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## Even Outrageous Foreclosures Difficult to Challenge

January 23, 2012 By [Courtney Sherwood](#)

Photo: Jeff Turner



A 50-year-old Mexican immigrant with an eighth-grade education can move forward with his lawsuit against Citibank after the bank **foreclosed** on him for failing to make loan payments that were nearly four times his pre-tax income. Jonas Z. Lona claimed that he was a victim of **predatory lending**, that his mortgage broker ignored his inability to repay a \$1.5 million loan on his \$40,000 annual income, and that his limited English and minimal education left him unable to understand many details of his 2007 home refinance.

After reviewing the evidence, a three-judge California appeals panel reversed a San Benito County Superior Court decision to dismiss Lona's claims, which were filed against both

Citibank and broker EMC Mortgage. But in agreeing that Lona could at least argue his case, the panel also seemed to suggest that his odds of winning are low.

The extreme disparity between Lona's income and his monthly loan payments was enough to justify a trial to determine "whether the loans were overly harsh and one-sided and thus substantively unconscionable," the appeals court panel ruled. Yet if their attorneys more carefully address Lona's allegations, Citibank and EMC may be able to get the case dismissed or win it at trial, the panel said.

Indeed, successful challenges to completed foreclosures are extremely rare.

Breyon Davis



"It's hard to establish standing without ownership of the property," said real estate and foreclosure attorney [Breyon Davis](#), with the Law Offices of Breyon J. Davis in Sacramento, Calif. "It's easier to help before the property's been sold to a third-party or reverted back to the bank."

A closer look at the suit against Citibank and EMC also provides a window into the moral ambiguities that can surround foreclosures.

Though he portrayed himself as an overwhelmed borrower who did not understand his mortgage, court records show that Lona was also a serial real estate investor who has lost other property to foreclosure in the past. Lona is now involved in multiple lawsuits related to these investments. His wife – whose name was not on the deed or \$1.5 million mortgage in question – had a separate source of income that she could have applied toward monthly loan payments, according to court documents. In addition, Lona may have provided false information to his lender, claiming an income of \$240,000, instead of \$40,000, at one point in the loan application process. Yet he stopped making payments on the property within months of refinancing, living in the house for free instead.

Meanwhile, Citibank – a purported villain in Lona's suit – had nothing to do with Lona's 2007 \$1.5 million mortgage. JP Morgan Chase-owned EMC Mortgage brokered the refinance, which was funded by Franklin Financial. Franklin, which specialized in subprime loans, then sold its interest in the loan to Citibank after the

transaction had closed. When Citibank foreclosed on the house and attempted to evict Lona, it appeared to follow all the rules set out in California state law, the appeals court found.

Lona sued to challenge the foreclosure, not the existence of the loans, and argued that because the terms of those loans were unreasonable he could not be legitimately foreclosed upon. Now he'll have a second chance to state his case before the court.

If you feel that you're the victim of an unfair loan or would like to challenge a bank's attempt to foreclose on your home, it's important to [contact a real estate lawyer](#) with experience in foreclosures before the foreclosure process is complete, attorney Davis said.

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