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Couple lose home, but may yet win Feds seek sanctions, say Countrywide abused bankruptcy laws

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Robin Atchley remembers one moment in her family's ordeal with Countrywide Home Loans as the absolute low point: the afternoon she told her four children to start packing up everything in their bedrooms.

It was time to leave home.

Robin Atchley and her husband, John, had spent the previous six months working furiously to avoid such a scene. Their plan had been to watch the kids grow up in their five-bedroom house in a rural corner of Cherokee County.

Unlike many families caught up in the mortgage meltdown, the Atchleys did not lose their house because they couldn't make their mortgage payments.

They lost it because of the expense and frustration of trying to force Countrywide to comply with bankruptcy laws that are supposed to offer a safe harbor to committed homeowners.

The massive California-based lender and its Atlanta law firm, McCalla Raymer, went to bankruptcy court twice within three months seeking permission to foreclose, claiming the Atchleys had not paid the mortgage. But the Atchleys' lawyer produced receipts in both cases proving that the Atchleys had indeed made their payments.

The problems didn't end there. The family says that Countrywide repeatedly billed them for inappropriate fees and charges that pushed the cost of the mortgage beyond their reach. About the time their children hesitated to ask for lunch money, Robin and John Atchley decided enough was enough.

They sold the house and paid Countrywide a balance that they thought was well above what they really owed. Their children got in the car with their suitcases and the family moved in with Robin's parents until they could save enough money to rent a house nearby.

"We would still be in that home if it hadn't been for Countrywide," said Robin Atchley, who works as a letter carrier for the U.S. Postal Service. "They just wouldn't leave us alone."

The Atchleys moved on months ago. But someone with considerable resources decided recently to take up the fight.

The Justice Department's United States Trustee in Atlanta attracted national attention in late February by going to court asking for sanctions against Countrywide for its actions in the Atchley case.

A crackdown on lenders

The U.S. Trustee's office is charged with ensuring the integrity of the bankruptcy system. But the action in the Atchley case is an unusual one that appears to be part of a coordinated effort to crack down on lenders who may be abusing the system.

The Trustee's office won't comment on its motives, but in its filing said Countrywide engaged in "bad faith conduct that abused the judicial process."

The Trustee's effort may be inspired by an Iowa law professor's groundbreaking study that found that lenders routinely ignore the requirements of bankruptcy law when seeking repayment by consumers.

Howard **Rothbloom**, the Atchleys' attorney, said the scrutiny will raise the curtain on a bankruptcy system that has tolerated too many injustices for families who are working hard to hold onto their homes.

"The regular course of conduct for these lenders is to do it wrong," **Rothbloom** said. "The system can't work that way."

Great start, then tragedy

Robin and her husband, John, a utility lineman, put \$22,000 down in 2004 when they moved out of their single-wide mobile home and bought the brand-new house in Waleska, about 50 miles from downtown Atlanta.

The next year, they refinanced with American Freedom Mortgage to pull out enough money to put up a fence and finish the basement. The project allowed their two daughters and two sons – today ages 14, 12, 11 and 5 – to each have their own rooms.

When the first payment book arrived, it had Countrywide's logo on the front.

The family kept up with its payments until a personal tragedy hit. Robin's sister died unexpectedly, prompting Robin to take a few weeks of unplanned leave from her job. They got behind with their bills.

To buy time to catch up, the Atchleys filed for bankruptcy in October 2005 under a Chapter 13 reorganization plan. A Chapter 13 is set up to stop repossessions and foreclosures, and establish a court-supervised repayment plan. Under such a plan, families must pay their current mortgage payments plus an extra payment that is distributed by the court to creditors.

The family had no significant debt other than their mortgage and auto loans. When their bankruptcy plan was filed, they were three months behind on the mortgage, which amounted to about \$5,000. The Atchleys immediately started making payments after their plan was filed.

In February and then again in May of 2006, Countrywide's attorney, McCalla Raymer, came to court seeking permission to foreclose, saying the family had not been making its required payments.

But payment receipts proved Countrywide's action was improper.

Fighting off the foreclosure actions, however, didn't solve all the problems. Countrywide planned to up the family's monthly payment to cover "escrow" charges, even though the family covered its own homeowners insurance policy and property tax payments.

"I made four payments in two months, and they were still telling me I owed them an outrageous amount of money on late payments and stuff," Robin Atchley said.

Legal battle too costly

The Atchleys couldn't keep up. Their budget was so tight, their sons offered to pay for gas using money they had earned doing odd jobs working for relatives.

They decided they didn't have the resources for a lengthy fight against Countrywide. They also didn't have the money to pay a mortgage balance that continued to climb.

They decided to throw in the towel.

When they entered bankruptcy, Countrywide said the Atchleys owed just under \$185,000. When it came time to pay off the loan, Countrywide said their pay-off total would be \$199,000. The Atchleys still do not understand how Countrywide came up with such a high mortgage balance, given their payment history. The sale price of the house was about \$2,000 short of what the family needed to pay commissions and Countrywide.

"We had to pay to get out of the home after we had put everything we had in it," Robin said.

The U.S. Trustee is now questioning whether the Atchleys paid Countrywide too much. Neither Countrywide nor McCalla Raymer would comment on the Atchley case, citing pending litigation.

In its court filing, the U.S. Trustee's office said Countrywide charged the family \$2,793 for "fees due" – much more than the \$242 enumerated for fees in Countrywide's court filings.

Exhibits in the case show that Countrywide also charged them \$2,564 for "escrow" charges, even though the family did not use escrow for taxes and insurance.

The U.S. Trustee's filing shows that Countrywide waited months to alert the bankruptcy court that the family had satisfied its debt. In the meantime, it continued to accept payments from the court made on the Atchleys' behalf.

"I still don't know if we got everything back that we should have," Robin Atchley said.

Situation not unique

The Atchleys' experience with their mortgage lender may not be unique.

Katherine M. Porter, a University of Iowa law professor, examined 1,700 recent Chapter 13 bankruptcy cases filed in 24 states, including Georgia. She discovered that mortgage lenders regularly fail to file documents required by law and that fees and charges billed to homeowners often are unreasonable.

"Bankruptcy is held out as this 'Come here, if you want to save your house,' " Porter said. "If that's what Congress wants it to be, then it needs to make sure that's how it's functioning."

Courts vs. Countrywide

The Atchleys' attorney said mortgage lenders profit by adding inappropriate fees to bankrupt borrowers' loans and often get away with it. "You have the perfect storm," **Rothbloom** said. "You have borrowers who are in financial disarray. They lack financial sophistication. And you have lenders who are ready, willing and able to take advantage of those circumstances."

Filings in courts across the country describe serious missteps by Countrywide and its attorneys.

A Texas judge, Jeff Bohm, rebuked Countrywide, Atlanta-based McCalla Raymer and a Texas law firm in a 72-page ruling. He found fault with each of the three parties' handling of a case in which Countrywide sought permission to foreclose on a homeowner who was up to date on payments. The Texas law firm hired by McCalla Raymer was singled out by the judge.

"Above all else, what kind of culture condones its lawyers lying to the court and then retreating to the office hoping that the Court will forget about the whole matter?" Bohm wrote.

In the wake of the ruling, McCalla Raymer managing partner John G. Aldridge said, "We are certainly paying very strict attention to the documents and evidence we present to any court."

In Ohio and Florida, the U.S. Trustee's office has filed complaints in the past month seeking sanctions against Countrywide. In Ohio, Countrywide sought payments in bankruptcy court from a homeowner who had already paid off Countrywide. In Florida, Countrywide tried three times to foreclose on a homeowner who no longer owed Countrywide any money on the property.

Countrywide has already been sanctioned in other cases.

A judge in Pennsylvania sanctioned the lender for trying to foreclose on a couple in that state who had made required payments "like clockwork," according to the judge.

Countrywide's Texas law firm was hit with a \$75,000 sanction for its behavior in a case that included court filings that were "erroneous" and "clearly legal nonsense."

A judge in North Carolina sanctioned Countrywide for twice changing the locks on a house that it had sought to repossess, even though the foreclosure had been stopped by a bankruptcy filing. Countrywide's agents disposed of the family's Christmas ornaments, family pictures and a christening dress when it improperly seized the home.

"It is difficult to imagine more deliberate, unwarranted and egregious conduct," Judge Catharine R. Carruthers wrote when sanctioning Countrywide.

When in the midst of her battle with the mammoth lender, Robin Atchley found Countrywide's behavior puzzling.

"I'm thinking 'Why are they trying to take our home?' " Atchley remembered. "We're making our payments -- why?"

Atchley and her husband are surprised to find themselves as players in what may turn out to be a ground-breaking legal challenge. But they do not mind playing that role.

"I hate to see anything bad or negative happen to anybody," Robin Atchley said. "I don't wish that on anyone. But you know, they deserve it."

Photo

ALLEN SULLIVAN / Staff

John and Robin Atchley at the house they lease. A dispute with Countrywide forced them out of their first home.

Photo

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John and Robin Atchley are surprised to find themselves as players in what may turn out to be a groundbreaking legal challenge.

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