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IN THE COUNTY COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE 11 027513

CITIMORTGAGE, INC.,

Plaintiff,

v.

MERRELL DAVID HIGER,

Defendant.

-----/

Proceedings had and taken place before the Honorable
Barry J. Stone, one of the Judges of said Court, at the
Broward County Courthouse, 201 Southeast 6th Street,
Suite 510, Fort Lauderdale, Florida, on Tuesday, the 14th
day of July 2015, commencing at the hour of 9:19 o'clock
a.m., and being a Hearing.

1 APPEARANCES:

2 CHRISTOPHER C. CASPER, ESQUIRE
3 Appearing on behalf of the Plaintiff
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1 (The following proceedings were had:)

2 MR. CASPER: This one, Your Honor, is an
3 inherited file from Butler and Hosch very recently, and
4 an issue has arisen also very recent, the loss of the
5 note. And so I know how the Court feels towards lost
6 notes.

7 THE COURT: I understand a lost note situation.

8 MR. CASPER: Yes, sir. So I am moving to
9 continue this trial. Well, basically to strike the trial -
10 -

11 THE COURT: Is it lost or you just haven't come
12 up with it yet?

13 MR. CASPER: I have the lost note affidavit
14 dated July 7th, Your Honor.

15 THE COURT: From them?

16 MR. CASPER: From my client regarding their
17 efforts to obtain the originals. And they've confirmed
18 that they have not been able to and that it is in fact
19 lost.

20 They no longer get any communication from
21 Butler and Hosch. I believe that it is the same issue
22 as what happened with Stern's office. As soon as
23 those doors could get sealed, they were sealed.

24 THE COURT: Right. The same thing happened
25 yesterday, too.

1 MR. ROSEN: Judge, this is -- whenever you're
2 ready.

3 THE COURT: Go ahead.

4 MR. ROSEN: Thank you. This is the seventh
5 trial setting. We were here on June 9th, before the
6 Court.

7 If you recall, we had this exact situation, and I
8 argued that it was different because the current firm,
9 Aldridge Pite, had already filed a notice of appearance
10 prior to the implosion of Butler Hosch.

11 They were in as of May 15th. They filed exhibit
12 lists. They filed witness lists, and Plaintiff's counsel
13 said well, we are -- and I have the transcript from that
14 hearing that day.

15 "We made a request for the original documents to
16 Butler Hosch, but then they shut their doors, so we
17 never received the original documents."

18 And I argued that they had filed two witness
19 lists. They had filed an exhibit list. They actually
20 moved to abate the action the day before, never
21 referenced that they couldn't get a hold of the note.

22 The Motion to abate was denied, and then you
23 granted a continuance. And then I realized hold on a
24 second, Judge. There's an interrogatory from just a
25 couple days ago that says the note is in Manhattan, in

1 New York City. I don't know if you remember this.

2 And so we came back before the Court. Ms.
3 Lamb insisted on having a court reporter for this. We
4 argued it once without. Then we argued it again with.

5 And from the record, once I pointed out that the
6 interrogatory, and it was Interrogatory Number 7, I
7 can show the Court again, it was notarized on June 4th,
8 and it said that the -- and here's my -- from that day --

9 "However, it has come to my attention that just
10 yesterday there were responses to interrogatories filed.
11 The responses were notarized on June 4th of this year."

12 Interrogatory Number 7 says, "Provide the
13 physical location of the original mortgage and
14 promissory note."

15 Their response, "The originals are currently
16 being held by its servicer -- Excuse me -- by its
17 owner, HSBC Bank USA National Association, located
18 at 452 5th Avenue, New York, New York, 10018."

19 Ms. Lamb then went on to say, "Well, Butler
20 Hosch, rather than transferring them directly to us,
21 they sent them to the investor, who was HSBC"

22 So now she completely changed her story. "As
23 indicated there, the actual plaintiff and servicer are
24 CitiMortgage as pled in the Complaint as the holder.

25 The issue is that now it has gone to the investor -

1 - from the investor to CitiMortgage. The issue is that
2 now it has to go from the investor to CitiMortgage to
3 us pursuant to bank transactions.”

4 And the Court says, Your Honor, continuing on
5 Page 10, Line 14,

6 "Okay. The Court has considered everything, and
7 it's the Court's view under the circumstances it may
8 not allow the documents that they've been told are the
9 owner of the documents.

10 This is the plaintiff's responsibility to do what
11 has to be done. This is a five year old case that was
12 set for trial today. This matter should not have been
13 brought today to the Court.

14 It could have been brought earlier to the Court.
15 You're bringing it up on the day of trial. It is a matter
16 that the Court could have imposed a sanction for, but
17 has not done so.

18 The Court's view is that there is no reason to
19 continue this case more than 30 days. Defendant is
20 ready for trial. Defendant has agreed that he is
21 satisfied as long as he has 15 days' notice of the name
22 of your witness."

23 Judge, then on Friday night, we get new exhibits
24 from Aldridge Pite. In it is an affidavit of lost note
25 signed July 7th.

1 Obviously -- not obviously, but normally, there's
2 not a signed affidavit and a discovery of a lost note all
3 in one day.

4 I think it's fair that maybe there was some time
5 period even before July 7th, but even then, let's just
6 say they found everything July 7th, they filed the
7 affidavit on July 7th.

8 I didn't get it until yesterday. I find out this
9 morning that they're moving for a continuance. And
10 here we are again after this last time where you said
11 I'm going to give you a short continuance, and the
12 implication was this is five years and enough is
13 enough.

14 And I felt comfortably you could have denied it
15 then, but you gave them one last chance, and now here
16 we are asking for a continuance. And I think it should
17 be denied at this point under the circumstances,
18 clearly.

19 MR. CASPER: Your Honor, clearly, no. The
20 Motion to abate was filed because his client was
21 attempting to save the property.

22 So it was really for his client's benefit that that
23 original Motion to abate filed by us that was, as he
24 indicated, denied.

25 In addition to that, Your Honor, to say that it

1 could have been disclosed to him that it was lost
2 before the affidavit was executed, that would just
3 basically be testifying on behalf of my client, who
4 hasn't presented any testimonies for me to tell him
5 that it's lost when it hasn't been confirmed lost.

6 My client hadn't signed the affidavit of lost note
7 that -- anyway, July 7th, confirmed it was lost.

8 I also have documentation, which I provided to
9 the defendant, regarding the last known whereabouts.
10 It's a screenshot showing that it was actually mailed to
11 Butler and Hosch.

12 Now, I'm not familiar with interrogatories or who
13 executed interrogatories. I don't believe that it is my
14 client, who's here today to testify who -- is the one
15 who executed interrogatories.

16 Anyway, an investigation was performed. That
17 investigation completed. The lost note affidavit was
18 signed. That was all within the last 30 days.

19 I have the confirmation, like I said, mailed to
20 Butler and Hosch. No receipt. No way to get a hold
21 of anybody at Butler and Hosch. It is in fact lost.

22 In addition to that, Mr. Rosen complaining about
23 the timeliness of these exhibits, he never filed a
24 formal request to the Court.

25 His request never went to any attorney that has

1 actually signed any of the pleadings on this file. He
2 never requested the exhibits from the last attorney that
3 attended the hearing--

4 MR. ROSEN: That is not true at all and I'm not
5 going to stand here and listen to that.

6 THE COURT: Here's the thing. It seems to me
7 that what was stated or what I may have said last time,
8 we didn't know the note was lost last time.

9 MR. CASPER: Yes, sir.

10 THE COURT: And it seems to me that even
11 though there is a lot of good points that are raised by
12 Mr. Rosen, that the fact of the matter is that they
13 really couldn't find out until the investigation was
14 done what the true situation was.

15 It sounds like a true investigation was done and
16 it has been determined that the note is lost, and that
17 this is the first time they've determined that the note
18 is lost.

19 And to throw in there the complication of the
20 bankrupt law firm, and so I really don't think that I
21 can disregard the Plaintiff's position on this, and so
22 I'm going --

23 MR. ROSEN: Judge?

24 THE COURT: What I'm going to do is I'm going
25 to -- now you're going to have to amend the complaint.

1 MR. CASPER: Yes, sir.

2 THE COURT: So I'm going to have to strike it as
3 not being at issue. I'm going to give you ten days to
4 amend the complaint. You have to get it signed.

5 MR. CASPER: Your Honor, verification -- yes,
6 sir.

7 THE COURT: You have to get it signed, so 30
8 days is enough time?

9 MR. CASPER: Yes, sir. Yes, sir.

10 THE COURT: I'll give you 30 days to amend the
11 complaint and we'll go from there.

12 MR. ROSEN: Judge, I can suggest one
13 alternative, and Plaintiff's counsel indicated to me
14 that if the evidence supports amending at trial, to
15 support it under Aguero 3rd DCA analysis --

16 THE COURT: If you have no objection to him
17 amending it, then I don't have a problem.

18 MR. ROSEN: Well, I don't have an objection, but
19 the Court would be -- if the evidence supports it, the
20 Court would seemingly be within its discretion to
21 grant it. So if the Plaintiff wants to continue and give
22 it a shot to amend the complaint, I'm ready to go. I'm
23 just looking to --

24 MR. CASPER: Your Honor, first, he's basically
25 trying to see if the -- I don't know if he's asking the

1 Court if the Court would grant a motion when I make
2 the motion or what his position is on that, but to
3 prevent, I guess, less issues at trial, notwithstanding
4 the discovery issues he raised here with regard to the
5 trial exhibits, but also that --

6 THE COURT: Now, if they're ready to go and if
7 they're willing to not be objecting to your introducing
8 evidence as to a lost note --

9 MR. CASPER: I don't know if he's agreeing to
10 that.

11 THE COURT: That's what it will have to be.

12 MR. CASPER: I don't know if he's agreeing to
13 allow me to conform the evidence. He's saying that I
14 can move.

15 THE COURT: Well, that's the difference. They
16 have to be agreeing not to be objecting and to let the
17 issue be tried without objection, but if they're willing
18 to do that, it's the same thing as amending the
19 complaint.

20 MR. CASPER: I don't know. Is that what you're
21 doing?

22 THE COURT: Mr. Rosen, I have to know whether
23 he's really saying that or not.

24 MR. ROSEN: Judge, we'll do that.

25 THE COURT: Okay.

1 MR. ROSEN: We'll agree to that.

2 THE COURT: Okay.

3 MR. CASPER: I have to ask my client, but
4 regarding the --

5 THE COURT: I'm going to say go ahead because
6 if they're agreeing that you don't have amend your
7 complaint to prove the lost note, then -- and they're
8 the only ones that are impacted by that lost note --

9 MR. CASPER: Right.

10 THE COURT: -- then I'm going to allow it.

11 Since nobody else is here objecting in the
12 lawsuit, then I'm going to allow the suit to go forward
13 upon representation of counsel that he's not going to
14 be objecting to the introduction of lost note evidence,
15 and that he's not going to be objecting to your right to
16 seek to ask the Court to let the evidence be conformed,
17 proves to be conformed to the evidence.

18 Then I have no reason to question that, and it
19 seems to me under those circumstances the case should
20 go forward.

21 MR. ROSEN: Just to clarify, I would not be
22 objecting to anything -- a lost note being outside the
23 scope of the pleadings.

24 THE COURT: Right. You could try it the same
25 way as if you would try it --

1 MR. ROSEN: Correct.

2 THE COURT: -- if the pleadings were amended
3 to allege a lost note.

4 MR. ROSEN: Which, quite frankly, is almost
5 definitely going to be granted on these circumstances.

6 The case under the other alternative is going to
7 be struck as not at issue. They'll have time to amend,
8 so you know, I'm looking to push the case forward.

9 THE COURT: All right. So let's go.

10 MR. CASPER: Let me talk with my client real
11 quick, Your Honor.

12 THE COURT: Okay.

13 MR. ROSEN: Thank you.

14 MR. CASPER: And I also want to make sure that
15 no issues regarding any interrogatories or any of the
16 evidence regarding the note itself would be --

17 THE COURT: Well, any issue that they could
18 raise if you had amended your complaint, I can't tell
19 them they can't raise.

20 MR. CASPER: Right.

21 THE COURT: Any amendment -- any issues that
22 they could raise --

23 MR. CASPER: Regarding interrogatories directed
24 toward the evidence?

25 THE COURT: -- that you haven't amended your

1 complaint, I think Mr. Rosen's pretty well stuck and is
2 committed, and I don't think it's a concern.

3 MR. ROSEN: Well --

4 THE COURT: And if -- I have no reason to think
5 that he would do some, but I think you'd have grounds
6 under those circumstances to ask for a mistrial.

7 MR. ROSEN: Just to be clear, again, it's only as
8 to evidence as to lost note being outside the scope. I
9 would not make those objections.

10 As to interrogatories that contradict for
11 impeachment purposes or other purposes, the sworn
12 statements, request for admissions, I'm not waiving the
13 right to use those.

14 THE COURT: Well, those are issues that he
15 could raise even if you amended your complaint.

16 MR. ROSEN: Absolutely.

17 MR. CASPER: Well, I understand that, but I'm
18 talking about the interrogatories directed to the
19 location of the note, as he indicated.

20 THE COURT: He could -- any issue that he could
21 raise if you amended your complaint, he can still
22 raise.

23 MR. CASPER: Yes, sir. Yes, sir.

24 THE COURT: He's not waiving that, but he is
25 waiving any issues regarding the fact that you haven't

1 amended your complaint and to treat this case the same
2 as if you had amended your complaint.

3 Am I correct?

4 MR. ROSEN: To plead a lost note. That is
5 correct. To plead a lost note specifically.

6 THE COURT: That's all. We spent ten minutes
7 doing this.

8 MR. ROSEN: Thank you, Judge.

9 MR. CASPER: Thank you, sir. Let me discuss
10 this with my client.

11 MR. ROSEN: Much appreciated as always.

12 (Off the record)

13 MR. CASPER: I've discussed this matter with my
14 client, Your Honor, and I have explained to her some
15 of the issues that still remain.

16 As Evan had pointed out, he still wants to be able
17 to impeach my client regarding the originals, so I want
18 to amend the complaint, but I also want to correct
19 those interrogatories which apparently are prejudicial
20 to my client, as he had indicated.

21 So if I could get the 30 days to amend the
22 complaint and to correct the interrogatories and
23 prevent any discovery issues that could also come up
24 tied to this, I would like the opportunity to do so,
25 Your Honor.

1 We're relatively new on the case, as of May as
2 Defense counsel had indicated, and I just want to be
3 able to prevent any prejudice.

4 I know he was going to allow me to conform the
5 pleadings, but he will be raising other objections,
6 including attempting to impeach my client. So I want
7 to have a trial on the merits to prevent any issues.

8 MR. ROSEN: Judge, they're asking to amend the
9 complaint, as I understand it, to amend their
10 interrogatories, which still are sworn statements that
11 can be used against them even if they're later
12 amended, and then he wants to, I believe, to prohibit
13 me from conducting any discovery on these issues.

14 I don't even know where to address that last
15 point. Whatever issues can be -- are stated in their
16 interrogatories can certainly be addressed at trial.

17 If it turns out that in fact the interrogatories are
18 wrong, that's what rehabilitation is for. That's what
19 she can do. The witness can testify to that.

20 This is the same plaintiff since the lawsuit was
21 filed in 2011. It's the same law firm who responded to
22 these interrogatories in the first place over a month
23 ago, same plaintiff as well then.

24 Again, the seventh trial order. This is -- the last
25 time we were here, you told them 30 days, short

1 continuance. It was on June 9th. They now have more
2 than 30 days, an extra five days, give or take.

3 So the case that I'm going to hand the Court is
4 this McWhorter v. McWhorter that stands for the
5 proposition, which the Court's well aware -- if I could
6 approach -- that seldom are second continuances --

7 MR. CASPER: May I take a look at it?

8 MR. ROSEN: I'll be happy to show you a copy,
9 sure. It's on Page 3; second requests for continuances
10 are seldom favored is the point of that. Considering
11 the six prior trials --

12 THE COURT: I'm sure you could find cases that
13 go -- that contradict that.

14 MR. ROSEN: Well, understandable. It's just that
15 it's seldom favored. You still have discretion. No
16 one's saying otherwise. It's just --

17 THE COURT: Here's the thing.

18 MR. ROSEN: Let me just -- one last little point.

19 THE COURT: Go ahead.

20 MR. ROSEN: Considering the Motion to abate
21 before the last trial, considering my agreement on the
22 record to bend to get this thing to go forward, and this
23 is really more than a second chance if you think about
24 all of those things. Enough is enough, Judge. Please.

25 THE COURT: I don't see any reason why we

1 can't go forward today. This is a five-year-old case,
2 and it should go to trial today. It's set for trial today,
3 and I don't see what difference it makes whether you
4 amend your answers or you don't. Your witness can
5 change the answers just as easily.

6 You've made the record clear that you would
7 have liked to have amended your answers, and they've
8 objected to your being allowed to amend your answers,
9 which goes against them in the sense that your
10 proposed amendments would be taken as -- you would
11 have amended it but for their objection, and so I don't
12 see any prejudice to the Plaintiff under those
13 circumstances.

14 And so there's no reason why we can go ahead
15 today. We're going to keep it on the docket.

16 MR. ROSEN: Thank you, Judge.

17 MR. CASPER: Okay. And as far as the
18 timeframe, though, I don't know how much time
19 Defendant needs for trial.

20 MR. ROSEN: I'm hoping two hours, give or take,
21 total.

22 MR. CASPER: So this would be a four-hour trial.

23 MR. ROSEN: No, I'm saying total. I don't -- you
24 have one witness, right?

25 MR. CASPER: Yes.

1 MR. ROSEN: I have no witnesses.

2 THE COURT: Okay. Let's go ahead.

3 MR. ROSEN: Thank you, Judge.

4 (Off the record at 9:56 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF BROWARD

I, Maritza Monroe, Reporter, certify
that I was authorized to and did report the
foregoing proceedings, and that the transcript is
a true and correct transcription of my notes to
the proceedings.

Signed this 12th day of August, 2015

Maritza Monroe
Maritza Monroe, Reporter
Notary Public - State of Florida
Commission No.: FF 228657
Expires: 6-16-2019

IN THE COUNTY COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

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CASE NO.: CACE 11 027513

CITIMORTGAGE, INC.,

Plaintiff,

v.

MERRELL DAVID HIGER,

Defendant.

-----/

Proceedings had and taken place before the Honorable
Carol Lisa Phillips, one of the Judges of said Court, at the
Broward County Courthouse, 201 Southeast 6th Street,
Suite 510, Fort Lauderdale, Florida, on Tuesday, the 14th
day of July 2015, commencing at the hour of 10:31 o'clock
a.m., and being a Non-Jury Trial.

APPEARANCES:

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1 (Thereupon, the following proceedings were had:)

2 THE COURT: All right. We're here this
3 morning on CitiMortgage versus Merrell David Higer,
4 et al.; is that correct? Am I here on the correct file?

5 MR. CASPER: Yes.

6 THE COURT: State your names for the record,
7 please.

8 MR. CASPER: Chris Casper for the Plaintiff.

9 MR. ROSEN: Evan Rosen on behalf Mr. Higer.

10 THE COURT: All right. And are you all ready
11 to proceed?

12 MR. ROSEN: No. There is a little preliminary
13 stipulation that was entered into downstairs that I
14 think we should inform the Court of.

15 The Plaintiff had moved for a continuance, and I
16 offered a suggestion, which was that I would not
17 object to any evidence of lost note, any lost note
18 evidence, such that the pleadings would then conform
19 to the evidence should the evidence support such a
20 claim.

21 I waive the right to object to pleadings,
22 evidence outside the scope as it pertains specifically
23 to the lost note.

24 THE COURT: Okay.

25 MR. CASPER: And I believe, as he stated, he

1 would allow me to move to conform the pleadings to
2 evidence without objecting; is that right?

3 MR. ROSEN: My understanding is by not
4 objecting outside the scope, it's treated as pled under
5 1.190, but, yes, that's the same understanding
6 basically.

7 THE COURT: Okay. As if there is a lost note
8 Count.

9 MR. ROSEN: Correct. And as long as the
10 evidence supports it.

11 MR. CASPER: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. ROSEN: Thank you, Judge.

14 THE COURT: And with that, are we ready to
15 proceed?

16 MR. ROSEN: We are.

17 MR. CASPER: Yes.

18 THE COURT: Okay. All right. Do you all want
19 to just give me a brief opening background, and then
20 we'll begin with the evidence.

21 MR. CASPER: Okay. Well, Your Honor, Chris
22 Casper on behalf of the Plaintiff. This case was filed
23 in 2011. It was filed by a prior law firm.

24 However, the Defendant had breached his
25 obligation to my client in 2011. My client

1 subsequently notified the Defendant of that breach.
2 He did not cure the breach. My client filed this
3 lawsuit and essentially to date there has been no
4 effort to cure the breach, and my client is entitled to
5 judgment as a matter of law.

6 That's essentially all that I have regarding that.

7 THE COURT: Okay. Just some quick questions.

8 Your client had standing at the time that they
9 filed the Complaint back on November 8th, of 2011?

10 MR. CASPER: Yes, Your Honor. My client has
11 been the servicer since, I believe, the second payment
12 on this loan.

13 This loan originated in 2006, and according to
14 my payment history, which is interesting, the second
15 payment was in fact late, but was made and accepted,
16 and the Defendant continued to make a few years
17 worth of payments before the default.

18 The owner of the note is HSBC Mortgage, and
19 my client, Citimortgage, is the servicer and has been
20 the servicer since the second payment on this
21 particular loan.

22 THE COURT: And has the authority to move
23 forward with this case?

24 MR. CASPER: Yes, Your Honor. I have the
25 powers of attorney, several copies of which were

1 recorded in multiple states. Granted, my client gave
2 authority to proceed on behalf of HSBC.

3 THE COURT: All right. Now, attached to the
4 Complaint that was filed back in November of 2011,
5 is a note as well as mortgage.

6 I know that you all had entered into some
7 stipulation before we began here this morning. So
8 tell me about this lost note issue.

9 MR. CASPER: Yes, Your Honor. As I
10 indicated, the prior law firm filed this action. I
11 believe it was Morris Hardwick, and they were
12 subsequently sold to Butler & Hosch, and Butler &
13 Hosch went under.

14 My client was attempting to retrieve the
15 originals, and they're essentially -- nobody is
16 employed with Butler & Hosch. A similar situation is
17 Stern's office. The doors are closed.

18 My client did due diligent effort to locate the
19 originals, and the last location was at that they were
20 with Butler & Hosch, and thus due to the
21 circumstances, are now, in fact, lost.

22 THE COURT: Okay. And the other question
23 that always comes up is the condition precedent with
24 regards to the default letter.

25 MR. CASPER: Yes, Your Honor.

1 THE COURT: And I -- well, I shouldn't assume,
2 but I will ask do you have evidence and do you
3 believe that your client can prove that they performed
4 and completed that condition precedent?

5 MR. CASPER: With regard to the sending of the
6 demand letter, Your Honor, I have both a copy and I
7 have a vendor log referencing the mailing of the
8 letter.

9 THE COURT: Okay. Mr. Rosen?

10 MR. ROSEN: Thank you, Judge.

11 Judge, I am not in the envious position of
12 representing a client who has not paid his mortgage.
13 There will be no dispute that he is in default. There
14 will no dispute that he owes money to someone.

15 The answer that was filed by a prior lawyer,
16 denied the default. We are hereby stipulating on the
17 record that he admits the default.

18 THE COURT: Okay.

19 MR. ROSEN: That was pled in Paragraph Seven.
20 He is not sure of the date of default, though. That
21 would have been an unknown.

22 That said, there are still four things total that a
23 Plaintiff must prove.

24 THE COURT: Mm-hmm.

25 MR. ROSEN: One of which is default,

1 obviously, now not at issue.

2 Standing exception we believe there are some
3 significant issues. There is an interrogatory that was
4 filed a month ago that indicates that the note is
5 Manhattan, in New York, filed by this Plaintiff and
6 this law firm just a little over a month ago.

7 There is also a very concerning issue that I look
8 forward to presenting to the Court as the evidence
9 unfolds. I hope the Court understands that there is an
10 evidentiary issue and the best ability to represent my
11 client.

12 I'm concerned about telling you it now, but I
13 would rather approach you when the evidence
14 presents itself.

15 THE COURT: Okay.

16 MR. ROSEN: I appreciate that, Judge.

17 As to the acceleration, we believe there is a
18 mailing issue and we believe there is a content of
19 letter issue.

20 And as to damages, we believe that there was a
21 miscalculation based upon something that happened
22 early on in the payment history of the loan. We'll
23 also go over that as the evidence presents itself.

24 THE COURT: All right.

25 MR. ROSEN: Thank you, Judge.

1 THE COURT: Thank you.

2 Okay. Counsel, present your first witness, or
3 only witness? How many witnesses?

4 MR. CASPER: Your Honor, I only have one
5 witness. I would like to call--

6 THE COURT: Okay. State your name.

7 THE WITNESS: Lorissa Russelburg from
8 Citimortgage.

9 THE COURT: Come on up here. I'll get you
10 sworn in and have you spell your first and last name
11 for the record.

12 THE CLERK: Do you solemnly swear or affirm
13 that the testimony you shall give in this case shall be
14 the truth, the whole truth, and nothing back up the
15 truth?

16 THE WITNESS: Yes.

17 THE CLERK: Please be seated. Again, just
18 state your name for the record and please spell both
19 your first and last.

20 THE WITNESS: My name is Lorissa Russelburg.
21 It's spelled L-O-R-I-S-S-A. Last name is R-U-S-S-E-
22 L-B-U-R-G.

23 THE COURT: Thank you. Please be seated.

24 DIRECT EXAMINATION

25 BY MR. CASPER:

1 Q. Please state your occupation.

2 A. I work for Citimortgage as a Business Cred
3 Analyst.

4 Q. Okay. And what is the relationship of
5 Citimortgage and all (inaudible) foreclosure?

6 A. We're the servicer.

7 Q. Okay. Is all of your testimony based on the
8 business records of Citimortgage?

9 A. Yes.

10 MR. CASPER: Let's start with my first
11 composite exhibit, Composite Exhibit One.

12 MR. ROSEN: Judge, a little out of turn. I
13 would like to object.

14 This appears to be a compilation of numerous
15 powers of attorney, some of which reference the
16 purported owner of the loan, some which reference
17 another entity altogether.

18 Some reference an AF1, some reference a trust
19 with an AF2, and to the extent it would also be
20 cumulative, I would ask simply that the Plaintiff pick
21 which power of attorney it seeks to introduce.

22 Here is the AF2, I'm showing opposing counsel.

23 Rather than this cumulative -- so that we can
24 record and I can appropriately examine the document
25 that they're seeking gives them the purported

1 authority under that agreement to be here. That's my
2 understanding of what they're proffering that for.

3 THE COURT: Okay. At this point in time,
4 obviously there is nothing to rule upon because no
5 questions have been asked with regards to the
6 documents.

7 I'm going blindly. I'm not going to take a look
8 at the documents unless they are admitted into
9 evidence. Once they are being asked to be moved
10 into evidence, I think the objections would be better
11 taken at that time.

12 MR. ROSEN: Will do. Thank you, Judge.

13 MR. CASPER: Let's see here. But, actually,
14 Your Honor, if I could move under 90.803 Subsection
15 8, as these are recorded public records in each of
16 their respective States and Counties. I would move
17 these into evidence.

18 THE COURT: I don't even know what they are.

19 MR. CASPER: They are recorded--

20 THE COURT: I guess it's a certified copy?

21 MR. CASPER: No, Your Honor.

22 THE COURT: Okay.

23 MR. CASPER: But 90.8--

24 THE COURT: You're out of the box.

25 MR. CASPER: Under 90.803 Subsection 8,

1 public records are admissible.

2 THE COURT: If they're certified, I believe,
3 then--

4 MR. CASPER: That--

5 THE COURT: I mean to start off with.

6 MR. CASPER: Yes.

7 THE COURT: The very first.

8 MR. ROSEN: Judge, I would agree. There is an
9 authentication as a condition precedent under 99.01,
10 and then there is hearsay, which the Plaintiff appears
11 to be addressing, strictly hearsay.

12 As to it being a public record, I gladly will
13 address both whenever the Court is ready.

14 THE COURT: Okay. Let me -- 8038?

15 MR. CASPER: Yes, Your Honor, public records
16 and reports.

17 THE COURT: Okay. So, go ahead.

18 MR. ROSEN: Can I address that?

19 THE COURT: Yes.

20 MR. ROSEN: Okay. Great. Thank you so
21 much.

22 First of all, the Plaintiff pled holder. They are
23 going to be seeking, by stipulation, evidence to prove
24 lost note. The Plaintiff is Citimortgage.

25 One of the issues that I didn't address in

1 opening statement, I think needs to be addressed now,
2 and that is what theory, under what note is the
3 Plaintiff proceeding under.

4 There is a Complaint with a note stamped
5 Original. That is endorsed specifically to a trust.
6 There is a note attached to the lost note affidavit,
7 which I believe they intend to proffer as a copy of
8 the note as per what's in that affidavit, which is not
9 endorsed to the trust, and is materially different in
10 five distinct ways.

11 THE COURT: Then the one that was attached to
12 the Complaint?

13 MR. ROSEN: Yes. It's not even the same
14 endorsement stamp. It's a different signer. The
15 signature is different.

16 Let me walk the Court through what we have
17 uncovered, and I'll walk the Court through the
18 history of how the notes have flip flopped in this
19 matter.

20 THE COURT: How could you possibly -- I mean
21 I understand the allowance in the agreement that you
22 all made to add the Count for lost note, but how do
23 you attach one note to the Complaint and move
24 forward today on a different note?

25 MR. CASPER: I'd have to see the Complaint,

1 Your Honor. I did not file the Complaint.

2 THE COURT: Okay. Here is the Complaint.
3 Actually that's the note that I turned to. And it's
4 stamped Original at the top.

5 MR. ROSEN: Correct.

6 THE COURT: I know it's not an original, but
7 it's stamped Original at the top.

8 MR. CASPER: Your Honor, what he is talking
9 about is the copy attached to the Complaint. My
10 client had closed the endorsement to the trust. The
11 copy attached to the lost note affidavit is -- does not
12 bear that endorsement.

13 So, clearly we haven't even presented this
14 before the Court. I don't know why it's being
15 addressed at this point, but in any event, that's what
16 he is talking about, Your Honor.

17 MR. ROSEN: Judge, let me--

18 MR. CASPER: My client had closed the
19 endorsement, the same entity that's been the owner
20 and the same servicer. That is the difference that he
21 is referring to.

22 MR. ROSEN: Mr. Casper, you might want to
23 study this a little further before you make any other
24 statements about the differences because they are
25 significant. That's not even remotely the same

1 stamp. It's a different signer. It's in a different
2 place. The signatures of the alleged borrower is in a
3 different place and appears to be different.

4 Let me walk the Court through side by side.
5 Even the original stamp on Page One is in a different
6 place.

7 THE COURT: All right. Well, let's do this now
8 rather than get two hours into this thing and bring
9 this to light, because I mean I can see allowing the
10 agreement for you all to add the lost note Count, if in
11 fact it's the same lost note that was attached, the
12 same note that was attached to the Complaint.

13 To be traveling today under a lost note Count
14 with a completely different lost note, I think we need
15 to talk about that.

16 MR. CASPER: Your Honor, I had attempted to
17 amend the Complaint. The Court had actually granted
18 me 30 days to amend downstairs, and the Defendant
19 wanted to proceed. So we offered an alternative,
20 stating that he would allow me to present evidence
21 and conform the pleadings to the evidence.

22 And I knew he would raise the issue at this
23 point regarding the lost note, so I had tried to
24 address the issue downstairs, but--

25 THE COURT: How can it be a completely

1 different note with different signatures, and they look
2 different.

3 MR. ROSEN: Yes, Judge. Can I see your lost
4 note affidavit, please?

5 THE COURT: I mean the whole thing doesn't
6 smell right at this point, and maybe I'm jumping the
7 gun without seeing anything.

8 MR. ROSEN: Sure.

9 THE COURT: But if it's -- there can only be
10 one note, right?

11 MR. ROSEN: Correct, Judge. So this is the
12 affidavit of lost note. It was just handed to me by
13 opposing counsel. I'm flipping to Exhibit A.

14 I would like the Court first to look at the
15 original stamp on the top of Page One. It is in a
16 different--

17 THE COURT: May I have that file back?

18 MR. CASPER: Yes.

19 THE COURT: So I can go through this.

20 MR. ROSEN: Sorry, Judge.

21 THE COURT: All right. And, Counsel, I don't
22 want you to be behind the gun. Do you want to look
23 along with me? I mean I'll be happy to step down
24 even.

25 MR. CASPER: Your Honor, I'll let you

1 complete your look at that.

2 THE COURT: Okay.

3 MR. ROSEN: Chris, Mr. Casper, why don't you
4 follow along with me, if you don't mind.

5 THE COURT: Okay. Yes, that would probably--

6 MR. ROSEN: I have it marked up here. It has
7 some of my notes on it, but I don't mind.

8 So, the original stamp, as compared to the
9 original that's filed with the Complaint, is in a lower
10 position. That's the first differentiation.

11 THE COURT: And there is a number missing.
12 If you go down to the bottom, the one that's attached
13 to the Complaint has -- where it says, "2018." Next
14 to that, the one attached the Complaint, there is an
15 ML050406, which is not on this one.

16 MR. ROSEN: Correct, Judge; thank you.

17 On Page Three, the endorsement signature page,
18 I would like the Court to notice, first of all, the
19 signature where the M of Merrell David Higer begins
20 on both are different. The R is different. The E is
21 different.

22 Let me just go in turn, I apologize, from left to
23 right. The E next to the M in Merrell, the R is
24 different, and it's actually a D, David Higer. The G
25 in the last name in the one attached to the Complaint

1 is rounded. The one that's attached to the note is
2 pointed. The end of the G line on the one attached to
3 the Complaint is up under the seal word. The end of
4 the G is under the -- in between--

5 THE COURT: Let me -- I'll give you this. It
6 could be the same gentleman the signed it twice. I'm
7 not an examiner, a forensic examiner.

8 MR. ROSEN: Sure.

9 THE COURT: But I can certainly tell that this
10 is not the same signature on this document as is on
11 this document, because my signature, I can't -- we
12 had a case with fraud with an attorney recently, and
13 they had me go through all of my signatures and by
14 the time I got done I was like, I don't know.

15 MR. ROSEN: Understandable, Judge.

16 THE COURT: You know, but I can certainly tell
17 that there is a difference between the signature on the
18 one document from the other document.

19 MR. ROSEN: Yes.

20 THE COURT: Is it the same gentleman signing
21 both? I don't know, but certainly they're different.

22 MR. ROSEN: Judge, sure, and I appreciate that,
23 and no one here is saying that -- and I spoke to my
24 client--

25 THE COURT: And, again, at the bottom of the

1 document, that ML number is missing, and I see that
2 the signature on the without recourse is not signed
3 and there is a different name, a John McCardy
4 (phonetic) on one document, and Randy Mohammed on
5 the other document.

6 MR. ROSEN: Correct, Judge. And it's in a
7 different position. The pay to the order on the one
8 attached to the Complaint is striking through that last
9 signature line, whereas on the one in the lost note is
10 above it entirely.

11 THE COURT: Yes.

12 MR. ROSEN: There are five major distinctions
13 between these two. Clearly that was not just closed
14 as Plaintiff's counsel thought was the case, but upon
15 further reflection it's undeniable that there are
16 significant differences.

17 So, that, it needs to be brought up now because
18 what theory are they traveling under; which note?
19 And then is the power of attorney relevant or
20 irrelevant because it may or may not be.

21 And then before I even get into the
22 authentication issues, et cetera, and the hearsay
23 issues on that power of attorney --

24 THE COURT: Even if you go to the second page
25 and look at the initials down at the bottom, the

1 initials -- again, I'm not saying the gentleman didn't
2 sign both documents, but what I am saying is
3 different, certainly the initials are different.

4 MR. ROSEN: Correct, Judge.

5 MR. CASPER: Well, with regard to that, Your
6 Honor, we haven't presented the note before the
7 Court, but if we're traveling under the one attached
8 to the Complaint, that would be the one that I have to
9 foreclose under, the note attached to the Complaint.

10 And that would be the copy that I will use
11 regarding the testimony from my client regarding the
12 lost note.

13 I can understand that there are -- there is an
14 issue raised here, but without the Defendant here to
15 clarify if he signed two notes, I believe I can proceed
16 under my pleading which has my endorsement to my -
17 - to the owner of the note, and the authority from my
18 witness here to testify on behalf of that owner of the
19 note.

20 So, if there were two notes, this is all this is
21 evidence of is that there were two notes associated
22 with this loan, and the one I have attached to the
23 Complaint is endorsed to HSBC. My client has been
24 servicer since day one. That note is endorsed to
25 HSBC. My client has authority to testify on behalf of

1 HSBC.

2 I have proof of the breach. I have proof that
3 they -- I guess--

4 THE COURT: And you have an affidavit now
5 that's inconsistent.

6 MR. CASPER: Yes, and I do have an affidavit,
7 but I clearly am not going to--

8 THE COURT: Okay. If you want to continue to
9 move forward at this point.

10 MR. ROSEN: Judge, I would make--

11 MR. CASPER: Well, Your Honor, if the Court
12 wants to--

13 THE COURT: I can't do anything at this point.
14 I'm just saying that I know that Mr. Rosen is not
15 going to sit on his hands and stay quiet at his seat.

16 MR. CASPER: Yes, I understand that, Your
17 Honor, and I had attempted downstairs to continue the
18 case in order to fix the issues that have arisen, but he
19 wanted it to proceed.

20 THE COURT: And if I were him, I would have
21 too.

22 MR. CASPER: Correct, Your Honor.

23 THE COURT: And I don't even think you knew
24 about these issues.

25 MR. CASPER: No, we didn't file the Complaint,

1 Your Honor.

2 THE COURT: You were downstairs until right
3 now with regards to this note.

4 MR. CASPER: We didn't file the Complaint,
5 Your Honor.

6 THE COURT: I mean--

7 MR. CASPER: I didn't have access to that
8 document until today, but in any event, I simply
9 would be proceeding under the note that's attached to
10 the Complaint.

11 And the Defendant, if the Court wants to grant
12 the continuance so I can subpoena the Defendant to
13 explain why he signed two documents, then--

14 THE COURT: Well, what's the affidavit say?

15 MR. CASPER: Basically--

16 MR. ROSEN: The note is lost, and this is a true
17 and correct copy.

18 THE COURT: This is the true and correct copy.

19 MR. ROSEN: True and correct copy of the
20 original.

21 THE COURT: Yes.

22 MR. ROSEN: That's correct.

23 THE COURT: And now you're going to have--

24 MR. ROSEN: And that's completely unfair,
25 Judge.

1 THE COURT: Ms. Russelburg testified that this
2 is the true and correct copy.

3 MR. ROSEN: And they already have a Request
4 for Admission, that the one attached to the
5 Complaint, RFA Number 10, the one attached to the
6 Complaint is a true and correct copy, so that's why I
7 had to clarify which way are we going.

8 THE COURT: All right. Do you want to
9 continue--

10 MR. ROSEN: This is totally unfair.

11 THE COURT: Okay. I'm just--

12 MR. ROSEN: I understand, Judge.

13 MR. CASPER: Well, Your Honor, I wanted to
14 be able to amend the Complaint and plead it properly.

15 MR. ROSEN: Judge, he didn't know about this
16 until just now, and it's a five year old case or four
17 year old case.

18 THE COURT: I know.

19 MR. CASPER: Well, the Defendant simply said
20 he would agree to my Motion to Conform. At the
21 same time he is raising objections to it, so--

22 THE COURT: But your Motion to Conform -- I
23 mean, Counsel, I mean I know it's a difficult job and
24 everything, but it's a completely different note.

25 MR. CASPER: Yes, Your Honor, and I would

1 like the opportunity to subpoena the Defendant to
2 explain--

3 THE COURT: I don't know how amendment -- I
4 mean at this point in time, I don't know what
5 happened downstairs, but I'm that whoever heard it
6 and denied the Motion for a Continuance and the
7 Motion to Amend the Complaint at this point. You're
8 traveling under the one on the Complaint.

9 I understand that you're the third counsel of
10 record, and it's gone through some -- you know, a
11 firm that has completely left the planet earth,
12 essentially, and I understand you're stuck with that,
13 but two original notes with one attached to the
14 Complaint, and you have an affidavit saying this is
15 the true and correct, in recent history, and now
16 you're going to go back and say the one attached to
17 the Complaint is the true and correct.

18 So, if want to proceed, go ahead.

19 MR. CASPER: Well, it would depend on my
20 client's testimony, Your Honor.

21 THE COURT: Okay.

22 MR. ROSEN: This is the affidavit, Judge.

23 THE COURT: Thank you.

24 MR. ROSEN: Judge, let me make a motion, if I
25 could at this time. It might be appropriate to have an

1 evidentiary hearing as to the nature of these two
2 different notes.

3 And it might be an appropriate to do that, to
4 have the person with the most knowledge of this
5 affidavit and the person who answered the
6 interrogatories just a month ago -- or the Request for
7 Admissions just a month ago, said that 1. The note
8 was in New York, and 2. That the original attached
9 to the Complaint is the accurate copy.

10 This was just a month ago, and now we have this
11 that says two totally things.

12 Counsel, you might consider that.

13 MR. CASPER: Are you saying at this moment or
14 a later date?

15 MR. ROSEN: It might inappropriate at this
16 time, or I leave it up to the Court as to how to
17 consider how to proceed with what's proffered to be
18 admitted into evidence.

19 THE COURT: The difficulty that I'm having is
20 sitting, and it's been proffered, but is not evidence at
21 this point, so I think I have verbalized my thought
22 process and the difficulties that one might have in
23 moving forward and proving their case here today.

24 And the difficulties that the Court having it, in
25 fact, the proffered evidence is the evidence in this

1 case, but again, I think it would be improper for me
2 to make that kind of ruling at this point if I don't
3 know that that is, in fact, the evidence.

4 However, if that were the evidence, I think that
5 it would be a substantial issue for the Plaintiff in
6 moving forward and finalizing this case.

7 MR. ROSEN: Thank you, Judge.

8 MR. CASPER: May I see the affidavit, Your
9 Honor?

10 THE COURT: I mean, as Mr. Rosen has pointed
11 out, you've got two different notes. You've got one
12 that's attached to the Complaint saying this is a copy,
13 a true and correct copy of the note, then you have an
14 interrogatory saying that it is a true and correct copy
15 of the note, and then -- less than a month, and then
16 you have an affidavit that's dated on July 7th, that's
17 saying no, this is a true and correct copy of the note.
18 And they're not the same note.

19 MR. CASPER: Your Honor, I would agree with
20 the Defendant that if we could have an evidentiary
21 hearing to clear up this issue, I would be happy to do
22 that, essentially.

23 MR. ROSEN: I think the Court has made the
24 right ruling. There has no admission of evidence, and
25 I withdraw the motion; it's not timely. I appreciate

1 your ruling.

2 THE COURT: I mean here for the trial. It's a
3 2011 case.

4 MR. CASPER: Yes, Your Honor.

5 THE COURT: Again, I understand the position
6 that you are in as being the third counsel being stuck
7 with everything that has been done since 2011, and
8 before 2011; since 2006.

9 And if your client wishes to continue to move
10 forward here today, that's fine. I'll rule on the
11 evidence presented here today.

12 MR. CASPER: Your Honor, I have not had the
13 opportunity to discuss the issue with my client, but--

14 THE COURT: Do you wish to take a break and
15 discuss the --

16 MR. CASPER: Yes, Your Honor.

17 THE COURT: -- with your client?

18 MR. CASPER: Absolutely.

19 THE COURT: Okay. You may step down.

20 THE WITNESS: Thank you.

21 MR. ROSEN: Judge, to the extent that the
22 witness is sworn and a question posed while she is
23 sworn could be considered improper.

24 I don't know if this an appropriate time for
25 Counsel to explain.

1 THE COURT: No. What I would say is I don't
2 want you discussing the -- your testimony here today.

3 What I am saying at this time is you should be
4 discussing -- you have heard everything that I have
5 said.

6 THE WITNESS: Correct.

7 THE COURT: You have heard the argument on
8 behalf of your counsel as well as opposing counsel.

9 What I'm asking is whether or not the Plaintiff
10 still wishes to move forward here today, and that's
11 what you should be discussing outside of our
12 presence.

13 MR. ROSEN: Thank you, Judge.

14 THE COURT: Okay?

15 MR. CASPER: Yes.

16 THE COURT: Not the testimony that you
17 already discussed, that you were giving here today
18 before you were sworn in, okay?

19 THE WITNESS: Absolutely.

20 MR. ROSEN: Thank you, Judge.

21 THE COURT: All right.

22 THE WITNESS: Thank you.

23 (Thereupon, a brief recess was had at 11:03
24 a.m.)

25 (Thereupon, the proceedings continued at 11:11

1 a.m.)

2 THE COURT: I assume we're proceeding?

3 MR. CASPER: Your Honor, at this time after
4 the discussion with my client regarding her
5 testimony, my client is respectfully asking to move
6 for a continuance to allow her to -- as it was brought
7 to her attention here today regarding the two alleged
8 notes.

9 She wants to be able to investigate it to be able
10 to fully testify as to why there appears to a second
11 note on this Complaint, and as the Defendant
12 indicated, an evidentiary hearing may also be
13 warranted regarding this recent -- as the evidence of
14 this second copy is dated July 7th. It's literally less
15 than a week ago, so it's new evidence and essentially
16 we would like time to investigate that new evidence.

17 THE COURT: It's your new evidence. It's not
18 like Mr. Rosen brought it here today.

19 MR. CASPER: Yes, I understand that, Your
20 Honor, but it was recently created. The affidavit was
21 recently created.

22 And I do apologize regarding the circumstances.
23 I was not aware that the -- that there were essentially
24 more than one copy of the note.

25 My client had advised me that it is regular

1 practice for an individual to sign several copies of
2 the note at closing, so there may have been an issue
3 that arose at that point. And my client wants time to
4 investigate that issue.

5 So, I respectfully request 90 days, Judge.

6 THE COURT: Okay. Counsel?

7 MR. ROSEN: This is the seventh trial setting.
8 Prior to this trial setting, there was Motion to Abate
9 the action, which was denied the Foreclosure
10 Division, Chief Judge Rosenthal.

11 At the last trial on June 6th, there was the day
12 of trial then following the Motion for Abatement was
13 denied. There was another Request for a Continuance
14 which was denied.

15 There was a discrepancy at that point which was
16 brought to the Court's attention. And I have a
17 transcript which I read downstairs from that last
18 hearing, where Plaintiff's counsel said, "We
19 requested the note from Butler & Hosch."

20 I then read from the interrogatory that was just
21 the day before that we received it, that says, "No, it's
22 in Manhattan."

23 And all of a sudden the story was different from
24 Plaintiff's counsel, which was, "Well, clearly it's in
25 Manhattan, but we have to get it." And the Judge

1 said, "I could have sanctioned you, but I didn't. Now
2 you have 30 days and that's it." And so he granted
3 30 days, and I thought it was very lenient under the
4 circumstances, and here we are yet again on the day
5 of trial.

6 The Court denied it downstairs. Judge Stone
7 denied it. And this is not just their second chance at
8 this issue considering everything that's gone on. The
9 case law supports that second continuances are
10 seldom favored.

11 As the Court has duly pointed out, this is their
12 own evidence. It's not a surprise from us. I was the
13 one that was surprised to get all this stuff last
14 minute.

15 And as to the note showing up seven days ago,
16 that's not true. The Complaint with the special
17 endorsement that's attached to the Complaint, was
18 provided to us with the Complaint obviously, and
19 then four different times when exhibits were given to
20 us, copies of exhibits.

21 On June 4th, in a response to a Request for
22 Production, where they say -- we ask specifically
23 what exhibits do you use to prove your case. They
24 give us the note with the blank endorsement; June 4th.

25 THE COURT: The blank endorsement--

1 MR. CASPER: Are you referring to the lost
2 note affidavit?

3 MR. ROSEN: No, I'm not.

4 THE COURT: The one attached to the lost note,
5 or the one--

6 MR. ROSEN: The one that was attached to the
7 lost note, we first saw it June 4th, when Plaintiff's
8 law firm, the current law firm, provided a response to
9 Request for Production, and they provided that note
10 with the blank endorsement. So, this is not new--

11 THE COURT: The one attached to the affidavit?

12 MR. ROSEN: Right.

13 THE COURT: Okay. That was on June 4th?

14 MR. ROSEN: Correct. So this is now going on
15 over a month that this has been not news to the
16 Plaintiff. It's new news to me. I should know this
17 case better than they do.

18 And then we had the interrogatory that's -- this
19 is unfair. We prepared seven times for trial. At
20 some point enough should be enough. And I'm
21 surprised that, quite frankly, the Plaintiff is not
22 voluntarily dismissing. I'm going to go ahead and
23 state that as aggressively as that sounds, or however
24 that comes off.

25 There are concerns, and I tried to give every

1 benefit I can, and I appreciate that, Judge. If I
2 overstepped my bounds there, I apologize.

3 MR. CASPER: Your Honor, with regard to the
4 Motion to Abate, his client tried to save this
5 property, and per the CFPB guidelines, we filed that
6 motion in good faith to protect the interest of his
7 client.

8 So, for him to raise that as an issue, I believe is
9 a little disingenuous because the motion was filed for
10 his benefit.

11 MR. ROSEN: I can clarify that.

12 MR. CASPER: But, in any event, Your Honor, I
13 believe the issues would be best addressed by, as
14 defense counsel had indicated, an evidentiary
15 hearing. And in addition to that, my client here
16 today--

17 THE COURT: You know, you're saying that.
18 Are you thinking about the ramifications of that also,
19 because it seems to me like it would almost be a
20 Motion for Fraud upon the Court, in which to dismiss
21 this case with prejudice and it never being brought
22 back to court.

23 If, in fact, certain evidence comes to light and
24 all the contradictions and inconsistencies are given
25 throughout the case, from the Complaint, to answers

1 to interrogatories, to affidavits attached, to different
2 signatures on different notes.

3 Even, I mean think about this, and maybe you
4 want to respeak with your client, but if they, let's
5 say okay, he signed two originals. On the date that
6 he signed the note, he signed two originals.

7 Are you saying that the pay to the order of
8 without recourse, one of which is then done by a John
9 McCardy and the other one who was done by -- I
10 think it was Randy Mohammed.

11 So, if you wish to have an evidentiary hearing
12 on the matter, I think it should be set up as a Motion
13 for Fraud upon the Court, truly at this point in time
14 if you wish to move forward.

15 MR. CASPER: Your Honor, at this point the
16 Plaintiff will voluntarily the action so we can clean
17 the issues and refile the case.

18 THE COURT: Okay. I think that is the best
19 way to go.

20 (Thereupon, the proceedings were concluded at
21 11:18 a.m.)

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C E R T I F I C A T E

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STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, Maritza Monroe, Reporter, certify
that I was authorized to and did report the
foregoing proceedings, and that the transcript is
a true and correct transcription of my notes to
the proceedings.

Signed this 12th day of August, 2015



Maritza Monroe, Reporter
Notary Public - State of Florida
Commission No.: FF 228657
Expires: 6-16-2019