

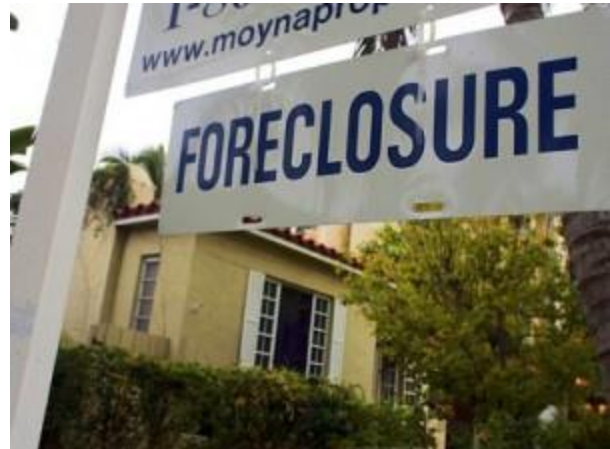
What Now? Bevilacqua v. Rodriguez Leaves Foreclosure Titles Unclear After U.S. Bank v. Ibanez

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The Massachusetts Supreme Judicial Court ruled today in much anticipated *Bevilacqua v. Rodriguez* case. The final edict is mix of bad and good news for owners of property whose titles have been rendered defective due to improper foreclosures stemming from the landmark *U.S. Bank v. Ibanez* ruling last January. The Court held that owners cannot bring a court action to clear their titles under the “try title” procedure in the Massachusetts Land Court. Left open, however, was whether owners could attempt to put their chains of title back together (like Humpty-Dumpty) and conduct new foreclosure sales to clear their titles. Unfortunately, the SJC did not provide the real estate community with any further guidance as to how best to resolve these complicated title defects.

Background: Developer Buys Defective Foreclosure Title

Frank Bevilacqua purchased property in Haverhill out of foreclosure from U.S. Bank. Apparently, Bevilacqua invested several hundred dollars into the property, converting it into condominiums. The prior foreclosure, however, was bungled by U.S. Bank and rendered void under the *Ibanez* case. Mr. Bevilacqua (or presumably his title insurance attorney) brought an action to “try title” in the Land Court to clear up his title, arguing that he is the rightful owner of the property, despite the faulty foreclosure, inasmuch as the prior owner, Rodriguez, was nowhere to be found.



Land Court Judge Keith Long (ironically the same judge who originally decided the *Ibanez* case) closed the door hard on Mr. Bevilacqua, dismissing his case. “I have great sympathy for Mr. Bevilacqua’s situation — he was not the one who conducted the invalid foreclosure, and presumably purchased from the foreclosing entity in reliance on receiving good title — but if that was the case his proper grievance and proper remedy is against that wrongfully foreclosing entity on which he relied,” Long wrote. The SJC took the case on direct review.

No Standing To “Try Title” Action In Land Court

The SJC agreed with Judge Long that Bevilacqua did not own the property, and therefore, lacked any standing to pursue a “try title” action in the Land Court. The faulty foreclosure was void, thereby voiding the foreclosure deed to Bevilacqua. The Court endorsed Judge Long’s

“Brooklyn Bridge” analogy, which posits that if someone records a deed to the Brooklyn Bridge, then brings a lawsuit to uphold such ownership and the “owner” of the bridge doesn’t appear, title to the bridge is not conveyed magically. The claimant in a try title or quiet title case, the court ruled, must have some plausible ownership interest in the property, and Bevilacqua lacked any at this point in time.

The court also held, for many of the same reasons, that Bevilacqua lacked standing as a “bona fide good faith purchaser for value.” The record title left no question that U.S. Bank had conducted an invalid foreclosure sale, the court reasoned.

Door Left Open? Re-Foreclosure In Owner’s Name

A remedy left open, however, was whether owners could attempt to put their chains of title back together and conduct new foreclosure sales in their name to clear their titles. The legal reasoning behind this remedy is rather complex, but essentially it says that Bevilacqua would be granted the right to foreclosure by virtue of holding an “equitable assignment” of the mortgage foreclosed upon by U.S. Bank. There are some logistical issues with the current owner conducting a new foreclosure sale and it’s expensive, but it could work.

In Bevilacqua’s case, he did not conduct the new foreclosure sale, so it was premature for the court to rule on that issue. Look for Bevilacqua to conduct the new foreclosure and come back to court again. The SJC left that option open.

The other remedy, which is always available, is to track down the old owner and obtain a quitclaim deed from him. This eliminates the need for a second foreclosure sale and is often the “cleanest” way to resolve *Ibanez* titles.

Title insurance companies who have insured *Ibanez* afflicted titles have been steadily resolving these titles since the original *Ibanez* decision in 2009. I’m not sure how many titles are out there unfixed. Those without title insurance, of course, have borne the brunt of this mess.

More Coverage:

- [Buyer Can’t Sue After Bad Foreclosure, Bloomberg News](#)
- [SJC Affirms Dismissal of Bevilacqua Case, Boston Globe](#)
- [Mass. Attorney General Coakley Press Release](#)
- [Massachusetts Land Use Monitor](#)



[Richard D. Vetstein, Esq.](#) is an experienced real estate litigation attorney who’s handled numerous foreclosure title defect matters & cases in Land Court and Superior Court. Please [contact him](#) if you are dealing with a Massachusetts foreclosure title dispute.