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| <p style="text-align: center;">IN THE CIRCUIT COURT OF THE 6th JUDICIAL CIRCUIT OF FLORIDA IN AND FOR PINELLAS COUNTY DIVISION #: 19</p> <p>Case #: 2008-018284-CI</p> <p>Residential Credit Solutions, Inc. Plaintiff,</p> <p>-vs.-</p> <p>Ernest C. Hassell a/k/a Ernie Hassell and Teri S. Dittrich-Hassell a/k/a Teri Dittrich-Hassell, Husband and Wife; et al. Defendant(s).</p> <p style="text-align: center;">HEARING BEFORE JUDGE WILLIAMS (Pages 1-178)</p> <p style="text-align: center;">WEDNESDAY, FEBRUARY 15, 2012 10:55 A.M. - 4:30 P.M.</p> <p style="text-align: center;">PINELLAS COUNTY COURTHOUSE 545 FIRST AVENUE NORTH ST. PETERSBURG, FLORIDA 33701</p> <p>Reported By: Jennifer Sirois Esquire Deposition Solutions - Tampa Office Phone - 813.221.2535, 800.838.2814 Esquire Job No.: 275489</p> | <p>1 Trial taken before Jennifer Sirois, Court 2 Reporter, in the above cause. 3 ----- 4 5 THE JUDGE: We're here on Case Number 6 08-018284, Residential Credit Solutions 7 versus Ernest C. Hassell, a/k/a Ernie 8 Hassell, and Teri S. Dittrich-Hassell. 9 And if you would like to state your 10 names, please, for the record. 11 MR. GACHE: Good morning, Your Honor. 12 Ron Gache, with me is Meghan Kenefic, for 13 the plaintiff. 14 MR. WEIDNER: If it please the Court, 15 Your Honor, Matthew Weidner, W-E-I-D-N-E-R, 16 here on behalf of the defendants, Ernest C. 17 Hassell and Teri E. Hassell. 18 Counsel here is Michael Fuino, 19 F-U-I-N-O; and Jason Kral, K-R-A-L. Teri 20 Dittrich-Hassell, D-I-T-T-R-I-C-H, and 21 Ernest Hassell. 22 THE COURT: Thank you all. 23 Plaintiff may proceed. 24 MR. WEIDNER: If I may interject, Your 25 Honor.</p> |
| <p>1 APPEARANCES: 2 3 MEGHAN KENEFIC, ESQUIRE 4 RONALD M. GACHE, ESQUIRE 5 Shapiro & Fishman, LLP 6 4630 Woodland Corporate Boulevard, Suite 100 7 Tampa, Florida 33614 8 813.880.8888 9 mkenefic@logs.com 10 rgache@logs.com 11 12 Attorneys for Plaintiff 13 14 15 16 MATTHEW D. WEIDNER, ESQUIRE 17 MICHAEL FUINO, ESQUIRE 18 JASON KRAL, ESQUIRE 19 The Law Offices of Matthew Weidner, P.A. 20 1229 Central Avenue 21 St. Petersburg, Florida, 33705 22 727.894.3159 23 Attorneys for Defendant 24 25 Also Present: Teri Dittrich-Hassell</p> | <p>1 THE COURT: Yes. 2 MR. WEIDNER: I previously filed and 3 submitted to your court the binder on this 4 motion and wanted to consider if the Court, 5 as you indicated, taking up pretrial 6 motions. 7 THE COURT: I don't remember. You're 8 going to have to refresh my memory. 9 MS. KENEFIC: I did not hear what 10 Mr. Weidner said. 11 MR. WEIDNER: On February 6th when we 12 met outside Judge William's office, I had 13 presented to opposing counsel the binder 14 that I filed. I have a copy of it here if 15 you don't have the binder, Your Honor. It 16 dealt with several issues that had 17 transpired in between, and I'll be happy -- 18 THE COURT: You gave it to me on 19 February 6th. I don't have it in here in 20 the courtroom today. 21 MR. WEIDNER: May I present my copy to 22 you? 23 THE COURT: Sure. What is it you 24 said, something about pretrial motions. 25 MR. WEIDNER: I had requested that --</p> |



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| <p>1 well, we filed a motion for continuance. 2 You said we could take care of that in 3 pretrial. I'm going to withdraw that 4 motion and say we're ready to go. 5 THE COURT: What motion are you 6 withdrawing? 7 MR. WEIDNER: Motion to continue. 8 THE COURT: Okay. So what motions are 9 pending? 10 MR. WEIDNER: What we have before you, 11 Your Honor, is a motion -- defendant's 12 motion in limine that was filed in your 13 office on February 6th. And I apologize if 14 the Court hasn't seen it. 15 THE COURT: I've been in trial every 16 single day with a jury until yesterday. So 17 if you filed something on February 6th, 18 that's the day we started picking the jury 19 and we've been in trial since then. 20 So nothing has been read since then 21 except emergency motions, of which I've had 22 twenty. Of those twenty emergency motions, 23 guess what ten of them were, motion to 24 continue foreclosure cases. 25 That's the sad truth of what we've</p> | 5 | <p>1 Are you a witness, ma'am? 2 MR. GACHE: She's a party. 3 MR. WEIDNER: She's a witness. 4 MR. GACHE: She's a party. 5 MS. KENEFIC: She's Residential Credit 6 Solutions, Your Honor. 7 THE COURT: You're the corporate 8 representative for Residential Credit 9 Solutions? 10 THE WITNESS: Yes, ma'am. 11 THE COURT: All right. You can sit at 12 the table. 13 MR. WEIDNER: Your Honor, we had an 14 order prepared that would only allow a 15 witness for Residential Credit to appear 16 and give testimony because as of that day, 17 the only witnesses that they had disclosed 18 had been Residential Credit. The day 19 before, opposing counsel provided a new 20 proposed witness list which included a 21 witness from American Home Mortgage 22 Servicing, Inc. 23 If Your Honor will remember, we had 24 a discussion where we had that agreed order 25 we all agreed to and at the last moment</p> | 7 |
| <p>1 been into. Anyway, continue. 2 MR. WEIDNER: If it please the Court, 3 Your Honor, if I can approach and point out 4 to the binder there what the motion -- 5 THE COURT: You can't talk from there. 6 This is a bad courtroom for acoustics and I 7 can't hear and others can't hear. So when 8 you're speaking, you have to be behind the 9 mic and the witness is going to be behind 10 the mic. 11 MR. WEIDNER: I want the Court to 12 remember what happened. We were here on 13 January 26th. We had a pretrial order that 14 we had agreed on. That pretrial order 15 asserted that the only witnesses who would 16 be called were a witness from Residential 17 Credit, and let me stop for just a second. 18 I'd like to invoke the rule. 19 THE COURT: Okay. The rule has been 20 invoked. Ladies and gentlemen, anyone who 21 is here as a witness on this case, 22 Residential Credit Solutions versus 23 Hassell, if you would step outside the 24 courtroom and we'll call you when your 25 testimony is required.</p> | 6 | <p>1 opposing counsel said: We would like to 2 call a witness from American Home Mortgage 3 Servicing, Inc. 4 Over objection and the Court 5 deferred and allowed a witness from 6 American Home Mortgage Servicing, Inc. to, 7 A, be deposed, and then Your Honor said 8 that she would be allowed to provide 9 testimony. Now, that said -- 10 THE COURT: Isn't this the one where 11 they moved to substitute party plaintiff 12 and I granted it and then I asked the 13 defense at one of the prior hearings -- I 14 don't know what date -- if the defense 15 wanted them to join in instead of -- 16 because the rule says you can either 17 substitute or join in a proper party. You 18 can either join them in with the previous 19 party or substitute. 20 I substituted it but I said to the 21 defendant: If you want me to join them in, 22 I will, and I thought the defendant 23 declined. 24 MS. KENEFIC: That's correct, Your 25 Honor.</p> | 8 |



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| <p>1 THE COURT: Okay. Go ahead.</p> <p>2 MR. WEIDNER: That is absolutely</p> <p>3 correct, Your Honor. We can enter those</p> <p>4 transcripts. We will later because those</p> <p>5 points are addressed in this motion in</p> <p>6 limine because they are directly relevant.</p> <p>7 The point that I'm making here is</p> <p>8 that the first we knew that a witness from</p> <p>9 American Home might be present to testify</p> <p>10 was January 26th. Your Honor's order</p> <p>11 asserted that I had until February 14th to</p> <p>12 take a deposition of American Home Mortgage</p> <p>13 Servicing, Inc.</p> <p>14 What's transpired between the 26th</p> <p>15 and just yesterday was a furious fight over</p> <p>16 how I could take a deposition of that</p> <p>17 nonparty witness. They raised objections</p> <p>18 and so it was only just yesterday that I</p> <p>19 was permitted to take the deposition of</p> <p>20 this nonparty, and I would assert that</p> <p>21 nonparty was not responsive in so many</p> <p>22 respects, but that's not covered in my</p> <p>23 motion. I'll cover that later.</p> <p>24 The issue presented in this long and</p> <p>25 detailed motion raises several important</p> | <p>9</p> <p>1 is, in fact, newly discovered evidence,</p> <p>2 which I have just now been able to present</p> <p>3 to the Court. The other point that I want</p> <p>4 to --</p> <p>5 THE COURT: Tell me what the newly</p> <p>6 discovered evidence is. But, wait a</p> <p>7 minute, I thought you withdrew the motion</p> <p>8 to continue, so why do I care, not that I'm</p> <p>9 not a caring individual. But legally does</p> <p>10 it make any difference if you don't want</p> <p>11 the continuance?</p> <p>12 MR. WEIDNER: It does, Your Honor,</p> <p>13 because it's going to call into question</p> <p>14 the evidence that they will submit. What's</p> <p>15 detailed here in this motion is the fact</p> <p>16 that I believe they knew of this evidence</p> <p>17 all along. We had two motions to compel.</p> <p>18 They failed to introduce that evidence.</p> <p>19 They failed to comply with the motions to</p> <p>20 compel because they asserted that they were</p> <p>21 no longer the plaintiff so they did not</p> <p>22 have to respond to discovery that we had</p> <p>23 two hearings on.</p> <p>24 THE COURT: So that means they should</p> <p>25 have joined.</p> |
| <p>10</p> <p>1 points about the evidence that they will</p> <p>2 seek to admit in this trial.</p> <p>3 MR. GACHE: Your Honor, can I just</p> <p>4 interject. In nonjury proceedings, you</p> <p>5 really don't have motions in limine.</p> <p>6 There's no jury.</p> <p>7 When we go to offer something, he</p> <p>8 can either argue surprise or he can argue</p> <p>9 irrelevant or he can argue some other</p> <p>10 evidentiary basis. But you don't really go</p> <p>11 through a motion in limine in a nonjury</p> <p>12 setting. You just let us get started.</p> <p>13 There's no jury to protect us from.</p> <p>14 So he has a long motion. It was</p> <p>15 filed before the deposition yesterday so it</p> <p>16 has nothing to do with yesterday's</p> <p>17 deposition. And he basically has newly</p> <p>18 discovered evidence that he believes --</p> <p>19 MR. WEIDNER: This is explicitly</p> <p>20 clear, Your Honor, and the point -- counsel</p> <p>21 is absolutely correct. I appreciate that</p> <p>22 distinction.</p> <p>23 The point that I want to make with</p> <p>24 this is that this information that came to</p> <p>25 my attention since this witness was noted</p> | <p>12</p> <p>1 MR. WEIDNER: Well, it's covered in</p> <p>2 the motions --</p> <p>3 THE COURT: I did give you all that</p> <p>4 option and now -- you didn't take the</p> <p>5 option. What do you want me to do with it?</p> <p>6 Do you want me to disqualify them as a</p> <p>7 plaintiff?</p> <p>8 MR. WEIDNER: The point was, as</p> <p>9 inserted in the motion, when you</p> <p>10 substitute, they are required -- the new</p> <p>11 plaintiff, RSC, would have been required to</p> <p>12 know the same information that the</p> <p>13 predecessor plaintiff knew because you</p> <p>14 substituted them.</p> <p>15 And as I quote, the definition in</p> <p>16 there of substitution is you take the shoes</p> <p>17 of the other, including taking the shoes of</p> <p>18 the discovery that was outstanding at the</p> <p>19 time the substitution occurred.</p> <p>20 Let's keep in mind, I filed a</p> <p>21 request for production, interrogatories,</p> <p>22 request for admission on August 2010. They</p> <p>23 did not answer that. They filed a motion</p> <p>24 to extend time. That was never ruled upon.</p> <p>25 In 2011, and after the substitution</p> |



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| <p>1 occurred, they, the new plaintiff, 2 Residential Credit, answered, to a certain 3 extent, some of the discovery. The point 4 addressed in this motion is they cannot use 5 discovery both as a sword and as a shield. 6 Discovery was outstanding as to the 7 predecessor plaintiff -- 8 THE COURT: What did you discover 9 yesterday that they didn't provide? 10 MR. GACHE: It wasn't yesterday, 11 Judge. 12 THE COURT: I thought the deposition 13 was yesterday. 14 MR. GACHE: Yeah, but this motion was 15 filed before the deposition. 16 THE COURT: You filed this last 17 Monday. 18 MR. WEIDNER: Correct. When I learned 19 that the Court would allow the deposition 20 of a nonrepresentative -- 21 THE COURT: How did you run out and 22 discover when you said you pulled up this 23 newly discovered evidence? 24 MR. GACHE: And then I'd like to 25 respond.</p> | <p>1 MR. GACHE: Yes, Your Honor. We filed 2 a formal objection. We just got this 3 yesterday. 4 THE COURT: Okay. Hold on just a 5 minute. 6 MR. GACHE: We'll talk about it in a 7 second. This is what I call a red herring. 8 When I speak, you'll understand, but this 9 is a nonissue. 10 MR. WEIDNER: Your Honor, this 11 affidavit is long and it's detailed. There 12 is a purported note that exists in this 13 case by an individual by the name of 14 Danielle Sterling. 15 In preparing for the deposition, I 16 discovered this affidavit. This affidavit 17 asserts that the same person who purports 18 to sign an endorsement in this case did not 19 sign the endorsement in that case there. 20 Why this is important and why I'm 21 asserting it was concealed from me is in 22 our interrogatories submitted in August 23 2010. I asked three specific questions 24 about that witness, Danielle Sterling. 25 Opposing party, at that point in time, was</p> |
| <p>1 MR. WEIDNER: I'll turn your attention 2 to the tab number, I believe it's 4. This 3 is an affidavit filed in the case. 4 THE COURT: Four says, "Notice of 5 Taking Deposition Duces Tecum." 6 MR. WEIDNER: Maybe it's 5. 7 THE COURT: Five, Affidavit of Third 8 Party Defendant Danielle Sterling. 9 MR. WEIDNER: That's correct, Your 10 Honor. I'd like to draw your attention to 11 that. When we learned that an American 12 representative would be testifying, Yvonne 13 Ibarra, we set out a furious search to 14 prepare for a deposition. In the course of 15 preparing for that deposition, I came 16 across this affidavit which was filed with 17 the court there in South Carolina January 18 12th. I'd like to present to the Court a 19 certified copy of it, and I also filed with 20 that motion a notice to take judicial 21 notice of this document under the judicial 22 notice statute pleading filed in another 23 state by a -- 24 THE COURT: Do you have any objection 25 to the Court taking judicial notice?</p> | <p>1 American Home Mortgage Servicing but it was 2 answered by Residential Credit. Response 3 to my interrogatories were: Not relevant. 4 They cited a case which asserted the 5 proposition that I didn't have the 6 opportunity to question any of that. 7 But the point of the matter is now 8 they are relying on this very endorsement 9 that they asserted was not relevant, and I 10 didn't have any ability to question on 11 them. That's the first element that's in 12 there. 13 The second element, which likewise 14 just came up recently, has to do -- 15 THE COURT: You're saying now they 16 want to call Danielle Sterling as a 17 witness? 18 MR. WEIDNER: Now they want to rely on 19 the signature of Danielle Sterling to prove 20 their case in chief. Specifically, they're 21 asserting that that endorsement on the note 22 that they have filed gives them the 23 standing, the authority, to pursue this 24 action. 25 I filed back in 2010, as part of my</p> |



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| <p>17</p> <p>1 affirmative defenses, a question regarding 2 the authenticity and voracity of that 3 signature. It's asserted as Florida 4 Statute 673.3081. It asserts that when the 5 party desires to challenge the authenticity 6 of a signature, he shall do so by specific 7 negative averment, as I have done. That is 8 a burden shifting statute. Once I have 9 done so, the burden then shifts to opposing 10 party and they, then, are required to come 11 forth with some evidence that asserts that 12 matter. 13 Now, opposing counsel will assert a 14 footnote to that section which cites 15 that -- 16 THE COURT: You think the whole face 17 is going to turn on this issue? 18 MR. WEIDNER: That's just one of the 19 six that are very clear and specific. 20 You're looking at, I think, the next one, 21 which is a big one in there, which is: 22 Plaintiff has filed a document in this 23 trial, in this case, titled "Notice of 24 Nonreliance on Assignment of Mortgage." 25 Now, you'll recall we had a hearing</p> | <p>19</p> <p>1 apparently a surrogate signer policy where 2 apparently documents have been executed by 3 the very person that's named in this 4 lawsuit, specifically Linda Green, by 5 parties who were specifically involved in 6 this lawsuit, American Home Mortgage 7 Servicing, Inc., and that document there, 8 to me, evidence that there's a problem with 9 the mortgage. Now I should -- the signed 10 mortgage. 11 Now I want to note something. I 12 have been raising this issue with counsel 13 that I respect for many, many months asking 14 for some explanation. So I come before the 15 Court, not taken by surprise but saying 16 that I've asked counsel from the beginning: 17 Please explain this away for me so that I 18 don't have to do this in open court or in 19 this matter. 20 The consistent response from 21 opposing counsel is: I'm not relying on 22 it. It doesn't matter. I didn't introduce 23 it. In fact, that's the what the opposing 24 counsel said in the October 24th hearing 25 but that's not correct, Your Honor. The</p> |
| <p>18</p> <p>1 on October 24, 2011. In that hearing I 2 said to the Court: Your Honor, I don't 3 know what this means, Notice of Nonreliance 4 on Assignment of Mortgage. Opposing 5 counsel asserted: That means I'm not 6 relying on it. 7 And I said: Your Honor, it's, A, 8 part of the court record because the 9 plaintiff made it part of this particular 10 court record; and, B, and perhaps more 11 importantly because it has an official 12 record, book and page number, it is part of 13 the public record and so we cannot just 14 ignore this. 15 There are, in fact, three separate 16 assignments of mortgages out there that 17 they apparently just want to ignore. I 18 assert that they cannot do this. But the 19 important -- 20 THE COURT: We're going to address 21 that during the trial. 22 MR. WEIDNER: Thank you. But the 23 important thing that I note on there is a 24 pleading filed with the Nevada Attorney 25 General's Office which attaches to it</p> | <p>20</p> <p>1 notice of filing in February 2010, opposing 2 counsel filed this document, put it at 3 issue in this case. 4 And so I cannot be forced to go 5 forward with a case where they can file 6 evidence, evidence which now bears upon the 7 voracity of everything in the case, and 8 then have it used against me. That's the 9 point made in that document. 10 MR. GACHE: Judge, if I can respond I 11 can bring clarity to this whole issue for 12 you. 13 First of all, let's address the 14 issue of Danielle Sterling's endorsement on 15 the note. We're not at trial, you're 16 right. We should get the trial started and 17 when we offer the note, that's really the 18 better place for this argument. But let me 19 just address this newly discovered 20 evidence, so the speak. 21 Mr. Weidner indicated in his 22 affirmative defenses filed in 2010, he 23 indicated that he questions the voracity 24 and genuineness of the endorsement. So he 25 pled, it's his defense, he pled it in 2010.</p> |



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| <p>21</p> <p>1 He took no discovery on that issue at all 2 through today. In other words, he's never 3 subpoenaed Danielle Sterling. He's never 4 gone to the people that she worked for, 5 which was American Brokers Conduit, not 6 American Home Loan Servicing, Inc. Let's 7 make sure we're clear, AHMSI aside, he has 8 never gone and taken discovery on his 9 defense that he questions the voracity of 10 Danielle Sterling's endorsement. 11 Now, what he has done is on the eve 12 of trial, he has gone to South Carolina. 13 He has found an affidavit which is hearsay 14 and would never be admissible in this 15 courtroom in any fashion whatsoever, 16 because I can't cross-examine the affiant. 17 But in any event, he's filed it and he has 18 now said this is new evidence because 19 Danielle Sterling, in another case for 20 another servicer, not AHMSI, she didn't 21 work for AHMSI, for another servicer she 22 said whatever it is that he claims that she 23 said in that affidavit having to do with 24 endorsements. It is a red herring. 25 If he had evidence on a bad</p> | <p>23</p> <p>1 mortgage into evidence and I needed to put 2 those assignments in as a matter of prima 3 facie, then I'm going to lose on a directed 4 verdict. But if I didn't put them in, then 5 Mr. Weidner is free to start talking about 6 them in his case in chief. I have my 7 arguments on relevancy. I'll be able to 8 argue whether or not they come into 9 evidence. 10 But the issue of the assignments of 11 mortgage and him saying: Well, I think 12 there's a bad signature on the assignments, 13 I think there's something wrong with them; 14 we'll deal with that when the time comes 15 for somebody to offer them into evidence. 16 Remember, what hasn't been -- was 17 hasn't happened yet is there hasn't been 18 something offered to you yet. Nothing has 19 been offered. Just because it's filed and 20 attached to a lawsuit or even filed 21 separately in the complaint or even in a 22 court file, it doesn't make it evidence in 23 a trial. You don't get to rule on things 24 that have been filed. You rule on things 25 that are offered at the trial.</p> |
| <p>22</p> <p>1 endorsement, he should be ready for that 2 today. He should have that person on his 3 witness list and he should present that in 4 his case in chief. 5 With respect to the assignments of 6 mortgage, we all know that you don't need 7 assignments of mortgage for standing. The 8 Harvey case, there's a Second District 9 case, and I have all the other cases that 10 you might need for standing, all you have 11 to do is hold the note on the day the 12 lawsuit is filed. If you're in possession 13 of it, you have standing. You don't need 14 assignments of mortgage. In the old days, 15 you might have fought that, but we know 16 what the law is today. 17 We have filed a notice, as I have 18 instructed all the lawyers in my law firm, 19 that if we're not going to rely on an 20 assignment of mortgage for standing, we 21 should tell the defendant as soon as 22 possible so the defendant knows it's not 23 going to be the basis for our standing. 24 So if I put on my case in chief 25 today and I don't put in the assignments of</p> | <p>24</p> <p>1 So if we never offer any assignments 2 in mortgage, they don't ever become an 3 issue unless he makes them an issue. And 4 if he makes them an issue, he makes them an 5 issue in connection with his case in chief 6 on his defense. But at this point, we'd 7 like to get started. There's no reason not 8 to get started. If he could show you 9 prejudice on the part of the Residential 10 Credit or AHMSI with respect to something, 11 that's called surprise, and he would raise 12 that. 13 Let me make one other point. There 14 are no outstanding motions to compel. 15 There are no outstanding discovery motions. 16 Any discovery motion that has been filed 17 has either been resolved by order or has 18 been withdrawn by the defendant. So there 19 is no issue of discovery that's still left 20 to be done that he hasn't received. He 21 can't show you one motion that has not been 22 withdrawn. You addressed all of these at 23 your pretrial. 24 We're ready to start and we can put 25 our case on very quickly and move on and we</p> |



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| <p>1 can get to the defense case. That's really 2 where he needs to make his statements. 3 MR. WEIDNER: Your Honor, let me 4 address this point -- 5 THE COURT: Very brief reply. 6 MR. WEIDNER: Very brief. I 7 respectfully disagree with my honored 8 colleague here. When he asserts the 9 proposition that a document that has been 10 filed in this case, that was filed on 11 February 24, 2010 in this case, which bears 12 with it an original book, an OR book and 13 page number that is a public record -- 14 THE COURT: You know what, you don't 15 need to argue on that because I'm not going 16 to have two arguments on this in the same 17 trial and that's going to come up if they 18 offer it. If they don't offer it, you can 19 offer it, it'll come up then in this trial. 20 But we're not going to hear it now and then 21 hear it in the trial. 22 MR. WEIDNER: Let me make one more 23 point about the discovery and I'll turn to 24 the endorsement. I'd like to approach and 25 present to the Court Florida Statute</p> | 25 | <p>1 So we don't have a jury to keep them 2 from hearing something that got blurred 3 out. So if you all want to take ten 4 minutes, I'll start with your trial in ten 5 minutes. We'll start at 11:25. 6 (A recess was taken.) 7 THE COURT: We are back on the record 8 on 08-018284, Residential Credit Solutions 9 versus Ernest C. Hassell. The plaintiff 10 may call your first witness. 11 MR. GACHE: We call Yvonne Ibarra. 12 THE COURT: Yvonne Ibarra. 13 MR. GACHE: Yes. She's outside. 14 15 YVONNE IBARRA (Sworn) 16 17 MR. WEIDNER: If I may, Your Honor, I 18 understand counsel is going to start with 19 his case. I'd like to make sure that 20 we're -- as far as the Court, with the 21 complaint, so that I know what we're 22 talking about. 23 THE COURT: With the complaint? 24 MR. GACHE: I don't know what that 25 means.</p> | 27 |
| <p>1 673.3081. 2 Counsel is correct, I raised the 3 issue as an affirmative defense regarding 4 the endorsement on there. I assert that, 5 according to the statute, that the burden 6 is shifting. It should also be noted that 7 beginning in August 2010, in 8 interrogatories at least three separate 9 times, in discovery three or more times, 10 direct specific questions about this 11 endorsement. The opposing party had the 12 obligation to then rebut that presumption 13 and come to the Court with something, 14 because now they come to the Court relying 15 upon that knowing that I made that an issue 16 since 2010. 17 MR. GACHE: Wouldn't that be the 18 argument at the time I offered the note? 19 THE COURT: Yeah, it will be. I'm 20 going to make a ruling that we don't need 21 to hear motions in limine prior to a 22 nonjury trial. So I'm not going to hear 23 those. I'm sorry. I just feel we're going 24 to hear the same arguments twice during the 25 motion in limine and the trial.</p> | 26 | <p>1 THE COURT: You didn't file a 2 complaint? 3 MR. WEIDNER: I want to make sure that 4 we are all on the same complaint. There 5 have been two. I want to make sure, as he 6 starts their case, we know what complaint 7 we'll be talking about. 8 THE COURT: So there's an amended 9 complaint? 10 MR. WEIDNER: Correct, Your Honor. 11 THE COURT: Is there a first amended, 12 second amended, third amended? 13 MS. KENEFIC: There's just an amended. 14 THE COURT: Just an amended. 15 MR. GACHE: The law says that if you 16 file an amendment, the first one goes away. 17 THE COURT: So we're offering an 18 amended complaint. Can you tell me what 19 date it was filed? 20 MR. GACHE: Sure. 21 MS. KENEFIC: Your Honor, the amended 22 complaint was filed on September 10, 2009. 23 THE COURT: Okay. You can proceed. 24 MR. GACHE: May it please the Court. 25</p> | 28 |



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| <p>29</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. GACHE:</p> <p>3 Q. Can you state your name for the</p> <p>4 record, ma'am.</p> <p>5 A. Yvonne Ibarra.</p> <p>6 Q. Ms. Ibarra, where do you live?</p> <p>7 A. Jacksonville, Florida.</p> <p>8 Q. What do you currently do?</p> <p>9 A. I'm a supervisor of the foreclosure</p> <p>10 special assets.</p> <p>11 Q. For what company?</p> <p>12 A. American Home Mortgage Servicing, Inc.</p> <p>13 Q. Is that also known as AHMSI?</p> <p>14 A. Yes.</p> <p>15 Q. What are those initials?</p> <p>16 A. AHMSI.</p> <p>17 Q. Have you ever heard of a company</p> <p>18 called American Brokers Conduit?</p> <p>19 A. Yes.</p> <p>20 Q. Are you affiliated with that company?</p> <p>21 A. No.</p> <p>22 Q. Have you ever heard of American Home</p> <p>23 Mortgage?</p> <p>24 A. Yes.</p> <p>25 Q. Are you affiliated with that company?</p> | <p>31</p> <p>1 less, which is like -- and I'm referring to</p> <p>2 remember when we were in law school, those</p> <p>3 laminated things we had in ethics class.</p> <p>4 One example would be asked and answered</p> <p>5 would be three words or less, irrelevant,</p> <p>6 hearsay, any of those objections. And then</p> <p>7 if it's hearsay, I'm going to look to the</p> <p>8 other side and in three words or less</p> <p>9 they're going to tell me if it's not</p> <p>10 hearsay or exception to hearsay such as</p> <p>11 business records, and then I'm going to try</p> <p>12 to rule, because otherwise, of course, we</p> <p>13 like to hear ourselves talk.</p> <p>14 Objection in three words or less.</p> <p>15 If I can't understand what you mean by your</p> <p>16 three words or less, of course I'm going to</p> <p>17 let you tell me so I can understand.</p> <p>18 MR. WEIDNER: Objection; vague. She</p> <p>19 asserts here --</p> <p>20 THE COURT: Whoa. Whoa. Wait.</p> <p>21 Three; one, two three. Vague. Anything</p> <p>22 else?</p> <p>23 MR. WEIDNER: State of incorporation.</p> <p>24 THE COURT: Explain again.</p> <p>25 MR. WEIDNER: I need the state of</p> |
| <p>30</p> <p>1 A. No.</p> <p>2 Q. So when we speak of AHMSI, we're</p> <p>3 speaking specifically of American Home Mortgage</p> <p>4 Servicing, Inc. and not American Brokers Conduit</p> <p>5 and not American Home Mortgage?</p> <p>6 A. Correct.</p> <p>7 Q. And you only are here on behalf of</p> <p>8 AHMSI, correct?</p> <p>9 A. Correct.</p> <p>10 THE COURT: Can I verify again, you</p> <p>11 work for whom?</p> <p>12 THE WITNESS: American Home Mortgage</p> <p>13 Servicing, Incorporated.</p> <p>14 MR. GACHE: AHMSI, American Home</p> <p>15 Mortgage Servicing, Inc.</p> <p>16 MR. WEIDNER: I'm going to object,</p> <p>17 Your Honor.</p> <p>18 MR. GACHE: What's the legal</p> <p>19 objection?</p> <p>20 THE COURT: The objection is?</p> <p>21 MR. WEIDNER: I would like to know --</p> <p>22 THE COURT: Wait. I'm sorry. Before</p> <p>23 you even start, I should lay out my ground</p> <p>24 rules for all trials. What I require is</p> <p>25 that objections be made with three words or</p> | <p>32</p> <p>1 incorporation.</p> <p>2 THE COURT: You can ask that on cross.</p> <p>3 That would be overruled on more than three</p> <p>4 words. I'm saying overruled on vague.</p> <p>5 Ask your question.</p> <p>6 Q. (By Mr. Gache) So Ms. Ibarra, the loan</p> <p>7 which is the subject of this lawsuit which is a</p> <p>8 loan made to Ernest C. Hassell and Teri</p> <p>9 Dittrich-Hassell, do you know whether AHMSI at</p> <p>10 one point in time was the loan servicer for this</p> <p>11 particular loan?</p> <p>12 A. Yes.</p> <p>13 Q. And do you have records that you have</p> <p>14 reviewed that confirm that?</p> <p>15 MR. WEIDNER: I'm going to object,</p> <p>16 Your Honor.</p> <p>17 THE COURT: Three words or less.</p> <p>18 MR. WEIDNER: Foundation.</p> <p>19 THE COURT: Sustained.</p> <p>20 Q. (By Mr. Gache) What are your job</p> <p>21 responsibilities at AHMSI?</p> <p>22 A. I oversee the foreclosure special</p> <p>23 assets department. I help them in getting</p> <p>24 documents that they need to prepare for trial.</p> <p>25 We handle the contested foreclosures. I review</p> |



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| <p>33</p> <p>1 pay histories, loan information, mortgages, 2 notes, bailee letters, any documents pertaining 3 to any loan pretty much. 4 Q. Do you know whether AHMSI serviced the 5 loan which is the subject of this lawsuit? 6 A. Yes. 7 Q. What period of time did AHMSI service 8 this particular loan? 9 A. July of '08 through October 2010. 10 Q. And between July of '08 and October 11 2010 when this was service-released to another 12 servicer, did AHMSI at some point in that time 13 have the original promissory note, have 14 possession of it, that is the subject of this 15 lawsuit? 16 MR. WEIDNER: Objection. 17 THE COURT: Grounds? 18 MR. WEIDNER: Foundation. 19 THE COURT: Overruled. You can 20 answer, if you can. 21 THE WITNESS: Yes. 22 Q. (By Mr. Gache) Let me show you what I 23 am marking as Exhibit 1 for identification. 24 THE COURT: I just want to reiterate, 25 before we broke the rule was invoked. I</p> | <p>35</p> <p>1 those to the extent that they've not been 2 entered in. If she's relying on them, they 3 should be entered in as evidence. 4 THE COURT: Overruled. You may answer 5 the question. 6 Q. (By Mr. Gache) Can you tell me if the 7 copy I showed you is a copy -- identical copy of 8 the one that AHMSI held in July of 2008? 9 A. Yes, it is. 10 MR. GACHE: Your Honor, the plaintiff 11 has filed the original note with the Court 12 on October 8, 2009. You can either give it 13 back to me and I can move it into evidence 14 or you can accept that it's in the court 15 file. 16 I'd like the witness to take a look 17 at it, though, so she can confirm that it 18 is a true -- appears to be the true 19 original note consistent with her file 20 copy. 21 THE COURT: You may show this to the 22 witness. 23 MR. GACHE: Thank you. 24 Q. (By Mr. Gache) Ms. Ibarra, can you 25 tell us if that original that's in the court</p> |
| <p>34</p> <p>1 don't know if any of you came in later if 2 anybody who's a witness here. 3 MR. GACHE: There's nobody else in 4 this trial. 5 Q. (By Mr. Gache) Now, I'm showing you 6 Exhibit 1, which is a photocopy of a promissory 7 note. I would ask, can you look at your records 8 and tell me if that is an accurate photocopy of 9 the promissory note that AHMSI had in its 10 possession in July of 2008? 11 MR. WEIDNER: Object, Your Honor. 12 THE COURT: The objection is? 13 MR. WEIDNER: Foundation, 14 authenticity. I see the witness has 15 documents that I can't see. I don't know 16 what she's looking at. 17 THE COURT: You can show us, if you 18 could, what you're looking at. 19 THE WITNESS: I'm looking at my 20 business records that I pulled in order to 21 prepare for the deposition yesterday and 22 the trial today. 23 THE COURT: Okay. You may look at 24 what she's looking at if you'd like. 25 MR. WEIDNER: I'd like to object to</p> | <p>36</p> <p>1 file is, in fact, a true -- or is, in fact, the 2 original and appears to be the same as you have 3 in your file at this moment? 4 A. This is it. 5 Q. Does it bear an endorsement in blank? 6 A. Yes. 7 MR. WEIDNER: I'm going to object to 8 that. 9 THE COURT: The objection is? 10 MR. WEIDNER: Hearsay. 11 THE COURT: As to the endorsement, 12 right? 13 MR. WEIDNER: Correct. 14 THE COURT: Let's see. Any exception? 15 MR. GACHE: It's not -- I'm not 16 offering the signature of the endorsement 17 as to the truth of the matter asserted. No 18 one is testifying. I just asked: Did it 19 bear an endorsement. That's all I've asked 20 so far. She's reading it. She's stating 21 the document does bear an endorsement. 22 THE COURT: Overruled. Go ahead. 23 MR. WEIDNER: I'm going to object. 24 It's a legal term -- legal conclusion. 25 Does the witness know what that is?</p> |



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| <p>1 THE COURT: She's already answered. 2 Now you have to make your objection after 3 the question and before the witness has 4 answered. Next question. 5 You may want to hold off for a 6 minute and you -- just until we get to the 7 point. 8 Q. (By Mr. Gache) And AHMSI did have 9 possession of that note in July 2008; is that 10 correct? 11 THE COURT: You can answer. 12 THE WITNESS: Yes. 13 MR. GACHE: I'd like to move the note 14 into evidence. 15 MR. WEIDNER: I'm going to object to 16 that, Your Honor. 17 THE COURT: Tell me your objection. 18 MR. WEIDNER: Hearsay. 19 THE COURT: The note is hearsay? 20 MR. WEIDNER: That's correct. 21 THE COURT: Any case law you want to 22 present? 23 MR. WEIDNER: The note is an 24 out-of-court statement being offered here 25 in court for the truth of the matter</p> | 37 | <p>1 argue at some point. He's just arguing, 2 quote, hearsay. 3 Have you ever sustained a hearsay 4 objection on just a promissory note? 5 THE COURT: This is a larger issue 6 than just like we had on the other case 7 though. Can the plaintiff bring in 8 somebody who's not the plaintiff to get in 9 the crucial piece of evidence? 10 MR. GACHE: AHMSI was the plaintiff 11 until they serviced the loan -- 12 THE COURT: The operative word there 13 is "was." Now we're in trial and you'll 14 remember, for the record, I asked the 15 defendant -- first of all, the plaintiff is 16 the one who asked that Residential be 17 substituted in as a true party in interest. 18 So they are now the true party in interest. 19 That's the law of the case. Counsel 20 can't change that and I can't change that 21 at this point unless the Court makes a 22 prior ruling. 23 MR. GACHE: We have Residential Credit 24 here as well. If your question is who's 25 the right person to be on the stand when it</p> | 39 |
| <p>1 asserted, the document that's there. There 2 are no exceptions to the hearsay rule that 3 would allow this witness to enter it in. 4 It's not her document. 5 THE COURT: Response. 6 MR. GACHE: The note is, first of all, 7 signed by my assistant so its admission, 8 comes in under the exception of hearsay 9 rule admission in the interest. Number 10 two, it's self-authenticating and there 11 won't be one case out there that says a 12 promissory note is hearsay. It's a 13 negotiable instrument that falls under the 14 UCC and it comes in in every court 15 proceeding as a matter of course and there 16 has never been one case that counsel showed 17 you that says the promissory note of the 18 borrower, who are here today, has to put 19 the borrower on to confirm the signature. 20 I don't think the borrower is going to get 21 up there and commit perjury and tell you 22 it's not his note. 23 Is there any issue of reliability? 24 Do we not believe this is the borrower's 25 note? That would be for the defendant to</p> | 38 | <p>1 comes in, I'm just arguing to you that from 2 an evidentiary basis, you don't need the 3 right person on the stand when it's an 4 admission, it's one thing. If it was a 5 breach -- 6 THE COURT: But they haven't 7 admitted -- 8 MR. GACHE: But the document is 9 signed. It's self-authenticating under the 10 law and it's signed by Hassell. So it's an 11 admission. At a minimum, it comes in -- 12 THE COURT: Wait. Wait. We don't 13 raise our voice. We make our argument on 14 the record and I get to rule. No offense, 15 but that's my job. 16 MR. GACHE: It would be like if she 17 wanted to say something that was said to 18 her by the Hassells, you would let that in 19 as an admission. 20 THE COURT: Because that would be a 21 little different. Right now we're trying 22 to get in what the plaintiff wants to say 23 is in their possession through another 24 person, and I'm going to sustain the 25 objection because the plaintiff is saying</p> | 40 |



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| <p style="text-align: right;">41</p> <p>1 they now own and hold the note and they're</p> <p>2 entitled to enforcement. This lady doesn't</p> <p>3 work for the plaintiff.</p> <p>4 And that's my final. You can, of</p> <p>5 course, appeal it, and that's the beautiful</p> <p>6 thing about the American justice system.</p> <p>7 MR. GACHE: I got your ruling.</p> <p>8 Completely understood. We have someone</p> <p>9 from the plaintiff here. That won't be a</p> <p>10 problem. So we'll put that on hold.</p> <p>11 Q. (By Mr. Gache) Ms. Ibarra, let me ask</p> <p>12 you a few other questions. Is it the regular</p> <p>13 business practice of AHMSI to keep copies of</p> <p>14 promissory notes, demand letters, loan payment</p> <p>15 histories in your files?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Let me show you what I'll mark as</p> <p>18 Exhibit 2.</p> <p>19 Tell me if you recognize Exhibit 2?</p> <p>20 A. Yes, I do.</p> <p>21 Q. What is Exhibit 2?</p> <p>22 A. That's the demand letter that was</p> <p>23 sent.</p> <p>24 Q. Sent by whom?</p> <p>25 A. Sent by American Home Mortgage</p> | <p style="text-align: right;">43</p> <p>1 THE COURT: Overruled. You may</p> <p>2 answer.</p> <p>3 THE WITNESS: Yes.</p> <p>4 Q. (By Mr. Gache) When demand letters are</p> <p>5 generated and sent to borrowers, are copies made</p> <p>6 to let the borrower respond?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have a copy of that exact</p> <p>9 letter in your file which you brought with you</p> <p>10 today?</p> <p>11 A. I do.</p> <p>12 Q. When payments are received, are loan</p> <p>13 payment histories updated to reflect those</p> <p>14 payments?</p> <p>15 MR. WEIDNER: Objection, Your Honor.</p> <p>16 THE WITNESS: Yes.</p> <p>17 THE COURT: Objection is?</p> <p>18 MR. WEIDNER: Hearsay.</p> <p>19 MR. GACHE: I didn't ask her for a</p> <p>20 statement out of court. I asked if the</p> <p>21 records are updated when the payments are</p> <p>22 received. I'm not asking for an</p> <p>23 out-of-court statement.</p> <p>24 THE COURT: Overruled. You can answer</p> <p>25 the question.</p> |
| <p style="text-align: right;">42</p> <p>1 Servicing, Inc.</p> <p>2 Q. Your company?</p> <p>3 A. Yes.</p> <p>4 MR. WEIDNER: I'm going to object,</p> <p>5 Your Honor.</p> <p>6 THE COURT: Objection is?</p> <p>7 MR. WEIDNER: Hearsay. She said the</p> <p>8 demand letter that was sent. She can say</p> <p>9 that's the letter.</p> <p>10 THE COURT: Overruled. She already</p> <p>11 answered. New question.</p> <p>12 Q. (By Mr. Gache) Is it the regular</p> <p>13 business practice of AHMSI to create demand</p> <p>14 letters?</p> <p>15 A. Yes.</p> <p>16 Q. And is the information contained in</p> <p>17 Exhibit 2, was that made at or near the time of</p> <p>18 the event being recorded; in other words, at or</p> <p>19 about the time of the date of that letter?</p> <p>20 MR. WEIDNER: I'm going to object,</p> <p>21 Your Honor.</p> <p>22 THE COURT: Objection is?</p> <p>23 MR. WEIDNER: The witness --</p> <p>24 THE COURT: Three words or less.</p> <p>25 MR. WEIDNER: Foundation.</p> | <p style="text-align: right;">44</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q. (By Mr. Gache) Are the -- are you the</p> <p>3 person best qualified from American Home</p> <p>4 Mortgage Servicing, Inc. to testify as to the</p> <p>5 status of American Home Mortgage Servicing,</p> <p>6 Inc.'s file with respect to the demand letter</p> <p>7 and loan payment history for this loan?</p> <p>8 A. Yes.</p> <p>9 MR. WEIDNER: Objection, Your Honor.</p> <p>10 I want to voir dire.</p> <p>11 THE COURT: No, you get to</p> <p>12 cross-examine. Overruled. This is the way</p> <p>13 we do it. You can object. That's the</p> <p>14 thing you have to understand is they have</p> <p>15 the right to present their case. You have</p> <p>16 a right to present yours in cross, but you</p> <p>17 don't cross during or in the middle of</p> <p>18 direct. She's already answered. Next</p> <p>19 question.</p> <p>20 Q. (By Mr. Gache) Was this default letter</p> <p>21 that you were holding as Exhibit 2, your records</p> <p>22 indicate was sent to the defendants?</p> <p>23 A. Yes.</p> <p>24 MR. WEIDNER: Objection, Your Honor.</p> <p>25 THE COURT: Objection is?</p> |



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| <p>45</p> <p>1 MR. WEIDNER: Hearsay, foundation. 2 How does she know that? 3 THE COURT: Sustained. 4 Q. (By Mr. Gache) Have you reviewed your 5 records prior to coming to court today? 6 A. Yes. 7 Q. Do your records indicate that this 8 letter was sent to the defendants on or about 9 the date it was dated? 10 A. Yes. 11 MR. GACHE: I'd like to move Exhibit 2 12 into evidence. 13 MR. WEIDNER: I'm going to object, 14 Your Honor. The witness testified she 15 reviewed the records. Those records are 16 not in evidence. That's the objection. 17 THE COURT: I won't allow it in at 18 this point in time but I will allow counsel 19 to cross-examine on it. He has questioned 20 the foundation, whether or not she knows 21 that this letter was, in fact, sent from 22 this witness. He will have a right to 23 cross-examine. I will come back and have 24 you offer it into evidence again after 25 cross-examination.</p> | <p>47</p> <p>1 showed this to me on Friday. I object on 2 the basis that this brand-new record is 3 nothing that I have seen, hasn't been 4 disclosed, concealed. 5 THE COURT: Do you want to respond? 6 MR. GACHE: Is the evidentiary 7 objection surprise? I'm not sure what... 8 THE COURT: I guess so. Did you 9 request it in discovery? 10 MR. WEIDNER: Absolutely. Since 2008, 11 Your Honor. 12 MR. GACHE: Let's be clear. These are 13 the AHMSI pay records from the time that 14 AHMSI serviced the loan. So they would 15 indicate whether his client was in default, 16 made payments. 17 So the first issue is prejudice. 18 Assuming that he only just got it Friday, 19 how are the pay records -- 20 THE COURT: Do you dispute that? 21 MR. GACHE: Yes, we do. He got these 22 January 9th, I believe. They were at the 23 deposition of the Residential Credit 24 Solutions witness who produced all of the 25 AHMSI pay records at that time, and we have</p> |
| <p>46</p> <p>1 If you could give me Exhibit 2, I'll 2 mark it for ID. You may proceed. 3 Q. (By Mr. Gache) The demand letter, what 4 is it dated? 5 A. It's September 3, '08. 6 Q. Is it addressed to the notemaker in 7 this case, Ernie Hassell? 8 A. Yes, it is. 9 Q. Let me show you what I'll mark as 10 Exhibit 3. Can you tell me what those records 11 are? 12 A. It's the pay history. 13 Q. Whose pay history? 14 A. For Mr. Hassell. 15 Q. But whose company pay history? 16 A. With AHMSI. 17 MR. WEIDNER: I'm going to object to 18 this, Your Honor. 19 THE COURT: Objection is? 20 MR. WEIDNER: Objection is hearsay, 21 number one. The objection is, number two, 22 this document was just shown to me on 23 Friday. I've never seen it before. It was 24 not previously disclosed on the witness or 25 exhibit list. I take that back. She</p> | <p>48</p> <p>1 documents here. 2 THE COURT: What do you have to show 3 that? 4 MR. GACHE: We have the exhibits from 5 the deposition. 6 MR. WEIDNER: If I may, Your Honor. I 7 have in my hands here the transcript of 8 Melissa Sequete. I would like to 9 acknowledge to counsel receipt of some 10 records, but I would -- here are the 11 originals here and I would like to turn to 12 the section which shows -- well, we should 13 do 5A through I, I believe is what was 14 admitted in that deposition. And I made 15 that issue particular in that deposition 16 because they were unresponsive to all the 17 questions and all the discovery information 18 sought. 19 So these are marked particularly. 20 Everything that was provided in that 21 deposition, it should be noted as -- this 22 was at the Residential Credit deposition. 23 But what really drew my attention to the 24 difference was here were the records, and 25 it's 5I, that was provided at the</p> |



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| <p>49</p> <p>1 deposition of Residential Credit.</p> <p>2 THE COURT: Do you all have a copy of</p> <p>3 what he's showing?</p> <p>4 MR. GACHE: Yes.</p> <p>5 THE COURT: Is that what the witness</p> <p>6 is looking at now?</p> <p>7 MR. GACHE: It is. It's in a</p> <p>8 different format, so to speak, but it's the</p> <p>9 same information. And that is simply the</p> <p>10 loan history for this particular loan.</p> <p>11 Residential Credit, as the subsequent</p> <p>12 servicer, inherits the servicing records of</p> <p>13 the previous servicer. So she had them</p> <p>14 with her at her deposition and they were</p> <p>15 produced then.</p> <p>16 THE COURT: These are the business</p> <p>17 records of which entity?</p> <p>18 MR. GACHE: Well, they were produced</p> <p>19 as the business records of Residential</p> <p>20 Credit Solutions. But there's an argument</p> <p>21 out there under a case called Glarum that</p> <p>22 indicates that you need the prior servicer</p> <p>23 to get their records in and then you use</p> <p>24 the subsequent servicer to get their</p> <p>25 records in.</p> | <p>51</p> <p>1 MR. GACHE: We understand.</p> <p>2 THE COURT: Do you have any brief</p> <p>3 reply?</p> <p>4 MR. WEIDNER: Hearsay, Your Honor.</p> <p>5 THE COURT: Overruled. That'll come</p> <p>6 in as Plaintiff's Exhibit 3, but I need, I</p> <p>7 guess, the original.</p> <p>8 (Plaintiff's Exhibit 3, Pay History,</p> <p>9 was admitted into evidence.)</p> <p>10 Q. (By Mr. Gache) Now, Ms. Ibarra,</p> <p>11 according to the loan payment history as</p> <p>12 maintained by AHMSI, first of all, can you tell</p> <p>13 us the dates that AHMSI -- sorry, the date that</p> <p>14 AHMSI service-released this loan?</p> <p>15 A. October 1, 2010.</p> <p>16 MR. WEIDNER: Objection, Your Honor;</p> <p>17 hearsay.</p> <p>18 THE COURT: The date that AHMSI first</p> <p>19 serviced the loan?</p> <p>20 MR. GACHE: No, released the loan to</p> <p>21 the next servicer. And she gave us a date</p> <p>22 and he said it was hearsay.</p> <p>23 THE COURT: And the objection?</p> <p>24 MR. WEIDNER: Hearsay, Your Honor.</p> <p>25 THE COURT: Overruled.</p> |
| <p>50</p> <p>1 THE COURT: Whose records are these?</p> <p>2 MR. GACHE: Well, they're AHMSI's</p> <p>3 records but they were produced at the</p> <p>4 deposition of the Residential Credit</p> <p>5 witness. The key here is whether they've</p> <p>6 been produced, not how they've been</p> <p>7 produced. He's arguing surprise. That's</p> <p>8 his only evidentiary objection. And we're</p> <p>9 saying, Judge, he either had them in</p> <p>10 January or he got them at least by Friday</p> <p>11 and he hasn't made a motion to continue.</p> <p>12 So you can't object to surprise at</p> <p>13 trial unless you're only first seeing it at</p> <p>14 trial. That's what the evidentiary</p> <p>15 objection surprise is. Otherwise, he</p> <p>16 should have filed a motion for continuance</p> <p>17 when he got them on Friday or got them in</p> <p>18 January.</p> <p>19 MS. KENEFIC: And if I may clarify,</p> <p>20 Your Honor --</p> <p>21 THE COURT: Wait. Wait.</p> <p>22 MR. GACHE: She was at the depo --</p> <p>23 THE COURT: I understand, but I can</p> <p>24 only have one arguing, making one argument</p> <p>25 for one party. Those are the rules.</p> | <p>52</p> <p>1 Q. (By Mr. Gache) Now, Ms. Ibarra, can</p> <p>2 you just tell us, according to AHMSI's records,</p> <p>3 the date of default?</p> <p>4 A. August 1, 2008.</p> <p>5 Q. And can you tell us when the last</p> <p>6 payment was received on this loan according to</p> <p>7 AHMSI's records?</p> <p>8 A. July 28th. It was applied to the July</p> <p>9 of '08 payment.</p> <p>10 Q. And what was the unpaid principal</p> <p>11 balance of the loan on the day that AHMSI</p> <p>12 released it to Residential Credit?</p> <p>13 A. \$537,055.69.</p> <p>14 Q. Did AHMSI incur expenses due to the</p> <p>15 defendant's default for property inspections,</p> <p>16 BPOs, appraisals?</p> <p>17 A. Yes.</p> <p>18 Q. Are those fees set forth in those</p> <p>19 records as well?</p> <p>20 A. Yes.</p> <p>21 Q. Can you explain how much you incurred</p> <p>22 in those particular fees, you being AHMSI as the</p> <p>23 servicer?</p> <p>24 MR. WEIDNER: I'm going to object to</p> <p>25 the relevance, Your Honor.</p> |



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| <p>53</p> <p>1 MR. GACHE: Relevance, your Honor. 2 Relevance to my damages. 3 MR. WEIDNER: I don't know who this 4 witness is. I don't know why they're here. 5 Foundation, relevance, hearsay. 6 THE COURT: Overruled. 7 Q. (By Mr. Gache) Can you tell us the 8 fees and costs that AHMSI incurred? 9 A. The total fees and costs? 10 Q. Just the advances... 11 A. Do you want me to go line by line? 12 Q. Yes, whatever makes it easiest for 13 you. 14 A. Do you want dates? 15 Q. You can just give us amounts and what 16 it's for. 17 A. \$910 for attorney's fees. \$707 for 18 attorney cost. 19 THE COURT: I'm sorry? 20 THE WITNESS: Attorney cost. Property 21 inspections, \$9.60. There's another 22 property inspection for 9.60. A BPO 125. 23 Property inspection for 9.60. There was an 24 appraisal for 355. There was another 25 property inspection for 9.60. BPO for 85.</p> | <p>55</p> <p>1 there was a BPO for 105. 2 Q. (By Mr. Gache) Do your records have a 3 total of all those advances? 4 A. Looks like it's 3,547.51. 5 Q. 3,547.51? 6 A. Correct. 7 Q. Did you make any advances for county 8 taxes? 9 A. Taxes and insurance, yes, we did. 10 Q. Can you tell us the total amount of 11 those? 12 A. There was a hazard insurance 13 disbursement done of \$4,700. 14 THE COURT: 4,700. 15 MR. GACHE: For hazard insurance. 16 THE COURT: When are we going to do 17 something about that? 18 MR. GACHE: Well, when you don't buy 19 it yourself and they have to force place 20 it, you pay a lot of money. 21 THE COURT: Why does it cost -- 22 MR. GACHE: Because the insurance 23 company doesn't know what really they're 24 insuring. They can't get in the house and 25 look at it. They bill you the highest</p> |
| <p>54</p> <p>1 There was assignment recording of \$18.50. 2 Property inspection of 9.60. Credit record 3 of \$350. Property inspection of 9.60. 4 Assignment prep, \$6.71. 5 MR. WEIDNER: I'm going to object to 6 that statement. 7 THE COURT: Which one? 8 MR. WEIDNER: The witness is relying 9 on computer records and the witness needs 10 to lay a foundation as to how she knows 11 those amounts are inputted in there. 12 MR. GACHE: I disagree, Judge. The 13 document is in evidence in which she's 14 commenting from it. You could just easily 15 read it but she's reading it for you. 16 THE COURT: Overruled. 17 THE WITNESS: Do you want me to 18 continue? 19 MR. GACHE: Yes. 20 THE WITNESS: There was a couple of 21 bankruptcy fees, one for 300 and one for 22 60. Property inspection for \$9.60. 23 Bankruptcy/attorney fees 650. Bankruptcy 24 cost -- 650 was the fees, I'm sorry, 150 is 25 the cost. Property inspection, \$9.60. And</p> | <p>56</p> <p>1 premium they're allowed to bill you. 2 THE COURT: Do they ask to get in the 3 house? 4 MR. GACHE: Well, they can't, the 5 mortgagor is in there. If he doesn't let 6 them in but he's not -- 7 THE COURT: What if the mortgagor lets 8 in him? 9 MR. GACHE: He's not paying his 10 insurance. 11 MR. WEIDNER: Objection. 12 MR. GACHE: We're just having a 13 conversation. But in any event, that's 14 what you expended -- 15 THE COURT: I still can't understand 16 that and I don't know why we allow that. I 17 don't know why we allow insurance companies 18 to get three times what the value of the 19 insurance policy is because they claim -- I 20 guess they claim they can't get in the 21 house. 22 MR. GACHE: Well, among other things. 23 THE COURT: Your objection is what? 24 MR. WEIDNER: Hearsay, foundation. 25 She's testifying to information that she</p> |



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| <p>57</p> <p>1 asserts is on there that has not been found 2 reliable. Number one, that's a summary. 3 There is not a foundation of the 4 information. 5 THE COURT: Why do you say it's not 6 found to be reliable? 7 MR. WEIDNER: Because there's no 8 evidence. It is a computer record and she 9 has not met the 11-step test for the 10 admissibility of computer records. 11 THE COURT: So that's why it was 12 allowed into evidence. You need an 13 appellate issue for the Second District and 14 that's done. Now we're onto the next. 15 Q. (By Mr. Gache) So 4,700 for hazard 16 insurance. What other advances? 17 A. Floor insurance of \$486. 18 THE COURT: How much? 19 THE WITNESS: 486. 20 THE COURT: Flood insurance is only 21 486? 22 MR. GACHE: Must not be in a flood 23 zone. 24 THE WITNESS: It is in a flood zone. 25 THE COURT: They got insurance for</p> | <p>59</p> <p>1 according to your records, send the original 2 note to the plaintiff's law firm to prosecute 3 this lawsuit? 4 A. The original note was sent from AHMSI 5 to -- 6 MR. WEIDNER: Objection, Your Honor. 7 THE COURT: Objection is? 8 MR. WEIDNER: Hearsay. Where is that 9 coming from? 10 THE COURT: Overruled. You can 11 testify, if you can. You're testifying 12 from personal knowledge, by the way, or how 13 do you know this? 14 THE WITNESS: I have a copy of the 15 bailee letter that we sent the original 16 note to Shapiro & Gache's firm -- 17 MR. WEIDNER: Objection, foundation. 18 MR. GACHE: She's the records 19 custodian. 20 THE COURT: Overruled. You can ask 21 her questions on cross. 22 Q. (By Mr. Gache) According to the 23 records of AHMSI, here's the records custodian, 24 according to AHMSI, did they send the original 25 note to the plaintiff's law firm for filing?</p> |
| <p>58</p> <p>1 486. Which company is that? I'm just 2 kidding. 3 Q. (By Mr. Gache) Let's keep going. 4 Any taxes or any other insurance? 5 A. There's another disbursement for 6 insurance of -- 7 MR. WEIDNER: I'm going to object to 8 that statement. The objection is this 9 witness is testifying to records as AHMSI. 10 AHMSI is not a plaintiff. There's no 11 connection between this witness and those 12 records and this action before the Court. 13 THE COURT: I've overruled the same 14 objection before and I'll overrule it. But 15 on the other hand, I don't really need her 16 to read me all the things on the piece of 17 evidence. I think the evidence speaks for 18 itself. Could we move on? 19 Q. (By Mr. Gache) Could you give me a 20 total for advances for taxes and insurance? 21 A. 9,483.16. 22 Q. 9,483.16 for taxes and insurance and 23 then 3,547.51 for other costs? 24 A. Correct. 25 Q. Did American Home Mortgage Servicing,</p> | <p>60</p> <p>1 A. Yes. 2 Q. Do you know what day they sent that? 3 A. December 2nd. 4 MR. WEIDNER: Objection, Your Honor; 5 foundation. 6 THE COURT: Overruled. You can cross 7 and you can make your objections, but I 8 really do have to allow the plaintiff to 9 put on a case. 10 Q. (By Mr. Gache) What day did you send 11 the note to us? 12 A. December 2, 2008. 13 Q. And then finally, with respect to the 14 default letter, one more time, I'm just going to 15 ask, how do you know for a fact that the default 16 letter was sent to the defendant/borrower in 17 this case? 18 A. It's done in our normal business 19 practice. That's how we send all of our default 20 letters. It has the borrower's address of -- 21 the mailing address of where it went to. 22 Q. Is there anything in your records to 23 indicate if the letter was, in fact, sent? Do 24 you keep in your computer records that the 25 letter was sent to the borrower?</p> |



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| <p>61</p> <p>1 A. Yes.</p> <p>2 Q. Did you confirm that this letter was</p> <p>3 sent to the borrower by reviewing your records?</p> <p>4 MR. WEIDNER: Objection, Your Honor.</p> <p>5 I want the witness to point to where that</p> <p>6 is.</p> <p>7 MR. GACHE: That's not an evidentiary</p> <p>8 objection, that's cross-examination.</p> <p>9 THE COURT: Overruled.</p> <p>10 Q. (By Mr. Gache) Do you remember the</p> <p>11 question?</p> <p>12 A. I'm sorry, I don't.</p> <p>13 MR. GACHE: Can you read it back?</p> <p>14 (The court reporter read back the last</p> <p>15 question.)</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. GACHE: Judge, once again, I'd ask</p> <p>18 to move the default letter into evidence.</p> <p>19 He can cross on it after if he wants, but I</p> <p>20 think I've established at least an</p> <p>21 evidentiary basis. The letter was sent.</p> <p>22 The records custodian is here to say it was</p> <p>23 sent. There's not much more I can do at</p> <p>24 this particular moment to satisfy my burden</p> <p>25 to have that letter put into evidence.</p> | <p>63</p> <p>1</p> <p>2 CROSS-EXAMINATION</p> <p>3 BY MR. WEIDNER:</p> <p>4 Q. I had the opportunity to depose this</p> <p>5 witness yesterday. I'd like to ask the witness:</p> <p>6 What is your connection to the note? And when I</p> <p>7 say "your witness," I mean you as American Home</p> <p>8 Mortgage Servicing, Inc.</p> <p>9 What is the connection between</p> <p>10 American Home Mortgage Servicing, Inc. and the</p> <p>11 current client Residential Credit?</p> <p>12 A. There is no relation.</p> <p>13 Q. What is the relationship of American</p> <p>14 Home Mortgage Servicing, Inc. to the note and</p> <p>15 mortgage in this case?</p> <p>16 A. We used to service the note and</p> <p>17 mortgage.</p> <p>18 Q. And did you service this note and</p> <p>19 mortgage pursuant to any written contract?</p> <p>20 A. A service agreement that we had.</p> <p>21 Q. And did the terms of that agreement</p> <p>22 spell out the terms of your relationship to note</p> <p>23 and mortgage?</p> <p>24 A. I haven't read over the servicing</p> <p>25 agreement.</p> |
| <p>62</p> <p>1 MR. WEIDNER: I'm going to object.</p> <p>2 They can admit a letter but not that it was</p> <p>3 sent.</p> <p>4 MR. GACHE: I'll take it for the</p> <p>5 purpose of whatever he wants to admit it</p> <p>6 for right now. I just want to get it into</p> <p>7 evidence.</p> <p>8 THE COURT: So the defense is not</p> <p>9 objecting to its admission?</p> <p>10 MR. GACHE: He's objecting to her</p> <p>11 statement that it was sent.</p> <p>12 THE COURT: I'll admit it as Exhibit 2</p> <p>13 into evidence.</p> <p>14 (Plaintiff's Exhibit 2, Default</p> <p>15 Letter, was admitted into evidence.)</p> <p>16 MR. GACHE: I don't have any other</p> <p>17 questions.</p> <p>18 THE COURT: Do you think cross is a</p> <p>19 long time or short time?</p> <p>20 MR. WEIDNER: I can make it real</p> <p>21 quick, Your Honor.</p> <p>22 THE COURT: Go ahead. I think by</p> <p>23 12:30 we'll probably have a break for</p> <p>24 lunch. If we need to bring her back, we</p> <p>25 will.</p> | <p>64</p> <p>1 MR. WEIDNER: Your Honor, the</p> <p>2 objection I make to this witness is that</p> <p>3 she's testifying and trying to present</p> <p>4 documents in. She's testified now that</p> <p>5 there's a servicing agreement that ties</p> <p>6 them to the note and mortgage that are at</p> <p>7 issue in this case that has not been</p> <p>8 presented. It has been asked for since</p> <p>9 August 2010. They have failed and refused</p> <p>10 to provide it. I will note the deposition</p> <p>11 yesterday, the witness indicated there's a</p> <p>12 servicing agreement that will define the</p> <p>13 relationship of this witness to the note</p> <p>14 and mortgage. And their capacity to make</p> <p>15 any statement in this court in this case,</p> <p>16 they failed to provide it. She shouldn't</p> <p>17 be allowed to testify as a witness.</p> <p>18 THE COURT: Response?</p> <p>19 MR. GACHE: I'm not sure what I'm</p> <p>20 hearing in terms of a procedural rule right</p> <p>21 now. I mean, he started his cross and now</p> <p>22 he wants to, what, strike this witness and</p> <p>23 everything that she's said. I guess that's</p> <p>24 what I'm hearing. So I'll respond to that</p> <p>25 motion to strike this witness and</p> |



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| <p>65</p> <p>1 everything that she's said. She is a 2 representative of the entity that held the 3 note on the day the lawsuit was filed. 4 She's a representative of the entity that 5 serviced the loan for two years. The owner 6 of a note is completely irrelevant in a 7 foreclosure proceeding. 8 The cases will tell you that. I 9 have them for you. Case law says what's 10 important is the holder of the note. AHMSI 11 held the note on the day the lawsuit was 12 filed, either AHMSI or its counsel. 13 THE COURT: Why do you think the 14 supreme courts have approved foreclosure 15 and says the plaintiff owns and holds the 16 note. 17 MR. GACHE: That is not correct. The 18 case law that has come out since that 19 forum, which was antiquated years ago, has 20 been superceded by case law from every 21 district that says all that matters is that 22 you held the note, you had possession. 23 Ownership doesn't matter. 24 So if ownership doesn't matter, then 25 it doesn't matter that you are the servicer</p> | <p>67</p> <p>1 the note in the courtroom testifying on the 2 day of the trial, not the owner. 3 THE COURT: I'd like to look at the 4 cases. So if you could present those to 5 the Court. I'm not sure I haven't... 6 MR. WEIDNER: I have a mountain of 7 cases and a motion directed, but let me 8 make a point very clearly here. There are 9 two types of cases before the Court. 10 There's one type of case when a plaintiff 11 comes and says: We own and hold the note 12 and mortgage -- 13 MR. GACHE: I'm handing you, for the 14 record, Harvey versus Deutsche Bank 15 National Trust, that's a Fourth District 16 case. I'm handing you Taylor which is a 17 Second District case. All from 2011. I'm 18 handing you Lippi which is a Fifth District 19 case, 2012. All three stand for the 20 proposition that one merely has to possess 21 the note, not own it. 22 MR. WEIDNER: Let me make this point 23 very clear because you're right, it is a 24 black and white appellate issue that we 25 need direction on and it is this: There's</p> |
| <p>66</p> <p>1 for an owner and then therefore you have to 2 put in a servicing agreement into evidence. 3 That is not a requirement. 4 Now, I understood your last case 5 where Chase was servicing for a named 6 plaintiff. But AHMSI was the plaintiff 7 when they filed and Residential Credit is 8 the plaintiff now, and they will get up and 9 put in the note in evidence. So that issue 10 that you had in the last trial is not the 11 same in this trial. 12 But what this gentleman is now 13 saying is, is that we need someone from the 14 investor, the, quote, owner here to 15 testify. And if your position, Judge, is 16 that we need the owner here to testify or I 17 have to put in the servicing agreement to 18 show you who I serviced for, even though I 19 was the holder on the day of the filing of 20 the lawsuit, we can't do it and you can 21 dismiss it right now because that would be 22 an appellate issue. 23 But I'm saying -- I would ask you 24 please read the cases that say that all 25 that matters is that we have the holder of</p> | <p>68</p> <p>1 two types of cases before the Court. 2 There's one type of case when a plaintiff 3 comes before the court and says plaintiff 4 owns and holds the note as is informed 5 1.944 the Rules of Florida Supreme Court. 6 There's a second type of case. When 7 the plaintiff comes before the court and 8 says: We are the servicer or we are acting 9 on behalf of some other party, that sets up 10 an agency-principal relationship that we 11 have to analyze. 12 Counsel has made several statements 13 about holder. That is a legal term. That 14 is a term that only applies within the 15 context of the Uniform Commercial Code. 16 The Uniform Commercial Code, the first step 17 they have to make is that the note is a 18 negotiable instrument. That is not at all 19 clear. This note is not a negotiable 20 instrument, number one. Number two -- 21 THE COURT: Why do you say this note 22 is not a negotiable instrument? 23 MR. WEIDNER: A negotiable instrument 24 is a promise to pay a fixed sum of money 25 with no conditions expressed or implied</p> |



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| <p>69</p> <p>1 otherwise. The document that is at issue 2 in the case does, in fact, have a whole 3 series of conditions. 4 The case law says that a negotiable 5 instrument must be a passanger with no 6 luggage, and that is a check, Your Honor. 7 If I have a check for \$100,000 made out to 8 Matt Weidner, that is a negotiable 9 instrument. If I endorse the back of it, 10 anybody else can pick it up and go into 11 court and cash it. That is a negotiable 12 instrument. 13 A promissory note is not a 14 negotiable instrument. And the interesting 15 thing is, we -- there have been thousands 16 of cases of course, but there have been 17 very few cases that analyze the instrument 18 before the Court as a negotiable 19 instrument. It should be noted, however -- 20 THE COURT: I'd like to see a case 21 that says that a note is not a negotiable 22 instrument. 23 MR. WEIDNER: Well, right here in the 24 Second DCA there is GMAC Air and -- but 25 we're sort of putting the cart before the</p> | <p>71</p> <p>1 MR. WEIDNER: That's correct, Your 2 Honor. 3 THE COURT: Is that a case where they 4 said a mortgage note was not a negotiable 5 instrument? I don't have the case to look 6 at. Can one of my interns pull this one 7 up. 933 So.2nd 34. 8 MR. WEIDNER: It, in fact, was not a 9 foreclosure. It was a retail installment 10 contract. But the footnote to that case 11 mentions mortgage foreclosure cases as 12 well. 13 THE COURT: Were they talking about 14 the note, though, to GMAC? 15 MR. GACHE: It's an auto loan case. 16 THE COURT: Auto loan, okay. 17 MR. WEIDNER: Correct. Again, we've 18 got to look at the footnote because it -- 19 first thing we have to do is analyze this 20 document and determine whether it fits 21 within that very clean, very strict 22 definition provided in the statute. It 23 just does not. 24 THE COURT: But I'm not sure I'm going 25 to do that during the trial, but I'm happy</p> |
| <p>70</p> <p>1 horse on this -- 2 THE COURT: No. I want to address 3 that issue. I am told that a note is not a 4 negotiable instrument and I want to see the 5 case that says that in the Second District 6 or in the state of Florida. 7 MR. GACHE: I'd certainly like a copy. 8 MR. WEIDNER: The first thing we want 9 to look at, Your Honor, is the statute, and 10 it's 673.1041, subsection 1. It defines a 11 negotiable instrument as an unconditional 12 promise or order to pay a fixed amount of 13 money with or without interest or charges 14 described in the promise to pay order. It 15 must be payable to bearer or to order the 16 time it is issued or comes into possession 17 of holder. Here is the key, this is 18 Florida Statute 673.1041, it does not state 19 any undertaking or instruction by the 20 person promising order to payment than the 21 payment of money. And paragraph 62 there 22 cites cases, one of the second which 23 analyzes this. 24 THE COURT: So you're saying this GMAC 25 case --</p> | <p>72</p> <p>1 to read the case law. It's just something 2 I haven't had presented to me before. 3 So one of you says it's a negotiable 4 instrument, one of you doesn't. 5 Now we're moving on. You have a 6 motion to strike the witness because 7 there's no servicing agreement basically. 8 You've argued that and you were on the 9 reply -- 10 MR. GACHE: One more thing. If, 11 indeed, I need a servicing agreement as 12 part of my case in chief, then what the 13 proper vehicle for him to do would be to 14 make a motion for directed verdict on the 15 rest. He never put a servicing agreement 16 in, Judge. Here's why he should have, it 17 should have been part of his case. I'll 18 respond why it wasn't needed and then we'll 19 move on. 20 You don't strike the witness after 21 you've allowed her to testify for the whole 22 time during direct. And now he's in the 23 middle of cross and then he just stops and 24 says: Okay, I want to strike. 25 So I really think it's more if I</p> |



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| <p>73</p> <p>1 don't need it, I don't need it. If I do 2 need it, you'll say I need it and that'll 3 make for the appellate issue. 4 THE COURT: It's a brief reply. 5 Arguments, response, and then a very brief 6 reply. So keep it brief because we're 7 going to break for lunch in three minutes. 8 MR. WEIDNER: There has been no 9 connection of this witness to the case 10 because there is no servicing agreement or 11 other document which evidences this 12 witness's ability to testify in this trial 13 on behalf of any of the parties there 14 before the courts. And any evidence that 15 she would seek to admit is therefore 16 inadmissible. 17 THE COURT: Thank you. I'm going to 18 deny the motion to strike the witness. 19 We'll come back after lunch and 20 finish cross-examination of this witness. 21 How many other witnesses does the plaintiff 22 have? 23 MR. GACHE: Just one, Residential 24 Credit, and then the rest of the 25 arrearages.</p> | <p>75</p> <p>1 Plaintiff's 4 in evidence. You may proceed 2 with cross. 3 (Plaintiff's Exhibit 4, Certified Copy 4 of Mortgage, was admitted into evidence.) 5 MR. WEIDNER: I have no further 6 questions for this witness but I would like 7 to reserve. 8 THE COURT: Was there any redirect? 9 MR. GACHE: If you're still 10 maintaining your ruling that you need the 11 actual plaintiff on the stand before the 12 note can come into evidence, just 13 confirming that that's your position, 14 because I tried to offer it through this 15 witness. It was the one who had it at the 16 time of the filing of the lawsuit. 17 THE COURT: Yes, that was my ruling. 18 So, yes. Any other questions other than 19 that? 20 MR. GACHE: No. 21 THE COURT: You may step down and the 22 plaintiff may call your next witness. 23 MS. KENEFIC: At this time, plaintiff 24 would like to call as its second witness 25 Melissa Sequete, who is the corporate</p> |
| <p>74</p> <p>1 THE COURT: How many witnesses does 2 the defense have? 3 MR. WEIDNER: Maybe two. 4 (A lunch recess was taken.) 5 MR. GACHE: Your Honor, I know he's 6 just getting started with his cross and I 7 wanted to also -- I was remiss, but I 8 wanted to put in a copy of the mortgage and 9 I can do it after he's finished and then he 10 can go back and ask more questions, or you 11 can let me do it right now so he can cover 12 it all in his cross. Would you mind if I 13 just offered the mortgage into evidence? 14 THE COURT: Do you object? 15 MR. WEIDNER: I do not object, Your 16 Honor. 17 MR. GACHE: Your Honor, I have a 18 certified copy of the mortgage to offer as 19 Exhibit 4, I guess we're up to, and under 20 90.902 B4, because it's a certified copy, 21 I'd ask that it be admitted into evidence. 22 THE COURT: You may bring it forward. 23 Is there any objection from the defense? 24 MR. WEIDNER: No objection. 25 THE COURT: That'll be admitted as</p> | <p>76</p> <p>1 representative of the plaintiff, 2 Residential Credit Solutions, Inc. 3 THE COURT: Melissa? 4 MR. GACHE: She'll spell it for you. 5 6 MELISSA SEQUETE (Sworn) 7 8 DIRECT EXAMINATION 9 BY MS. KENEFIC: 10 Q. Can you please state your full name 11 for the record. 12 A. Melissa Sequete. 13 Q. Can you please spell your last name 14 for the record? 15 A. S-E-Q-U-E-T-E. 16 Q. Ms. Sequete, can you please -- who is 17 your current employer? 18 A. Residential Credit Solutions, Inc. 19 Q. And who is Residential Credit 20 Solutions, Inc.? 21 A. They are a loan servicer. 22 Q. And is Residential Credit Solutions, 23 Inc. the present plaintiff in this foreclosure 24 action? 25 A. Yes, they are.</p> |



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| <p>1 Q. And what type of business does 2 Residential Credit Solutions, Inc. do? 3 A. We service mortgage loans. 4 Q. And does Residential Credit Solutions, 5 Inc. service the subject loan? 6 A. Yes. 7 MR. WEIDNER: Objection, Your Honor. 8 THE COURT: The objection is? 9 MR. WEIDNER: Foundation. 10 THE COURT: Sustained. 11 You can inquire about that, about 12 how does she know that. So I'm not 13 withholding any other questions. 14 Q. (By Ms. Kenefic) Is Residential Credit 15 Solutions, Inc. the current servicer of this 16 loan? 17 A. Yes. 18 Q. And when did Residential Credit 19 Solutions, Inc. begin servicing this loan? 20 MR. WEIDNER: Objection, Your Honor. 21 THE COURT: Objection is? 22 MR. WEIDNER: Foundation. 23 THE COURT: Overruled. You can answer 24 the question. 25 THE WITNESS: October 1, 2010.</p> | <p>77</p> <p>1 THE COURT: Overruled. You can 2 answer. 3 THE WITNESS: We began servicing it on 4 October 1, 2010. 5 THE COURT: I already heard that 6 answer. What I said was I need to know how 7 you know that. 8 THE WITNESS: Through our business 9 records. 10 THE COURT: You may continue to 11 inquire. 12 Q. (By Ms. Kenefic) What records did you 13 review in order to determine that Residential 14 Credit Solutions, Inc. is the servicer of this 15 loan? 16 MR. WEIDNER: Objection. She's asking 17 her to testify to records that are not in 18 evidence. 19 THE COURT: Overruled. You can answer 20 the question. 21 THE WITNESS: I have reviewed the 22 note, the mortgage, notes, payment history 23 to name a few. 24 Q. (By Ms. Kenefic) Within your position 25 at Residential Credit Solutions, are you</p> <p>79</p> |
| <p>1 THE COURT: But I do need the witness 2 to tell me how she knows that. 3 Q. (By Ms. Kenefic) Ms. Sequete, how long 4 have you worked for Residential Credit 5 Solutions, Inc.? 6 A. Since March of last year. 7 Q. And what is your position within 8 Residential Credit Solutions, Inc.? 9 A. I am the assistant vice president of 10 servicing. 11 Q. And can you describe what your daily 12 duties are within that position? 13 A. I handle the litigation foreclosures 14 in the state of Florida and I review all of our 15 business records in regards to those 16 foreclosures. 17 Q. And within your position at 18 Residential Credit Solutions, Inc., have you 19 reviewed the subject loan? 20 A. I have. 21 Q. And in reviewing the business records 22 of Residential Credit Solutions, Inc., can you 23 determine when Residential became servicer of 24 this loan? 25 MR. WEIDNER: Objection; foundation.</p> | <p>78</p> <p>1 familiar with the business practices of 2 Residential Credit Solutions in creating and 3 maintaining the business records? 4 A. Yes. 5 Q. And does your job duties entail you 6 having access and reviewing the business records 7 pertaining to mortgage servicing? 8 A. Yes. 9 Q. And do you have access to Residential 10 Credit Solutions, Inc.'s business records? 11 A. Yes. 12 Q. And does that include access to the 13 business records relating to the defendant's 14 loan? 15 A. Yes. 16 Q. Are you personally familiar with 17 Residential Credit Solutions, Inc.'s business 18 records? 19 A. Yes. 20 Q. And are you personally familiar with 21 the business records pertaining to the 22 defendant's loan? 23 A. Yes. 24 Q. How are you personally familiar with 25 those records?</p> <p>80</p> |



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| <p>81</p> <p>1 A. I have reviewed all the records.</p> <p>2 Q. And can you describe what those</p> <p>3 records are that you've reviewed?</p> <p>4 A. I've reviewed the note, the mortgage,</p> <p>5 the payment history, notes, fees due, collection</p> <p>6 notes. Any and everything that pertains to this</p> <p>7 loan, I've reviewed.</p> <p>8 MS. KENEFIC: Your Honor, if I could</p> <p>9 actually show the witness a copy of the</p> <p>10 original note that's in the court file.</p> <p>11 THE COURT: You may. Here's the court</p> <p>12 file.</p> <p>13 MS. KENEFIC: Judge, can I approach</p> <p>14 the witness?</p> <p>15 THE COURT: You can.</p> <p>16 Q. (By Ms. Kenefic) Just let me know when</p> <p>17 you're done reviewing it.</p> <p>18 A. I'm done.</p> <p>19 Q. Ms. Sequete, do you have a copy of the</p> <p>20 note from Residential Credit Solutions, Inc.</p> <p>21 business records with you?</p> <p>22 A. I do.</p> <p>23 Q. And in reviewing the original note</p> <p>24 that's been filed with the Court, does the</p> <p>25 Residential Credit Solutions, Inc. business</p> | <p>83</p> <p>1 MS. KENEFIC: Your Honor, the witness</p> <p>2 has testified that the business record,</p> <p>3 copy -- or the original note that's in the</p> <p>4 court file is a copy of the business</p> <p>5 records that RCS maintains. We -- the</p> <p>6 plaintiff asserts that the original note is</p> <p>7 not hearsay evidence.</p> <p>8 THE COURT: Anything else from the</p> <p>9 defense on that issue?</p> <p>10 MR. WEIDNER: It's not that witness's</p> <p>11 evidence that they can testify to.</p> <p>12 THE COURT: By "that witness's"</p> <p>13 testimony, do you mean it's not the</p> <p>14 plaintiff in this case?</p> <p>15 MR. WEIDNER: Correct.</p> <p>16 THE COURT: Exhibit Number 1 will be</p> <p>17 admitted into evidence over the defense</p> <p>18 objection as stated on record.</p> <p>19 (Plaintiff's Exhibit 1, RCS Business</p> <p>20 Records, was admitted into evidence.)</p> <p>21 Q. (By Ms. Kenefic) Ms. Sequete, I am</p> <p>22 going to show you what's been premarked as</p> <p>23 Plaintiff's Exhibit Number 5 for identification.</p> <p>24 Do you recognize that document?</p> <p>25 A. I do.</p> |
| <p>82</p> <p>1 records copy of the note match the original note</p> <p>2 that's filed with the Court?</p> <p>3 A. It does.</p> <p>4 Q. And does that note -- is that note</p> <p>5 that's within the file, the court record, is</p> <p>6 that the note that RCS, Residential Credit</p> <p>7 Solutions, Inc., currently services?</p> <p>8 A. Yes, it is.</p> <p>9 MS. KENEFIC: At this time, Your</p> <p>10 Honor, plaintiff would like to introduce</p> <p>11 into evidence the original note that's been</p> <p>12 filed with the Court as Plaintiff's Exhibit</p> <p>13 Number 1.</p> <p>14 THE COURT: Any objection?</p> <p>15 MR. WEIDNER: I'm going to object,</p> <p>16 Your Honor, to hearsay.</p> <p>17 THE COURT: How is it hearsay? I just</p> <p>18 want to be very clear. I think this is</p> <p>19 what the issue is that's before the Second</p> <p>20 District.</p> <p>21 MR. WEIDNER: This is a court</p> <p>22 statement used against my client. This</p> <p>23 witness has no knowledge of that document</p> <p>24 other than she's seeing a document.</p> <p>25 THE COURT: Response?</p> | <p>84</p> <p>1 Q. Can you state for the record what that</p> <p>2 document is?</p> <p>3 A. These are our judgment figures.</p> <p>4 Q. And the data that's contained within</p> <p>5 those judgment figures, is that a record that</p> <p>6 was made at or near the time of the event of the</p> <p>7 judgment figures being entered?</p> <p>8 A. Yes.</p> <p>9 Q. And the data that's contained within</p> <p>10 the judgment figures, is that made by or from</p> <p>11 information transmitted by a person with</p> <p>12 knowledge?</p> <p>13 A. Yes.</p> <p>14 Q. And is the data that's contained</p> <p>15 within judgment figures, is that kept within the</p> <p>16 ordinary business practice of Residential Credit</p> <p>17 Solutions, Inc.?</p> <p>18 MR. WEIDNER: Objection; leading.</p> <p>19 THE COURT: Sustained.</p> <p>20 Q. (By Ms. Kenefic) Is the information --</p> <p>21 MR. WEIDNER: Objection; leading.</p> <p>22 THE COURT: Let me hear the whole</p> <p>23 question.</p> <p>24 Q. (By Ms. Kenefic) And is it the regular</p> <p>25 business practice of Residential Credit</p> |



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| <p>1 Solutions, Inc. to put the information from the 2 judgment figures into a -- put the data 3 information from judgment figures into that 4 document? 5 MR. WEIDNER: Objection; leading. 6 THE COURT: Sustained. 7 MR. GACHE: Your Honor, can Ms. 8 Kenefic be heard on the leading objection? 9 THE COURT: If the question suggests 10 an answer -- 11 MR. GACHE: The hearsay rules require 12 that you establish those four things. I 13 think there's an exception that the Court 14 is supposed to give a little leeway for 15 those four things. You have to prove them 16 that way. So you have to ask the questions 17 the way the evidence rules requires it, and 18 I've had other trial judges understand it. 19 There are certain times when you 20 just have to ask the question in a certain 21 way. We understand what leading means. We 22 just ask that you give a little leeway in 23 that regard on that hearsay rule because 24 that's how you have to ask it. 25 THE COURT: I'll take that as a motion</p> | 85 | <p>1 MR. GACHE: No, it doesn't say you 2 have to. What I'm saying is I don't know 3 of any other way -- 4 THE COURT: Maybe I didn't read it 5 clearly. 6 MR. GACHE: No. What I'm saying is I 7 don't know of any other way to ask those 8 kinds of questions without them necessarily 9 being leading to get exactly what the court 10 -- the appellate court says you must 11 establish to get the business records in. 12 I don't know of another way to do it. 13 Maybe the Court does. 14 But to say is it part of the 15 regularly conducted business activity to do 16 this, how else are you supposed to ask that 17 question? But I have to have it that 18 way -- 19 THE COURT: She's already asked is 20 that the way you do it in the regular 21 course, and the witness has already 22 answered that. But then we had a long 23 extended answer that I think it suggested a 24 yes answer, and that's what I ruled on. 25 So you don't have to respond and I</p> | 87 |
| <p>1 to reconsider my ruling. 2 Do you want to speak to that? 3 MR. WEIDNER: I do. It's a yes or no 4 question. The witness has to be able to 5 get the records in under the exception. 6 THE COURT: His motion to reconsider 7 is based on the fact that he says the Court 8 has to give leeway under certain types of 9 questions. 10 How is it that you say this question 11 fits into the certain type of questions and 12 what case law are you depending on. 13 MR. GACHE: I don't really have a 14 case. I'm just arguing as a matter of 15 course where the law says -- I'm reading 16 right from the case -- that the proponent 17 of the evidence must establish the record 18 is made at or near the time of the event, 19 was made by an individual transmitted by a 20 person with knowledge, was kept in the 21 ordinary course of the regularly conducted 22 business. 23 THE COURT: Does it say anywhere in 24 there that the Court has to allow leading 25 questions to establish that?</p> | 86 | <p>1 deny the request to reconsider the ruling. 2 You may proceed. 3 Q. (By Ms. Kenefic) Ms. Sequete, in your 4 review of Residential Credit Solutions, Inc.'s 5 business records, do -- I'm sorry, strike that. 6 Are escrow advances and fees for 7 expenses paid out on loans, are those reflected 8 within the RCS system at all? 9 MR. WEIDNER: Objection. 10 MS. KENEFIC: I'm sorry. 11 Q. (By Ms. Kenefic) Are those -- sorry. 12 Are escrow advances, payments made for 13 interest, fees, are those reflected anywhere in 14 Residential Credit Solutions' system? 15 A. Yes, they are. 16 MR. WEIDNER: Leading. 17 THE COURT: Overruled. 18 Q. (By Ms. Kenefic) Where would this 19 information, this data pertaining to escrow 20 advances, fees paid out and interest paid, where 21 would this data be contained? 22 A. It would be in our business records in 23 our loan servicing platform. 24 Q. And where -- what document would come 25 out of that loan servicing platform?</p> | 88 |



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| <p style="text-align: right;">89</p> <p>1 A. Several documents would come out of 2 the loan servicing platform which would contain 3 the judgment figures. 4 Q. Can you describe what documents those 5 -- would come out of that loan servicing 6 platform? 7 A. Well, you know, the payment histories, 8 escrow payment history, insurance payment 9 history, original balance, unpaid principal 10 balance history, all those histories would come 11 out of our loan servicing platform. 12 Q. What is that loan servicing platform 13 that RCS employs in which to show all this data? 14 A. It's called FiServ. 15 Q. How are you personally familiar with 16 this FiServ system? 17 A. I work with it on a daily basis. 18 Q. And what kind of data is contained in 19 this FiServ system? 20 A. Everything that is -- everything on 21 the loan from the time that we bring the loan -- 22 that the loan is transferred to Residential 23 Credit Solutions, Inc. to present. 24 Q. And is the document -- strike that. 25 And can you describe for me what</p> | <p style="text-align: right;">91</p> <p>1 are not the complete record. 2 I had the opportunity to 3 cross-examine this witness. We looked at 4 the records there with Ms. Sequete the 5 deposed witness. My question is the 6 witness -- the witness admitted that the 7 records that are before her now are summary 8 data compilations, not all the information. 9 MS. KENEFIC: Your Honor, this witness 10 has testified that the particular document, 11 Exhibit 5, contains escrow advances, 12 contains judgment figures, it contains fees 13 paid out, it contains the loan number, it 14 contains the defendant's name, it contains 15 all the information that is required in 16 order to establish that money is owed on 17 this particular loan. 18 We have properly laid the predicate 19 for business records exception and that's 20 what we are asking the Court to introduce 21 in evidence as -- as a business record of 22 Residential Credit Solutions, Inc. in order 23 to testify -- have this witness testify as 24 to the amounts that are owed on this 25 particular note.</p> |
| <p style="text-align: right;">90</p> <p>1 Exhibit 5 -- what's been premarked as 2 Plaintiff's Exhibit 5, can you describe what 3 that document is? 4 A. It is screen shots from Residential 5 Credit Solutions' FiServ system. 6 Q. And can you state for the record what 7 that particular document has in it? 8 A. It contains the defendant's name and 9 property address, such things as the interest 10 due, the original principal balance, the unpaid 11 principal balance, escrow advances, last payment 12 received and expense advances. Even the 13 defendant's social security number is in here. 14 When last payment -- when they were paid, when 15 their next payment is due, who we pay property 16 insurance to is in there as well. 17 MS. KENEFIC: Your Honor, at this time 18 plaintiff would like to move into evidence 19 what's been premarked as Plaintiff's 20 Exhibit 5 as Plaintiff's Exhibit 5, the 21 judgment figures. 22 MR. WEIDNER: I'm going to object, 23 Your Honor. It's all hearsay. It's 24 business records that haven't been properly 25 authenticated. It's summary records that</p> | <p style="text-align: right;">92</p> <p>1 We've already had AHMSI testify as 2 to its loan payment history and that's 3 already been introduced into evidence. 4 THE COURT: Do you want to be heard? 5 MR. WEIDNER: Absolutely. We'll get 6 to that. As my good counsel just noted, 7 she's testified to previous records that, 8 while she hasn't stated, I assume are part 9 of those records. But the point is, this 10 witness has testified that those are 11 summary. I'm not disputing about what she 12 said about what's in there. The fact is, 13 what this witness has said is that those 14 are summary records, not the full record. 15 MR. GACHE: Your Honor, I'd like to 16 point out that -- 17 THE COURT: You don't need to. I'm 18 going to overrule the objection. I'm going 19 to admit Exhibit 5 into evidence, and 20 noting the defense objection, and it can be 21 taken up on appeal. 22 You may proceed. 23 (Plaintiff's Exhibit 5, Judgement 24 Figures, was admitted into evidence.) 25 Q. (By Ms. Kenefic) Ms. Sequete, do you</p> |



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| <p>1 know what information the judgment figures 2 contain? 3 A. I do. 4 Q. And what kind of information is 5 contained in the judgment figure? 6 A. They contain the unpaid principal 7 balance, the original principal balance, taxes, 8 insurance paid, any other fees incurred such as 9 appraisals or BPOs. 10 Q. And as of today's date, do you know 11 the total amount that's owed to the plaintiff by 12 defendants? 13 A. I do. It's \$741,815.04. 14 Q. As of today's date, do you know what 15 the unpaid principal balance is owed? 16 A. The unpaid principal balance is 17 \$537,055.69. 18 Q. And can you testify today as to the 19 total amount of interest that's owed on this 20 particular loan? 21 A. The total amount of interest is 22 \$160,466.63. 23 Q. And can you state for the record the 24 years that the interest includes? 25 A. The interest includes from '08 to --</p> | 93 | <p>1 THE COURT: Thank you. Cross? 2 MR. WEIDNER: No cross-examination. 3 THE COURT: You may step down. 4 Plaintiff may call your next witness. 5 MR. GACHE: Judge, the plaintiff 6 rests. 7 THE COURT: Defense may proceed. 8 MR. WEIDNER: If it please the Court, 9 Your Honor, at this point in time we're 10 going to move for a directed verdict. 11 Primary basis, and there are many, but 12 first is going to be there's been 13 absolutely zero testimony from the 14 plaintiff regarding the date of endorsement 15 on the original note. 16 The case out of the Second DCA 17 recently decided, Feltus versus U.S. Bank, 18 stands for the proposition -- and it's 19 found in Footnote Number 2. I'm showing 20 counsel Footnote Number 2 under Feltus 21 asserts that even after they had properly 22 amended the complaint, in fact they did in 23 this case, they needed to show that the 24 endorsement in blank was effectuated before 25 the lawsuit was filed.</p> | 95 |
| <p>1 from '08 to today. 2 Q. And were there escrow advances made on 3 this particular loan by the servicer? 4 A. Yes, there was. 5 Q. And what were these advances for? 6 A. We advanced monies for taxes and 7 insurance. 8 Q. And can you state for the record what 9 the total amount was advanced for those 10 particular -- for taxes and insurance? 11 A. The total was \$30,083.19, taxes was 12 \$16,227.32, and insurance was \$13,855.87. 13 Q. Were there any fees incurred due the 14 property evaluations and BPOs and appraisals on 15 the property? 16 A. Yes, \$1,358.60. 17 MS. KENEFIC: Your Honor, at this 18 time, I have no more questions for this 19 witness. 20 THE COURT: Cross? 21 MS. KENEFIC: Just as a method of 22 reserving, we do have attorney's fees 23 that's reflected in the judgment. We did 24 file an affidavit for those attorney fees, 25 so I'd just like to put that on the record.</p> | 94 | <p>1 Counsel here on the other side has 2 had not one but two witnesses that had an 3 opportunity to talk about the note. 4 Neither one of them did, Your Honor. We've 5 had deposition testimony. Neither one of 6 them did, Your Honor. So the standard 7 there is that they failed to introduce that 8 evidence under Feltus and we're entitled to 9 a directed verdict based on that. 10 THE COURT: Somebody gave me Feltus 11 earlier but I can't seem to lay my hands on 12 it. 13 MR. WEIDNER: Should make the record 14 clear that there was an amended complaint 15 filed subsequently -- 16 THE COURT: Which one are we talking 17 about, in this case? 18 MR. WEIDNER: In this case, Your 19 Honor. The issue is that, like in Feltus, 20 when the plaintiff filed the original 21 complaint, there was no note attached to 22 that complaint. In fact, I think we should 23 look at the record right now so it's clear 24 so if we look at the original complaint 25 that was filed and make that record clear,</p> | 96 |



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| <p>97</p> <p>1 there was no note attached to it. There 2 was no copy of the note attached to it. 3 THE COURT: To what, the amended -- 4 MR. WEIDNER: To the original 5 complaint filed in this lawsuit. 6 THE COURT: To the original complaint? 7 MR. WEIDNER: Correct. 8 THE COURT: The original complaint had 9 no copy of the note? 10 MR. WEIDNER: Yes, that's correct, no 11 copy. 12 THE COURT: What about the amended 13 complaint? 14 MR. WEIDNER: When they did get around 15 to filing the amended complaint, they did 16 have a copy of the note and it was, in 17 fact, endorsed. 18 THE COURT: Now, so your position is 19 that they have not established the date of 20 the endorsement was before the filing of 21 the original action October 4 -- that's the 22 wrong date, December 2, 2008. 23 MR. WEIDNER: Correct, Your Honor. 24 And as Feltus, in particular, most recently 25 clarifies -- but there are a variety of</p> | <p>99</p> <p>1 the fact of the matter is that under MERS 2 versus Azize, a long time ago out of this 3 very district, there's a genuine issue of 4 material fact as to who owns the note and 5 who has the standing to foreclose, and 6 that's what we're talking about here. 7 There's another party that owns the 8 note and mortgage at issue in this case. 9 Look at the way they pled it both in their 10 original complaint and in the amended 11 complaint. They asserted they either own 12 or hold or are servicing the loan. In 13 deposition they testified that we are 14 servicing the loan. So they have admitted 15 that they do not own the note or mortgage, 16 that they're merely servicing. 17 And the fact of the matter is that 18 they have to provide some evidence of their 19 relationship to the principal that -- 20 because they're in the court acting as an 21 agent for a principal. If you look at both 22 of their complaints, there -- but I just 23 want to set the amended complaint. Let's 24 focus on that one. 25 They're acting as the agent from an</p> |
| <p>98</p> <p>1 other cases prior to that -- standing must 2 -- standing must be acquired at the 3 inception of the lawsuit, not acquired 4 subsequently. They've not introduced any 5 evidence of that fact, that's number one. 6 MR. GACHE: Do you want to take them 7 one at a time? 8 THE COURT: No. Give me all of your 9 argument for DV, all of your response, 10 brief response, then I'm ruling. 11 MR. WEIDNER: There are two types of 12 cases, when they own and hold and -- 13 THE COURT: This is issue two? 14 MR. WEIDNER: Issue two. The 15 plaintiff has failed to introduce any 16 evidence whatsoever that either one of the 17 witnesses that they have called have any 18 relationship to the note or mortgage in 19 question. 20 They have, in fact, said, both 21 witnesses, we are the servicer but they 22 have not introduced a single piece of 23 evidence which gives them the authority to 24 be here in front of the Court. There are a 25 number of cases that deal with this, but</p> | <p>100</p> <p>1 undisclosed principal. I've been asking 2 from the beginning: Give me some proof, 3 give me some authorization, 4 interrogatories, discovery, deposition, in 5 the request for production, request for 6 admissions. They refused to provide 7 anything. 8 The case law which stands for 9 proposition that the party seeking 10 foreclosure must present evidence that it 11 owns the note and mortgage, Lizio versus 12 McCullom 36th So.3rd 927, that's out the 13 4th in 2010. Verizzo, that's out of the 14 2nd DCA, V-E-R-I-Z-Z-O, versus Bank of New 15 York 28 So.3d 976. There's a genuine issue 16 of fact as to whether Bank of New York owns 17 and holds the note and has standing to 18 foreclose the mortgage in question. 19 To grant the judgment of foreclosure 20 in favor of plaintiff, the trial court 21 would have to find, among other things, 22 that the plaintiff owned the mortgage and 23 had performed all conditions precedent if 24 anything. That's Dykes versus Trustbank 25 567 So.2nd 958. That's out of the 2nd 990.</p> |



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| <p>101</p> <p>1 So that's my argument regarding</p> <p>2 providing to the Court some evidence that</p> <p>3 you have any relationship to the note and</p> <p>4 mortgage in question. They have not done</p> <p>5 that in this case, Your Honor. We're</p> <p>6 entitled to directed verdict.</p> <p>7 Number three, the third issue, both</p> <p>8 the witnesses that they presented testified</p> <p>9 that they are here acting as servicers.</p> <p>10 Because they are acting as servicers, they</p> <p>11 do not come under the holder provisions of</p> <p>12 the Uniform Commercial Code. Under 673.301</p> <p>13 it doesn't say that a person may be</p> <p>14 entitled to enforce the instrument, either</p> <p>15 they're not or alike; however, if they're</p> <p>16 holding it, they only get the rights that</p> <p>17 the transfer had any instrument. That's</p> <p>18 Florida Statute 673.2031, subsection 2.</p> <p>19 It goes on further to state that if</p> <p>20 a transferor -- and we'll start with the</p> <p>21 originator. American Brokers Conduit was</p> <p>22 the originator on here. They're the name</p> <p>23 that's on there. There's testimony that</p> <p>24 the first witness, American Home Mortgage</p> <p>25 Servicing, was servicing that on behalf</p> | <p>103</p> <p>1 else. It's a term of art that is</p> <p>2 particular to a contract between one party</p> <p>3 or another. It's not a legally operative</p> <p>4 word.</p> <p>5 So if the Court is going to rely on</p> <p>6 their testimony, they need to present the</p> <p>7 contract that gives him the basis for that.</p> <p>8 Neither one of the plaintiffs introduced</p> <p>9 evidence of the endorsement. We put the</p> <p>10 burden onto them --</p> <p>11 THE COURT: I thought that was your</p> <p>12 issue too. You're getting me confused.</p> <p>13 MR. WEIDNER: That is, Your Honor.</p> <p>14 Let me give you four.</p> <p>15 THE COURT: Go ahead.</p> <p>16 MR. WEIDNER: We shifted the burden to</p> <p>17 the opposing party to prove the validity,</p> <p>18 the endorsement of the note. They failed</p> <p>19 to do so. They didn't introduce any</p> <p>20 evidence of that. Under 673.3081, the</p> <p>21 failure to do so, they have not shifted the</p> <p>22 burden. They haven't proven their case.</p> <p>23 Issue number five, the note at issue</p> <p>24 in this case is nonnegotiable. The case</p> <p>25 that -- the issue before the Court is that</p> |
| <p>102</p> <p>1 of -- was servicing. So presumably</p> <p>2 something was transferred from the</p> <p>3 originator, American Brokers Conduit, but</p> <p>4 it was not the whole note, it was just,</p> <p>5 arguably, the right to service it. But</p> <p>6 they admitted they don't own it, they're</p> <p>7 servicing it.</p> <p>8 The statute asserts if a transferor</p> <p>9 purported to transfer less than the entire</p> <p>10 instrument, negotiation of the instrument</p> <p>11 does not occur. The transferee has no</p> <p>12 right under this chapter, has only the</p> <p>13 rights of the partial assignee. That's</p> <p>14 Florida Statute 673.2031, subsection 4.</p> <p>15 That's what has occurred in this</p> <p>16 case. The note was transferred for</p> <p>17 potentially but only the rights. They have</p> <p>18 not asserted that they own it.</p> <p>19 Again, back to this issue, the</p> <p>20 American Home Mortgage Servicing, Inc.</p> <p>21 representative asserted they're just the</p> <p>22 servicer. They don't own the note. This</p> <p>23 is not a legally operative word,</p> <p>24 "servicer." It's not like a personal</p> <p>25 representative or a trustee or anything</p> | <p>104</p> <p>1 they have not proven up that the note</p> <p>2 itself is negotiable, much less proven the</p> <p>3 conditions that require it to be</p> <p>4 negotiated.</p> <p>5 The third -- I guess this would be</p> <p>6 the sixth one now, is that the mortgage at</p> <p>7 issue in this case, paragraph 22, requires</p> <p>8 that a default letter be sent out to the</p> <p>9 parties to that contract. The plaintiffs</p> <p>10 have issued -- have entered no default</p> <p>11 letter on behalf of one of the parties to</p> <p>12 the lawsuit, the wife, Teri</p> <p>13 Dittrich-Hassell. The failure to introduce</p> <p>14 evidence that they sent a default letter to</p> <p>15 the second party to the contract renders a</p> <p>16 failure of that important condition</p> <p>17 precedent.</p> <p>18 They may assert that the provision</p> <p>19 in the mortgage which asserts that notice</p> <p>20 to one party is notice to both may carry</p> <p>21 today, but it does not because there are</p> <p>22 important constitutional and homestead</p> <p>23 protections here which the spouse is</p> <p>24 entitled to.</p> <p>25 The plaintiff and their witnesses</p> |



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| <p>105</p> <p>1 failed to introduce competent evidence that 2 a default had occurred under the terms of 3 the mortgage. They introduced summary 4 evidence but they didn't introduce any 5 summary evidence -- or any complete 6 evidence. And those are the basis, Your 7 Honor.</p> <p>8 THE COURT: Say number seven again for 9 me, please, so I can write some notes. I'm 10 sorry, this last one you just mentioned, 11 summary figures.</p> <p>12 MR. WEIDNER: Yes, that they didn't 13 introduce default. They testified as to 14 figures which were summaries of others but 15 nobody was able to testify specifically to 16 a default.</p> <p>17 Second, a related element to that 18 was we recall that they entered in the 19 letter, and I said: Sure, you can enter in 20 a letter but that's not proof of default. 21 That's the issue, they didn't get in any 22 proof of default.</p> <p>23 That's it, Your Honor.</p> <p>24 THE COURT: Thank you.</p> <p>25 MR. GACHE: Honestly, I had trouble</p> | <p>107</p> <p>1 that's the evidence of security. We have 2 the demand letter in evidence, that's 3 evidence that a letter was sent to the 4 borrower defaulting the borrower. And the 5 question of whether he thinks it's good 6 notice or not, that's a different issue but 7 it's not an issue for directed verdict. We 8 have both loan payment histories in 9 evidence by two different competent 10 witnesses, one who serviced the loan for 11 two years and one who has been servicing 12 the loan since 2010. Both have all their 13 figures into evidence. Okay, so we have 14 all of that record evidence.</p> <p>15 Now, let me start with the standing 16 at the time of filing. He made a point 17 that Feltus states that the endorsement -- 18 we have to know that the endorsement was 19 prior to the filing of the lawsuit, and I 20 agree with that. You don't have to give an 21 exact date but you have to be able to 22 establish that you were the person who held 23 the note on the day the lawsuit was filed, 24 because if the note is made payable to a 25 specific person and you're not that person,</p> |
| <p>106</p> <p>1 keeping up on all of them. I'm just going 2 to try to respond to as many as I could 3 write down. If you think I missed 4 something or if there's something of 5 concern to the Court, you'll remind me and 6 I'll address it.</p> <p>7 First of all, let's remember this is 8 a motion for directed verdict. That means 9 there was absolutely not a scintilla of 10 evidence on the part of the plaintiff that 11 would have satisfied a particular element 12 of our prima facie case, and, therefore, 13 he's entitled to judgment as a matter of 14 law.</p> <p>15 This is not a summary judgment 16 standard. It has nothing to do with 17 material issues and facts that he cited 18 case law from summary judgement cases. 19 We're at trial. So the question is: Did 20 we sustain our burden sufficient to get by 21 a motion for directed verdict?</p> <p>22 Let's retrace our steps. What do we 23 have in evidence? We have the note in 24 evidence, so that's the evidence of the 25 debt. We have the mortgage in evidence,</p> | <p>108</p> <p>1 you need that blank endorsement prior to 2 filing the action.</p> <p>3 Well, don't we remember what Ms. 4 Ibarra testified to? We put her on the 5 stand and I specifically said: Did you 6 have possession of this promissory note in 7 2008 prior to filing the action as it 8 exists today with the endorsement, and she 9 said: Yes. That was the testimony from 10 Ms. Ibarra. That's why I elicited it. So 11 that satisfies that issue. I don't have to 12 give a specific date of endorsement. 13 Nobody knows the dates of these 14 endorsements. They're not dated. But I if 15 can establish beyond --</p> <p>16 THE COURT: That's one of my big pet 17 peeves, by the way.</p> <p>18 MR. GACHE: Is that they don't date 19 endorsements. But that's commercial paper, 20 that's the UCC. They don't date 21 endorsements. But I have to establish that 22 we had it on the date of the filing of the 23 lawsuit. I think I did that. I certainly 24 don't think it's a directed verdict issue. 25 The testimony came directly from the</p> |



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| <p>1 witness's mouth.</p> <p>2 This issue of no relationship of the</p> <p>3 note and the owner, I guess what he's</p> <p>4 basically saying is a servicer cannot come</p> <p>5 in here if, in fact, they are the</p> <p>6 plaintiff -- remember, we don't have the</p> <p>7 Chase problem that you had earlier this</p> <p>8 morning. We have the plaintiff. They held</p> <p>9 the note. They said they had possession</p> <p>10 before we filed a lawsuit. So they were,</p> <p>11 in fact, a holder.</p> <p>12 Now, I could read to you -- I don't</p> <p>13 know if you got a chance to read some of</p> <p>14 the cases I gave you over lunch, but I can</p> <p>15 read to you right out of the Fourth, right</p> <p>16 out of the Second, right out of the Fifth</p> <p>17 that the party that holds the note and</p> <p>18 mortgage in question has standing to bring</p> <p>19 and maintain a foreclosure action. That's</p> <p>20 just one of one hundred I could give you.</p> <p>21 But that's from Lippi, L-I-P-P-I, Fifth</p> <p>22 District case, January 2012. The person</p> <p>23 having standing to foreclose a note secured</p> <p>24 by a mortgage may be either the holder of a</p> <p>25 note or a nonholder in possession of the</p> | <p>1 that right away. But we would think that</p> <p>2 with all the case law I've given you, that</p> <p>3 a holder is all you needed here.</p> <p>4 You should rule for us and let him</p> <p>5 take it up on appeal that an owner needed</p> <p>6 to have been here today, because we've</p> <p>7 given you the case law that says a holder</p> <p>8 is all you need. And a holder is merely</p> <p>9 one in possession. It can be a servicer.</p> <p>10 It can be your sister. It can be my</p> <p>11 brother. Anybody holding the note has the</p> <p>12 right to enforce it if you believe it's a</p> <p>13 negotiable instrument.</p> <p>14 So let's segue into that argument.</p> <p>15 He claims it's not a negotiable instrument.</p> <p>16 The only case he gave you was a GMAC car</p> <p>17 loan case. Car loans may read different</p> <p>18 than mortgage loans, but I think you know</p> <p>19 by now, and the thousand of foreclosures</p> <p>20 that have gone on in this state for the</p> <p>21 last three or four years, you would have</p> <p>22 seen one case at least that said a mortgage</p> <p>23 note is not a negotiable instrument. You</p> <p>24 haven't seen one case that a mortgage loan</p> <p>25 is not negotiable. He's shown you a car</p> |
| <p>1 note.</p> <p>2 We are a holder in possession.</p> <p>3 AHMSI was the holder when it was filed.</p> <p>4 It's been service-released to Residential</p> <p>5 Credit. They are the now-plaintiff today.</p> <p>6 We did the motion to substitute under 1260.</p> <p>7 That's what happened, that's how the rule</p> <p>8 got written because interests transfer</p> <p>9 sometimes during long periods of a lawsuit.</p> <p>10 So the fact that we don't have the</p> <p>11 owner here from whoever the investor may</p> <p>12 be, you won't find one case that says that</p> <p>13 because the owner didn't testify at trial,</p> <p>14 motion for directed verdict granted. You</p> <p>15 may see cases where on summary judgment it</p> <p>16 wasn't clear who the owner and holder were</p> <p>17 or if they were separate or if they were</p> <p>18 the same person, but that's summary</p> <p>19 judgment.</p> <p>20 We are here at trial on a directed</p> <p>21 verdict motion where, as a matter of law,</p> <p>22 you can make the call. Did the owner have</p> <p>23 to be in the courtroom today to testify?</p> <p>24 If that's your position, that's a matter of</p> <p>25 law. The appellate court can deal with</p> | <p>1 loan. I can't fight him on that one. I</p> <p>2 haven't read the terms of that car loan.</p> <p>3 But we're here today to foreclose a</p> <p>4 mortgage like any other foreclosures going</p> <p>5 on all around the country. That mortgage</p> <p>6 note is clearly negotiable. It's a</p> <p>7 negotiable instrument. It has an</p> <p>8 endorsement in blank and it was presented</p> <p>9 to the Court, and I remind the Court it's</p> <p>10 in evidence.</p> <p>11 I talked about the holder being the</p> <p>12 one in possession. I'm not sure what his</p> <p>13 argument was on that, but the holder was</p> <p>14 here today. He challenged the signature on</p> <p>15 the endorsement and he claims by simply</p> <p>16 asserting an affirmative defense,</p> <p>17 therefore, he wins. Well, on a motion for</p> <p>18 directed verdict we know that's not true</p> <p>19 because he didn't get any evidence in yet.</p> <p>20 He hasn't put on anything to establish that</p> <p>21 the endorsement is somehow fraudulent or</p> <p>22 not valid. Remember, all he did is assert</p> <p>23 a defense, that's on paper. We're at trial</p> <p>24 now.</p> <p>25 If I was at summary judgment, I may</p> |



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| <p>113</p> <p>1 have to meet and defeat all of those 2 defenses as a matter of law. But we're at 3 trial, so for purposes of my case, he can't 4 argue on directed verdict that the 5 signature bears some sort of problem. Just 6 because he asserts it, doesn't mean I have 7 to make it into my case in chief. 8 In fact, a comment on the rule 9 that -- the UCC rule says that even if he 10 challenges it in his defense, he still has 11 to establish by competent evidence 12 something that would shift the burden to 13 me. He hasn't had anything in evidence 14 yet. The farthest we got was some 15 discussion in a motion in limine at the 16 beginning of the trial that he thinks that 17 this person who signed this endorsement had 18 problems in another case, in another state, 19 for another client. It's not competent 20 evidence. There's no reason to challenge 21 the endorsement, not in a motion for 22 directed verdict. 23 As far as it stands now, the note is 24 in, the endorsement is presumed valid 25 because it's self-authenticating, and the</p> | <p>115</p> <p>1 The parties waived any argument that 2 they don't get separate notice by signing a 3 contract that indicates that I'll take -- 4 notice for one is notice for both, and we 5 rely on that provision of the mortgage. He 6 admits that it's in the mortgage, I can 7 point it out to you, but it's not a fact in 8 dispute. The mortgage is in evidence, you 9 can take notice of it. And so the default 10 letter only going to one is all that the 11 servicer needed to send. 12 And then in terms of the fact -- I 13 guess his last argument was that we failed 14 to establish that there was, in fact, a 15 default. Simply because we sent the 16 default letter, doesn't mean there wasn't a 17 default. First of all, this is a motion 18 for directed verdict so all inferences go 19 in our favor. 20 So number one, the fact that we sent 21 a default letter that said you were in 22 default, that in and of itself is some 23 scintilla of evidence that there was a 24 default. You wouldn't be able to find that 25 there was absolutely no evidence in</p> |
| <p>114</p> <p>1 commercial code says it's presumed valid. 2 So there's no issue on the signature. The 3 fact that it's not negotiable, we talked 4 about that already. 5 The default letter, let's talk about 6 the default letter. Default letter is in 7 evidence. It went out to the borrower. It 8 went to the notemaker, Mr. Hassell. It 9 indicates in the mortgage signed by 10 Mrs. Hassell that notice to one is good for 11 notice for both. But what he says to you 12 is: Well, there's constitutional concerns, 13 they have homestead rights. 14 Notwithstanding whatever they had agreed to 15 in the contract, she should get her own 16 notice when she signed the mortgage that 17 said notice to one is good as a notice to 18 me. What he's basically saying is parties 19 to a contract waive certain rights. They 20 can even waive their constitutional rights. 21 Don't we waive the constitutional 22 rights to homestead when I sign a mortgage 23 and you can now foreclose and kick me out 24 of my own house. People waive 25 constitutional rights all the time.</p> | <p>116</p> <p>1 default. But better than that and just to 2 ease any concerns you might have, both 3 answers testified -- strike that. 4 Ms. Ibarra testified that the last 5 payment made on this loan was July 2008. 6 She indicated that that was the last 7 payment that they received and there have 8 been no payments made since August of '08. 9 The notes is in evidence. It calls for 10 successive payments. The mortgage is in 11 evidence. By hearing testimony that there 12 was no payment made since July of '08, 13 clearly we established default. 14 And then Ms. Sequete came on and she 15 indicated what the total amount due is as 16 of today for advances, for unpaid balance, 17 for fees. So she's established the actual 18 amount. We've done everything that the 19 plaintiff is supposed to do in a 20 foreclosure trial. We've met all of the 21 criteria for a prima facie case. 22 We would ask that his motions for 23 directed verdict be denied. 24 Now if I've missed anything, 25 certainly the Court will remind me and I'll</p> |



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| <p>117</p> <p>1 address it, but I think I caught them all.</p> <p>2 THE COURT: I think you did. I was</p> <p>3 running through them as you gave them to</p> <p>4 me.</p> <p>5 MR. GACHE: Thank you.</p> <p>6 THE COURT: Brief reply?</p> <p>7 MR. WEIDNER: I'll be very brief, Your</p> <p>8 Honor.</p> <p>9 I think what's appropriate at this</p> <p>10 point in time is for the Court to have the</p> <p>11 transcript transcribed so that we can</p> <p>12 determine what were the facts. Counsel</p> <p>13 asserted what some of the facts were --</p> <p>14 THE COURT: Wait. Is there -- you</p> <p>15 want me to stop the trial in the middle and</p> <p>16 have the transcription?</p> <p>17 MR. WEIDNER: I think that you should</p> <p>18 have the transcription to review and</p> <p>19 determine directed verdict --</p> <p>20 THE COURT: No offense, but I do</p> <p>21 trials every day. I don't -- you think in</p> <p>22 this economy I can afford to wait in the</p> <p>23 middle of the trial -- who's going to pay</p> <p>24 for the transcript? We don't even have</p> <p>25 enough money to keep judicial assistants.</p> | <p>119</p> <p>1 because the plaintiff is the holder, and I</p> <p>2 think that's based on the Riggs case out of</p> <p>3 the Second District.</p> <p>4 Now, number three is the same issue.</p> <p>5 I think the servicer doesn't come under the</p> <p>6 holder position. The Court is finding that</p> <p>7 in this case, the plaintiff is the holder.</p> <p>8 Again referring to the Riggs case.</p> <p>9 The Riggs case, as you will recall,</p> <p>10 differentiated between the case that we</p> <p>11 talked about for a long time, which was the</p> <p>12 BAC Funding case versus Jean-Jacques,</p> <p>13 which, of course, was a summary judgment</p> <p>14 case, but they differentiate. And they</p> <p>15 said in the case -- in the Riggs case, they</p> <p>16 said unlike the plaintiff, the BAC Funding,</p> <p>17 Aurora offered both affidavits and the</p> <p>18 original note with a blank endorsement.</p> <p>19 That supported its claim that it was the</p> <p>20 proper holder of the note and mortgage.</p> <p>21 Now here we didn't have affidavits</p> <p>22 because we're at trial. So the Court finds</p> <p>23 that the plaintiff has presented prima</p> <p>24 facie case that they're the holder of the</p> <p>25 note, which is now in evidence.</p> |
| <p>118</p> <p>1 MR. GACHE: And the only issue would</p> <p>2 be if you couldn't remember what happened</p> <p>3 two hours ago.</p> <p>4 MR. WEIDNER: Counsel asserted that</p> <p>5 one -- that the key fact that the witness</p> <p>6 testified when the note was endorsed, let's</p> <p>7 find it on the transcript.</p> <p>8 THE COURT: I remember the testimony.</p> <p>9 You don't have to find it. I remember</p> <p>10 that.</p> <p>11 MR. WEIDNER: My position is that</p> <p>12 there is no evidence when it was endorsed</p> <p>13 that's a requirement under Feltus.</p> <p>14 THE COURT: Thank you. With regard to</p> <p>15 issue one, the plaintiff's witness</p> <p>16 testified that the blank endorsement was on</p> <p>17 the note when her employer came into</p> <p>18 possession of the document prior to</p> <p>19 December 2, 2008.</p> <p>20 Point two is the issue of whether or</p> <p>21 not there has to be evidence or a copy,</p> <p>22 perhaps, of the servicing agreement to</p> <p>23 endorsement of mortgage. The Court is</p> <p>24 finding on that issue that the plaintiff</p> <p>25 does not have to provide that information</p> | <p>120</p> <p>1 As to Point four that the defendant</p> <p>2 shifted the burden to plaintiff regarding</p> <p>3 the date of endorsement, I've already made</p> <p>4 a finding that the plaintiff's witness</p> <p>5 testified that the blank endorsement was on</p> <p>6 the document when they came into possession</p> <p>7 of it prior to December 2, 2008.</p> <p>8 Point five, the note is not</p> <p>9 negotiable, the Court finds that it is a</p> <p>10 negotiable instrument. Again, I'll go back</p> <p>11 to the Riggs case which says: A mortgage</p> <p>12 loan servicing company's possession of the</p> <p>13 original promissory note endorsed in blank</p> <p>14 was sufficient under Florida Uniform</p> <p>15 Commercial Code to establish that it was</p> <p>16 the lawful holder of the note and entitled</p> <p>17 to enforcement of its terms in a case where</p> <p>18 there was no issue of authentication.</p> <p>19 That's the June 16, 2010 ruling on the</p> <p>20 Florida District. The Court is finding</p> <p>21 that it's a negotiable instrument here.</p> <p>22 Six, the mortgage required a default</p> <p>23 letter and the defense contends that there</p> <p>24 was none as to the wife. The mortgage</p> <p>25 document does say that notice to one is</p> |



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| <p>121</p> <p>1 notice to both, and even though it's a</p> <p>2 homestead property, the defendant's have a</p> <p>3 right to contract that right away which, in</p> <p>4 this case, they did by signing that</p> <p>5 document.</p> <p>6 And then point seven was the --</p> <p>7 plaintiff presented summary figures only</p> <p>8 but no specific testimony of default. But,</p> <p>9 in fact, the plaintiff witness did testify</p> <p>10 to default by the defendant's and the</p> <p>11 payment of this note. And so the Court</p> <p>12 will, on that basis and with those</p> <p>13 findings, deny the motion for directed</p> <p>14 verdict.</p> <p>15 Now, I'm going to ask,</p> <p>16 unfortunately, to take another quick break</p> <p>17 because I also have a two o'clock calendar.</p> <p>18 So if you could give us -- this trial --</p> <p>19 it's 2:40. If you could come back, please,</p> <p>20 at 2:55, I'll take it back up. We'll start</p> <p>21 with the defense side in the case. I'm</p> <p>22 just going to address the two o'clock</p> <p>23 hearings.</p> <p>24 (The Court heard other matters.)</p> <p>25</p> | <p>123</p> <p>1 attached to it as an exhibit a copy of the</p> <p>2 original note endorsed in blank which</p> <p>3 matches the original note filed with the</p> <p>4 Court on 10/9/09. But, again, remember</p> <p>5 there was no note filed.</p> <p>6 THE COURT: I'm not really clear on</p> <p>7 what that means.</p> <p>8 MR. WEIDNER: I'm not either. Can I</p> <p>9 mark these?</p> <p>10 THE COURT: Are you offering this into</p> <p>11 evidence?</p> <p>12 MR. WEIDNER: Yes, Your Honor.</p> <p>13 THE COURT: Any objection?</p> <p>14 MR. GACHE: No.</p> <p>15 THE COURT: This is Defense 1?</p> <p>16 MR. WEIDNER: Yes, Your Honor.</p> <p>17 THE COURT: That will be admitted as</p> <p>18 Defendant Number 1 in evidence. That is</p> <p>19 the request for admissions. And you're</p> <p>20 offering this as Defense 2?</p> <p>21 MR. WEIDNER: Yes, your Honor.</p> <p>22 THE COURT: Notice of service. So</p> <p>23 that's the request itself. Is this a copy</p> <p>24 of the same thing or how are they</p> <p>25 different? So the request is -- the</p> |
| <p>122</p> <p>1 MR. WEIDNER: If it please the Court,</p> <p>2 Your Honor, I'll try to be real brief.</p> <p>3 Defendant would like to begin by reading</p> <p>4 into the record the request for admissions</p> <p>5 that were served on plaintiff on '12</p> <p>6 January 13. They were -- I'm sorry, they</p> <p>7 were served on plaintiff on 21 December</p> <p>8 2011 as the second request for admission,</p> <p>9 and then I received the answers on January</p> <p>10 13, 2012.</p> <p>11 Your Honor, again, on December 21,</p> <p>12 2011, the defendants, Ernest and Teri</p> <p>13 Hassell, sent the following request for</p> <p>14 admissions to the plaintiff: Number 5,</p> <p>15 admit that the complaint filed by plaintiff</p> <p>16 on or around December 16, 2008 contains the</p> <p>17 count to reestablish loss note.</p> <p>18 The answer of the plaintiffs:</p> <p>19 Admit.</p> <p>20 Number 6, admit that there is no</p> <p>21 note with blank endorsement attached as an</p> <p>22 exhibit to the original complaint by</p> <p>23 plaintiff on or around December 16, 2008.</p> <p>24 The Answer 6, admit. Plaintiff</p> <p>25 amended file complaint filed 9/10/09, has</p> | <p>124</p> <p>1 answers are 1 and request is 2, okay.</p> <p>2 (Defendant's Exhibit 1, Answers, was</p> <p>3 admitted into evidence.)</p> <p>4 (Defendant's Exhibit 2, Request, was</p> <p>5 admitted into evidence.)</p> <p>6 MR. WEIDNER: Next, defense would</p> <p>7 admit Defendant's First Request for</p> <p>8 Admissions that were served on 11/2010.</p> <p>9 MR. GACHE: The last one you just</p> <p>10 said, 5 and 6, which ones?</p> <p>11 MR. WEIDNER: All of them.</p> <p>12 Your Honor, I've shown it to my</p> <p>13 colleague over here. Defendant's First</p> <p>14 Request for Admissions, I'll read each</p> <p>15 admission and then I will note what they</p> <p>16 filed here, but the point I want to make</p> <p>17 first, Your Honor, is these were served on</p> <p>18 plaintiff 11 August 2010.</p> <p>19 What I have in my hands, Your Honor,</p> <p>20 is answers that were not responded to by</p> <p>21 this plaintiff at all but they were not</p> <p>22 filed until April 21, 2011. So I would ask</p> <p>23 that each of the requests for admission be</p> <p>24 deemed admitted based on the failure to</p> <p>25 respond.</p> |



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| <p>125</p> <p>1 THE COURT: I'm not sure I'm clear on 2 what they answered but not until the later 3 date. 4 MR. WEIDNER: Correct. Those were 5 filed August 2010. They were in the hands 6 of the plaintiff August 2010. They did not 7 get around to answering those until months 8 and months and months after the 30 day set 9 expired. I'm holding in my hand an answer 10 filed on behalf of Residential Credit that 11 was filed 21 April 2011. 12 THE COURT: You are offering this into 13 evidence? 14 MR. WEIDNER: Yes, your Honor. 15 MR. GACHE: Our response is, Your 16 Honor, that you can't wait until trial to 17 spring something like this on the 18 plaintiff. This is a gotcha tactic that 19 the appellate courts have absolutely 20 frowned upon. He saw that we filed our 21 response, albeit late, and he has now 22 waited over a year now. What was the date 23 of the actual answers? 24 THE COURT: April 21st of 2011. 25 MR. GACHE: He's waited close to a</p> | <p>127</p> <p>1 MR. WEIDNER: I'm making my case right 2 now and this is my case, and the Second DCA 3 has been clear, no motion, no relief, no -- 4 in any event, the second point is, Your 5 Honor said discovery is closed, no 6 discovery motions. You closed discovery. 7 MR. GACHE: This has nothing do with 8 discovery. This would be a motion that you 9 could have made as soon as he got our 10 responses to say they're untimely, I move 11 to strike them or not to sit on them and be 12 quiet after I rest my case and say: Oh, 13 yeah, you didn't answer these on time so I 14 want every fact in this case admitted from 15 a defense side. 16 THE COURT: But you're asking me to do 17 two things. One, I thought I was being 18 asked to put these in evidence but then, 19 two, I think I had the motion in from the 20 defense to deem the admissions admitted 21 because the answers were filed late; is 22 that right? 23 MR. WEIDNER: Yes. 24 THE COURT: You've already responded 25 to their motion to deem admissions admitted</p> |
| <p>126</p> <p>1 year knowing that we filed a response. 2 It's one thing if we had never filed a 3 response but he's known we filed this 4 response. He's let it sit in his file. 5 He's never moved to strike it. He's never 6 had it called up for some sort of hearing. 7 All he's doing now is saying: I want them 8 all being admitted. At a minimum, he can 9 move for a tenet or relief from technical 10 admission, which is well within your 11 prerogative and you can even do it after 12 the deadline. That's what that motion is 13 for. 14 But at a minimum, Judge, we've 15 already established testimony. We've 16 already this morning taken evidence on 17 these issues and now he wants some 18 variations that are in the admissions to be 19 deemed admitted after we just took evidence 20 to the contrary. So there's a complete 21 docket of facts in which should not be 22 condoned in this particular court or 23 anywhere else. 24 MR. WEIDNER: Your Honor. 25 THE COURT: Brief reply.</p> | <p>128</p> <p>1 because the answers were filed late on 2 April 21, 2011. I will acknowledge I'm 3 going to deny the motion to deem them 4 admitted. The second district can take up 5 that issue. 6 Now, the defendant has requested 7 they be admitted into evidence. Any 8 objection? 9 MR. GACHE: No objection. 10 THE COURT: Composite exhibit or 11 Defendant's 2? 12 MR. WEIDNER: Composite is fine. 13 THE COURT: Composite Defendant's 3 in 14 evidence. Next. 15 (Defendant's Exhibit 3, Composite, was 16 admitted into evidence.) 17 MR. GACHE: Now you're going to have 18 to call a witness. 19 MR. WEIDNER: Your Honor, I'd like to 20 ask this exhibit to be marked Number 4. 21 THE COURT: All right. 22 MR. WEIDNER: Your Honor, there is an 23 assignment of mortgage that postdates the 24 filing of a lawsuit by more than a year 25 and --</p> |



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| <p style="text-align: right;">129</p> <p>1 THE COURT: Wait, we're not at closing 2 arguments yet. So call the witness as you 3 like or admit evidence or carry on. 4 MR. WEIDNER: Admit this. 5 THE COURT: You're asking. Any 6 objection? 7 MR. GACHE: My objection is relevancy. 8 He doesn't have any testimony yet. We're 9 not sure what issue it goes to until he 10 lays a foundation or some sort of 11 predicate. What issue is it being 12 proffered for in the defense case? That 13 would be why. Just because it's a 14 certified copy, that just gets around the 15 authenticity problem. Still have to have a 16 relevance basis, and I don't know what 17 that's being offered for at this particular 18 moment because he hasn't even called a 19 witness yet. 20 THE COURT: Okay. I'll sustain the 21 objection and you can call a witness and 22 try to get it in that way. 23 MR. WEIDNER: I'd like to call Ernest 24 Hassell. 25</p> | <p style="text-align: right;">131</p> <p>1 MR. GACHE: What's Number 2? 2 MR. WEIDNER: Number 2 is the 3 plaintiff's alleged default letter. 4 THE WITNESS: I've not seen this 5 letter. 6 Q. (By Mr. Weidner) Thinking back in time 7 to the date that is asserted on this, 8 September 3, 2008, do you recall receiving such 9 a letter? 10 A. No, I don't. I've never received such 11 a letter, Your Honor. I would distinctly 12 remember it. 13 MR. WEIDNER: Your Honor, I think 14 these are all your exhibits here. I'm 15 finished with the witness, Judge. 16 THE COURT: Cross? 17 MR. GACHE: No questions. 18 THE COURT: No questions. You may 19 step down. I have one question, I'm sorry, 20 what was your address on September 3, 2008? 21 THE WITNESS: 1426 75th Circle 22 Northeast, St. Petersburg, Florida, 33702. 23 THE COURT: At that period of time or 24 during that period of time, did you have 25 any difficulty with mail delivery?</p> |
| <p style="text-align: right;">130</p> <p>1 ERNEST C. HASSELL, (Sworn) 2 3 EXAMINATION BY MR. WEIDNER: 4 Q. Mr. Hassell, I'm going to show you what 5 is in the court file. Sort of partition this 6 off to show that this is indeed what is in the 7 court file, and I'm going to ask you whether you 8 see in this court file a copy of a promissory 9 note? 10 MR. GACHE: Objection. I think the 11 document, certainly the court file speaks 12 for itself. If counsel is trying to 13 establish the original complaint did not 14 have a note attached to it, you've got an 15 admission on that already from us and I'll 16 stipulate to it as well. 17 THE COURT: So stipulated. Keep 18 moving. Was it Plaintiff's 2, 3 or 4 in 19 evidence or 5? They're right here. And 20 Number 1, of course, is in the court file 21 stamped. 22 Q. (By Mr. Weidner) I'm showing you 23 what's been previously marked as Plaintiff's 24 Exhibit 2. I'm going to ask you, did you get a 25 copy of that document?</p> | <p style="text-align: right;">132</p> <p>1 THE WITNESS: Perpetually. My 2 neighbors got my mail. It happened quite 3 frequently in the course of 18 months. 4 THE COURT: Thank you. Any questions 5 based on the Court's question? 6 MR. GACHE: I do. 7 8 CROSS-EXAMINATION 9 BY MR. GACHE: 10 Q. Do you have any evidence whatsoever 11 that AHMSI did not actually mail this letter to 12 that address other than the fact you say you 13 didn't receive it? Do you have any other 14 evidence that you know of that they didn't 15 actually place it in the mail to you? 16 A. I have no evidence on my end to show 17 receipt of it. 18 Q. You said you didn't receive it but I'm 19 asking, do you have any reason to believe that 20 AHMSI didn't send it, anything you can point to, 21 any evidence? 22 A. I guess what I'm saying is I didn't 23 receive it. I'm also saying that I didn't sign 24 for such a letter, certified or otherwise. 25 Q. Did you tell me that some people</p> |



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| <p>133</p> <p>1 picked up your mail and you picked up their 2 mail, you all helped each other out? 3 A. No. What I said was that the mail 4 person has changed during about a year and a 5 half probably three or four times. 6 Consequently, my mail was showing up at my 7 neighbor's mailboxes. My neighbor's mail was 8 showing up in mine. 9 Q. Think that might have been what 10 happened here? 11 A. I don't know what happened to it. 12 MR. GACHE: Thank you for your candor 13 about the mix-up with the mail. 14 THE COURT: Any redirect? 15 MR. WEIDNER: No, Your Honor. 16 THE COURT: You may step down. Call 17 your next witness. 18 MR. WEIDNER: Your Honor, I'd like to 19 argue this assignment that I would like to 20 introduce. 21 MR. GACHE: We're at the same page we 22 were before, no witness and no evidence. 23 THE COURT: You can put a witness on. 24 I've sustained the objection to you just 25 getting it in without a witness. So now</p> | <p>135</p> <p>1 MR. WEIDNER: To show that it was 2 filed after the fact and that is evidence 3 of the fact that they didn't have standing 4 at the time they filed the lawsuit. That's 5 the central issue of this case. That's the 6 relevance of that document. 7 THE COURT: Response? 8 MR. GACHE: My response is that 9 assignments of mortgage are irrelevant with 10 respect to standing. So he has to 11 establish a relevant basis. I have all the 12 cases for you. I think you've seen them. 13 In fact, I've might have even cited some of 14 them already, that an assignment recorded 15 after the date of the filing of the lawsuit 16 is irrelevant to the issue of standing. 17 Standing is who held possession of 18 the note on the date of the filing. So it 19 doesn't come in for any relevant issue, 20 plain and simple. He can't just throw up a 21 recorded document and say it comes in with 22 no witness, no testimony. It has to go to 23 a relevant issue. 24 THE COURT: I'm going to mark it for 25 ID only and I'm going to stand by my prior</p> |
| <p>134</p> <p>1 you either have to offer it or take it up 2 to the Second. 3 MR. WEIDNER: I would like to offer 4 it. 5 THE COURT: We already did the 6 offering without a witness and I already 7 sustained an objection. So they've 8 objected to relevance. So if you could put 9 on a witness and you could establish that, 10 of course I can reconsider it. 11 MR. WEIDNER: I have a certified copy. 12 It is a self-authenticating document that 13 I'll urge you to reconsider based on that. 14 THE COURT: I'll mark it for ID. 15 It'll be part of the record. It'll be part 16 of the record so the Second DCA can 17 establish it. 18 MR. WEIDNER: Well, this is the 19 important thing, the case law provides that 20 assignment can be used to establish 21 standing and that's what we have is the 22 question about whether it's standing. 23 THE COURT: Wait a minute, since 24 you're not trying to establish standing, 25 what would you be introducing it for?</p> | <p>136</p> <p>1 ruling that I've sustained the objection to 2 this coming in with nothing more. The 3 defendant can, of course, call the 4 witnesses. At this point I'll mark it for 5 ID only as defense -- guess it would be. 6 So I'm going to mark this Defendant's 7 Number 4 for ID only. 8 (Defendant's Exhibit 4, Assignment, 9 was admitted for identification.) 10 THE COURT: So it is part of the 11 record. It was, in fact, offered in 12 evidence by the defense. An objection was 13 raised by the plaintiff which the Court has 14 sustained. So it's not in evidence but 15 it's certainly part of the record. 16 You may present your next witness. 17 MR. WEIDNER: Two very brief things, 18 Your Honor, and then I'll wrap up. I had 19 the opportunity to take the deposition of 20 plaintiff's witness Melissa Sequete, and 21 I'd like to read from page 111 of that 22 deposition. 23 THE COURT: What is the spelling? 24 MR. WEIDNER: S-E-Q-U-E-T-E. 25 Question I asked --</p> |



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| <p>1 THE COURT: Page and line, please.</p> <p>2 MR. WEIDNER: Page 111.</p> <p>3 MR. GACHE: Before you take this,</p> <p>4 because he's offering this as substantive</p> <p>5 evidence, correct, in the case in chief?</p> <p>6 Well he's reading during this case. I</p> <p>7 don't know what else it can be.</p> <p>8 THE COURT: You're offering it as</p> <p>9 substantive evidence?</p> <p>10 MR. GACHE: So that's under the rule</p> <p>11 that you can read a deposition of a party,</p> <p>12 is that what we're traveling on?</p> <p>13 THE COURT: I assume but I don't want</p> <p>14 to say for sure.</p> <p>15 MR. WEIDNER: Does your trial order</p> <p>16 not require that he disclose to us in</p> <p>17 advance excerpts of depositions that he's</p> <p>18 going to read in order that we're aware of</p> <p>19 them?</p> <p>20 THE COURT: Well, my long, standard</p> <p>21 trial order does.</p> <p>22 MS. KENEFIC: Yes, we have the</p> <p>23 pretrial order, your Honor. That does</p> <p>24 specifically state that and I did ask</p> <p>25 Mr. Weidner on Thursday when we met for the</p> | <p>137</p> <p>1 and that was not done and no specific</p> <p>2 transcript pages or readings of the</p> <p>3 transcript were discussed at our meeting on</p> <p>4 that Thursday.</p> <p>5 MR. GACHE: I would even be fine this</p> <p>6 morning or to have done it over lunch. I</p> <p>7 think now it's a little unfair.</p> <p>8 THE COURT: Well, pretrial order does</p> <p>9 specifically say, and mine always has, that</p> <p>10 you have to specify page and line</p> <p>11 designations and that if you don't, they're</p> <p>12 waived. So if that's what the trial order</p> <p>13 is, that's what the order is. No, wait</p> <p>14 until I'm finished. Now I'm sustaining that</p> <p>15 objection.</p> <p>16 What is it that we have to do to</p> <p>17 correct our record when I sustain an</p> <p>18 objection to evidence coming in on a case</p> <p>19 that I know is going to go on appeal?</p> <p>20 MR. GACHE: He needs to proffer it at</p> <p>21 this point and after I hear the proffer, I</p> <p>22 may withdraw my objection so I don't have</p> <p>23 another problem on appeal potentially for</p> <p>24 you. So I'd like to hear it but, again, on</p> <p>25 the form of proffer.</p> |
| <p>138</p> <p>1 exchange of exhibits and I specifically</p> <p>2 asked if he would be only introducing that</p> <p>3 exhibit for impeachment purposes only, and</p> <p>4 he stated yes.</p> <p>5 MR. GACHE: If he's only using the</p> <p>6 deposition for impeachment, we're past</p> <p>7 that. My witness is already off the stand.</p> <p>8 He's now into his case in chief.</p> <p>9 That's why I asked about substantive</p> <p>10 evidence as opposed to impeachment. He was</p> <p>11 supposed to have told us about that at</p> <p>12 least in their meeting that they had when</p> <p>13 they met and conferred prior to this trial.</p> <p>14 Otherwise I'm at a loss to be able to read</p> <p>15 additional sections. It's a violation of</p> <p>16 the Court's order.</p> <p>17 MR. WEIDNER: Your Honor, the Court</p> <p>18 required us to introduce the evidence, the</p> <p>19 exhibits we'd be using. Both of us agreed</p> <p>20 we would be using his deposition.</p> <p>21 MS. KENEFIC: For impeachment purposes</p> <p>22 only, Your Honor. The pretrial order is</p> <p>23 specific that if we were going to use</p> <p>24 transcripts for any other purpose than</p> <p>25 impeachment, then that had to be declared</p> | <p>139</p> <p>1 THE COURT: You may put your proffer</p> <p>2 on the record.</p> <p>3 MR. WEIDNER: Thank you, Your Honor.</p> <p>4 Page 111, Line 22.</p> <p>5 "Question: Okay, have you had a</p> <p>6 chance to examine the original note in the</p> <p>7 case?"</p> <p>8 "Answer: I have not seen the</p> <p>9 original note."</p> <p>10 "Question: Have you had a chance to</p> <p>11 examine a copy of the originals?"</p> <p>12 "Answer: Yes."</p> <p>13 "Question: When was the note</p> <p>14 endorsed?"</p> <p>15 "Answer: The blank endorsement, I</p> <p>16 do not know."</p> <p>17 MR. GACHE: If that's all he's</p> <p>18 offering, Judge, I'll withdraw my objection</p> <p>19 to violation of the pretrial order and</p> <p>20 surprise and I don't have anything in</p> <p>21 response to that in terms of any additional</p> <p>22 pages to read.</p> <p>23 THE COURT: All right. The objection</p> <p>24 is withdrawn and that will be admitted in</p> <p>25 the substantive portion of the defense</p> |
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| <p>1 case. 141</p> <p>2 MR. WEIDNER: Thank you, Your Honor.</p> <p>3 Do you want the whole transcript?</p> <p>4 MR. GACHE: Your Honor, it's read in,</p> <p>5 I don't think we need the pages.</p> <p>6 THE COURT: You really don't as long</p> <p>7 as it's part of the record. You've got a</p> <p>8 transcript. And you said that -- was it</p> <p>9 for that one, any other witnesses for the</p> <p>10 defense?</p> <p>11 MR. WEIDNER: One more transcript,</p> <p>12 Your Honor, a deposition.</p> <p>13 THE COURT: Same issue, same ruling?</p> <p>14 MR. GACHE: Well, Yvonne Ibarra is</p> <p>15 different because that one he couldn't have</p> <p>16 given us because he only took it yesterday.</p> <p>17 But let's get to the real issue.</p> <p>18 The real issue is the witness was</p> <p>19 not available. You can't read a nonparty</p> <p>20 witness's deposition unless she's</p> <p>21 unavailable under the rules. She was here</p> <p>22 all morning and, in fact, he just excused</p> <p>23 her and let her go because I spoke to --</p> <p>24 her counsel was here and said why did</p> <p>25 Mr. Weidner just excuse Yvonne and let her</p> | <p>1 reading of any of the deposition. Plus, 143</p> <p>2 did he ask to read, do you know, at the</p> <p>3 conclusion of the depo?</p> <p>4 MS. KENEFIC: I actually don't know if</p> <p>5 that question was answered.</p> <p>6 MR. GACHE: The point is, you can't</p> <p>7 read the depo of a nonparty when she's</p> <p>8 available.</p> <p>9 MR. WEIDNER: Lack of prejudice, Your</p> <p>10 Honor, and just a sentence.</p> <p>11 THE COURT: Well, if the witness is</p> <p>12 not unavailable, do you have anything to</p> <p>13 say she is unavailable?</p> <p>14 MR. WEIDNER: I told Miss Kenefic I</p> <p>15 was not going to call her. I did not</p> <p>16 anticipate until I looked at this. That's</p> <p>17 what I told her.</p> <p>18 THE COURT: Okay. So I have to</p> <p>19 sustain the objection that you can't read</p> <p>20 it in. I guess I'll let you proffer it in</p> <p>21 case the Second District says for some</p> <p>22 reason maybe she was not available,</p> <p>23 unavailable.</p> <p>24 MR. GACHE: By him dismissing her.</p> <p>25 THE COURT: Right. I guess</p> |
| <p>1 go. If that's a ploy, he let her go and 142</p> <p>2 then read her depo and I can't call her</p> <p>3 back to get up on the stand, you can't do</p> <p>4 that. Only a party can you do that for if</p> <p>5 she's here at the case.</p> <p>6 THE COURT: For future reference, just</p> <p>7 so everybody knows, my policy is if</p> <p>8 somebody has been subpoenaed or called as a</p> <p>9 witness in the case, one side doesn't let</p> <p>10 the witness go without letting the Court</p> <p>11 know you're going to excuse the witness and</p> <p>12 then the Court then asks the other side if</p> <p>13 they were going to call that witness, and</p> <p>14 we do that specifically for this reason.</p> <p>15 MR. GACHE: And whether here or not,</p> <p>16 he had an opportunity to talk to her on</p> <p>17 cross. He had an opportunity to call her</p> <p>18 on this case. That's the whole rules of</p> <p>19 evidence. You can't use a deposition of a</p> <p>20 nonparty when the witness is here. We</p> <p>21 always -- the Court always must take live</p> <p>22 testimony over deposition testimony, other</p> <p>23 than unavailability. He hasn't established</p> <p>24 she's unavailable.</p> <p>25 So we would absolutely object to the</p> | <p>1 technically that would be a point. So you 144</p> <p>2 can read it in as a proffer.</p> <p>3 MR. WEIDNER: I don't have the</p> <p>4 authority to dismiss. I communicated to</p> <p>5 Counsel I didn't dismiss.</p> <p>6 I will read page 54, beginning at</p> <p>7 line 14.</p> <p>8 "Question: Do you know why the</p> <p>9 complaint did not have a note attached to</p> <p>10 it?"</p> <p>11 "Answer: No, I don't."</p> <p>12 THE COURT: Were you talking about the</p> <p>13 original complaint or the amended</p> <p>14 complaint, because my understanding it's</p> <p>15 different, the original one didn't have --</p> <p>16 MR. WEIDNER: Beginning at page 54.</p> <p>17 "Did the copy that you reviewed of</p> <p>18 the original complaint have a note attached</p> <p>19 to it."</p> <p>20 "Answer: No."</p> <p>21 "Question: Do you know why the</p> <p>22 complaint received did not have a note to</p> <p>23 it?"</p> <p>24 And that began another series of</p> <p>25 questions.</p> |



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| <p style="text-align: right;">145</p> <p>1 THE COURT: All right. Anything else 2 in the proffer? 3 MR. WEIDNER: We're going to find the 4 pretrial -- we drafted the pretrial between 5 ourselves so it was not your standard 6 pretrial order. I'll have it in just a 7 minute here. I don't believe it limits it 8 at all. 9 MR. GACHE: I'm sure that's an 10 exercise we can go through because I 11 withdraw my objection. And then on this 12 one my argument has nothing to do with a 13 pretrial, it has to do with rules of 14 evidence. 15 THE COURT: But it came in as 16 substantive evidence. 17 Any other witnesses for the defense? 18 MR. WEIDNER: No, Your Honor. 19 THE COURT: Any other rebuttal 20 witnesses for the plaintiff? 21 MR. GACHE: No. 22 THE COURT: All right. Why don't you 23 give your closing arguments. 24 MR. WEIDNER: I want to renew my 25 motion for directed verdict now just to</p> | <p style="text-align: right;">147</p> <p>1 defenses -- in the answer to affirmative 2 defenses to our amended pleading. I don't 3 know if you have a copy of that answer 4 there but essentially there are ten 5 affirmative defenses. 6 THE COURT: Could you tell me the date 7 which it was filed? 8 MR. GACHE: Yes, it was filed on 9 August 10, 2010. There was no evidence 10 whatsoever established by the defendant, 11 other than Mr. Hassle did not receive in 12 his possession the default letter. That 13 wouldn't be a defense. That would simply 14 be a denial of an allegation, let's say, of 15 ours that we sent him the default letter. 16 Then there was put into evidence 17 that there was no note attached to the 18 original complaint. We've agreed with that 19 and I have case law for you that indicates 20 that once somebody amends their complaint, 21 first complaint is out. It's no longer 22 given any consideration whatsoever as if it 23 never existed. And for that proposition, I 24 have for you the case called Grayling 25 Vereen, V-E-R-E-E-N, versus Alpha Realty.</p> |
| <p style="text-align: right;">146</p> <p>1 make sure the record is clear. 2 THE COURT: Defense renews. Are there 3 any different arguments than what was 4 previously given? 5 MR. WEIDNER: Your Honor, I was pretty 6 lengthy in my argument. I would just like 7 to submit a written version of what I made 8 previously. 9 THE COURT: That's something you have 10 here that you want to file? 11 MR. WEIDNER: Yes, Your Honor. 12 MR. GACHE: Are you serving that now? 13 MR. WEIDNER: Yes. 14 MR. GACHE: Copy for us? 15 THE COURT: The Court may sustain 16 ruling on his motion for directed verdict 17 that may be at the close of plaintiff's 18 case. That will be denied at this time. 19 Plaintiff may proceed to close. 20 MR. GACHE: Before we close, Judge, we 21 have the opportunity directed verdict 22 motion as to the defense case. We would 23 move for directed verdict on all of the 24 affirmative defenses raised by the 25 defendant to the answer in the affirmative</p> | <p style="text-align: right;">148</p> <p>1 This is a Fifth District case. What it 2 says is we agree with Alpha on the second 3 point that Vereen abandoned his negligent 4 claim when he failed to include it in his 5 amended complaint. The amended complaint 6 did not express an intention to save an 7 earlier pleading, supercedes your earlier 8 pleading. Generally, an amended complaint, 9 as opposed to an amendment to a complaint 10 that does not refer to the original 11 complaint supercedes the original 12 complaint. Filing amended complaint 13 abandons original complaint which no longer 14 serves any purpose on the record. 15 So any argument that the first 16 complaint somehow is operative, that there 17 was a loss note count in it or that it 18 didn't have a note attached to it, as long 19 as it was properly done with the amended 20 complaint, the previous original complaint 21 would be of no relevance to the Court. 22 Just to kind of belt and suspenders, 23 I have a Second District case for the Court 24 called Arthur versus Hillsborough County 25 Board of Criminal Justice which holds the</p> |



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| <p>149</p> <p>1 same, that the filing of the amended 2 complaint abandons the original complaint 3 and it no longer has any effect. 4 So with that said, that's all the 5 evidence that came in from the defense 6 side. So that I say to the Court, if you 7 look at his answer in affirmative defenses, 8 it says here, number one, affirmative 9 defense one, failed to comply with the 10 forbearance modification and other loan 11 prevention servicing requirements. We 12 didn't hear anything about that. 13 Number two, plaintiff's claims are 14 barred because the Court -- because we came 15 with unclean hands as a result of number 16 one, which we didn't hear anything on. 17 Number three, plaintiffs are barred 18 because we didn't plead capacity. Well, 19 that's a pleading issue, that's not a trial 20 issue. 21 So I don't think anything that was 22 not pled becomes an issue at trial. As far 23 as capacity is concerned, all that means is 24 they have to be of value to be an 25 established entity and they're challenging</p> | <p>151</p> <p>1 October 24 on defense motion amended. 2 MR. WEIDNER: Your Honor, we filed a 3 second amended answer and affirmative 4 defense to plaintiff's first amended -- 5 THE COURT: Docket shows September 29, 6 2011. 7 MR. GACHE: I didn't have it but 8 that's okay. I'll deal with it. I'm sure 9 it's pretty much the same. 10 Number one, capacity, I addressed 11 that issue already, Judge. Number two, the 12 chief financial officer issue, again, no 13 evidence of that. 14 Number three, devoid of an 15 assignment of mortgage. As we know, 16 assignments of mortgage aren't necessary, 17 so as a matter of law you can make a 18 decision on that. 19 Number four, the defendant questions 20 the voracity and authenticity of the 21 endorsement. Again, no evidence in the 22 defense side having to do with the 23 endorsement. There may have been argument, 24 which is not evidence. There may have been 25 some motions on it but he didn't call one</p> |
| <p>150</p> <p>1 that. It's a law. 2 Number four, barred because we 3 didn't comply with 660.227 which requires 4 us to provide Florida's chief financial 5 officer the full name of the trust. Again, 6 no evidence to the contrary on that put out 7 by the defendant, which would be his 8 burden. That's if, indeed, he's even 9 citing the law correctly there. 10 Affirmative defense five, barred 11 because the amended complaint is the void 12 of assignment of mortgage. We know that 13 assignments of mortgage are not required 14 for standing. So as a matter of law you 15 can rule on a directed verdict on that 16 issue. 17 MR. WEIDNER: May I just interrupt. I 18 want to make sure that we're looking at the 19 right -- 20 MR. GACHE: Amended answer to amended 21 complaint. Was there one since then? 22 MR. KRAL: September 2011. 23 MR. GACHE: Second amended affirmative 24 defense. 25 THE COURT: There was a hearing</p> | <p>152</p> <p>1 witness to talk about the endorsements. He 2 goes from four to seven, it looks like. 3 Not a negotiable instrument, I think you 4 ruled on that in his motion for directed 5 verdict. 6 Number eight, standing. I'd ask you 7 to make a ruling as a matter of law that 8 the plaintiff has standing since they 9 established they were the holder in 10 possession on the date of the filing of the 11 action. 12 Number nine, not authorized to bring 13 this action by the owner and holder of the 14 note. Again, this goes to their directed 15 verdict issue that the owner would have to 16 be here or somehow the holder would have to 17 establish that the owner gave him 18 permission. Again, anyone that walks into 19 this courtroom holding possession of the 20 note who had it when they filed a suit is 21 allowed to enforce, that's what the Riggs 22 says, as long as you have a proper 23 endorsement. 24 Number ten, presuit condition 25 received. This is the notice issue.</p> |



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| <p>153</p> <p>1 Really it's a mere denial but, again, that 2 may be one that you will grant a directed 3 verdict on and you may have to weigh the 4 evidence on number ten and make a finding 5 of fact. 6 And then that's all the affirmative 7 defenses. So certainly everything other 8 than number ten we'd ask that you make an 9 issue of directed verdict on all of those 10 defenses for lack of any evidence. 11 THE COURT: Thank you. Response? 12 MR. WEIDNER: Your Honor, I'm ready to 13 make my close. 14 THE COURT: You don't want to respond 15 to his motion for directed verdict? 16 MR. WEIDNER: The directed verdict 17 against defendant should be denied, each of 18 the answers and affirmative defenses, as 19 I've put it there, for legitimate issues at 20 play. There are issues both fact and law, 21 the issues of fact that I put in, the 22 evidence in the deposition, the evidence of 23 the witness, the evidence, the law that 24 we'll argue is argued in our motion for 25 directed verdict. So at this point in</p> | <p>155</p> <p>1 assignment of the mortgage, and so I will 2 deny the DV as to affirmative defense 3 number three. 4 As to four, the affirmative defenses 5 that the defendant -- affirmative questions 6 of their voracity and authenticity of any 7 possible endorsement, the defense argued 8 that issue and presented limited testimony 9 on that issue. So deny DV on affirmative 10 defense four. 11 Affirmative defenses number six and 12 seven, so then go to seven, that the note 13 at issue is not a negotiable instrument, 14 the Court has already made a finding. So 15 grant DV as to affirmative defense seven. 16 Affirmative defense eight, that the 17 plaintiff lacks standing, Court has already 18 made that ruling that the plaintiff has 19 standing to bring this action and so the 20 Court will be granting affirmative defense 21 eight. 22 And affirmative defense nine, it 23 says that the plaintiff is barred because 24 the plaintiff is not authorized to bring a 25 suit as a holder of the note. The Court</p> |
| <p>154</p> <p>1 time, directed verdict against the 2 defendant is inappropriate. 3 THE COURT: Thank you both. On the 4 defendant's motion for directed verdict 5 for -- 6 MR. GACHE: Plaintiff. 7 THE COURT: I'm sorry. As to the 8 plaintiff's motion for affirmative defense. 9 As to affirmative defense number one, the 10 Court finds that there has been no 11 testimony, that there's not -- the defense 12 does not have capacity and they didn't put 13 on any witnesses to show that they did have 14 capacity, I've made the ruling and they're 15 a holder. So the motion for DV on number 16 one is granted. 17 As to affirmative defense number 18 two, the failure to comply with 660.27 and 19 that the chief financial officer has to be 20 provided information about the trust, there 21 was no evidence brought forward by the 22 defense in that issue so the Court will 23 grant DV as to affirmative defense two. 24 As to affirmative defense number 25 three, the defense, they brought up the</p> | <p>156</p> <p>1 has already ruled on that issue. So the 2 Court will grant DV on affirmative defense 3 nine as the Court found plaintiff here was 4 the holder of the note, a negotiable 5 instrument. 6 As to affirmative defense ten, the 7 Court denies the motion for DV as to 8 affirmative defense ten. The plaintiff may 9 present your -- 10 MR. GACHE: The only one I missed was 11 two. 12 THE COURT: The Court granted the 13 motion for directed verdict on number two. 14 You may proceed. 15 MR. GACHE: One other point that 16 should be noted before I start my closing, 17 just for record purposes on the admissions 18 which you allowed and did not deem 19 admitted, even though there was an untimely 20 response, I just want the Court to also 21 know that I did not bring to your attention 22 that we filed timely a motion for extension 23 of time to respond to those admissions. 24 There was never an order entered on that 25 motion, but just to reinforce your ruling</p> |



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| <p>157</p> <p>1 so that you know that we did something. I 2 didn't raise it and tell you we had filed a 3 motion for extension of time on those. I 4 believe that would have told the time, but 5 either way, you've ruled even without 6 knowing there was a motion and I want you 7 to know that there was in fact a motion 8 filed.</p> <p>9 THE COURT: Did you file the motion 10 prior to expiration of your due date?</p> <p>11 MR. GACHE: I believe so. I only have 12 the docket sheet here. I don't have the 13 notes with me, but I'm looking at the 14 Court's docket and there is a motion for 15 extension of time to respond to admissions.</p> <p>16 Judge, with respect to plaintiff's 17 case, I'll try to be brief. You've gone 18 way over and above the call of duty today. 19 Thank you so much for the time you've given 20 us.</p> <p>21 We believe that we have a very 22 simple foreclosure matter here. We 23 established through two servicers the 24 continual holder status of the note all the 25 way through to today's default. We put on</p> | <p>159</p> <p>1 That's why we had AHMSI come first and then 2 we had RCS come second, because although I 3 think RCS should be able to testify about 4 prior servicer's loans when they inherit 5 those loans, we did it the safe way, we 6 brought you two witnesses.</p> <p>7 RCS testified to the judgment 8 figures. The note and mortgage are both in 9 evidence. There's no question about the 10 signatures on the note and mortgage, 11 although you denied the motion for directed 12 verdict with respect to the signatures on 13 the endorsement because you thought there 14 was some, quote, limited testimony you 15 thought you heard about that. Again, I beg 16 to differ. I thought it was all argument 17 by the lawyer, but let me read to you from 18 the Harvey decision from last summer where 19 they say here, the Fourth District says, 20 "As to Harvey's argument regarding 21 'questionable signatures,' although Harvey 22 argued this point in her motion for 23 reconsideration, she failed to present any 24 evidence below to support her contention 25 that the signatures were fraudulent. Even</p> |
| <p>158</p> <p>1 the witness from AHMSI who testified that 2 they were the original plaintiff, who 3 testified they had the note in their 4 possession at the time that the lawsuit was 5 filed thus establishing standing.</p> <p>6 We put on the AHMSI representative 7 to establish the date of default being 8 August of 2008. That there had been no 9 payments made since July of '08. That this 10 mortgager has resided in this property for 11 going on four years now without having made 12 a mortgage payment.</p> <p>13 It's important to note, and in the 14 Harvey case they made note of it, the 15 borrower never got on the stand and said 16 that he's not in default of this loan. 17 Harvey makes a point of noting that for the 18 Court. We put on the fact that the loan is 19 in default. We put on how much it's in 20 default. The records of the servicers are 21 both in evidence.</p> <p>22 I don't know if you're familiar with 23 the Collaro decision. That's a decision 24 that one servicer may not be able to 25 comment on the records of another servicer.</p> | <p>160</p> <p>1 if Harvey could prove this, the dispute 2 would be between AHMAI and Deutsche Bank. 3 Importantly, Harvey has never denied that 4 she was in default as to her mortgage 5 payments."</p> <p>6 What they're saying there is if 7 there's an endorsement issue, it's between 8 the person who sold you the note and the 9 person who bought the note. It's not for 10 the mortgagor's benefit. He doesn't get to 11 come in and say: Because you guys didn't 12 transfer the note properly, you can't sue 13 me.</p> <p>14 You didn't hear the mortgager say 15 someone else has made demands on him. You 16 haven't heard the mortgager say anyone else 17 has sued him in four years. The issue is, 18 is the note reliable, did it pass enough 19 muster to get into evidence. It did and 20 that's all that you have. Everything the 21 plaintiff did went rebutted.</p> <p>22 The only issue left that has any 23 merit at all is the fact that Mr. Hassell 24 got up there and said: I didn't get the 25 demand letter. Well, the law doesn't</p> |



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| <p>1 require you get the demand letter it 2 requires we send the demand letters. We 3 can't make sure that everyone gets it in 4 their hands. All they have to do is not 5 pick up their mail and we can never 6 foreclose the mortgages. 7 He was even more candid. He said: 8 My mail has been getting mixed up for 9 years. My neighbors get my mail. I get 10 their mail. Who knows where it went, but 11 there's no requirement in the mortgage for 12 certified mail return receipt or you would 13 have seen that as a defense. We would have 14 been out of this case four years ago 15 re-filing and re-demanding. 16 So there's no issue about the demand 17 letter. The fact that any borrower can get 18 up there and say: I didn't get it, does 19 not carry the date for you. You're the 20 trier of fact, does it seem more likely 21 than not that the demand letter was sent 22 AHMSI testified in their records, that they 23 had a copy of it in their records and that, 24 in fact, it was sent. 25 And I asked Mr. Hassell: Do you</p> | <p>161</p> <p>1 request for attorney's fees pursuant to our 2 affidavits, the judgment grand total is 3 741,858.04 and for that we ask that you 4 grant foreclosure and if I need any time 5 for rebuttal, I'd like to save it for that, 6 Judge. 7 THE COURT: Thank you. Defense 8 closing. 9 MR. WEIDNER: I'll try to be brief. 10 The fundament issue before the Court has to 11 do with the original promissory note. The 12 Second District Court of Appeal in the case 13 of Ederer versus Fisher, it's 183 So.2d 39, 14 asserted, and I quote, "There's no position 15 -- presumption that the endorsements of a 16 prior holder are genuine and when properly 17 put at issue in the pleadings, the parties 18 seeking to establish the status of holder 19 of the order paper must prove the validity 20 of those endorsements on which a status 21 depends." I'd like to present that case 22 to, Your Honor. 23 THE COURT: Yes, please. 24 MR. WEIDNER: Your Honor, counsel has 25 quoted a number of cases and --</p> <p>163</p> |
| <p>1 have any reason to believe it wasn't sent? 2 All he testified is he didn't get it. They 3 put on no other evidence to indicate it 4 wasn't mailed. 5 So at this point, Judge, we would 6 ask that you grant the final judgment of 7 foreclosure. We've got a proposed judgment 8 here. I don't know if I need to go through 9 the figures in my closing. I don't know 10 that the figures are in dispute. We didn't 11 hear any defense that they didn't get 12 credit for proper payments, but the unpaid 13 principal balance at this particular moment 14 is \$537,055.69. The interest that's 15 accrued from July of '08 through today is 16 160,466.63. We have a number of expenses 17 and costs that were testified to by the two 18 witnesses which brings the total to 19 720,567.07. And then we had property 20 inspections and appraisals and hazard 21 insurance for another 9,553.47. We have 22 affidavits for attorney's fees. I don't 23 know if that will be an issue with counsel. 24 We'll talk about that at some point. 25 But in the event you grant our</p> <p>162</p> | <p>164</p> <p>1 THE COURT: But do you have a copy for 2 counsel? If you don't, you take this first 3 and when you're finished looking at it, you 4 can bring it up to me. 5 MR. WEIDNER: We're all familiar with 6 the number of cases that are on there - 7 Riggs, Harvey, Taylor versus Deutsche Bank. 8 It is an important distinction to be made 9 whether it's an owner that's in court 10 pleading as an owner or whether in this 11 case they're pleading the status of 12 servicer. 13 This plaintiff has come into your 14 courtroom asserting they're the servicer 15 that asserts that they're an agent-ship for 16 someone else. They haven't disclosed who 17 the principal is. They've given you zero 18 evidence that they have any authority to be 19 here on behalf of the principal. 20 So the analysis then turns on the 21 Uniform Commercial Code and whether or not 22 just standing in the courtroom with an 23 original note, albeit endorsed in blank, is 24 enough to carry debt. Your Honor, it is 25 not. It is not because, as I quoted</p> |



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| <p>1 earlier with Ederer, we shifted the burden 2 on endorsement number one. Number two, I 3 made argument about the negotiability of 4 it. 5 It is not because of the Florida 6 statute, Uniform Commercial Code, when the 7 note is transferred, unless the entire note 8 is transferred as their testimony was, 9 we're just the servicer. You don't get all 10 of the rights. You only get what the prior 11 transferor had, and that's what we had. 12 So we've had no evidence at all of 13 their right to be here suing the client and 14 all they're relying on is that UCC 15 definition. 16 We've introduced testimony of the 17 defendant Ernie Hassell, he claims he 18 didn't get the default letter. The default 19 letter is a key and absolute element here. 20 He testifies he didn't get it. We have 21 testimony from the plaintiff, they assert 22 that it did go through. Comes into 23 creditability. You weigh these two that 24 someone before you claims they didn't get 25 it.</p> | <p>1 the action. So the issue of owner is 2 irrelevant. No one ever asked who the 3 owner is. No one cares who the owner is 4 when you get to trial. 5 In terms of a default letter, I've 6 been over it. The evidence is we sent it. 7 He put on no evidence that it wasn't sent. 8 All he would have had to have done is prove 9 that AHMSI never sent it and it would have 10 carried the debt, but he didn't. He only 11 put on his client to say: I didn't receive 12 it. That's not good enough. I can't rebut 13 that. I can't stop his client from getting 14 up there saying he didn't receive it. 15 There's nothing the plaintiff can do about 16 that and we all know that we'd never get a 17 foreclosure done if word got out that the 18 borrower just has to get on the stand and 19 say they never received it. That's all you 20 have to do is send it. 21 This case from 1966, I didn't get a 22 chance to read it in full, but in this case 23 there was a real question about the 24 endorsement and there was testimony in 25 evidence about the endorsement, and this is</p> |
| <p>1 He also claims -- well, the record 2 establishes that the complaint that was 3 filed with the Court, there was no note 4 period much less any endorsement on there. 5 And I will submit to you that Feltus tells 6 us you have to have the original note at 7 least attached to it. You certainly have 8 to have some evidence of when that 9 endorsement appeared on there. 10 I've introduced the -- attempted to 11 introduce the assignment which shows that 12 they got rights in this document a year 13 after when the lawsuit was filed. That's 14 evidence that tends to support that they 15 did not have the rights at the time they 16 filed this lawsuit. 17 At this point in time we would ask 18 for defense verdict and rest. 19 THE COURT: Rebuttal, close by the 20 plaintiff, if any. 21 MR. GACHE: I think what I just heard 22 him say is all we're relying on is the UCC. 23 That is the law in Florida. The law in 24 Florida is the holder brings the claim. 25 The person in possession of the note brings</p> | <p>1 a 1965 note, purchased money where the 2 person who built the house also took back a 3 note and then sold it to someone else and 4 they endorsed it to someone else and they 5 tried to sue. 6 THE COURT: That's, under the law, 7 considered a mortgage, isn't it? 8 MR. GACHE: It's a mortgage, I agree, 9 but it's a 1966 case where there was a real 10 issue about the endorsement. If he had put 11 on any evidence whatsoever about the 12 endorsement, if he would have done anything 13 more than just argue, without evidence he 14 just argued that the endorsement is 15 questionable. Any lawyer can come in here 16 and argue the endorsement is questionable. 17 What is that put to the plaintiff? I got 18 to go find the person that endorsed this 19 note who may or may not exist anymore. 20 That's why the commercial paper 21 exists the way it does. That's why the UCC 22 says these signatures are presumed 23 authentic and they're valid. And he has to 24 at least put on some evidence by 25 introduction, and I'm saying directly from</p> |



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| <p>169</p> <p>1 Mr. Weidner's own papers in his motion in 2 limine, the UCC, the comment to 3-308 says 3 that presumed means until some evidence is 4 introduced, that means in evidence. 5 Did you get any documents in 6 evidence, did you get any testimony in 7 evidence about the endorsement? Until some 8 evidence is introduced which would support 9 a finding that's an actual finding that the 10 signature is forged or unauthorized, the 11 plaintiff is not required to prove that it 12 is valid. The defendant is, therefore, 13 required to make some sufficient showing of 14 the grounds for the denial. You can't just 15 deny it. You got to have some grounds for 16 the denial before the plaintiff is required 17 to introduce evidence. That's his burden. 18 He can't just say: I deny the existence of 19 the endorsement. 20 Again, we would never get to the 21 finish line in any foreclosure if that was 22 the law. He would have a case on that 23 citing the code in particular. 24 So we would ask, Judge, that you 25 find for the plaintiff that he has not</p> | <p>171</p> <p>1 defense is that the -- for the voracity and 2 the authenticity of any possible 3 endorsement, and once again the Court's 4 only testimony that they heard regarding 5 endorsement was from the plaintiff's 6 witness. So that went undecided. I 7 understand I think that the defendant wants 8 the assignment to rebut the endorsement, 9 however, there's no evidence to that effect 10 in this case. 11 As to affirmative defense number 12 ten, the Court, which still has pending 13 before the Court, and that is the demand 14 notice to the borrower, the Court has 15 testimony from the plaintiff that the 16 demand letter was sent to the address of 17 1426 75th Circle, St. Petersburg, Florida 18 33702. The Court has the testimony from 19 Mr. Hassell that he did not receive the 20 letter that was sent September 3, 2008. 21 The Court finds that the requirement is not 22 that the defendant received the letter. 23 The requirement under the law is that under 24 this contract that the plaintiff or the 25 plaintiff's predecessor made with the</p> |
| <p>170</p> <p>1 carried any of his burdens to warrant this 2 mortgage or staying in this house any 3 longer. We'd ask that you grant our 4 request for relief. 5 THE COURT: Thank you. The Court is 6 going to look first at the affirmative 7 defenses of everything and the first is 8 regarding the assignment issue and that is 9 a document that's not a requirement of -- 10 is not in evidence but it's marked for ID 11 only, and the defense would have asked that 12 the Court find that because the assignment 13 is dated after this lawsuit was filed that, 14 in fact, would somehow indicate the 15 endorsement was not valid. 16 The only testimony the Court had 17 regarding the endorsement came from the 18 plaintiff's witness who indicated under 19 oath that the endorsement was on the 20 original note when she saw the document and 21 she said that that was before the date that 22 the lawsuit was filed. The Court will rely 23 upon that testimony. Of course that will 24 be one of your issues for appeal. 25 The second issue of affirmative</p> | <p>172</p> <p>1 defendant, the contract requires the 2 plaintiff to send a demand letter. It also 3 does not require the letter to be sent by 4 certified mail, and the Court, as you know, 5 case law cannot insert additional 6 provisions into contracts so I can't 7 require the plaintiff to have to send it by 8 certified mail. I don't have that 9 obligation. 10 There was testimony by Mr. Hassell 11 that on occasion his neighbors have gotten 12 his mail and he's gotten their mail. So 13 the Court finds that the plaintiff has met 14 the burden to establish that they mailed 15 it. I can't say for sure that it was 16 received and Mr. Hassell has said that it 17 was not received. 18 As to the plaintiff's case, motion 19 to foreclose these three remaining 20 affirmative defenses, the issue next is 21 whether the plaintiff met their burden to 22 establish that this was a negotiable 23 instrument, this original note that's in 24 evidence, and whether they as the servicer 25 could bring that original note to the Court</p> |



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| <p>173</p> <p>1 for endorsement. And again, based upon the 2 testimony the Court heard today from the 3 plaintiff's two witnesses and based mainly 4 on the Riggs case, which is a Fourth DCA 5 and it is not a Second District Court 6 opinion, it's not mine, his word, however 7 it has some very similar qualities, in that 8 case a mortgage loan servicing company 9 brought the original mortgage note too, as 10 did the plaintiff here, and that court 11 found that the possession of that note was 12 sufficient under the UCC to establish that 13 it was a holder of the note and that it was 14 entitled to enforce its terms. And this 15 Court made the same finding and ruling out 16 of a motion for directed verdict earlier 17 today.</p> <p>18 The Court finds that the plaintiff, 19 because they had possession of this note, 20 the Court finds that they had authority and 21 were entitled to enforce it and the Court 22 finds that it is a negotiable instrument 23 and, of course, the Second District agrees 24 and we'll probably have another trial. 25 This case of Riggs also had balance</p> | <p>175</p> <p>1 under Florida Statute 90902(8). And once 2 again, the Riggs case also differentiates 3 from the case of the BAC Funding blank 4 endorsement which was a different 5 situation. And so there is a 6 differentiation between the BAC case and 7 the Riggs case.</p> <p>8 So this Court finds that the 9 plaintiff has met the burden of proof in 10 this case and that the plaintiff is 11 entitled to a final judgment of 12 foreclosure. The balance due is 13 uncontroverted here. The plaintiff witness 14 testified that and the defense did not 15 testify that these figures were incorrect. 16 So the Court will grant final judgment to 17 the plaintiff in the amount -- and let me 18 just -- can the defense -- is there an 19 argument as to the amount of the attorney's 20 fees in affidavit?</p> <p>21 MR. WEIDNER: Absolutely, Your Honor. 22 There's been no evidence of those 23 attorney's fees in the prior testimony so 24 we object to that. 25 THE COURT: I'll reserve on the issue</p> |
| <p>174</p> <p>1 endorsement. So once again it's quite 2 similar to the case at hand here today. 3 The Court considered that and the Riggs 4 versus Aurora Services case and they said, 5 in fact, they said that Aurora's possession 6 of the original note endorsed in blank was 7 sufficient under Florida UCC to establish 8 it was the lawful holder of the note and 9 entitled to enforce those terms. It's very 10 similar to our case. It is a blank 11 endorsement.</p> <p>12 I agree that the testimony 13 uncontroverted that the blank endorsement 14 bears no date. It frustrates the Court 15 daily, and I will say daily in the six 16 years I've been doing foreclosures, that 17 there are no dates on these endorsements 18 and it causes us thousands of hours of 19 litigation time. The law doesn't require 20 them to be dated. I wish I wrote the law. 21 I don't. I'm not a legislature. I'm stuck 22 with the way it is and it doesn't require 23 the date, much to most of you in the legal 24 field too. 25 The note is self-authenticating</p> | <p>176</p> <p>1 of attorney's fees. I'll grant final 2 judgment of foreclosure. If you would 3 bring to the Court the proposed final 4 judgment, I would delete any amount of 5 attorney's fees and put a reservation of 6 jurisdiction for that and I will go ahead 7 and set the sale date. Would you confer on 8 the proposed final judgment?</p> <p>9 MR. GACHE: Here's the situation. I 10 understand he's objecting to the affidavit 11 of testimony which he has every right to 12 do, and for that he's required to have an 13 evidentiary hearing. With that said, I'd 14 like to confer with my client what we'd 15 like to do is submit to you a final 16 judgment that doesn't include any reference 17 to attorney's fees but all the other 18 amounts will be in the judgment, and it'll 19 reserve that you'll set the sale date. We 20 may or may not ever pursue the attorney's 21 fees in the event the client wants to waive 22 it, but if I could get this to you by 23 tomorrow, we could have a one over here to 24 you. We'll pass it by Mr. Weidner first, 25 of course.</p> |



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| <p>177</p> <p>1 THE COURT: Just show Mr. Weidner. 2 Just make sure he doesn't object. 3 MR. GACHE: It's just going to be the 4 same as this one. So if he has any 5 problems other than attorney's fees. 6 MR. WEIDNER: In this motion I'd like 7 to stay for appeal. 8 THE COURT: You'll have to file a 9 motion. I'll certainly have a hearing on 10 it if you want to do that. 11 MR. GACHE: I don't know if there's 12 any other business. 13 THE COURT: I'm hoping not because 14 it's 4:30 and I've got another hearing 15 after this. What's this motion for 16 involuntary dismissal? 17 MR. GACHE: This is his directed 18 verdict. 19 THE COURT: I'll file it. 20 (Whereupon the trial concluded at 4:30 21 p.m.) 22 23 24 25</p> | |
| <p>178</p> <p>1 CERTIFICATE OF REPORTER 2 STATE OF FLORIDA) 3 4 5 I, Jennifer Sirois, certify that I was 6 authorized to and did stenographically report 7 the trial; and that the foregoing pages are a 8 true and complete record of my stenographic 9 notes taken during said trial. 10 I further certify that I am not a relative, 11 employee, attorney, or counsel of any of the 12 parties, nor am I a relative or employee of any 13 of the parties' attorneys or counsel connected 14 with the action, nor am I financially interested 15 in the action. 16 Dated this 1st day of March, 2012. 17 18 19 JENNIFER SIROIS 20 Notary Public 21 State of Florida at Large 22 My Commission Number: EE131960 23 Expires: September 19, 2015 24 25</p> | |

