

HYPOTHETICAL REGARDING ETHICS OF RECORDING A LIS PENDENS WHEN THE UNDERLYING CLAIM LACKS MERIT

BOB SADLUCK comes into the office of attorney FIXIT QUICK and shows him a complaint in which the plaintiff SALLY INNOCENT alleges ownership of Bob's residence and asks for an order evicting Bob and his family. The complaint shows that Ms. Innocent purchased the property recently from Investor Trust #7201 which obtained title at a non judicial foreclosure 2 months earlier.

Bob had a lot of equity in his residence and he and his family have lived there for more than 20 years. He says he was in contact with a loan servicer by telephone, and submitted papers to refinance his loan, and was told to stop making payments while his application was being processed. None of this is in writing. He didn't think the foreclosure sale would be held, but it was.

Bob says he can either borrow or inherit money from his mother who he says is on her deathbed. He doesn't have the money now, and he may need to wait until she passes. Bob says that he talked to Ms. Innocent, and that she said all she wants is a nice profit, and that she has a buyer who has agreed to purchase the residence for \$50,000 more than she paid Investor Trust #7201.

FIXIT agrees to represent Bob Sadluck. FIXIT files an answer on behalf of Bob alleging possible irregularities in the foreclosure, and possible collusion between Investor Trust #7201 and Ms. Innocent. He includes in his answer a third party complaint against Investor Trust #7201 alleging that promises were made to not hold the foreclosure.

FIXIT signs a lis pendens, which FIXIT has recorded.

FIXIT then sends a letter to Ms. Innocent saying "You are going to need to make a deal with us in which the foreclosure is undone, the deficiency cured, and you reconvey to the property to Bob. We are going to try to make a deal in which you will get what you paid Investor Trust #7201 plus \$10,000 for your trouble. You will need to let Bob and his family continue in the residence while we work on making this deal, but Bob will pay reasonable rent."

Is FIXIT acting unethically in light of the fact that our Supreme Court has held that the recording of a lis pendens is absolutely privileged?