it appears contractors kicked loose the fitting on a pipe in the attic when they were getting the house ready for sale. The problem went undetected until Mikey removed a lock the gas company put on the gas line prior to the home repair work, the same day the marijuana grow was discovered in July 2008.

Whoever was growing the marijuana and apparently squatting in the foreclosed home was long gone by the time the drugs were discovered.

A locksmith sent to change door locks made the discovery, finding the house empty, with aluminum foil on the inside walls and ventilation ducts jutting from the ceiling, Swanson said. He called the broker, Susan L. Broussalian, who in turn called police.

According to a Los Angeles County Sheriff's Department report, investigators found drums of water attached to hoses; 150 10-gallon pots filled with soil; dirt on the floors of the home; and plastic bags and containers filled with marijuana stems.

Even though Broussalian was there for the bust and investigators interviewed her, she didn't tell them about the drug operation, the Kostelnys said. They said they only learned of it by chance, one business day before close of escrow. Even then, the couple said, they thought it was a minor drug arrest and didn't realize the extent of what had gone on in the house. Their lender wouldn't fund their loan because of a \$1,500 lien the county placed on the property, a step the local government took because of trash left over from the marijuana operation and other code violations.

Broussalian, who is named as a defendant in the suit along with her Glendale-based company, Oakmont Real Estate Services, said she could not comment because the litigation is spending.

If Broussalian knew of the raid, so should Wells Fargo have, Swanson said, adding that the potential for mold was obvious.

"When you have moisture and heat and absolutely no ventilation, all of which is necessary for marijuana grows, it's going to grow mold," she said.

Broussalian ended up paying off the lien, though that was hardly the end to the Kostelnys' woes, according to Albert Siu, Swanson's co-counsel on the case.

"They pretty much went through hell and back," he said.

At one point, the attic caught fire because of debris from the grow house that had been stuffed up there, Swanson said. The couple started getting warnings in the mail claiming they owed \$40,000 in back taxes on the home, and as a result risked foreclosure themselves. Their mortgage company later paid the tax bill, but threatened to triple their mortgage. Eventually, Siu said, he was able to negotiate with the title insurance provider, which agreed to cover the taxes.

As the smell of fresh paint in their new home began to subside, the couple also began to notice something else: an odor they initially thought was a dead rat. But it was actually mold, discovered when a contractor they hired to remodel their bedroom opened up the walls.

They started getting headaches from the mold, and itched and suffered rashes and allergies, the couple said. Mikey caught pneumonia twice, developed asthma and got so sick he had to be hospitalized.

The ongoing health issues have begun to affect Mikey's job as a tree surgeon for the city of Los Angeles - he said he now has an intolerance to mold, including the kind that grows in trees.

The ordeal also affected their marriage, the Kostelnys said. Living in the house proved so difficult that Zeina went to live with her sister, and Mikey moved into the garage. The couple had to borrow money from relatives and estimate they spent between \$35,000 and \$40,000 just getting rid of the mold and other damage the squatters caused.

The couple bought a Rottweiler after several visits from apparent gang members who seemed to know about the former drug operation at the house.

Zeina says she's gone through all kinds of emotions - anger, humiliation, embarrassment. The couple went through counseling, which they said saved their marriage, although they still worry they won't ever be able to sell the house.

"All that sacrificing we did, it's all gone," she said.

"It's very hard," Mikey added. "It's like they flipped our life upside down."

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