

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA

CITIMORTGAGE, INC.,

Plaintiff,

vs.

CASE NO. 2009-CA-001643 S

COSTEL G. SERBAN, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KEITH BRACE

DATE: OCTOBER 10, 2013
TIME: 11:10 A.M. TO 12:12 P.M.
LOCATION: OKALOOSA COUNTY COURTHOUSE
CRESTVIEW, FLORIDA

AS REPORTED BY:

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APPEARANCES

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

JAMES ORTH, ESQUIRE
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STEVEN COPUS, ESQUIRE
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Richard H. Powell & Associates, PA
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1 PROCEEDINGS

2 THE COURT: Okay. CitiMortgage vs. Costel
3 Serban. Hallihan.

4 MS. KOCH: Good morning, Your Honor.

5 THE COURT: Good morning. Ms. Koch, what is
6 your first name, please?

7 MS. KOCH: Heather.

8 THE COURT: Thank you.

9 MS. KOCH: You're welcome.

10 THE COURT: All right. This cause of action
11 is 09-CA-1643, CitiMortgage vs. Costel Serban.
12 Ms. Heather Koch is here on behalf of the
13 plaintiff. Phelan Hallihan is the law firm.

14 Mr. Powell, Mr. Copus, and --

15 MS. PATTERSON: O-R-T-H.

16 MR. ORTH: James Orth, Your Honor, for the
17 defense.

18 THE COURT: All right. Is the plaintiff ready
19 to proceed in this matter?

20 MS. KOCH: We are, Your Honor.

21 THE COURT: Is the defendant ready to proceed,
22 Mr. Orth?

23 MR. ORTH: We are, Your Honor.

24 Actually, Your Honor, before we begin the
25 testimony, if the original note and mortgage are in

1 the file and I can take a look at them, we may be
2 able to stipulate to the admission of those
3 documents.

4 THE COURT: Okay. I'm not sure whether they
5 are or not.

6 MS. KOCH: They should be, Your Honor. They
7 were filed way back in 2009 or 2010, I believe.

8 THE COURT: Do you have that file with you,
9 Lori?

10 MS. PATTERSON: Yes.

11 THE COURT: Are they marked? Okay. For your
12 review is the original note in the amount of
13 \$55,800.

14 MR. ORTH: For purposes of this trial, that
15 note and mortgage look original to me. We have no
16 objection to the admission of those documents.

17 THE COURT: All right. Thank you.

18 Does either counsel desire to make a brief
19 opening?

20 MR. ORTH: Defense waives, Your Honor.

21 MS. KOCH: Plaintiff waives.

22 THE COURT: Okay. Ma'am, would you please
23 raise your right hand.

24 (JENNIFER SHERMAN was duly sworn by the Court.)

25 THE COURT: Thank you. State your name.

1 THE WITNESS: Jennifer Sherman, S-H-E-R-M-A-N.

2 THE COURT: S-H-E-R-M-A-N?

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 Ms. Koch.

6 DIRECT EXAMINATION

7 BY MS. KOCH:

8 Q Ms. Sherman, where do you work?

9 A CitiMortgage.

10 Q And what are your duties and responsibilities
11 with CitiMortgage?

12 A I currently travel to attend trials. I have
13 access to be able to review the business records for
14 those loans, business records such as the payment
15 history, the demand letters, any document that we may
16 have on file.

17 Q Okay. And have you personally reviewed the
18 loan documents and records concerning the loan involved
19 in this case?

20 A Yes.

21 Q And are you testifying today based on your
22 personal knowledge of these documents?

23 A Yes.

24 Q Okay. We have already gone through the note
25 and the mortgage. So I'm going to hand you what is one

1 of our exhibits marked as the breach letter. Have you
2 seen this before?

3 (Off-the-record discussion between counsel.)

4 MS. KOCH: Judge, at this time we would move
5 to enter the note as Exhibit A and the mortgage as
6 Exhibit B in this matter.

7 THE COURT: I understand. Without objection?

8 MR. ORTH: No objection, Judge.

9 THE COURT: All right. They will, for the
10 purposes of this proceeding, be marked as Plaintiff
11 1 and 2, 1 being the note and 2 being the mortgage
12 which are in the court file at this time, having
13 been examined by both counsel and in evidence
14 without objection.

15 (Plaintiff's Exhibits 1 & 2 marked and admitted.)

16 BY MS. KOCH:

17 Q I'm going to go back. We have admitted the
18 note in evidence. I'm going to show you what has been
19 admitted into evidence as a copy of the note and
20 mortgage. Do you recognize that document?

21 A Yes.

22 Q And what is it?

23 A A copy of the note.

24 Q For this case; correct?

25 A Correct.

1 Q And can you tell me what endorsements are on
2 this note?

3 MR. ORTH: Objection, Your Honor. The
4 document speaks for itself.

5 MS. KOCH: It does. But we're going to go to
6 a time frame as to when the endorsements were
7 placed on the note.

8 MR. ORTH: The endorsements aren't dated. The
9 document speaks for itself, Judge.

10 THE COURT: I understand that. But if the
11 plaintiff has information to indicate when the
12 endorsements were placed on there, I will permit
13 that. Based upon her examination of the records,
14 the Court will permit that testimony to come in
15 over objection of counsel for the defendant.

16 BY MS. KOCH:

17 Q Would you take a look at the endorsements on
18 this note for me, please.

19 A Yes.

20 Q And what is, to the best of your knowledge and
21 based on the business records, the last endorsement on
22 this note?

23 A The last endorsement on this note is Flagstar
24 Bank FSB to blank.

25 Q Do you, based on your examination of the

1 records in this case, have any idea when that
2 endorsement would have been placed on the note when
3 CitiMortgage took possession or ownership of the note?

4 A We took possession and ownership of the
5 note --

6 MR. ORTH: Objection as to possession and
7 ownership. The witness is now going to testify as
8 to documents not in existence. They need to
9 proffer some kind of documents that show the date
10 they acquired the note and ownership.

11 MS. KOCH: We are going to --

12 MR. ORTH: Otherwise, it's inadmissible
13 hearsay.

14 MS. KOCH: We are going to do this based on
15 her review of the business records of this case
16 beforehand.

17 MR. ORTH: And, Your Honor, without those
18 records, the law is clear, without those business
19 records, it is inadmissible hearsay.

20 THE COURT: If you're quoting Ehrhardt without
21 any case authority, then I studied under Ehrhardt,
22 I know him well, and attended many seminars where
23 Chuck has spoken, and he is an authority on the
24 issue. But business record exceptions is also --
25 the Court is going to hear from the plaintiff,

1 unless you have a specific case that says I can't.

2 MR. ORTH: He has a specific citation,
3 Cullimore vs. Barnett Bank of Jacksonville.

4 THE COURT: Show me the case. I'm not talking
5 about just the mere citations.

6 MR. ORTH: I understand, Your Honor.

7 THE COURT: I'm talking about the contents.

8 MR. ORTH: Just for the record, I'd just like
9 to cite that it's 386 So. 2d 894 at 895, Florida
10 1st District Court of Appeals, 1980, where oral
11 testimony of the contents of business records is
12 not admissible unless the record has first been
13 admitted.

14 THE COURT: Okay. Proceed.

15 BY MS. KOCH:

16 Q Based on your review of the records for this
17 loan, can you repeat for the Court again when
18 CitiMortgage took possession of this note in this case?

19 A September of 2006.

20 Q And can you tell me --

21 THE COURT: September when 2006?

22 A September 27th, 2006.

23 MR. ORTH: Objection, Your Honor. It appears
24 the witness is referring to notes. We haven't been
25 given an opportunity to review her notes. And

1 that's not on the promissory note.

2 THE COURT: Have you asked for it?

3 MR. ORTH: I haven't. But I didn't know she
4 was going to bring a notebook with her handwritten
5 notes. I'd like an opportunity to review it.

6 THE COURT: You might have inquired before
7 today. Right? I mean, you had an opportunity to
8 depose the witness and ask her to bring her books
9 and notes, et cetera.

10 MR. ORTH: Theoretically, yes.

11 THE COURT: And you'll be given an opportunity
12 to cross-examine her when the time comes.

13 Proceed, Ms. Koch.

14 MS. KOCH: Thank you.

15 BY MS. KOCH:

16 Q And can you tell me which documents you looked
17 at that led you to come up with that date, what business
18 records you examined?

19 A I have a computer screen that showed me when
20 we would have received the file, and we also -- the
21 computer system showed me a record of when we would have
22 actually received the physical file.

23 Q Okay. Moving from that, thank you, I'm
24 showing you what has been marked as Plaintiff's Exhibit
25 No. 3.

1 MR. ORTH: May I see the document first?

2 MS. KOCH: Yes.

3 THE COURT: If you would have the document
4 marked by the case manager as an exhibit in
5 identification. Mark it No. 3 for identification
6 so it's part of the record.

7 MS. KOCH: Would you like me to do that now,
8 Judge?

9 THE COURT: Yes, ma'am. And tell me what it
10 is.

11 MS. KOCH: It is the breach letter or demand
12 letter in this case.

13 (Plaintiff's Exhibit 3 marked for identification.)

14 BY MS. KOCH:

15 Q Have you seen that document before,
16 Ms. Sherman?

17 A Yes.

18 Q And what is this document?

19 A This is a copy of the default or acceleration
20 letter that was sent to Costel Serban on January 30th,
21 2009.

22 Q And what is the date of this letter?

23 A January --

24 MR. ORTH: Objection. The witness is
25 testifying as to a document not in evidence.

1 MS. KOCH: Judge, at this time we would move
2 to enter Plaintiff's Exhibit 3 into evidence.

3 THE COURT: And then the exhibit will speak
4 for itself.

5 MS. KOCH: Yes.

6 MR. ORTH: Your Honor, none of the
7 foundational questions have been asked for this
8 document.

9 THE COURT: Proceed with your inquiry.

10 BY MS. KOCH:

11 Q Was this document created as part of your
12 regular business activities?

13 A Yes.

14 Q And is this document kept, after its creation,
15 as part of your regular business activities?

16 A Yes.

17 Q How is this document kept?

18 A We have a document tracking system.

19 Q Okay. And is this a true and correct copy of
20 the breach letter that was sent to Mr. Serban in 2009?

21 A Yes.

22 Q Does this letter indicate a time frame within
23 which he can bring his loan current?

24 A Yes.

25 Q What is that time frame?

1 A The letter was sent out on January 30th, 2009,
2 and it asks to receive the payment by March 2nd, 2009,
3 or the next business day thereafter.

4 Q And based on your review of the record for
5 this case, did the borrower make a payment within that
6 time frame?

7 A No.

8 MS. KOCH: Judge, at this time we would move
9 to admit Plaintiff's Exhibit 3 into evidence.

10 THE COURT: Mr. Roth [sic].

11 MR. ORTH: May I see the document, Your Honor?

12 THE COURT: Mr. Orth. I'm sorry.

13 MR. ORTH: That's okay, Your Honor. I've been
14 called worse.

15 THE COURT: I couldn't read my own writing.

16 MR. ORTH: No objection to Exhibit 3, Your
17 Honor.

18 THE COURT: Thank you. Exhibit 3, previously
19 marked for identification, being the breach letter,
20 will be received into evidence.

21 (Plaintiff's Exhibit 3 admitted in evidence.)

22 MS. KOCH: When we had previously gotten those
23 from our client, it was through September. So
24 Ms. Sherman, prior to coming today, included that
25 top page so it has some of the figures, some of the

1 numbers from the pages behind it but brings the
2 payment history current through October.

3 BY MS. KOCH:

4 Q Ms. Sherman, I'm showing you a document marked
5 as Plaintiff's Exhibit 4. Can you tell us what this
6 document is?

7 A This is a copy of our payment or financial
8 information for the loan.

9 Q For the loan pertaining to this case?

10 A Yes.

11 Q And have you seen this document before?

12 A Yes.

13 Q And is it the regular business practice of
14 your company to create such a document?

15 A Yes.

16 Q Is it also the regular business practice of
17 your company to keep and maintain this document?

18 A Yes.

19 Q How is this document maintained?

20 A We have a computer system that keeps this
21 information up to date.

22 Q And what is the earliest date on this payment
23 history?

24 A The earliest date? October 6, 2006.

25 Q Okay. And does this document reflect a

1 default date?

2 A Yes.

3 Q And can you tell us what that default date is?

4 A The loan is currently paid through November of
5 2008.

6 Q Have any payments been received since this
7 reflected default date?

8 A No.

9 MS. KOCH: At this time, Judge, we would move
10 to enter Plaintiff's Exhibit 4, the payment
11 history, into evidence.

12 THE COURT: Mr. Orth.

13 MR. ORTH: Your Honor, I'm not going to object
14 at this time. I'll deal with it on
15 cross-examination.

16 THE COURT: Okay. All right. Then there
17 being no objection, the document will be received
18 into evidence and marked so by the case manager.

19 (Plaintiff's Exhibit 4 marked and admitted.)

20 BY MS. KOCH:

21 Q All right. I am handing you a copy of the
22 plaintiff's proposed final judgment. Have you seen this
23 document before, Ms. Sherman?

24 A Yes.

25 Q Have you reviewed the business records of your

1 company as it pertains to the amount due and owing on
2 this loan?

3 A Yes.

4 Q With the exception of the attorney fees, do
5 the amounts shown on this proposed foreclosure final
6 judgment reflect those you reviewed in your business
7 records?

8 A Yes.

9 Q And these figures are true and correct?

10 A Yes.

11 Q And can you state for the Court the final
12 amount that we're seeking in our judgment.

13 A \$84,643.87.

14 MS. KOCH: Judge, at this time we conclude
15 with our evidence and respectfully request that you
16 enter final judgment in favor of the plaintiff.

17 THE COURT: The examination of the witness has
18 been concluded. You may cross-examine the witness
19 at this time, Mr. Orth.

20 MR. ORTH: Thank you, Your Honor.

21 Your Honor, may I approach the clerk to have
22 my first exhibit marked?

23 THE COURT: Yes, you may.

24 MR. ORTH: Your Honor, I'm handing the witness
25 what's been marked for identification as Defense

1 Exhibit A.

2 (Defendant's Exhibit A marked for identification.)

3 CROSS-EXAMINATION

4 BY MR. ORTH:

5 Q Ma'am, do you recognize that document?

6 A Yes.

7 Q You've seen this document before?

8 A Yes.

9 Q That's a business record of your company?

10 A Yes.

11 Q And that was an assignment of mortgage that
12 was executed for purposes of bringing this litigation;
13 correct?

14 A Yes.

15 Q And what's the date that that document was
16 executed?

17 A Looks like September 3rd, 2009.

18 Q Is that a true and correct copy of what you
19 believe that document is that's in your business
20 records?

21 A Yes.

22 MR. ORTH: Your Honor, I would offer Defense
23 Exhibit A into evidence.

24 THE COURT: Ms. Koch?

25 MR. ORTH: It's also a certified copy, Your

1 Honor, of a publicly recorded document certified by
2 the clerk of this county.

3 THE COURT: Well, it would come in under
4 certification with less potential to be held out
5 than it would be under their business records.

6 MS. KOCH: The only objection -- we don't have
7 an objection to the date it is signed. We do have
8 an objection to the fact that it is effective
9 before the date that it was --

10 MR. ORTH: Your Honor, if I understand the
11 objection, they're objecting to their own
12 back-dating of the assignment. And I would have no
13 objection to that --

14 MS. KOCH: Not back-dating.

15 MR. ORTH: -- and would proceed forward on --

16 MS. KOCH: As to the effective date.

17 MR. ORTH: -- the date of the document, which
18 is September 3rd, 2009.

19 MS. KOCH: That is correct. That is the date
20 it is signed, as to the effective date of the
21 assignment.

22 THE COURT: No objection or without objection,
23 or do you have an objection?

24 MS. KOCH: Without objection.

25 THE COURT: The exhibit, then, marked A for

1 identification previously is now received in
2 evidence. And it is a certified copy of the clerk,
3 as well as being identified by the witness for the
4 bank.

5 (Defendant's Exhibit A admitted in evidence.)

6 MR. ORTH: Your Honor, if I may briefly have
7 that back for a few follow-up questions with the
8 witness.

9 THE COURT: Surely. The document purports to
10 be an assignment of mortgage.

11 BY MR. ORTH:

12 Q Ma'am, I would like, while I go through this,
13 for you to follow along with me while I read it just to
14 make sure that I'm reading it correctly. This is from
15 Mortgage Electronic Registration Systems, Inc.; correct?

16 A Correct.

17 Q They're commonly known as MERS?

18 A Correct.

19 Q And MERS assigned this mortgage right here,
20 the mortgage, to CitiMortgage Inc.; correct?

21 A It actually says that MERS Electronic
22 Registration System, residing at or located at care of
23 CitiMortgage, to CitiMortgage.

24 Q Okay. So it's assigning, as it says right
25 here, assigning the mortgage executed by Costel Serban.

1 That's assigning the mortgage; correct?

2 A Correct.

3 Q And that's the subject mortgage in this case?

4 A Correct.

5 Q I would like you to follow along with me and
6 make sure I'm reading this correctly: "Together with
7 the note and each and every other obligation described
8 in said mortgage and the money due and to become due
9 thereon." Did I read that correctly?

10 A Yes.

11 Q Ma'am, my apologies. I didn't write down your
12 name at the beginning of the suit. Can I get your name
13 again?

14 A Jennifer Sherman, S-H-E-R-M-A-N.

15 Q Now, Ms. Ferman --

16 A Sherman.

17 Q Oh, Sherman, S-H-E-R-M-A-N. Okay. My
18 apologies.

19 Ms. Sherman, you didn't bring any documents with
20 you today showing the actual date that the note was --
21 the original promissory note was obtained in the
22 possession of CitiMortgage; correct?

23 A No.

24 Q You didn't bring any documents with you today
25 showing the date you acquired servicing rights over the

1 subject loan with the true owner of the note; correct?

2 A Yes. I brought a copy of the MERS Milestone
3 reports.

4 Q Well, I'm talking about your business records,
5 not somebody else's business records.

6 A They are held in our business records.

7 Q They're held in your business records?

8 A Yes.

9 Q And have you seen the original complaint in
10 this lawsuit?

11 A At some point. The original?

12 Q A copy of what was originally filed as the
13 original complaint in this suit.

14 A Yes.

15 Q You're aware there was a lost-note count
16 alleged in the original complaint?

17 A Yes, I believe so.

18 Q And you're aware that the attachments to the
19 original complaint didn't include a copy, a photocopy of
20 the promissory note; is that correct?

21 A I believe that's correct, yes.

22 MR. ORTH: Your Honor, may I approach to have
23 this marked as Exhibit B?

24 THE COURT: You may. Identify the document,
25 please.

1 MR. ORTH: Your Honor, this is a document with
2 the heading of CitiMortgage, Inc., and it
3 references information as to the subject promissory
4 note in this case.

5 THE COURT: Thank you.

6 (Defendant's Exhibit B marked for identification.)

7 BY MR. ORTH:

8 Q Ma'am, I'm handing you what's been marked for
9 identification purposes as Exhibit B. Is there any
10 information on there which would lead you to believe
11 that's a business record of CitiMortgage, Inc.?

12 A Yes.

13 Q Have you seen that document before today?

14 A Not that I recall.

15 Q But you did see the original complaint, a copy
16 of it, with the attached documents?

17 A I don't remember.

18 Q Okay. If I were to tell you that's in the
19 original complaint in the Court's file, would you have
20 any reason to disagree with me?

21 MR. ORTH: Or would the Court prefer I hand
22 the court file with the original complaint to the
23 witness?

24 THE COURT: It's her election. If she does
25 not feel that she can respond to the question

1 without the court file, the court file is right
2 here and you can show her.

3 MR. ORTH: If I may approach.

4 THE COURT: Yes, sir.

5 BY MR. ORTH:

6 Q Ma'am, is this the copy of your complaint you
7 have read before?

8 A Yes, I believe so.

9 Q And Count II is the count to reestablish a
10 lost promissory note --

11 A Correct.

12 Q -- that was not in your possession?

13 Now, the first document after that is marked as A,
14 and that's a copy of the mortgage in this particular
15 case?

16 A Correct.

17 Q Borrower, Costel Serban. And we'll just
18 forward to the end of the mortgage. Does that look like
19 the signature page?

20 A Yes.

21 Q Family rider. You've seen that before?

22 A Uh-huh.

23 Q And I'd like you to take a look at the
24 document I handed you. And would you please compare it
25 up to this document that's in the court file as Exhibit

1 B to the complaint.

2 A It looks to be the same.

3 Q Okay. Ma'am, if that has the header of
4 CitiMortgage, Inc., on it, would you agree with me that
5 that would be an indication it is your company's
6 business record?

7 A Yes.

8 Q Having looked at the document that was filed
9 in the complaint and having looked at that document,
10 would you believe that's a true and accurate copy of
11 your business record for CitiMortgage, Inc.?

12 A Yes.

13 MR. ORTH: Your Honor, I would offer Exhibit B
14 into evidence at this time, Defense Exhibit B.

15 MS. KOCH: I have no objection.

16 THE COURT: Without objection, it will be
17 received and marked in evidence.

18 (Defendant's Exhibit B admitted in evidence.)

19 MR. ORTH: Your Honor, I would like to
20 question the witness in regard to this document.
21 Do you need the document first?

22 THE COURT: We'll mark it in evidence whenever
23 you're through.

24 MR. ORTH: Thank you, Your Honor.

25 BY MR. ORTH:

1 Q Ma'am, this was submitted -- I'll step back.
2 This was submitted along with the complaint due to the
3 absence of the promissory note; correct?

4 A I'm not sure.

5 Q Does CitiMortgage ever file a document similar
6 to that when they're filing lost-note counts and they
7 don't have the note?

8 A I've actually never seen a document like this
9 filed with a complaint.

10 Q How long have you worked for CitiMortgage?

11 A Eleven years.

12 Q How many cases have you testified at trial on,
13 approximately?

14 A A lot. I don't know a number.

15 Q Over ten? Over a hundred?

16 A I would say probably over a hundred.

17 Q And in those cases, when you had the original
18 note, isn't there a copy of the note attached to the
19 complaint?

20 A Generally speaking, yes.

21 Q So you don't know why that particular document
22 was filed in this case, and you've never seen that type
23 of document before from your company?

24 A Not that I recall, no.

25 MR. ORTH: No further questions of this

1 document, Your Honor.

2 THE COURT: It will be marked as being
3 received into evidence by the Court.

4 BY MR. ORTH:

5 Q Ms. Sherman, did you bring any business record
6 for your company which indicates that CitiMortgage has a
7 right to assign Fannie Mae's notes and mortgages to
8 itself?

9 A No.

10 Q Ms. Sherman, did you bring any documents
11 evidencing that that notice of default was actually
12 mailed?

13 MS. KOCH: Objection, Your Honor. We have
14 already filed an affidavit of mailing for the
15 breach letter in this case back when we were here
16 for the motion for summary judgment/motion to
17 dismiss back in September.

18 MR. ORTH: Your Honor, that hasn't been
19 introduced at trial, and affidavits are
20 inadmissible at trial. A witness needs to show up
21 and testify.

22 THE COURT: Is the witness not prepared to
23 answer that question?

24 A I did not bring any documents with me, no,
25 other than the copy of the default letter.

1 THE COURT: All right. I don't know that that
2 really -- well, I won't comment on that. The
3 question's been answered. She didn't bring any
4 documents. She acknowledged that the breach letter
5 was. . .

6 However, I might indicate to you my notes
7 indicate that she testified that on January 30th it
8 was sent. So that's, in this Court's opinion, all
9 that's required. So if you're operating on another
10 assumption, you have the opportunity to examine the
11 witness further.

12 MR. ORTH: Your Honor, I'd ask at this time
13 for the Court to take judicial notice of the
14 document filed by the plaintiff in this case on
15 October 23rd, 2009, which is entitled Original
16 Documents, Attachments --

17 THE COURT: Is this your Exhibit B?

18 MR. ORTH: No, Your Honor. This is a separate
19 document. That was an exhibit attached to the
20 complaint.

21 THE COURT: What document are you making
22 reference to?

23 MR. ORTH: It was filed, received by the clerk
24 on October 23rd, 2009.

25 THE COURT: Well, this is just a clerk's

1 record of what they received.

2 MR. ORTH: I would like the Court to take
3 judicial notice of the fact that it was filed on
4 that date.

5 THE COURT: October 22nd, 2009, the document
6 indicating the original note, the original
7 mortgage, and a copy of the recorded assignment of
8 mortgage.

9 MR. ORTH: Yes, Your Honor. Document No. 19,
10 I'm told.

11 BY MR. ORTH:

12 Q Ms. Sherman, CitiMortgage didn't originate
13 this loan; correct?

14 A Correct.

15 Q And you didn't bring any documents with you
16 today to evidence a date that the endorsements were
17 placed on the note; correct?

18 A Correct.

19 Q Did you bring any documents with you to show
20 you who for CitiMortgage actually had physical
21 possession or was a custodian of the note, the original,
22 while in your possession?

23 A I'm sorry. Can you rephrase that and/or
24 repeat it?

25 Q Sure. Did CitiMortgage keep track of which

1 individual or which location actually has the original
2 promissory note and where it's located?

3 A From the time that CitiMortgage has it, yes.

4 Q How is it that the possession of that document
5 is actually maintained? Is there a ledger? Is there
6 some kind of computer records that would indicate who
7 has the actual control and custody of the original note
8 while in your company's possession?

9 A We have a program that shows our file
10 location.

11 Q If it's changed from one location -- if the
12 promissory note, the original, is changed from one
13 person to another, is that documented in the computer
14 system?

15 A It's actually documented by the location of
16 the file.

17 Q Did you bring any of that documentation with
18 you today to show who had possession of it and when they
19 had possession of it?

20 A No.

21 Q Is it the policy of CitiMortgage to scan the
22 promissory note in your computer system when you acquire
23 the right to enforce it?

24 A We would scan a copy of the note in when we
25 receive it, yes.

1 Q Maybe my question was misunderstood. Is it a
2 policy of CitiMortgage that when they receive the actual
3 original note that they scan it into their computer
4 system at that time?

5 A Yes.

6 MR. ORTH: Your Honor, I have no further
7 questions for the witness.

8 THE COURT: Okay. Any redirect?

9 MS. KOCH: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. KOCH:

12 Q I'd just like to clarify. Is this a note that
13 the investor is Fannie Mae?

14 A No.

15 Q Just to clarify, it is your testimony as
16 earlier, based on your review of the business records,
17 what date again, based on your review of the business
18 records, did CitiMortgage take possession of this note?

19 MR. ORTH: Objection again, Your Honor.

20 There's no business record entered into evidence
21 upon which she can testify.

22 THE COURT: Thank you. The objection is
23 overruled. You may answer the question.

24 A September 22nd, 2006.

25 MS. KOCH: And, Your Honor, I was wondering if

1 I could get Defense Exhibit A to ask her a
2 question.

3 THE COURT: Sure. A?

4 MS. KOCH: Yes, please.

5 BY MS. KOCH:

6 Q I'm showing you Defendant's Exhibit A, which I
7 believe we already established was a proposed assignment
8 of mortgage. Your previous testimony was that it is
9 dated September 3rd, 2009; correct?

10 A Correct.

11 Q Is there any other date or an effective date
12 on that other than that date?

13 MR. ORTH: Objection. The document speaks for
14 itself, and it's outside of -- well, not outside of
15 the scope of cross --

16 THE COURT: The document is in evidence.

17 MR. ORTH: -- but it speaks for itself and it
18 is in evidence.

19 THE COURT: Okay. But if you could point it
20 out for the benefit of the Court, I would
21 appreciate it.

22 A It says, "To have and to hold the same unto
23 the said assignee, its successors and assigns, the 16th
24 day of March, 2009, but without recourse."

25 BY MS. KOCH:

1 Q March 16, 2009; correct?

2 A Correct.

3 Q And is that a date before the complaint was
4 filed in this case?

5 A Yes.

6 MS. KOCH: No further questions, Your Honor.

7 MR. ORTH: Your Honor, just one further
8 question for the witness based on that testimony
9 that was just elicited.

10 THE COURT: Okay. I don't generally permit
11 surrebuttal. But I guess to get this matter drawn
12 to a conclusion, we will. Let me look at it
13 myself, though.

14 All right. Go ahead, sir.

15 RE CROSS-EXAMINATION

16 BY MR. ORTH:

17 Q Ma'am, you just testified that Fannie Mae
18 doesn't own the loan. Isn't it true that I was
19 incorrect and Freddie Mac actually owns the loan?

20 A That's correct.

21 Q And isn't it true that they've owned the loan
22 since December 15, 2003?

23 A I don't know the specific date offhand.

24 Q But they owned the loan prior to your
25 acquisition of the servicing rights?

1 A Yes.

2 MR. ORTH: No further questions.

3 THE COURT: Okay. On that issue, any
4 redirect?

5 MS. KOCH: No further questions, Your Honor.

6 THE COURT: Plaintiff have anything further to
7 submit?

8 MS. KOCH: To submit, no.

9 THE COURT: Okay. Subject to the final
10 judgment being ratified, then, do you rest?

11 MS. KOCH: Yes, Your Honor, we rest.

12 THE COURT: All right. Mr. Orth.

13 MR. ORTH: Your Honor, I don't have any
14 witnesses. Just closing arguments.

15 THE COURT: Okay. You want to make your
16 argument or reserve to rebut Mr. Orth?

17 MS. KOCH: I'll reserve.

18 THE COURT: Thank you.

19 MR. ORTH: Your Honor, if I may stand at the
20 podium, it's easier for me to present.

21 THE COURT: You may. Anywhere you feel most
22 comfortable.

23 Let me -- there were only two exhibits
24 submitted by the defendant and four by the
25 plaintiff, is that correct, all of which were

1 received and admitted into evidence?

2 MS. KOCH: That's correct.

3 MR. ORTH: I believe that's correct, Your
4 Honor.

5 THE COURT: All right. Thank you.

6 MR. ORTH: Your Honor, today at close of
7 trial, the plaintiff is not entitled to a judgment
8 of foreclosure for the following reasons:

9 There's been no evidence, no documentary
10 evidence, no business record entered into evidence
11 to establish the date they received the note other
12 than Defense Exhibit B. Defense Exhibit B is the
13 assignment of mortgage from Mortgage Electronic
14 Registration Systems, Inc., which I'll continue to
15 refer to as MERS for brevity purposes. So we have
16 no evidence that the plaintiff, other than
17 unsubstantiated testimony of the witness, that they
18 had physical possession of the note prior to filing
19 suit. The law is clear, they have to have standing
20 at inception to file suit. They can't cure that
21 afterwards.

22 So the initial complaint, if we look at the
23 initial complaint, it clearly provides for two
24 counts. Count I is a mortgage foreclosure, and
25 Count II is a notice to the Court. We don't have

1 the note. It's lost. It's not in our possession.

2 Further, the testimony of the witness today
3 was that when they receive the original note, they
4 scan it into their computer system. That wasn't
5 attached to the complaint. Had they received prior
6 to filing the suit the original note, they would
7 have scanned it into their system, and it would
8 have been an exhibit to the complaint.

9 The witness's testimony, uncontroverted
10 testimony, is that the attachment to the complaint
11 is a business record of CitiMortgage. And that is
12 not the note. All they are doing in that document
13 is explaining what the terms are of the note which
14 they allege to be able to enforce.

15 They didn't have it. There's no evidence
16 today that they had it at that time. And the
17 evidence presented shows that they didn't have it.

18 So what we don't have today is any kind of
19 servicing contract between the plaintiff and
20 Freddie Mac. The plaintiff admitted Freddie Mac
21 owns the loan. There's nothing before the Court to
22 show they were entitled to enforce this promissory
23 note and mortgage at the time they filed this suit.

24 The assignment of mortgage, Defense B --
25 actually, I think it's A, Your Honor, my apologies.

1 THE COURT: Yes, sir, it is.

2 MR. ORTH: -- shows that the assignment
3 assigned not only the mortgage, but the promissory
4 note to the plaintiff. It's clearly below the
5 description of the property, together with the
6 note. That is the date the note got assigned to
7 the plaintiff.

8 Now, they try and back-date it by their law
9 firm who was representing them at that time in
10 order to acquire standing. But that flies in the
11 face of the fact that in their own pleadings they
12 didn't have the note, they didn't even have a
13 photocopy of the note which would have scanned into
14 their system if they had had the original note.

15 Now, Florida law provides that in order to be
16 able to enforce a note, there's three options. A
17 holder, which the law is, in order to be a holder,
18 it has to be negotiated and delivered. If it's not
19 delivered, you're not a holder.

20 Option number two, subsection two, is
21 nonholder in possession with rights of a holder.
22 And that's going to become relevant for almost the
23 rest of what I'm about to say, because I'm going to
24 take the Court through a case which is extremely
25 important on MERS-configured loans in our state

1 that was decided in 2010.

2 It's called Gregory Taylor v. Deutsche Bank
3 National Trust Company. I have a copy for the
4 Court, Your Honor, and I have a copy for counsel.
5 The end result of this case was the legal
6 determination that under this type of a configured
7 loan, which we'll go through -- ours is exactly the
8 same, same language -- MERS was a nonholder in
9 possession with rights of a holder under this
10 configured type of loan due to an explicit grant.
11 And those are the words, explicit.

12 Now, if we look at this and we look at our
13 mortgage, Your Honor -- actually, first, if we look
14 at the note. On page 1, bottom, right corner of
15 page 1 of the --

16 THE COURT: Are you talking about the original
17 note?

18 MR. ORTH: Yes, Your Honor, the original note.
19 On paragraph 1 of our note, it says the same thing.
20 It says in Taylor v. Deutsche, "I understand that
21 the lender may transfer this note."

22 THE COURT: I'm looking at the note, and you
23 said paragraph 1. That's about borrower's promise
24 to pay. I don't see that language.

25 MR. ORTH: Let me find my copy here. Your

1 Honor, it says, "Borrower's promise to pay." The
2 first paragraph starts with, "In return," then it
3 identifies the lender will turn into a funding
4 corporation.

5 THE COURT: Yes, sir.

6 MR. ORTH: Then it says, "I will make all
7 payments."

8 And then next sentence below that is the same
9 thing that's in Taylor v. Deutsche, "I understand
10 that the lender may transfer this note. The lender
11 or anyone who takes this note by transfer and who
12 is entitled to receive payments under this note is
13 called the note holder."

14 Now, if we turn to page 2 of Taylor and we
15 turn to paragraph 10 in our promissory note, we'll
16 see the same language, "In addition to the
17 protections given the note holder under the note, a
18 mortgage deed of trust or security deed dated the
19 same date as this note protects the note holder
20 from possible losses."

21 And that's what they're talking about in the
22 first paragraph on the top of page 2 of Taylor v.
23 Deutsche. The note identifies the mortgage and
24 instructs the borrower of the fact that the
25 mortgage protects the note holder from possible

1 losses in the event of nonpayment. So we have the
2 same language in our note that Taylor v. Deutsche
3 is referencing.

4 Now, if we move to the mortgage, as the Taylor
5 court did, they reference in the next paragraph,
6 paragraph C and D, which we find on the first page
7 of our mortgage. In Taylor --

8 THE COURT: I don't see C. I only see 1 and
9 2.

10 MR. ORTH: On the first page of the mortgage?

11 THE COURT: I'm talking about the case.

12 MR. ORTH: I'm sorry, Your Honor. On page 2,
13 the second paragraph down in the left column of
14 Taylor v. Deutsche.

15 THE COURT: Yes, sir.

16 MR. ORTH: In Taylor v. Deutsche, it says,
17 "The mortgage defines lender as First Franklin."
18 Here, ours says lender is Alternative Funding
19 Corporation.

20 "And MERS, as a separate corporation acting
21 solely as nominee for lender and lender's
22 successors and assigns." That's what ours says in
23 paragraph C on the first page of the mortgage.

24 "MERS, Mortgage Electronic Registration System, is
25 a corporation acting solely as a nominee for lender

1 and lender's successors and assigns." So we're
2 still tracking the same language in both cases.

3 We then move forward in the same paragraph in
4 Taylor v. Deutsche, and it says, "The mortgage
5 indicates that it, quote." And if you look at page
6 3 of our mortgage, under the paragraph entitled
7 Transfer of Rights in the Property, we see the
8 language, "The mortgage indicates that it, quote,
9 secures to lender, one, the repayment of the loan
10 and all renewals, extensions, and modifications in
11 the note; and, two, the performance of borrower's
12 covenants and agreements under the securing
13 instrument and note."

14 It then proceeds, as in Taylor, as in our
15 mortgage, "The borrower, quote, does hereby
16 mortgage, grant, and convey to MERS solely as
17 nominee for lender and lender's successors and
18 assigns and to the successors and assigns of MERS
19 the following described property." And then it
20 describes the property in our case as it did in
21 Taylor.

22 Now, the next paragraph down starts with in
23 the decision, in the Taylor decision, "Borrower
24 understands and agrees." You have to look at the
25 paragraph on page 3, the very last paragraph, and I

1 believe it's the third sentence that starts with
2 "Borrower understands and agrees."

3 Taylor says, "Borrower understands and agrees
4 that MERS holds only legal title to the interest
5 granted by borrower in this security interest. But
6 if necessary to comply with law or custom, MERS, as
7 nominee for lender and lender's successors and
8 assigns, has the right to exercise any and all of
9 those interests, including but not limited to the
10 right to foreclose and sell the property and take
11 any action required of lender, including but not
12 limited to releasing, canceling the security
13 instrument."

14 In Taylor, at the bottom of that same page, it
15 says, "One other document is critical to
16 understanding this case." In Taylor, it was the
17 assignment of mortgage which also assigned the
18 note. That's exactly what we have here, an
19 assignment of mortgage that assigned the note in
20 September, after the case was filed.

21 The Court then goes through and discusses
22 persons who are entitled to enforce. And the Court
23 determines, because of the language, the specific
24 language, it again recites, "Borrower understands
25 and agrees that MERS holds only legal title but is

1 entitled to foreclose."

2 The Court states, and I quote, "It appears
3 consequently that the mortgage document reciting
4 the explicit agreement of Mr. Taylor grants to MERS
5 the status of a nonholder in possession as that
6 position is defined by Section 673.3011." And
7 that's what we have here. MERS was a nonholder in
8 possession of the note, and that continued until
9 after the lawsuit was filed; the assignment of note
10 and mortgage were executed; note and mortgage were
11 transferred.

12 Coincidentally, on 9/15 there's an affidavit
13 in the court -- but since it's not in evidence I
14 won't discuss it. Approximately six weeks after
15 the assignment of mortgage and note, the plaintiff
16 finally files for the first time on October 23rd
17 the original note in the file. So they got it
18 after they filed this suit.

19 The proper party as nonholder in possession of
20 the instrument with the rights of a holder, MERS
21 was the proper party to bring this suit. MERS
22 didn't bring the suit. That's the question today,
23 who had the right to sue under this configured
24 setup under our note and mortgage?

25 Under the evidence before the Court, the

1 plaintiff cannot establish by competent admissible
2 evidence that it had possession of the note on the
3 day the suit was filed. The Taylor court concludes
4 with Deutsche Bank had standing to foreclose,
5 because in that case they had assigned the note and
6 mortgage to Deutsche Bank before Deutsche Bank
7 filed the lawsuit.

8 In our case, MERS was still the nonholder in
9 possession at the date the suit was filed. That's
10 uncontroverted. That assignment of mortgage is
11 there. That's when it was filed. It's
12 uncontroverted they didn't have the note on the
13 date it was filed. Their pleading says so. Their
14 business record says they didn't have it. Thus,
15 they had to re-create something to reestablish the
16 terms of the note.

17 And as the Taylor court says, "Standing in the
18 context of the presently considered documents is
19 broader than just actual ownership of the
20 beneficial interest in the note." MERS --

21 THE COURT: Where are you reading the word
22 "standing"?

23 MR. ORTH: I'm looking at the final page of --
24 one page back. It's page 4 of the Taylor decision,
25 in the top, right corner. It's referring to

1 Mortgage Electronic Registration Systems, Inc. vs.
2 Azize.

3 THE COURT: Page 4, "Lender included but not
4 limited to releasing and canceling the security
5 instrument"? Show me where you're reading.

6 MR. ORTH: Oh, I'm sorry. That would be page
7 8. I'm looking at page 4 in the bottom, right
8 corner, Your Honor. I'm look at the upper right
9 corner, where it says, "Standing in the context of
10 the presently considered documents is broader than
11 just actual ownership of the beneficial interest in
12 the note."

13 THE COURT: Okay.

14 MR. ORTH: What all of this stands for, Judge,
15 is the fact that the plaintiff failed to establish
16 its standing at inception.

17 It failed to offer any business record that
18 the document was actually mailed, the notice of
19 default was actually mailed. There's no document.
20 There's no return receipt. They could always go to
21 the postal service and get a document printed out,
22 put it in their business records, showing on this
23 date it was delivered. I've done that before on
24 some of my cases and had to agree to a judgment.

25 But that would then be a business record that

1 would be admissible to show delivery. Just because
2 they printed something out doesn't mean it was
3 delivered. I print stuff all the time as an
4 attorney and throw it in the trash because it's not
5 ready to go out. Just because that document is
6 addressed does not mean it was sent out.

7 Further, just as in the case this morning,
8 Your Honor, in this case, the mortgage has the same
9 provision that says the notice address will be the
10 property address. And the mortgage address in our
11 mortgage is different from the address on the
12 notice of default. Based on that alone, they
13 failed to meet the condition precedent.

14 But what is most important here is even in
15 their own pleadings they don't claim to be a
16 holder; they claim that they're a designated
17 holder. I've never seen anything in the loan which
18 identifies a designated holder. You're either a
19 holder or you're not.

20 They didn't have possession. Their initial
21 pleading admitted they didn't have possession.
22 There's no copy of the note. They didn't scan it
23 in their system. If they had, it would have been
24 attached to the complaint.

25 There's no grounds for a judgment today, Your

1 Honor, to this plaintiff. If they acquired the
2 right to enforce this note and mortgage, it was
3 upon delivery. And it was as a holder, not as the
4 owner, because the testimony is Freddie Mac owns
5 it.

6 Once they receive possession of the original,
7 that's when they're entitled to enforce. You can't
8 cure that by later amending. There's no amended
9 complaint, so that's irrelevant. But they can't
10 cure what they didn't have a right to bring on the
11 day they filed suit. That's our case, Your Honor.

12 THE COURT: Thank you. Ms. Koch.

13 MS. KOCH: With respect to the argument with
14 MERS being the proper party to have standing to
15 bring this, this has been well-settled. MERS is an
16 electronic tracking system. They help track notes,
17 log the notes, log the mortgages.

18 MR. ORTH: Objection, Your Honor. Counsel is
19 testifying as to facts not in evidence.

20 THE COURT: I think it's reasonable that she
21 can articulate what MERS is. It's a pretty common
22 ingredient of these cases. But don't get too much
23 into a witness.

24 MS. KOCH: No. It was my client's testimony,
25 my witness's testimony today that based on her

1 review of the business records -- and she regularly
2 reviews business records. She has testified in
3 over a hundred trials. She has testimony that
4 she's worked at CitiMortgage over 11 years -- that
5 based on her review of the business records, which
6 includes MERS milestones and all other sorts of
7 information at their disposal, that this loan was
8 transferred to CitiMortgage in 2006,
9 September 22nd, 2006, which was well before the
10 date that this complaint was filed, March 23rd,
11 2009. Therefore, CitiMortgage was the owner --
12 well, the holder of the note in 2006.

13 In addition, with respect to the lost note, we
14 don't discount that the lost-note count was
15 originally in the complaint. However, it has since
16 been dropped because they did have the documents.
17 They filed the documents in 2009.

18 And with respect to that assignment of
19 mortgage, it is dated September 3rd, 2009.
20 However, there's a specific clause that said it is
21 effective as of March 16th, 2009. Therefore, that
22 assignment was effective from MERS to CitiMortgage
23 before this complaint was filed on March 23rd,
24 2009.

25 THE COURT: Where does it -- okay. "To have

1 and hold the same unto said assignee and successors
2 on the 16th day of March, 2009." But it was not
3 executed until September 3rd, 2009.

4 MS. KOCH: Correct, Your Honor.

5 THE COURT: Okay.

6 MS. KOCH: Therefore, we believe, based on the
7 documents admitted into evidence, that CitiMortgage
8 was the correct holder of the note. There's a
9 blank endorsement. We believe we have satisfied
10 all requirements to be the proper party in standing
11 and that judgment should be entered in favor of
12 CitiMortgage.

13 THE COURT: I don't recall any testimony from
14 your witness as to where the document, the default
15 letter was sent.

16 MS. KOCH: That is correct. There was none.

17 MR. ORTH: Your Honor, the document speaks for
18 itself. It's addressed on the document. That's
19 why I think I objected to it and it didn't come in.

20 THE COURT: Okay. Well, I mean, it could have
21 been supplemented by testimony.

22 How do you address the issue as it relates to
23 this assignment of mortgage, Mr. Orth, with
24 reference to the paragraph that states that as of
25 the date certain, that being March 16th of 2009,

1 even though the document is not executed until
2 September?

3 MR. ORTH: Well, the document speaks for
4 itself that on that date that's when they
5 transferred the note and mortgage. They can claim
6 to back-date it. But there's been no evidence --
7 and even if you assume that that back-dating is
8 correct, that flies in the face of the testimony of
9 their own witness that they had it all the way back
10 in 2006.

11 That's why the admission of the documents
12 evidencing possession is so imperative. And they
13 didn't provide it. That document which was created
14 by their law firm at the time that the suit was
15 pending -- it was already filed -- says, oh, yeah,
16 well, this happened before we filed the lawsuit.
17 That alone makes that statement within that
18 document that it predated untrustworthy.

19 THE COURT: The fact that it was prepared by
20 David Stern particularly.

21 MR. ORTH: Was that prepared by Stern, or was
22 that prepared by Watson?

23 THE COURT: Prepared by David J. Stern.

24 MR. ORTH: Well, that would be another issue.
25 I don't know that anybody would disagree with that

1 here today.

2 But, Your Honor, the fact of the matter is
3 that was created after the litigation began. And
4 for that reason alone, the back-dating of the
5 assignment is untrustworthy.

6 THE COURT: I agree.

7 MR. ORTH: The fact is, that date of 9/3 was
8 the date it was assigned. That's the date when it
9 was formalized. That's the date when the note and
10 mortgage were transferred. And that's why we find
11 six weeks later they filed the original note. So
12 that would be my response, Your Honor, to your
13 question.

14 THE COURT: The Court finds that the plaintiff
15 has failed to prevail in this action and a judgment
16 for the defendant.

17 MR. ORTH: Thank you, Your Honor. I will
18 draft the proposed judgment and send it to counsel.

19 (The proceedings concluded at 12:12 a.m.)
20
21
22
23
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25

CERTIFICATE

STATE OF FLORIDA
COUNTY OF OKALOOSA

I, Brenda Douglas, RPR, FPR, Court Reporter
and Notary Public for the State of Florida at Large,
certify that I was authorized to and did report
stenographically the foregoing proceedings and that the
transcript is a true and complete record of my
stenographic notes.

DATED this 14TH DAY OF OCTOBER, 2013.

Brenda Douglas

BRENDA DOUGLAS, RPR, FPR

\$	38/21 39/11 absence [1] 25/3 acceleration [1] 11/19 access [1] 5/13 accurate [1] 24/10 acknowledged [1] 27/4 acquire [2] 29/22 36/10 acquired [3] 8/10 20/25 46/1 acquisition [1] 32/25 acting [2] 39/20 39/25 action [3] 3/10 41/11 50/15 activities [2] 12/12 12/15 actual [5] 20/20 29/7 30/2 43/19 44/11 actually [14] 3/24 10/22 19/21 25/8 26/11 28/20 29/1 29/5 29/15 32/19 35/25 37/13 44/18 44/19 addition [2] 38/16 47/13 address [5] 45/9 45/10 45/10 45/11 48/22 addressed [2] 45/6 48/18 admissible [3] 9/12 43/1 45/1 admission [3] 4/2 4/16 49/11 admit [1] 13/9 admitted [12] 6/15 6/17 6/19 9/13 13/21 15/19 19/5 24/18 34/1 35/20 45/21 48/7 affidavit [2] 26/14 42/12 affidavits [1] 26/19 after [7] 12/14 23/13 41/20 42/9 42/14 42/18 50/3 afterwards [1] 34/21 again [5] 9/17 20/13 30/17 30/19 41/24 agree [3] 24/4 44/24 50/6 agreement [1] 42/4 agreements [1] 40/12 agrees [4] 40/24 41/2 41/3 41/25 ahead [1] 32/14 al [1] 1/6 all [21] 3/10 3/18 4/17 6/9 15/16 15/21 27/1 27/8 32/14 33/12 33/25 34/5 35/12 38/6 40/10 41/8 44/14 45/3 47/6 48/10 49/9 allege [1] 35/14 alleged [1] 21/16 almost [1] 36/22 alone [3] 45/12 49/17 50/4 along [3] 19/13 20/5 25/2 already [4] 5/24 26/14 31/7 49/15 also [5] 8/24 10/20 14/16 17/25 41/17 Alternative [1] 39/18 always [1] 44/20 am [1] 15/21 amended [1] 46/8 amending [1] 46/8 amount [3] 4/12 16/1 16/12 amounts [1] 16/5 and/or [1] 28/23 another [3] 27/9 29/13 49/24 answer [2] 26/23 30/23 answered [1] 27/3 any [24] 5/15 8/1 8/21 15/6 20/19 20/24 22/9 22/20 26/5 26/10 26/24 27/3 28/15 28/19 29/17 30/8 31/11 33/3 33/13 35/18 41/8 41/11 44/17 48/13 anybody [1] 49/25 anyone [1] 38/11 anything [2] 33/6 45/17 Anywhere [1] 33/21 apologies [3] 20/11 20/18 35/25 Appeals [1] 9/10 APPEARANCES [1] 2/1 appears [2] 9/23 42/2 appreciate [1] 31/21 approach [3] 16/21 21/22 23/3	are [21] 3/20 3/23 3/25 4/5 4/11 5/10 5/21 6/12 7/1 8/11 8/14 16/9 21/6 26/19 27/21 35/12 35/13 37/11 37/16 41/22 43/21 aren't [1] 7/8 argument [2] 33/16 46/13 arguments [1] 33/14 articulate [1] 46/21 as [56] ask [3] 10/8 27/12 31/1 asked [2] 10/2 12/7 asks [1] 13/2 assign [1] 26/7 assigned [7] 19/19 36/3 36/6 41/17 41/19 43/5 50/8 assignee [2] 31/23 48/1 assigning [3] 19/24 19/25 20/1 assignment [18] 17/11 18/12 18/21 19/10 28/7 31/7 34/13 35/24 36/2 41/17 41/19 42/9 42/15 43/10 47/18 47/22 48/23 50/5 assigns [6] 31/23 39/22 40/1 40/18 40/18 41/8 Associates [1] 2/15 assume [1] 49/7 assumption [1] 27/10 attached [5] 22/16 25/18 27/19 35/5 45/24 attachment [1] 35/10 attachments [2] 21/18 27/16 attend [1] 5/12 attended [1] 8/22 attorney [2] 16/4 45/4 authority [2] 8/21 8/23 authorized [1] 51/6 aware [2] 21/15 21/18 Azize [1] 44/2
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