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The One Action Rule Nightmare

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First Cal. Bank v McDonald

California's one-action rule—legislatively misconceived at its creation, consistently misinterpreted by the judiciary, and capable of generating unpredictable and destructive consequences for practitioners—has been put on display again in *First Cal. Bank v McDonald* (2014) 231 CA4th 550, reported on p 25 of this issue. The decision also warns lender's counsel that nonchalantly being helpful to a borrower can be suicidal.

In *McDonald*, the bank's $1.5 million loan to Sally and John DeVincenzo was secured by a deed of trust on their shared Wasco property and also by a deed of trust on Sally's separate Shafter property. When John died, Sally, desiring to sell her Shafter property, obtained the bank's consent to release its deed of trust on it in return for applying its sale proceeds to the existing joint loan, which paid it down to about $1 million (and left it secured by the Wasco property). There were some glitches in the transaction, however, that no one originally noticed:

- On John's death, his children (rather than Sally) had been appointed personal representatives of his estate.
- When the bank agreed to release Sally's Shafter deed of trust, nobody thought to get the children's (*i.e.,* the personal representatives') approval.

Those oversights meant that when the loan later went into default and the bank initiated a judicial foreclosure on the Wasco property, John's children could argue that his estate should not be liable for any deficiency judgment because they had never consented to the release of the Shafter collateral. (As nonassuming heirs of John, his children were unlikely to have faced any personal liability on their father's promissory note anyway, but as the personal representatives of his estate, they could contend that the rest of his estate should not be liable for any deficiency judgment following the Wasco foreclosure sale.) The trial court disagreed with the children, but the court of appeal disagreed with the trial court and gave John's estate immunity from any deficiency liability that might arise if the Wasco security did not sell for enough (or lacked sufficient value) to cover the debt. (Only Sally was probably at risk for that, but that issue was not raised in the case.)

Did the Lender Do Wrong?

Because the bank held a nonrecourse note and sought to judicially foreclose on the collateral securing it, the court of appeal's holding that the bank could not obtain a deficiency judgment after the sale required it to conclude that the bank had done something wrong. Its sin was to have violated the one-action rule of CCP §726 by releasing the deed of trust on Sally's Shafter property without having obtained the prior consent of John's children. (Although the children held no interest in Shafter, they did hold, as John's personal representatives, his co-ownership interest in Wasco, as well as all his other assets.) As co-maker of a mortgage note, John "legally"intended to not have his remaining assets reached until after all of the security given for the joint loan had been exhausted, and that security included the Shafter property, even though it was entirely Sally's. Yet, by releasing Shafter, the bank thereafter needed only to foreclose on Wasco before seeking a deficiency judgment against the rest of John's estate. Did that violate the security-first aspect of the one-action rule?

Judge Poochigian, in his concurring opinion, thought that, under all of the circumstances, the one-action rule had not been violated: "[T]he Bank's conduct does not seem worthy of sanction.... Here, there is no evidence of defalcation or other misconduct." 231 CA4th at 574 n3. Had the bank asked John's children to consent to the release of Sally's property (and the crediting of its sale proceeds to the debt), their inevitable approval would have led to the same outcome, while an irrational refusal to consent by them would simply have triggered foreclosure sales of both parcels, with no likely financial gain for the children were Wasco judicially sold—as it should be under marshalling principles—before Shafter was. It is hard to see how the children, or John's estate, would have been any better off under such a situation. Perhaps there was a "violation" of the one-action rule, but does it matter if no one can show any harm from it?

The Logic of a One-Action Prohibition

My CEB Mortgage and Deed of Trust book (California Mortgages, Deeds of Trust, and Foreclosure Litigation (4th ed Cal CEB)) points out that judicial rationalizations for the California one-action rule have gotten blurred over the years. The rule was originally included in the New York Field Code as part of the intended abolition of the former distinction between law and equity proceedings; thus, the provision that "there shall be in this state *but one form of action* for the protection of private rights" was designed to stress that parties no longer had to worry about two—legal and equitable—forms of action being involved in their controversies that might need to be pleaded and litigated separately. (Another section of the Field Code provided for "but one action for the recovery of a mortgage debt" and also made it into our code, although it did *not* get enacted in New York, giving California a rule that New York (and the rest of the country) rejected.)

Why Only One Action?

The purpose of a one-action principle is often stated as being for the benefit of debtors—to relieve them from the stress of being sued repeatedly. Historically, however, it appears that the rule was intended to make life easier for creditors, especially mortgage lenders, who were often forced to file separate actions in equity (to foreclose on the title) and in law (to collect on the debt), and sometimes also to bring a legal ejectment action (to obtain possession of the property)—and who, amidst all this clutter, were also subject to the risk of being treated as having undone the effect of one of their actions by virtue of the steps taken in another. The "vexation" of dealing with a "multiplicity" of actions fell more on plaintiffs—who had to sue twice (and pay two sets of attorney fees) in order to get one complete recovery—than on defendants, who generally defaulted in those actions anyway. Even contemporary debt collectors of the vulture variety are unlikely to eagerly seek to incur double sets of fees against nonresponsive debtors.

A carelessly written statement in *Felton v West* (1894) 102 C 266, however, turned the vexation argument upside down, treating multiplicity of actions as a creditor strategy designed to harass debtors:

> Formerly the law allowed an action upon a promissory note, and also a suit in equity to foreclose the mortgage given to secure the note. The *mischief in such a practice lay in the multiplicity of suits, and the harassing of the debtor by two actions*, when the creditor could readily enforce all his rights in one. A remedy for this evil was provided by section 726 of the code, whereby the creditor was allowed to foreclose his mortgage and have a personal judgment for any deficiency in the same action. This court has construed this law so as to suppress the mischief and advance the remedy by compelling the creditor to exhaust his security before proceeding personally against the debtor.

102 C at 269 (emphasis added).

The "mischief" may have been in the multiplicity, but as *Felton* itself shows, it was the creditor who was trying to avoid harassment rather than the debtor. A lender was attempting to collect from a debtor who resided in California but whose loan security was located in Oregon. The lender's foreclosure in Oregon followed by an attempt to get a deficiency judgment in California obviously entailed two actions, but was held not to violate §726 or harass the debtor:

> [T]he section quoted has no application to the case at bar. To deprive this respondent of a right of action, under such a construction of the statute, would be to permit and justify a grave injustice.... Appellants' construction of the statute would not promote justice, but injustice; neither would the statute's apparent object be effected thereby. Such a construction would result in the gravest injustice, for respondent, a resident of California, would thus have no remedy in California courts against a defendant also a resident of California, upon a matured promissory note made and payable in this state. He could not bring an action here to foreclose the mortgage, for the security is situated in another state. He could not bring a personal action at law upon the note only, for our courts would not allow him to waive his security. *Neither could the object and intent of the legislature in enacting this statute be effected in this case by such a construction; for one action, either in Oregon or California, could not be made sufficient to secure all of respondent's rights*.... It is hardly necessary to say that the action for the foreclosure of this mortgage, brought in the state of Oregon, was not the action referred to in this section of the Code of Civil Procedure.

102 C at 269 (emphasis added).

Despite those facts, *Felton*'s language is used too often by judges to berate lenders for taking steps deemed to violate the one-action rule, as if they believe that the underlying motivation is harassment and annoyance of debtors rather than a desire to function efficiently under dubious rules of procedure.

Regardless of who is benefited or vexed by it, §726 is in the statute books and its wording is that of a mandatory rule. Its command displaces the common law choice of remedies a mortgagee might choose between pursuing the collateral and collecting the debt (or both). It puts California at odds with most other jurisdictions that allow real estate lenders to make such choices, as well as putting our real property security remedies in conflict with our personal property ones, whereas UCC §9–601 specifically permits commercial (*i.e.,* nonreal estate) lenders to pursue collection in any order they please. Apparently, multiplicity and harassment are not as worrisome when personal rather than real property security is involved.

A Nonzero Security-First Policy

Section 726 also, because of its other subsections, is seen as mandating a particular procedure, requiring that foreclosure of the security occur before entry of any judgment of personal liability, thereby making it a "security-first" rule as well as an anti-multiplicity rule, because the lender is prohibited from going after the debtor's other assets (*e.g.,* John's general estate) until after it has exhausted all of his posted security.

Does this sequencing mandate do either party any good? If a borrower has other assets (say, a yacht) in addition to the land he has pledged as security for his mortgage loan, how is he better off knowing that the yacht cannot be reached until after, rather than before, the land has been sold? Mortgagors might be better off under a true election-of-remedies rule (which would make going after one asset a waiver of rights to the other), but California's one-action rule permits a mortgage lender to reach both assets, in a single proceeding, as long as it is all done in the "correct" order. The ordering requirement does not protect either asset from the lender's reach; if both the land and the yacht will be lost ultimately, the security-first principle does not appear to do John much good.

From the opposite perspective, mandated sequencing can be costly to a lender whose original security now lacks sufficient value to cover its debt and who is delayed in reaching its debtor's other assets while it is forced to go through the time-consuming preconditions of exhausting its original security before it can reach anything else. The delay inevitably exposes the lender to the risk of losing those other assets as rival creditors (unburdened by a one-action rule if they are either unsecured or secured only by personal property) reach them on execution before it does. It is ironic that our one-action rule burdens mortgagees without compensatingly benefiting mortgagors—a hardly laudable goal of any thoughtful debtor-protection policy.

Section 726 Traps

Sometimes, the statute's commands can be easily honored, even if they are not particularly sensible. When a creditor has only one piece of real property collateral, it should know that its debtor can successfully object to its attempt to ignore the security and sue her personally, or it will quickly find this out when the debtor does raise §726 as an affirmative defense to an action the lender brings on only the note. See *Western Fuel Co. v Sanford G. Lewald Co.* (1922) 190 C 25. Were §726 strictly an affirmative defense, it might inconvenience a mortgagee but it would not blindside it.

However, when a real estate loan is secured by two assets, inclusion of only one of them in any judicial foreclosure action filed by the lender will be deemed to be a "waiver" of its security interest in the other. This is much more of a counterintuitive trap, since that same multiply secured creditor could have conducted separate nonjudicial trustee sales of each of its items of collateral in a piecemeal fashion, because trustee sales are not treated technically as actions and are therefore regarded as outside the one-action statute. Such an interpretation hardly seems consistent with the judicially stated policies underlying the one-action rule, making this likely to confuse newcomers, especially when mixed real and personal property is involved. But when collecting on a loan secured by real estate by way of judicial foreclosure, California's reading of its one-action rule requires the inclusion of all of the collateral in a single foreclosure action, under the supreme court's decision in *Walker v Community Bank* (1974) 10 C3d 729. *Walker* can be regarded as the first of the §726 "traps" before its outcome was known.

***Walker* and Its Progeny**

Article 9 of the Commercial Code makes it clear that a commercially secured lender does not jeopardize its rights to any of its security by going after only some of it (or none of it) as a first step. UCC §9–601. This feature is probably what caused Community Bank in the *Walker* case to believe that it could separately foreclose on its chattel mortgage before judicially foreclosing on its real estate mortgage in 1965, two years after the UCC went into effect. The notions that a secured lender should have more remedies than an unsecured one, and that a multiply secured lender therefore should have even more remedies than a singly secured one, seem so sensible, but *Walker* reached the opposite conclusion, ruling that the effect of §726 on omitting the real property security from the chattel mortgage foreclosure action was loss of that real property security.

The court explained its result in a way that has caused trouble ever since:

> [S]ection 726 is susceptible of a dual application - it may be interposed by the debtor as an affirmative defense or it may become operative as a sanction.... If the debtor does not raise the section as an affirmative defense, he may still invoke it as a sanction against the creditor on the basis that the latter[,] by not foreclosing on the security in the action brought to enforce the debt, has made an election of remedies and waived the security.

10 C3d at 734. California thus invented the notorious "sanction defense" for §726 as a companion to its preexisting awkward but manageable version of the rule as an affirmative defense.

Walker also spoke in terms of a "waiver" of the right to a deficiency judgment, as well as a "sanction" for misbehavior, which seemed to imply that the statute was intended to target even nonblameworthy conduct, a concept picked up by the majority in *McDonald*. However, since waiver constitutes *intentional* relinquishment of a known right, it is doubtful that Community

Bank ever intended to release its real estate mortgage when it foreclosed only its chattel mortgage (in *Walker*), or that First Bank intended to release John's share of the Wasco property (and whatever else his estate had) when it agreed to release Sally's Shafter property (in *McDonald*). The waiver references within §726 all seem to deal with post-foreclosure filing conduct—allowing a lender to shorten its post-sale redemption period by waiving its rights to a deficiency judgment—rather than "implicit" waivers arising from unrelated conduct.

The sanction defense created by *Walker* subjects a real estate lender to the risks that

- Its conduct may not have been resisted by its debtor but might nevertheless justify its being subsequently sanctioned for having engaged in it; and
- The sanction may be imposed in uncertain ways—Community Bank lost its mortgage and First Bank lost its right to a deficiency judgment.

Lenders' concerns inevitably arose as to what other conduct might be held to trigger a sanction and as to what sanctions might be deemed appropriate—concerns that in retrospect turned out to be justified in light of the cases that followed *Walker*.

The *Wozab* Offset

Our supreme court described the situation in *Security Pac. Nat'l Bank v Wozab* (1990) 51 C3d 991, 995, reported at 14 CEB RPLR 22 (Jan. 1991), thusly:

> A bank depositor owed a debt of approximately $1 million to his bank. The debt was secured by a deed of trust on the depositor's real property. Without first seeking to foreclose the security interest, the bank set off approximately $3,000 in the depositor's account in partial satisfaction of the debt. The debtor protested to the bank, contending it was required first to foreclose its security interest. The bank responded by reconveying the deed of trust to the debtor and then filing suit to collect the remainder of the debt. The question before us is whether the bank's setoff without first foreclosing its real property security interest precludes this action by the bank to recover the balance of the depositor's debt.

Could a $3000 offset trigger loss of a $997,000 debt? Yes, apparently, if the offset were held to violate the one-action rule and loss of the debt were deemed to be an appropriate sanction for such misconduct.

On the question of whether a setoff could violate the one-action rule, that step does not look like an action at all, since it is nonjudicial, like a trustee sale. A bank that is owed money on a loan from one who is also a depositor simply offsets the two amounts internally, without going near a court. But in *Wozab*, the supreme court held that the setoff violated §726, even though it was not an action, because the offset was taken before the debtor's loan security had been foreclosed. That meant that steps taken by a loan officer—even though not in court or with the knowledge or consent of bank counsel—can trigger the one-action rule (and bring its sanction consequence into play). If exercise of ordinary (and otherwise proper) rights of offset is a one-action violation, what other conduct might be subject to the same characterization?

In *Wozab*, it was the sanction issue for this violation that drew most judicial attention. The lower courts had held that the bank should suffer the loss of its entire remaining claim—the $1 million mortgage—because of the wrongful exercise of its $3000 setoff right, but the majority of the high court held that, in light of the fact that the debtor had demanded that the bank release its mortgage and the bank had then complied, loss of the security interest, without loss of the underlying debt, was an adequate sanction.

This softer position—loss of security rather than loss of the debt—narrowly prevailed by a 4–3 vote in that court, but it was available to save the lender in this case only because the debtor had first demanded it. Whether a lender who improperly exercised an offset or attempted some other perceived wrongful circumvention of the one-action rule may similarly exonerate itself by undoing what it did, with or without having been asked, is another worry for its lawyers to bear. Loss of the entire claim may be the more likely sanction when the debtor is not so cooperative or the bank not so responsive.

Finally, loss of the security is certainly milder than loss of the debt, but not costless. An unsecured $1 million claim against a shaky borrower is not always a valuable asset.

The *Shin* Attachment

Shin v Superior Court (1994) 26 CA4th 542, reported at 17 CEB RPLR 308 (Oct. 1994), tells an even more threatening story. Korea First Bank had loaned three investors (including Shin) $9.6 million, secured by a deed of trust on some California property. When the investors defaulted and the bank apparently concluded that its security was insufficient, it sought as a first step to obtain a prejudgment attachment order from a Korean court on land owned by Shin, a few weeks before filing its judicial foreclosure action in California against the local collateral. Nothing seems to have come out of the Korean attachment, but for the California court of appeal, the effect of that attachment was to waive the California security, to invalidate the California foreclosure action, and—apparently—to release all investors from liability on their $9.6 million mortgage note to the bank.

The bank had argued that its Korean attachment was not an action because it sought only provisional relief, but this contention was rejected: Attachment is literally an action under CCP

§22 and has the same financial effect of depriving a debtor of its unpledged assets as does a banker's offset under *Wozab*. The demons of harassment and multiplicity were resurrected in new forms (26 CA4th at 548):

> KFB's tactics, if allowed, would empower every secured lender to initiate lawsuits for the sole purpose of sequestering a debtor's unpledged assets to assure payment of a potential deficiency judgment before there is any showing that a deficiency will occur. The real vice of permitting this practice is that it may deny debtors access to assets which may be needed to fund a legal defense fending off such action and asserting their rights under [CCP §726]. Conceivably, secured creditors, following KFB's example, could pursue all of a debtor's unpledged and nonexempt assets with attachment proceedings rendering the debtor economically vanquished without ever demonstrating that its security is inadequate to satisfy its claim. ...We believe it is contrary to the objectives of [CCP §726(a)] to allow secured creditors to launch campaigns to sequester debtor's personal assets by filing separate actions on secured claims to obtain attachments in anticipation of a deficiency judgment which may arise in an independently filed judicial foreclosure action. We cannot countenance such a strategy since it would force on the debtor an unreasonable burden of resisting and defending any number of actions in as many venues as the debtor may have unpledged assets. Here, KFB has confronted Shin with two pending lawsuits on the same claim and only in the second one is it resorting to its security. This is a paradigm of what is meant by a "multiplicity of lawsuits." ... The sanction of the one action rule applies to this very situation for the purpose of encouraging secured creditors to exhaust their security first. Otherwise, secured creditors could impose the annoyance and expense of multiple lawsuits on debtors with impunity.

This language redirects the §726 policies, adding harm to a debtor from being denied the ability to use its unpledged assets to fight the mortgage case to the existing burden of having to defend two lawsuits. The bank's filing two separate actions in *Shin* was more likely due to its inability to find any other California assets worth reaching rather than to worries about the debtor building up a war chest, but that possibility was not suggested by the court.

Shin's new policy logic seems to be more accurately an argument against wrongful attachment rather than against multiplicity, since the court's imprecations against using attachment to stop a debtor from funding a defense apply whether or not the original loan was ever secured or whether the attachment is ever accompanied by a second judicial foreclosure action. Abusive attachment, like abusive lis pendens, can be effective in many contexts.

Note, however, that under CCP §490.020, the sanction for wrongful attachment is all damages proximately caused, plus costs, expenses, and attorney fees, not loss of the underlying claim or any security held by the creditor. The sanctions from a wrongful lis pendens are simply attorney fees and costs, with no damages or other penalties added on. CCP §405.38. Thus, to sanction a creditor who feared that it was undersecured (and wrongly attempted to better its prospects) by complete forfeiture of its claim goes far beyond the remedies for wrongful attachment or wrongful lis pendens—a point I shall return to below.

Joint Debtors, *Schwenke*, and Where the Money Went

A situation somewhat similar to *McDonald*, and perhaps going the other way, occurred 27 years earlier in *Pacific Valley Bank v Schwenke* (1987) 189 CA3d 134, reported at 10 CEB RPLR 95 (June 1987), when a lender released the security that one debtor had posted for a joint loan and was held to have thereby released the other debtor from deficiency liability, even though that other debtor was not a co-owner of that released collateral. The *Schwenke* court held that as a co-maker of a secured note, the other debtor was still protected by §726, just as John's remaining estate in *McDonald* was. (Civil Code §1543 permits one debtor to be released without losing rights against the other, but like the law of offsets, those rules apparently do not apply to releases in the mortgage context.)

The bank in *McDonald* probably did not realize that John's estate was a separate co-debtor not personally represented by Sally. But even if it had, it might have concluded that *Schwenke* presented no threat because none of the funds released in *Schwenke* had been applied toward the joint debt, whereas all of the funds generated by sale of the released Shafter parcel in *McDonald* were so applied. A co-debtor fearing personal liability for that part of the debt over and above the value of the security clearly feels differently whether its proceeds are applied to the debt or instead are just given away to someone else. Indeed, to decree that the release of some security is a violation of the one-action rule even though the release was paid for by full application of its sales proceeds to the balance of the debt (and the consequent betterment of all debtors) gives CCP §726 more of a religious significance than one of any practical value.

Sensible Sanctions

Sally's Shafter property was released because Sally (its sole owner) requested its release and its sale proceeds were then applied in their entirety to reduce a debt that Sally and her deceased husband jointly owed. Under those circumstances, the bank's failure to obtain the consent of John's children (representing his interest in the other security that he and Sally had posted as well, in his general assets) seems to constitute at best a trivial violation of the one-action rule, with none of the evils of multiplicity, harassment, failure to exhaust, or deprivation of defense funds involved. Even if a technical violation can be found, is the sanction of loss of deficiency liability sensible as the remedy for what was done?

Lawyers' uncertainties as to when their clients' behavior will be held to violate the one-action rule—as the above review of case law illustrates all too well—are compounded when the penalties imposed for doubtful violations are as punitive as loss of security or loss of debt. Judge Poochigian's observation that "A $1 sanction can be harsh if imposed for blameless conduct" fits these situations well. *First Cal. Bank v McDonald* (2014) 231 CA4th 550, 574 n3 (concurring opinion of Poochigian, J). Both creditors and debtors (other than those who win the lottery by being rewarded with an unexpected sanction) would be better off if the rules could be rationalized somehow.

But rationalizing a rule is not that easy when it comes straight from a statute. Given its history, our legislature may feel too unconfident as to what change may be beneficial. (Montana has amended its one-action statute to make it state that it does not prohibit enforcing powers of sale, assignments of rents, guaranties, foreign mortgages or judgments, Article 9 rights, or steps taken by, *e.g.*, sold-out juniors or holders of worthless security (§71–1-222), but none of the items in that list would have told First California Bank about the dangers of agreeing to Sally's request to release its deed of trust on her Shafter property (or telling Security Pacific Bank or Korea First Bank to do what they did). As long as there is a restriction on mortgage recovery ("but one") and as long as "action" has a meaning that is policy-driven rather than literal, uncertainty will prevail and lenders will continue to act in terror when they negotiate with their borrowers. It is unlikely that we will ever live under a one-action-free legal regime.

Nor are private agreements likely to offer much hope. Even if all loan documents explicitly waived all aspects of the one-action rule, they would have no prospect of entitling lenders to enforce them as is done elsewhere. "Subsequent" waivers of the rule have slightly better prospects of success—see *Salter v Ulrich* (1943) 22 C2d 263—but courts seem quite willing to invoke sanctions as an offset to such waivers. See *James v P.C.S. Ginning Co.* (1969) 276 CA2d 19.

There is hope of reducing the stress level in the field by clarifying and reducing the appropriate sanction a lender may suffer from having violated the one-action rule. Code of Civil Procedure §726 is silent on this question, and the judicial ruling (in *McDonald*) that a lender should lose its ability to recover a deficiency judgment against one debtor for improvidently accommodating a co-debtor's request to release her security and apply it to their debt seems more like kneecapping lenders than enforcing any rational policy of protecting debtors from harassment.

California's one-action statute is likely to remain in place, but could be accompanied by more nuanced and less overwrought sanctions than the courts have superadded to it. I have already mentioned the statutory damages penalties imposed for wrongful attachments and improper lis pendens filings—which resemble one-action violations in going after the wrong relief or asset first. (Damage exposure was a contention made by the lender in *Wozab* and rejected by the court there, but under non-*Wozab* facts—*e.g.*, lack of a demand or reconveyance of the security—it remains an open question whether a borrower should be forgiven its debt if it was not harmed by its lender's conduct.)

The field of marshalling assets, mentioned earlier, also offers another plausible alternative sanction. Marshalling is little more than another variation of a one-action policy under different circumstances. A secured lender may be obliged by the principles of CC §2899 or §3343 to go after Asset A before going after Asset B; when it did not do so, it can be sanctioned by giving the other party a credit for the additional income that would have been received had the proper order of collection been followed. See *Commonwealth Land Title Co. v Kornbluth* (1985) 175 CA3d 518, reported at 9 CEB RPLR 70 (Apr. 1986). Following that notion, if a court concluded that nonrelease and subsequent inclusion of Sally's Shafter property in the *McDonald* foreclosure would have generated, say, an additional $50,000 of funds for the bank, then the bank's ultimate deficiency recovery would be made $50,000 smaller because of it (like a higher fair value determination might also do). But there would still be a deficiency judgment, since the sanction would not need to be complete loss of that deficiency. And if, as Judge Poochigian contended, the bank's payoff for granting the release was deemed equal to the full market value of the parcel but that payoff amount was in fact applied entirely to the loan balance, then there might need to be no sanction at all, even if a violation of the one-action rule were found.

Lenders would obviously be better off under a more rational and predictable system of sanctions for one-action violations. If it is true that lenders pass their uncertainty costs on to borrowers through higher interest rates, smaller loans, or greater demands for security, then borrowers may profit, too. The only group at risk of suffering from such an improvement might be law professors—or at least those who have staked their reputations on spending so much time fulminating about the situation.