



[Become a Member](#)

[Become a Registered Site User](#)

[Sign In](#)

- [Your Closing](#) ▾
- [Forms](#) ▾
- [ALTA Best Practices](#)
- [Commercial Title and Escrow](#) ▾
- [Search Services](#)
- [Publications](#) ▾
- [Real Estate Calculators](#) ▾
- [Foreclosure Information](#)
- [Glossary of Real Estate Terms](#)
- [About ATG Resource](#) ▾

- Transaction Tools
- [Order Title Now](#) ▶
  - [Complete Title Examination](#) ▶
  - [Request Closing Protection Letter](#) ▶
  - [Prepare Closing Statement](#) ▶
  - [Schedule Closing](#) ▶
  - [Water and Zoning](#) ▶
  - [TRID Calculator](#) ▶
  - [City Stamps](#) ▶

June 2009

Vol. 2, No. 6



### Casenotes

#### Illinois Fraud; Mortgages

*LaSalle Bank v Ferone*, 384 Ill App 3d 239, 892 NE2d 585, 322 Ill Dec 948 (2nd D 2008).

**Facts:**Property owner Catherine Ferone approached lawyer Marc Biagini for help in securing a credit line with LaSalle Bank (LaSalle) using her house as collateral. Biagini then fraudulently obtained Ferone's signature on a deed in trust creating a new trust for which Biagini was the sole beneficiary. Biagini proceeded to mortgage the property as collateral for a loan, whose proceeds he collected and used to pay his personal debts. LaSalle had granted the loan despite the fact that Ferone made several comments to the bank's agent, the appraiser, regarding her ownership interest in the property, as well as the fact that Biagini's loan application contained several misrepresentations.

Subsequently, LaSalle initiated foreclosure proceedings against rightful owner Ferone. She made the affirmative defense that LaSalle was not *abona fide* mortgagee because Biagini had fraudulently mortgaged the property with the bank. LaSalle filed for a motion for summary judgment as to this defense. Trial court granted this motion, explaining that Ferone could not establish an issue of material fact as to whether LaSalle had reasonable notice that something illicit was afoot, which the court found necessary in light of the alleged fraud being fraud in inducement rather than in execution.

**Holding:**Reversed and remanded. The totality of the facts raised the possibility that LaSalle had reasonable constructive notice regarding Biagini's fraudulent activities. In such a case as this, "one having notice of facts which would put a prudent man on inquiry is chargeable of other facts which he might have discovered by diligent inquiry."*Miller v Bullington*, 381 Ill 238, 243 (1942). The court called upon *In re Ehrlichin* reaffirming that the presumption that mortgagees always have notice of the physical property and inhabitants. 59 B R 646 (N D Ill 1986). In light of occupant Ferone's statements to a bank agent that she owned the property and this presumption that the mortgagee has notice of the property's inhabitants in addition to Biagini's suspicious conduct in his dealings with LaSalle, the court found that there was a legitimate issue of fact regarding whether LaSalle had reasonable notice. As a result, the grant of summary judgment was reversed.

[Last update: 6-18-09]

[Subscribe to Our Newsletters](#)

[Sign Up!](#) →

[Find an Attorney Near You](#)



**GENERAL INQUIRIES**  
IL: 800.252.0402  
WI: 800.788.8989

[Contact Us](#)

**ATG SOFTWARE SUPPORT**  
888.776.4420

[HelpDesk](#)

**CUSTOMER SERVICE**  
Contact Eileen Burns  
800.252.0402 ext. 1196

[Email Us](#)

