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

CASE NO. CACE13004386

CENTRAL MORTGAGE COMPANY,

Plaintiff,

-vs-

MARLENE V. RATTIGAN,

Defendant.

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TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE JOHN J. MURPHY

Broward County Courthouse

201 Southeast 6th Street

Fort Lauderdale, Florida 33301

January 8th, 2015

1:30-4:30 p.m.

## 1 APPEARANCES:

2

3

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Witness:                      Direct   Cross   Redirect   Recross

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1 THEREUPON:

2 THE COURT: This is Central Mortgage Company  
3 Claims versus Rattigan.

4 MR. ROSEN: Correct.

5 THE COURT: Case Number 13-4386.

6 MR. ROSEN: Yes.

7 MR. HERBERT: Yes.

8 THE COURT: Do you want to state your  
9 appearances, please?

10 MR. HERBERT: My name is Curtis Herbert, Your  
11 Honor, with Brock and Scott. I'm here on behalf of  
12 the plaintiff, Central Mortgage Company. I have my  
13 witness.

14 MS. MCCLENDON: Natalie McClendon with Central  
15 Mortgage Company, the witness for today.

16 MR. ROSEN: Evan Rosen on behalf of Mr. and  
17 Mrs. Rattigan.

18 THE COURT: And are they here today? Are they  
19 coming?

20 MR. ROSEN: They are here through me, Judge,  
21 but they are not here.

22 THE COURT: Okay. And counsel, is everybody  
23 ready to proceed?

24 MR. HERBERT: Yes, Your Honor.

25 MR. ROSEN: Yes.

1 THE COURT: Okay. Are you going to give an  
2 opening statement or waive it?

3 MR. HERBERT: I have an opening statement.

4 THE COURT: Go right ahead.

5 MR. HERBERT: If it pleases the Court, Your  
6 Honor, this is a contested foreclosure action on  
7 real property that is in Broward County, Florida.  
8 It's located in Miramar, 17679 Southwest 54th  
9 Street.

10 On October 30th, 2006, the defendant, Marlene  
11 Rattigan, executed and delivered a promissory note  
12 in the amount of 650,000 to GL Financial Services,  
13 LLC.

14 She was the borrower, and GL Financial  
15 Services, LLC was the originating lender. On the  
16 same day, Marlene Rattigan and her husband executed  
17 and delivered a mortgage security for the note,  
18 which was recorded in the public records of  
19 Broward.

20 The complaint was filed on February 19th, 2013  
21 by Central Mortgage Company as plaintiff. It was  
22 verified by Central Mortgage Company and attached  
23 as exhibits a copy of the original promissory note  
24 which we have here today which we'll surrender and  
25 introduce into evidence payable to GL Financial

1 Services which had endorsements on it.

2 There was an endorsement from GL Financial  
3 Services, LLC, the originating lender, to Flagstar  
4 Bank, FSB. Flagstar Bank, FSB then endorsed it to  
5 Flagstar Capital Markets Corporation, and Flagstar  
6 Capital Markets Corporation then endorsed it in  
7 blank.

8 The original promissory note and mortgage were  
9 in the possession of the plaintiff, Central  
10 Mortgage Company, and they have it in their  
11 possession today.

12 An assignment of mortgage was executed and  
13 reported in the public records of Broward County,  
14 Florida. It was executed on 12/6/2012 by MERS on  
15 behalf of GL Financial Services, LLC, to Central  
16 Mortgage Company, the plaintiff. The assignment of  
17 mortgage was executed and recorded prior to the  
18 filing of the complaint in February, 2013.

19 The defendant, the Rattigan s, filed an  
20 amended answer in affirmative defenses through  
21 their counsel. That was on or about June 7th,  
22 2013. I believe there were five affirmative  
23 defenses.

24 The first three generally dealt with standing,  
25 and then there was a fourth affirmative defense

1 regarding conditions precedent, the breach letter,  
2 and the fifth was entitled double recovery.

3 We're here today pursuant to the Court's trial  
4 order to present the note and offer testimony as to  
5 the current amount due, the defaults and costs  
6 associated with this action.

7 THE COURT: Thank you. Do you want to give a  
8 brief opening?

9 MR. ROSEN: No, Judge. We'll waive.

10 THE COURT: Call your first witness.

11 MR. HERBERT: I would like to call Natalie  
12 McClendon.

13 THE COURT: Ms. McClendon, do you want to come  
14 up, please?

15 (Thereupon, the witness was duly sworn and  
16 testifies as follows:)

17 THE COURT: You may proceed, counsel.

18 DIRECT EXAMINATION

19 BY MR. HERBERT:

20 Q. Ms. McClendon, by whom are you employed?

21 A. Central Mortgage Company.

22 Q. And can you briefly describe to the Court your  
23 job title and duties at Central Mortgage Company?

24 A. Sure. Foreclosure supervisor in the  
25 foreclosure department at Central Mortgage Company. I

1 oversee the entire foreclosure process in all 50 states  
2 that we service. I sign the legal documents that are  
3 presented in court for any of the foreclosures in those  
4 states.

5 I also attend hearings and trials associated  
6 with the foreclosure and monitor the foreclosure  
7 timelines with the investors.

8 Q. And are you familiar with the books and  
9 records of Central Mortgage Company?

10 A. I am.

11 Q. At my request, did you specifically review  
12 documents associated with the note and mortgage that  
13 are the subject matter of this action?

14 A. I did.

15 Q. And are the records that you reviewed for  
16 today the kind of records that are kept in the regular  
17 course of business activity of Central Mortgage Company?

18 A. They are.

19 MR. ROSEN: Objection, vague. Which records?

20 THE COURT: Sustained. Which records?

21 BY MR. HERBERT:

22 Q. Are the records that I asked you to review in  
23 regards to the introduction today at trial, specifically  
24 the promissory note, the mortgage previously referenced,  
25 an assignment of mortgage that was given to Central



1 Mortgage Company, complete payment history on this  
2 particular loan, a screen shot from your computer system  
3 regarding the date that the loan was -- that the note  
4 and mortgage were delivered to the possession of Central  
5 Mortgage Company, the breach letters or cure letters at  
6 the mortgage requires for fulfillment of conditions  
7 precedent.

8           Are those types of records that I've just  
9 referenced the type of records that are kept in the  
10 regular business activity of Central Mortgage Company?

11           A.     They are.

12           MR. ROSEN:  Objection.  Compound and leading.

13           THE COURT:  Overruled.

14 BY MR. HERBERT:

15           Q.     Are the records you reviewed in the documents  
16 we just discussed and that we have today maintained at  
17 the dates identified on the documents?

18           A.     They are.

19           Q.     Are the business records made by or from  
20 information transmitted by a person with knowledge?

21           A.     They are.

22           Q.     Are the business records you reviewed -- is it  
23 the regular business practice of Central Mortgage  
24 Company to make and keep such records?

25           A.     Yes.

1 Q. I would like to ask you a few questions to get  
2 some more detail about what you do, essentially. How  
3 long have you been with the company?

4 A. Seven years.

5 Q. And what other positions, if any, have you  
6 held with the company?

7 A. I have always been in the foreclosure  
8 department. I started out as a foreclosure processor,  
9 processing the foreclosures, and then I moved from a  
10 team lead to a supervisor.

11 Q. Does the company service loans that are both  
12 in default and those that are not in default?

13 A. Yes.

14 Q. How long has Central Mortgage Company been  
15 servicing this particular loan?

16 A. Since 2007 it was acquired.

17 Q. And who was the investor on this particular  
18 loan?

19 A. Deutsche Bank is the particular investor.

20 Q. Is this the first loan that Central Mortgage  
21 Company has serviced on behalf of this particular  
22 investor?

23 A. No.

24 Q. Has Central Mortgage Company had a  
25 long-standing business relationship with this investor

1 as servicer?

2 A. We do.

3 Q. Okay. Has Central Mortgage Company in the  
4 past onboarded or verified documents and data from this  
5 particular investor?

6 A. We have.

7 MR. ROSEN: Objection, relevance.

8 THE COURT: Overruled.

9 BY MR. HERBERT:

10 Q. When loans are required, as you indicated, and  
11 boarded, what process takes place regarding a recently  
12 acquired loan?

13 A. When we acquire assets, it goes through our  
14 onboarding department. They verify the mortgage, the  
15 payment history, the notes, any type of correspondence  
16 with the borrower.

17 We key the information into our system, verify  
18 that all payments have been made, everything is correct  
19 that we have that reflects the prior investor's books.

20 Q. Okay. Does Central Mortgage Company verify  
21 the information received from a prior servicer or  
22 lender?

23 A. We do.

24 Q. Is this system that you use in Central  
25 Mortgage Company that you used to verify onboard disk,

1 data, and documents, is it a reliable system?

2 A. It is.

3 Q. Is it a system that's commonly used by  
4 servicers in the banking industry?

5 MR. ROSEN: Objection, leading.

6 THE COURT: Overruled.

7 THE WITNESS: It is.

8 BY MR. HERBERT:

9 Q. Have you had an opportunity to review the loan  
10 that is the subject matter of this action?

11 A. I have.

12 Q. In your review of this loan, was it also  
13 boarded and verified according to the procedures at  
14 Central Mortgage Company?

15 A. Yes.

16 MR. ROSEN: Objection, hearsay.

17 THE COURT: Overruled.

18 BY MR. HERBERT:

19 Q. Do you have all the access to all the records  
20 regarding this loan?

21 A. I do.

22 Q. Okay. Are there policies and procedures in  
23 place at Central Mortgage Company regarding onboarding  
24 and verifying loans that they acquire?

25 A. Yes.

1 Q. Have you had any particular training at all  
2 regarding the policies and procedures that Central  
3 Mortgage Company utilizes in maintaining its business  
4 records?

5 A. Yes.

6 Q. Okay. Is this training that you've had  
7 continuous? Is it ongoing?

8 A. It's training that we have every year.

9 Q. Okay. Have you ever visited the particular  
10 department in Central Mortgage Company that receives and  
11 catalogs payments received on loans?

12 A. Yes.

13 Q. How is that department set up?

14 A. We have a cashiering department at Central  
15 Mortgage Company. Also within my area of foreclosure,  
16 we have a separate payment department for payments that  
17 come in during trial or modifications.

18 We have the safe room, a locked room where you  
19 have to have a badge to access. Payments come in  
20 through there. They are posted in that room. They are  
21 posted the same day as received or returned in cases  
22 where it needs to be returned.

23 Q. Have you seen the process taking place?

24 A. Yes.

25 Q. Have you ever personally been involved in that

1 process?

2 A. I have.

3 Q. Have you ever seen or visited the department  
4 at Central Mortgage Company that receives documents,  
5 loan documents from prior servicers or investors?

6 A. Yes. We actually get our original documents  
7 prior to foreclosure within my department, and I oversee  
8 that position.

9 Q. Okay. Are you familiar with the process that  
10 takes place when the documents are received?

11 A. I am.

12 Q. Okay. For all the occasions that you were  
13 reviewing the same business records and platforms, I  
14 would ask -- well, what I would like to do is show you a  
15 number of documents and ask if you can identify them.

16 MR. HERBERT: For purposes of these documents,  
17 Your Honor, I've already -- counsel has already  
18 seen them. We have filed them as far as exhibits.  
19 He has no objections to two of the documents, which  
20 will be the first two that I seek to give to the  
21 witness, the promissory note and the mortgage.

22 THE COURT: Defense, is that correct?

23 MR. ROSEN: That's correct. We have a  
24 stipulation, the note and mortgage will come in on  
25 objection.

1 THE COURT: The note and mortgage?

2 MR. ROSEN: Correct.

3 THE COURT: Okay. This is the note?

4 MR. HERBERT: That is the promissory note.

5 THE COURT: This says fixed adjustable rate  
6 note. And the mortgage?

7 MR. HERBERT: Yes, Your Honor.

8 THE COURT: Mark them, and they will be in  
9 evidence as Plaintiff's 1 and 2, respectfully.

10 (Thereupon, the documents have been brought  
11 into evidence as Plaintiff's Exhibit 1 and 2.)

12 MR. HERBERT: Thank you, Your Honor.

13 BY MR. HERBERT:

14 Q. First, I would like to show you what has been  
15 marked as Plaintiff's Exhibit 1 and ask you if you could  
16 look at that and can you identify it?

17 A. Yes. This is the original note.

18 MR. ROSEN: Judge, just objection. It's a  
19 waste of time. We can let the document speak for  
20 itself.

21 THE COURT: Agreed.

22 MR. HERBERT: Okay. Let me see if I have any  
23 questions other than -- okay. Your Honor, the  
24 court file should be here.

25 THE COURT: Yes, I have the court file.

1 BY MR. HERBERT:

2 Q. I would like to show you -- this is the court  
3 file on this particular case. And I've turned the page  
4 over to the original verified complaint that was filed  
5 in this matter. Can you look at the Exhibit A to that  
6 complaint that was filed?

7 A. Okay.

8 Q. Okay. And take a look at that Exhibit A and  
9 let me know if that is the same promissory note that we  
10 have introduced as Plaintiff's Exhibit 1.

11 MR. ROSEN: We'll stipulate that the original  
12 is the -- the copy attached to the complaint is a  
13 copy of what has been introduced into evidence as  
14 Plaintiff's 1.

15 MR. HERBERT: That's fine, Your Honor.

16 THE COURT: Okay. So there's no need to  
17 establish it.

18 MR. HERBERT: I have no further questions on  
19 the note. I have no questions on the mortgage,  
20 since it has been stipulated to.

21 BY MR. HERBERT:

22 Q. I'm going to show you another document, and  
23 ask if you can identify that document.

24 MR. ROSEN: I'm sorry, what is this document?

25 MR. HERBERT: I'm sorry. That's a copy of the



1 assignment of mortgage. I have copies for you.

2 MR. ROSEN: That's fine. I have the copies  
3 that you served me, I just want to know which one  
4 you were going onto. That's all.

5 BY MR. HERBERT:

6 Q. Do you recognize that document?

7 A. I do.

8 Q. Okay. And what is that document?

9 A. It's an assignment of mortgage, and it's an  
10 assignment of Mortgage Electronic Registration Systems  
11 as nominee for GL Financial Services, which is the  
12 original lender on the note to Central Mortgage Company.

13 Q. Okay. And that assignment of mortgage, does  
14 it assign to Central Mortgage Company on its face the  
15 mortgage that we introduced as Plaintiff's Exhibit 2?

16 MR. ROSEN: Objection, reading from a document  
17 not in evidence. You're supposed to identify it.

18 BY MR. HERBERT:

19 Q. Okay. Let me rephrase that. That document,  
20 is that a document that's kept in the business records  
21 of Central Mortgage Company?

22 A. It is.

23 Q. Okay. Is that a document that you reviewed as  
24 part of your -- in preparation for your testimony today?

25 A. I did.

1 MR. HERBERT: Your Honor, I would like to mark  
2 this as Plaintiff's ID 1.

3 THE COURT: You're asking to have it admitted  
4 into evidence?

5 MR. HERBERT: Not admitted into evidence, just  
6 marked as Exhibit 1 for identification.

7 THE COURT: Excuse me. Exhibit A for  
8 identification is going to be the note. B is the  
9 mortgage. And they are 1 and 2 respectfully, so  
10 this would be item C for identification.

11 MR. HERBERT: Thank you.

12 THE COURT: Not in evidence.

13 MR. HERBERT: Correct.

14 BY MR. HERBERT:

15 Q. Okay. The date of execution by MERS on that  
16 document, what is that date?

17 MR. ROSEN: Objection, leading. Reading from  
18 a document not in evidence.

19 THE COURT: What is the date of the execution?  
20 That's not -- I'll overrule the objection as to  
21 leading. But reading from the document, she just  
22 identified it, so I'm going to allow it.  
23 Overruled.

24 THE WITNESS: December 6th of 2012.

25 MR. HERBERT: Your Honor, I would ask that

1 this be introduced into evidence as part of the  
2 business records of Central Mortgage Company as  
3 Plaintiff's 3.

4 THE COURT: Any objection?

5 MR. ROSEN: Judge, this is not a  
6 self-authenticating documents. The witness has  
7 testified by reading from the title of it and I  
8 assume they are also seeking to admit it for the  
9 truth that the mortgage was assigned. That makes  
10 it hearsay.

11 Apparently, there has been an attempt -- my  
12 objection would also be hearsay and authentication.  
13 I can briefly voir dire on those issues, Judge, or  
14 we can save that for cross.

15 THE COURT: Well, I would respectfully request  
16 that you save it for cross. The reason is I know  
17 the witness testified that this document is kept in  
18 the ordinary course of their business, but this is  
19 also a record that appears to have been recorded in  
20 the public records of Broward County, Florida.

21 MR. ROSEN: Correct. And as far as it being  
22 recorded, if it was a certified copy of the  
23 recording, that would make it self -authenticate,  
24 and that would cover that issue, but it's not  
25 certified.

1           And this is our fifth time here for trial.  
2           Plaintiff's counsel certainly could have run across  
3           the street and got it certified to come here.  
4           That's probably what would be required, and I would  
5           imagine, has been from my experience when I'm  
6           trying a case.

7           Otherwise, it's not self-authenticating, and I  
8           can voir dire on that briefly now, or we can cover  
9           that on cross as far as hearsay is concerned.

10          THE COURT: Thank you. Yes?

11          MR. HERBERT: Your Honor, from the standpoint  
12          of qualifying, this really gets to the issue of  
13          whether or not she qualifies as a business records  
14          custodian, and the documents we're going to seek to  
15          introduce in evidence on behalf of Central Mortgage  
16          Company can come in under the business records  
17          exception to the hearsay rule.

18          Obviously, the first two are not objected to,  
19          but all the rest of the documents are documents  
20          that come directly from the records of Central  
21          Mortgage Company.

22          If he would like to voir dire the witness to  
23          see if she qualifies as a business records  
24          custodian for purpose s of being able to introduce  
25          those under the exception --

1 THE COURT: Counsel, you don't have to be a  
2 custodian to testify about the business records as  
3 long as she has knowledge. She indicated she has  
4 knowledge and she's familiar with it. She can  
5 testify to that.

6 MR. ROSEN: I have no objection from that  
7 standpoint. I don't plan to examine the witness on  
8 whether or not she's an underqualified witness for  
9 CMC records.

10 At this point, you've laid an adequate  
11 foundation, and I'm going to help move things along  
12 here and not get into a lengthy voir dire on this  
13 issue. She's apparently seen it, done it.

14 For CMC records, my position is that this  
15 AOM is not a CMC record. In fact, it was not  
16 prepared by or created by, and may very well have  
17 been a copy maintained by.

18 But that's not -- that doesn't, in and of  
19 itself, make it a CMC record. So there would be  
20 some brief voir dire on that issue.

21 THE COURT: Okay. I don't know if you're  
22 entitled to voir dire on that issue. You're just  
23 simply objecting to it. I don't know that that  
24 cuts it, Counsel, respectfully.

25 Obviously, this is a business record of

1 Central Mortgage Company, as counsel indicated it  
2 wasn't prepared by them. It's a document from MERS  
3 as the nominee for GL Financial Services. It looks  
4 like it was returned to Central Mortgage Company.

5 All right. Objection is overruled. It will  
6 be admitted.

7 THE COURT CLERK: Plaintiff's 3.

8 (Thereupon, the document has been brought into  
9 evidence as Plaintiff's Exhibit 3.)

10 BY MR. HERBERT:

11 Q. The next document I would like to show you is  
12 the loan payment history. Can you take a look at that  
13 document, and I'll ask you if you can identify it.

14 A. Yes. This is a payment history that's pulled  
15 off of our servicing system. It reflects all of the  
16 payments made and disbursements made from CMC.

17 Q. And how is this payment history produced by  
18 Central Mortgage Company?

19 A. It is printed from our servicing system and  
20 anything that comes in is changed. So payments coming  
21 in that day will reflect on the payment history, same  
22 with any disbursements we take out, such as insurance.

23 Q. Okay. And that payment history department who  
24 puts that together and receives the disbursements, you  
25 previously have worked in that department?

1           A.     Actually, this is from our foreclosure  
2 department.  Anybody can print a payment history that  
3 works with Central Mortgage Company.

4           Q.     Okay.  And is the printout a history of all  
5 the payments and disbursements made upon the particular  
6 loan which is the subject matter of this foreclosure  
7 action?

8           A.     Yes.

9           Q.     Are the entries that are reflected on that  
10 payment history made contemporaneously with the payments  
11 received and the disbursements that are made?

12          A.     Yes.

13          Q.     Okay.  So was the payment history printed out  
14 by you in preparation for this trial?

15          A.     It was.

16          Q.     Was that history made at or near the time of  
17 the dates identified contemporaneously when payments  
18 were received and disbursements were made?

19          A.     Yes.

20          Q.     Is the record the kind of record that -- a  
21 payment history Central Mortgage Company regularly keeps  
22 in its business activity?

23          A.     Yes.

24          Q.     And is it made by a person with knowledge from  
25 information transmitted by that person?

1 A. Yes.

2 Q. And is it the regular practice of Central  
3 Mortgage Company to maintain and keep those records?

4 A. Yes.

5 Q. What is the date of default that's reflected  
6 on that payment history, if you could take a look at  
7 that?

8 A. August, 2012.

9 Q. Okay. And is the loan still in default?

10 A. Yes, it is.

11 Q. Has the loan been brought current at any time  
12 since it went into default?

13 A. No.

14 Q. Have funds been advanced by the plaintiff to  
15 protect insecure collateral in regards to this loan?

16 A. Yes.

17 Q. Have any payments been received by the  
18 borrower since the date of default reflected on that  
19 payment history?

20 A. No.

21 MR. HERBERT: Your Honor, I would like to  
22 offer this payment history into evidence as  
23 Plaintiff's Exhibit 4, I believe.

24 THE COURT: Any objection?

25 MR. ROSEN: No objection, Your Honor.



1 THE COURT: It will be admitted.

2 (Thereupon, the document has been brought into  
3 evidence as Plaintiff's Exhibit 4.)

4 BY MR. HERBERT:

5 Q. Let me show you another document. This is the  
6 screen shot, and I ask you if you can identify that  
7 particular document.

8 A. Yes. This is a screen shot from our servicing  
9 system. It is an actual comment box where we can make a  
10 comment. This is regarding when we received the  
11 original documents.

12 Q. Okay. And this screen shot that you're  
13 looking at, does it reflect a date that the original  
14 note and mortgage were received by Central Mortgage  
15 Company?

16 A. Yes.

17 MR. ROSEN: Objection, reading from a document  
18 not in evidence.

19 THE COURT: Does it reflect a date?

20 THE WITNESS: Yes.

21 THE COURT: Are you introducing that into  
22 evidence?

23 MR. HERBERT: Yes, I'm going to introduce it  
24 into evidence. Let me lay the predicate, Your  
25 Honor.

1 BY MR. HERBERT:

2 Q. Was that particular screen shot retrieved by  
3 you from the system that Central Mortgage Company uses  
4 to maintain its records?

5 A. Yes.

6 Q. Okay. And was that screen shot -- the dates  
7 and the information on that screen shot that you've  
8 identified made contemporaneously?

9 A. Yes.

10 Q. And is the record the kind of record that's  
11 kept in the regular business activity of Central  
12 Mortgage Company?

13 A. Yes.

14 Q. And are the -- is the information and data on  
15 that screen shot made by a person from information  
16 transmitted, that person having knowledge?

17 A. Yes.

18 Q. Is it the regular practice of Central Mortgage  
19 Company to maintain and keep those types of records?

20 A. Yes.

21 MR. HERBERT: Okay. I would like to introduce  
22 that as Plaintiff's 5, Your Honor.

23 MR. ROSEN: No objection.

24 THE COURT: It will be admitted.

25 (Thereupon, the document has been brought into

1 evidence as Plaintiff's Exhibit 5 for  
2 identification.)

3 MR. HERBERT: I just have a few other further  
4 questions.

5 THE COURT: Whenever you are ready.

6 BY MR. HERBERT:

7 Q. Okay. Is there a date reflected on that  
8 screen shot, that document that has been introduced into  
9 evidence that shows the date of receipt of the original  
10 promissory note and mortgage by Central Mortgage  
11 Company?

12 A. Yes.

13 Q. And what is that date?

14 A. November 7th of 2012.

15 Q. Okay. And is that date prior to the date that  
16 the complaint in this action was filed?

17 A. Yes.

18 Q. Okay. I'm going to show you another document.  
19 This is the breach letter.

20 MR. HERBERT: There's actually two breach  
21 letters, Your Honor, one to Harold Rattigan, one to  
22 Marlene. I can introduce them separately or as a  
23 composite.

24 THE COURT: Can they come in together as a  
25 composite?

1 MR. ROSEN: That's fine. And the mortgage is  
2 noticed to one, and that's paragraph 15 in the  
3 mortgage. That's fine.

4 And I can stipulate that that's coming in as a  
5 CMC record. You've laid an appropriate foundation  
6 in my opinion at this point.

7 MR. HERBERT: Okay. I want to admit this into  
8 evidence as Plaintiff's 6.

9 THE COURT: It will be admitted into evidence.

10 (Thereupon, the document has been brought into  
11 evidence as Plaintiff's Composite Exhibit 6.)

12 BY MR. HERBERT:

13 Q. Okay. There are two breach letters that are a  
14 composite exhibit, Plaintiff's 6. Can you tell me who  
15 those breach letters have been sent to based on the  
16 address on the breach letter?

17 MR. ROSEN: Objection, hearsay as to whether  
18 or not they were sent. The date on the letter, I  
19 have no issue with, but as to whether or not they  
20 were sent --

21 BY MR. HERBERT:

22 Q. Let me rephrase it. Can you give me the name  
23 of the addressee on those two letters which are  
24 Plaintiff's Exhibit 6?

25 A. Marlene Rattigan and Harold Rattigan.

1 Q. And what is the address that's reflected on  
2 the breach letter?

3 A. 17679 Southwest 54th Street, Miramar, Florida,  
4 33029, the same address that's in default.

5 Q. And are those the breach letters that Central  
6 Mortgage Company sends out as part of the cure  
7 provisions on the mortgage?

8 MR. ROSEN: Objection, vague, speculative,  
9 relevance.

10 THE COURT: You can answer the question.

11 THE WITNESS: Yes.

12 BY MR. HERBERT:

13 Q. Are those letters generated by Central  
14 Mortgage Company?

15 A. They are.

16 Q. Are you familiar with the process regarding  
17 the preparation of those letters?

18 A. I am.

19 Q. Is there a requirement regarding the  
20 preparation and when those letters need to go out?

21 A. Yes.

22 Q. And what is that requirement?

23 A. Sent out by our default support department,  
24 which is connected to the foreclosure department, and  
25 they are sent out -- depending on which state it is --

1 some states require to be sent differently, but they are  
2 sent out at least 30 days prior to the foreclosure  
3 review.

4 Q. Okay. Do those letters provide a notice of  
5 default?

6 A. Yes, they do.

7 Q. Okay. And does it give a timeframe on the  
8 letters for the borrowers or the addressee on those  
9 letters to cure the default?

10 A. Yes.

11 Q. And what is the date of default that's on  
12 those breach letters?

13 A. The date of default is August 1st, 2012.

14 Q. Okay. And is that the same default date  
15 that's reflected on the payment history, which has  
16 previously been introduced into evidence?

17 A. Yes, sir.

18 Q. And -- actually, that's all the questions I  
19 have on the breach letter. This is the limited power of  
20 attorney. Can you look at that document and identify it  
21 for the Court, please?

22 A. Yes. Limited power of attorney for Deutsche  
23 Bank National Trust Company to Central Mortgage Company.

24 Q. And who is Deutsche Bank National Trust  
25 Company?

1           A.     Deutsche Bank is one of the investors for  
2 Central Mortgage Company.

3           Q.     And on this particular loan, is Deutsche Bank  
4 National Trust Company the investor on this loan?

5           A.     They are.

6           Q.     And you service this loan on behalf of  
7 Deutsche Bank, the investor?

8           A.     We do.

9           Q.     And that power of attorney, is that a recorded  
10 document?

11          A.     Yes, sir, it is.

12          Q.     Okay. Is it recorded in --

13          A.     Broward County.

14          Q.     Okay. And the purpose of that power of  
15 attorney is what?

16          A.     So Central Mortgage Company can testify for  
17 the records of --

18                 MR. ROSEN: Objection, best evidence rule.  
19 We'll let the contents of the written document  
20 speak for itself.

21                 THE COURT: Sustained.

22 BY MR. HERBERT:

23           Q.     Is that power of attorney the document that  
24 evidences the right of Central Mortgage Company to  
25 service this loan on behalf of the investor?

1 A. That's correct.

2 MR. HERBERT: Would you like me to go through  
3 the -- just for purposes of the business records  
4 exception, do you want me to go through the four  
5 prongs, or are you going to object to it coming in  
6 as a business record?

7 MR. ROSEN: No. Actually, that's fine. You  
8 can -- we'll stipulate that it's in.

9 THE COURT: This next document will be marked  
10 as Exhibit 7.

11 (Thereupon, the document has been brought into  
12 evidence as Plaintiff's Exhibit 7.)

13 BY MR. HERBERT:

14 Q. I'm going to show you another document and ask  
15 if you can identify what that is.

16 A. This is the final judgment.

17 Q. Okay. Does that final judgment contain the  
18 figures that are due and payable on this loan, including  
19 the principal balance, interest, and any advances that  
20 were made?

21 A. Yes.

22 MR. ROSEN: Judge, this is improper. This  
23 document is not going to be introduced into  
24 evidence. The witness is reading from a document  
25 not in evidence. This is a proposed final



1 judgment.

2 My position is that if the facts and evidence  
3 elicited and introduced in court support this  
4 document, then it should so be entered at that  
5 time.

6 But at this point, it's improper, and again,  
7 reading from a document not in evidence.

8 THE COURT: Counsel, my understanding is that  
9 she can refresh her recollection from anything.

10 So if she's refreshing her recollection, and  
11 it gives rise to her ability to recollect the  
12 numbers -- the outstanding balance, I would allow  
13 it.

14 But it has to be to refresh her recollection.  
15 She's not just going to read from it.

16 MR. HERBERT: I understand, Your Honor. I was  
17 actually going to use it for identification and  
18 allow her to refresh her recollection as to the  
19 figures, because she prepared that document.

20 MR. ROSEN: It still would be an improper  
21 refresh. She never had any personal knowledge of  
22 this. Her knowledge of this loan is based upon a  
23 review of documents.

24 The documents that are in evidence should  
25 either support the figures in the judgment or not.

1 She doesn't have personal knowledge.

2 THE COURT: I don't know if she does or not.

3 At this juncture, the objection is overruled.

4 Ma'am, is this something that would refresh your  
5 recollection?

6 THE WITNESS: Yes. All these figures are  
7 derived from the pay history.

8 THE COURT: Proceed.

9 BY MR. HERBERT:

10 Q. Based on your review of the business records  
11 for Central Mortgage Company, the pay history that has  
12 already been introduced into evidence, did the records  
13 reflect the outstanding principal balance that was due  
14 on this particular loan?

15 A. Yes.

16 Q. And if you could refresh your recollection as  
17 to what the exact amount of the outstanding principal  
18 balance is?

19 MR. ROSEN: Judge, again, improper refresh.  
20 She never said she doesn't remember. She never  
21 said she had personal knowledge and forgot. And  
22 furthermore, if the evidence supports the figures,  
23 then I'll have no objection to this, but to read  
24 from it and whether they are supported or not  
25 supported is an improper way to get in damage

1 figures that may or may not be supported by the  
2 evidence.

3 THE COURT: The objection is overruled.

4 BY MR. HERBERT:

5 Q. Do you recall what the unpaid principal  
6 balance is that's due on this loan?

7 A. \$760,323.46.

8 Q. And is there interest that's due on this loan  
9 since the date of default through today?

10 A. Yes.

11 Q. Do you recall the amount of interest that's  
12 due on this loan from the date of default through today  
13 based on your review of the business records of Central  
14 Mortgage Company?

15 A. 56 --

16 MR. ROSEN: Objection, Judge. Reading from a  
17 document not in evidence. That document should be  
18 used to refresh. She should look up if her memory  
19 has been refreshed and then testify from her own  
20 knowledge.

21 THE COURT: Thank you. Objection is  
22 overruled.

23 BY MR. HERBERT:

24 Q. I'm sorry. What was the amount again?

25 A. \$56,553.06.

1 Q. Were there any late charges that were due on  
2 this particular loan?

3 A. Yes.

4 Q. Do you recall the amount of the late charges  
5 that are due pre-acceleration late charges?

6 A. \$250.

7 Q. Okay. Do you know if there were any advances  
8 made for taxes on this particular loan, property taxes?

9 A. Yes. Taxes were advanced for three years.

10 Q. Do you know what years those taxes were  
11 related to, the advances?

12 A. 2012 to 2014.

13 Q. Do you recall the amounts specifically -- the  
14 amount of those taxes for each individual year?

15 A. I can't remember all of them, but give me a  
16 minute. If they are here, I can show them.

17 Q. Would you be able to refresh your recollection  
18 by looking at the figures and determining that those are  
19 the figures that you recall were in the system?

20 A. Absolutely. That's correct. About \$7,500  
21 each time.

22 Q. The hazard insurance, was there any hazard  
23 insurance that was advanced by Central Mortgage Company?

24 A. Yes.

25 Q. And do you recall the amounts specifically

1 that were advanced by Central Mortgage Company to pay  
2 the hazard and flood insurance on this particular home?

3 A. Hazard was around \$11,000. The flood  
4 insurance was about \$1,500.

5 MR. ROSEN: Objection. Again, reading from a  
6 document not in evidence. I just want to throw it  
7 out there, I'll stipulate if it's in the pay  
8 history, it can be in the judgment. Whatever there  
9 is fine by me if we get to that phase.

10 THE COURT: Thank you. Your objection is  
11 noted. Counsel, she has indicated it's around  
12 number. She's not giving you an exact number.

13 So I don't know if this document is refreshing  
14 her recollection or not as far as the taxes and the  
15 insurance. She said it's around \$7,500 in taxes.

16 MR. HERBERT: What I would like to do, Your  
17 Honor, with the --

18 MR. ROSEN: And the objection would also be  
19 speculation.

20 MR. HERBERT: If I could have the payment  
21 history?

22 THE COURT: Counsel, if you admit the  
23 document, I give it to the clerk, and when you want  
24 them back, I give them to the witness. All of them  
25 are still up here.

1           You're welcome to get any of them at any time,  
2           but when you are done with them, I request you come  
3           back just in case Mr. Rosen would want to look at  
4           it.

5           MR. HERBERT: Thank you, Judge.

6           MR. ROSEN: Thank you, Your Honor.

7 BY MR. HERBERT:

8           Q. This is the payment history which has been  
9           introduced into evidence. I wanted to ask you to look  
10          at the payment history which has been introduced into  
11          evidence, and if that can refresh your recollection as  
12          to the exact amount that was paid on real property taxes  
13          advanced by Central Mortgage Company on this property.

14          A. Okay.

15          Q. Can you refresh your recollection by looking  
16          at it and saying on the record what those amounts are?

17          A. For 2012, it's \$7,594.36. For 2013 --

18          MR. ROSEN: Objection, Judge. Lack of  
19          personal knowledge, reading from a document not in  
20          evidence.

21          MR. HERBERT: The payment history is --

22          THE COURT: Objection overruled. It's in  
23          evidence. The payment history is in evidence.

24          MR. ROSEN: I apologize. To the extent that  
25          it's being prepared with the judgment.

1 THE WITNESS: \$7,586.32 for 2013. For 2014,  
2 \$7,770.28.

3 BY MR. HERBERT:

4 Q. And does the payment history also reflect  
5 disbursements for insurance that was advanced by Central  
6 Mortgage Company?

7 A. It does, flood and hazard insurance.

8 Q. And can you look at that document and refresh  
9 your recollection as to the exact amounts that were  
10 disbursed for hazard and flood insurance?

11 A. For 2013, flood insurance is \$1,064. For 2014  
12 flood insurance, it's \$523. For 2014 hazard insurance,  
13 it's \$2,384, and for 2013, it's \$9,800.50.

14 Q. Were there any property inspection fees that  
15 were advanced by Central Mortgage Company?

16 A. There were.

17 Q. And does that payment history refresh your  
18 recollection as to the amount of property inspection  
19 fees our advances?

20 A. It does. They are individually listed. It's  
21 the total of \$307.

22 Q. Were there any escrow credits that were due to  
23 the borrower as reflected on that payment history?

24 A. Yes. There is a starting escrow amount and  
25 there was an insurance refund. The full amount of both

1 of those would be \$11,219.81.

2 Q. And just to refresh your recollection, because  
3 I think you had estimated what the amount was, the  
4 pre-acceleration late charges, does it reflect what that  
5 amount is and can it refresh your recollection by  
6 looking at the payment history as to the amount of  
7 pre-acceleration late charges?

8 A. \$253.44.

9 Q. Okay. What is the remedy you are asking of  
10 the Court today?

11 A. To proceed with judgment and set a sale date.

12 MR. HERBERT: Your Honor, there are fees and  
13 costs that were reflected on the proposed judgment.  
14 Obviously, we've listed an expert witness as to the  
15 reasonableness of those fees and costs.

16 I have affidavits which we have filed with the  
17 Court regarding attorney's fees and costs,  
18 reasonable attorney's fees and costs. It is not an  
19 expert witness.

20 We can bifurcate the issue of attorney's fees  
21 and costs for a hearing, if Mr. Rosen so wishes.

22 MR. ROSEN: Judge, attorney's fees were not  
23 pled. The fees were something that were maybe --  
24 if they are something we can live with, like over a  
25 few thousand dollars, I don't want to waste the



1 Court's time.

2 But it is \$10,550 in fees. It's not in the  
3 wherefore clause, it's not pled, and therefore, it  
4 shouldn't be proffered at all. And any testimony  
5 to would be irrelevant.

6 THE COURT: So you're objecting to the  
7 affidavits?

8 MR. ROSEN: And I object to the affidavits, of  
9 course as not evidence.

10 THE COURT: I'll sustain the objection.

11 MR. HERBERT: Okay. Your Honor, if I could  
12 have the court's file for a moment?

13 THE COURT: Here you go.

14 MR. HERBERT: Thank you. I have no further  
15 questions at this time.

16 THE COURT: Thank you. Counsel, do you have  
17 any questions?

18 MR. ROSEN: I do, Judge. Thank you.

19 CROSS-EXAMINATION

20 MR. ROSEN: Permission to move freely about  
21 the courtroom, Judge?

22 THE COURT: Yes.

23 BY MR. ROSEN:

24 Q. The note that has been marked into evidence as  
25 Plaintiff's Exhibit 1 shows a start date of October

1 30th, 2006, correct?

2 A. Correct.

3 Q. And it shows that the first payment is due  
4 December 1, 2006, correct?

5 A. Correct.

6 Q. And the loan history with CMC, the first  
7 payment shows as April, 2007, correct?

8 A. Correct.

9 Q. So there were payments -- you are not claiming  
10 there weren't payments before 2007, correct?

11 A. Yes.

12 Q. So there were payments between December, 2006  
13 and April, 2007 not reflected on this, correct?

14 A. Correct.

15 Q. I'm showing you what has been marked as  
16 Plaintiff's Exhibit 2, the mortgage, as well as  
17 Plaintiff's Exhibit 6, the default letter. First of  
18 all, your knowledge of this loan is based upon a review  
19 of records, correct?

20 A. Correct.

21 Q. And you, yourself didn't mail that letter,  
22 correct?

23 A. No, but my company did, and the area that's  
24 connected to my department did.

25 Q. And you don't have a record here with you, a

1 document that shows it was actually sent, isn't that  
2 correct?

3 A. I have a certified mail receipt that was  
4 signed by the borrowers.

5 Q. But those are not in evidence, right?

6 A. No. I didn't bring them from the mail  
7 department.

8 Q. Let's take a look at the payment history.

9 MR. ROSEN: Judge, if I could, I want to hand  
10 you -- with counsel's permission -- a copy of the  
11 payments that were provided to me.

12 Or, you can rely on the one that's actually  
13 introduced into evidence. Let's do it that way.  
14 Before we do that, Judge --

15 BY MR. ROSEN:

16 Q. This here is a copy of the payment history,  
17 and it says here that this was from Jada Steiner, an  
18 e-mail. That's what that says, right?

19 A. Yes.

20 Q. And Jada Steiner works with the plaintiff's  
21 law firm, Brock and Scott, correct?

22 A. Correct.

23 Q. And she sent this pay history, and take a  
24 second to look through it. I just want you to make sure  
25 this is an accurate copy, because I'm going to be

1 talking to you about this copy, and just make sure it's  
2 the same copy as what you have here, if you don't mind.

3 MR. HERBERT: Before she answers, I would  
4 object based on the fact that this is a document  
5 which is not introduced into evidence.

6 He's talking about an e-mail from a law firm  
7 with an attached payment history which I have no  
8 basis to know if that's a complete copy, if that --  
9 that hasn't been filed with the Court, as far as I  
10 know.

11 MR. ROSEN: That's why I'm asking the  
12 witness --

13 THE COURT: Counsel, I don't have a problem.  
14 Why don't you -- please show it to counsel. My  
15 understanding is, Counsel, he has notations on it.

16 Mr. Rosen has notations on it, and that's why  
17 he's trying to make sure it's the same as what you  
18 have. I don't know if there's anything other than  
19 that.

20 MR. ROSEN: Well, just so I can cross-examine  
21 on it, and I would like the Court to be looking at  
22 the same thing, if that's possible, as well. I  
23 will show it to you, and I apologize that I didn't  
24 do it first.

25 But as an officer of the Court, this is the

1 exact thing I received, and I'm hoping it's an  
2 exact copy of what has been introduced. I  
3 certainly relied that yours was, as well. Barring,  
4 of course, the markup that has been added to the  
5 document.

6 THE WITNESS: This is it.

7 MR. ROSEN: Great. Let me show your attorney.  
8 Mr. Herbert? I should have thought to do this  
9 before, Judge. I'm sorry.

10 THE COURT: No problem.

11 MR. HERBERT: It looks the same, Your Honor,  
12 and she's testified that our copy is the same. Is  
13 he going to be cross-examining based upon the  
14 payment history in evidence, then, since it's the  
15 same?

16 MR. ROSEN: I'm going to be handing the  
17 Court --

18 THE COURT: He wants to show it to me so I can  
19 follow along.

20 MR. ROSEN: I would like to publish it as the  
21 trier of fact here, if I could. Thank you, Judge.  
22 I'm handing the Court the one that has been marked  
23 in evidence, and I'm showing the one that has been  
24 testified to as a copy and has been shown to  
25 plaintiff's counsel.

1 BY MR. ROSEN:

2 Q. So I've highlighted and I've gone through,  
3 starting with the April '07 payment, and that was  
4 applied to May, the April 30th payment.

5 And I'm following through month by month, and  
6 just quickly, we have May '07, every payment made  
7 through December of '07, correct?

8 A. Hold on.

9 Q. Just take your time. I'm trying to do it as  
10 quickly as I can. I'm going through it chunks at a  
11 time. The payments are all there from April to the end  
12 of the year?

13 A. That's correct.

14 Q. And again, from January of '08 to December of  
15 '08, each monthly payment is reflected on there,  
16 correct?

17 A. That's correct.

18 Q. January of '09, and I'm going to go forward  
19 all the way, to make it easy, 12/2010. We'll do a two  
20 year chunk of time at this point.

21 A. Okay.

22 Q. Now, drawing your attention to January of  
23 2011, that payment was made, correct?

24 A. Yes.

25 Q. And we have February of 2011, it shows the

1 regular payment on the bottom there, correct?

2 A. Uh-huh.

3 Q. And then we have on the top of the next  
4 page -- so January and February of 2011 are made. We  
5 have a payment that looks like it came in on February  
6 25th that was for a due date of March 1st, correct?

7 A. Correct.

8 Q. And it shows unapplied payment, correct?

9 A. Uh-huh.

10 Q. And over here, on the far right, it was put  
11 over in this unapplied amount column, correct?

12 A. Yes, sir.

13 Q. And the same thing happened for the next  
14 payment, which was March 24th. Again, it was unapplied,  
15 and again, it was accounted for over in the second to  
16 the last column on the right side?

17 A. Correct.

18 Q. Then we have another one in April, another one  
19 in May, and in fact, it looks like two in May. Is that  
20 correct?

21 A. No. It's just one in May. See here the  
22 unapplied amount went up by 2,000.

23 Q. But the total amount is different. Isn't that  
24 correct?

25 A. Yes.

1 Q. Actually, they were regular payments, so those  
2 were not send to the unapplied, correct?

3 A. These were -- let's see. The payment for  
4 February was sent to unapplied. The payment for March  
5 was sent to unapplied, which leads me to believe that  
6 this is under modification trial payments because the  
7 loan was modified in 2012.

8 Q. The loan was modified?

9 A. It was modified, or it's going to be modified.  
10 Whenever we get modification payments in, they are  
11 posted into a suspense account until the modification is  
12 completed, and then they are posted to the account with  
13 the final mod documents.

14 Q. And this loan has actually been modified,  
15 correct?

16 A. According to my notes that I have written down  
17 in my folder here, this loan has been -- there's a  
18 modification.

19 Q. Okay. Let's keep going on, then. So what  
20 would have been a March payment was unapplied, what  
21 would have been an April is unapplied, correct?

22 A. Let me look real quick. Okay.

23 Q. And then we have a May also that -- excuse me.  
24 An April, which would have been a May payment that is  
25 also unapplied, correct?



1           A.     Correct.

2           Q.     And then we have what would have been a June  
3 and July payment as regular payments. Those were  
4 received, correct?

5           A.     Correct, but they were posted. They weren't  
6 put in unapplied.

7           Q.     They were posted, sure.

8           A.     They were posted for March, and they were  
9 posted for April.

10          Q.     Correct, but had -- that's fine. And what  
11 would have been next an August payment, because again,  
12 we're up through July, was a regular payment posted,  
13 correct?

14          A.     Yes. This was posted for May, because there's  
15 still --

16          Q.     Unapplied funds?

17          A.     Yes.

18          Q.     And again, a September payment -- what would  
19 have been a September payment, what would have been an  
20 October payment were made in July and August, correct?  
21 And those were applied as regular payments?

22          A.     As July and August.

23          Q.     And going all the way down next would have  
24 been November -- what would have been in November was  
25 paid in September for a \$2,300 regular payment, correct?

1 A. Correct.

2 Q. And then the next one, what would have been  
3 December was received in October, what would have been a  
4 January, 2012 was in November of 2011. Isn't that  
5 right?

6 A. Yes.

7 Q. And then a February, 2012 was -- what would  
8 have been a February, 2012 was received in December of  
9 2011 and what would have been a March was received in  
10 January of 2012. Correct?

11 A. You're months behind because of the money that  
12 was unapplied.

13 Q. Sure. Exactly. And then April -- again, what  
14 would have been an April was received in February. What  
15 would have been a May was received in March, what would  
16 have been a June was received in April of 2012.  
17 Correct?

18 A. Correct.

19 Q. Then the next page, what would have been a  
20 July payment was received in May, what would have been  
21 an August payment was received in June, what would have  
22 been a September payment was received in July. Correct?

23 A. Correct.

24 Q. On the actual acceleration letter and in the  
25 complaint, it alleges that there had been a default for

1 the August 1st, 2012 payment. Isn't that correct?

2 A. Correct.

3 Q. And yet there were a couple of payments that  
4 were put into unapplied, and you don't have a business  
5 record with you today that says Ms. Rattigan told you to  
6 put that in unapplied funds, do you?

7 A. No, I can't say I do.

8 Q. And would there be such a record, or is that  
9 something CMC would do without input typically from the  
10 borrower for one reason or another? In this instance,  
11 there was a loan mod, apparently?

12 MR. HERBERT: Objection, speculation.

13 THE COURT: If she knows, she can answer.

14 THE WITNESS: We would do it without  
15 permission from the borrower, because we are  
16 required to do so per our servicing agreement with  
17 the investor.

18 BY MR. ROSEN:

19 Q. Okay. So let's take a look at the letter.  
20 It's claiming -- it looks like -- is that \$7,325.40 is  
21 due?

22 A. It's \$7,325.40, correct.

23 Q. And this letter is dated October 2nd, 2012.  
24 So that should include -- from what it says here, it  
25 look like it would include August, September, and

1 October. Is that right? Three payments?

2 A. Correct, and any late charges.

3 Q. Okay. And it also says here in the letter  
4 that the amount to cure -- it says in order to cure, you  
5 must pay so on and so forth under paragraph two. That's  
6 what it says there, right?

7 A. Yes.

8 Q. And it says that amount is subject to increase  
9 as additional monthly installments, interest, late  
10 charges, or other authorized expenses become due,  
11 correct?

12 A. Correct.

13 Q. And it --

14 A. It says you have 30 days to cure it.

15 Q. Sure. And it says on the bottom of paragraph  
16 three, you are strongly encouraged to call Central  
17 Mortgage Company or contact Central Mortgage Company  
18 about the total amount to cure prior to issuing payment.  
19 Isn't that what that says?

20 A. Correct.

21 Q. So they have to contact Central Mortgage, Mr.  
22 and Mrs. Rattigan, to find out interests, late charges,  
23 or other authorized expenses. Is that right?

24 A. If there were additional ones on here, you  
25 know, if they sent it at a later date. But if they went

1 ahead and sent in what was on the demand letter, we  
2 would still accept it.

3 Q. Okay. Let's take a look at the mortgage,  
4 paragraph 22. First of all, paragraph 22 is in all  
5 bold, correct? The whole paragraph?

6 A. Yes.

7 Q. It's the only paragraph that's in all bold on  
8 the whole mortgage, correct?

9 A. I would have to flip through it to give you an  
10 answer to that.

11 Q. Sure. Go ahead.

12 A. Yes.

13 Q. Just quickly, in paragraph 22, it starts off  
14 with the lender shall give notice to borrower. That's  
15 what that says, right?

16 A. Yes.

17 Q. And the next sentence says the notice shall  
18 specify. It starts with that, correct?

19 A. Yes.

20 Q. And one of the things it says it shall  
21 specify -- well, it goes through A, B, C, and D. And on  
22 D, it says that failure to cure the default on or before  
23 the date specified in the notice may result in  
24 acceleration of the sums secured by the security  
25 agreement, foreclosure by judicial proceedings, and sale

1 of the property. That's what that says, right?

2 A. Correct.

3 Q. Yet nowhere in this letter are the words  
4 foreclosure by judicial proceeding. Isn't that correct?

5 A. It talks about the foreclosure proceeding in  
6 the nonexistence of a default or other defense to  
7 acceleration and foreclose.

8 Q. That says you have the right to assert in the  
9 foreclosure proceeding the nonexistence of a default or  
10 other defense to acceleration of foreclosure. That's  
11 what number six says, correct?

12 A. Correct. And number four says your failure to  
13 cure the default on or before the date specified in the  
14 paragraph above may result in acceleration of the sums  
15 secured by the security interest in a foreclosure sale  
16 of your property as well as other remedies available to  
17 the lender.

18 Q. So in any of those two sentences -- again,  
19 number six relates to a further sentence in paragraph  
20 22, which is the notice shall further inform the  
21 borrower of the right to reinstate after acceleration  
22 and the right to assert in the foreclosure proceeding  
23 nonexistence of a default or any other defense of a  
24 borrower to acceleration and foreclosure. That's  
25 covered, that last sentence.

1           My question to you, and I believe you've  
2 answered it, was to point out where it says foreclosure  
3 by judicial proceeding as it relates to not paying by  
4 the date specified?

5           MR. HERBERT: Your Honor, I'm going to object.

6           The documents speak for themselves. He's asking  
7 her to interpret whether or not the letter, the  
8 breach letter which has been introduced into  
9 evidence says or -- basically says foreclosure  
10 proceedings or the exact wording that's indicated  
11 in paragraph 22.

12           Paragraph 22 has been introduced into  
13 evidence, the breach letter has been introduced  
14 into evidence. The two documents that are in  
15 evidence speak for themselves as to what they say.

16           THE COURT: Counsel, this is  
17 cross-examination. It's liberal. Those are your  
18 documents in evidence, and he has a right to  
19 question the witness about them.

20 BY MR. ROSEN:

21           Q. Thank you, we'll move on. Just quickly, we  
22 talked in the pay history about the loan mod -- and  
23 that's in writing when there's a loan mod in this case,  
24 right?

25           A. Yes.

1 Q. Let's talk about the power of attorney that  
2 has been received into evidence as -- I don't see the  
3 power of attorney. I'm showing you what has been marked  
4 as Plaintiff's Exhibit 7.

5 And let me grab, if I could -- if I could do  
6 the same, I would like to just show it to opposing  
7 counsel and make sure I have an accurate copy.

8 I would like to hand the Court the actual  
9 exhibit and cross-examine the witness with what should  
10 be a true and correct copy that was provided to me in  
11 the notice of filing exhibits. Just let me know that  
12 you stipulate that I can use this as an exact copy to  
13 cross-examine her with.

14 MR. HERBERT: This is the same document.

15 BY MR. ROSEN:

16 Q. I'm handing back to the Court what has been  
17 introduced as Plaintiff's Exhibit 7 and showing the  
18 witness what has been stipulated to as a copy of that  
19 exhibit.

20 Let's take a look at this. It says that  
21 Deutsche Bank National Trust Company and National  
22 Banking Association organized existing etc. -- and then  
23 it says pursuant to the pooling and servicing agreement,  
24 correct?

25 A. Yes.



1 Q. And the pooling and servicing agreement is not  
2 in evidence, correct?

3 A. Correct.

4 Q. And then it goes on to the bottom, and says  
5 for which Central Mortgage Company is acting as the  
6 servicer, correct?

7 A. Yes.

8 Q. And it says here this appointment shall apply  
9 only to the following enumerated transactions, correct?

10 A. Yes.

11 Q. And number eight says with respect to a  
12 mortgage or deed of trust, the foreclosure, the taking  
13 of a deed in lieu of foreclosure, or the completion of a  
14 judicial or nonjudicial foreclosure or termination,  
15 cancellation, or rescission of any such foreclosure  
16 including without limitation any and all of the  
17 following acts. That's what that says there in  
18 paragraph eight, correct?

19 A. Yes.

20 Q. And then it goes on to say the substitution of  
21 the trustee in A, correct?

22 A. Yes.

23 Q. B, preparation and issuance of statements,  
24 etc. there?

25 A. Yes.

1 Q. C, the preparation and filing of notices of  
2 default and/or notices of sale, correct?

3 A. Correct.

4 Q. D, the cancellation/rescission of notices of  
5 default or notices of sale, correct?

6 A. Yes.

7 Q. E, the taking of deed in lieu of foreclosure,  
8 right?

9 A. Yes.

10 Q. And then F, the preparation execution of such  
11 other documents and performances of such other actions  
12 as may be necessary under the terms of the mortgage,  
13 deed of trust, or law to expeditiously complete said  
14 transactions in paragraphs 8 A through 8 E above.  
15 That's what that says, right?

16 A. Yes.

17 Q. And then down at the bottom, it says  
18 undersigned gives that attorney in fact full power and  
19 authority to execute such instruments and due and  
20 perform all and every act necessary to -- and proffer to  
21 carry into effect the power or powers granted by or  
22 under this limited power of attorney. That's what that  
23 says, correct?

24 A. Yes.

25 Q. And then it says this appointment is to be

1 construed and interpreted as a limited power of  
2 attorney, correct?

3 A. Yes.

4 Q. The enumeration of specific items, rights,  
5 acts, or powers herein is not intended to, nor does it  
6 give rise to, and is not to be construed as a general  
7 power of attorney, correct? That's what that says?

8 A. Yes.

9 Q. And then the last thing I want to go over on  
10 page four, the second to the top, first full paragraph  
11 there, this limited power of attorney is not intended to  
12 extend the powers granted to the servicer under the  
13 agreement or to allow the servicer to take any actions  
14 with respect to mortgages, deeds of trust, or mortgage  
15 notes not authorized by the agreement. That's what that  
16 says, right?

17 A. Yes.

18 Q. And nowhere in here does it say CMC has the  
19 right to hold the note, correct?

20 A. We have the right to enforce it as the  
21 servicer. I would have to read through the whole thing  
22 and see if we have the right to hold it. And it says  
23 with the completion of a judicial or nonjudicial  
24 foreclosure. So in order to proceed with any type of  
25 foreclosure, we need the note to proceed.

1 Q. As far as the words CMC can hold the note,  
2 that's not in there, correct?

3 A. No.

4 Q. As far as the words CMC can enforce the note,  
5 those words are not in there, correct?

6 MR. HERBERT: Objection, Your Honor. She's  
7 answered that question.

8 THE COURT: Sustained.

9 BY MR. ROSEN:

10 Q. As far as CMC can foreclose the mortgage,  
11 those words are not in there, correct?

12 MR. HERBERT: Again, objection, Your Honor.  
13 She's answered the question.

14 THE COURT: You've read that and have gone  
15 through that. Move on, Counsel.

16 MR. ROSEN: Fair enough, Judge. Thank you.

17 BY MR. ROSEN:

18 Q. Where are the records kept in this case? The  
19 note, the mortgage, the original records, where are they  
20 kept in this case?

21 A. When we received them?

22 Q. Just before trial, where were they kept?

23 A. They should have been in the court file or  
24 with our attorney's office.

25 Q. You're not sure though?

1 A. Brock and Scott brought them here today.

2 Q. But you don't know for sure who had them?

3 A. They had them with the cover letter when it  
4 was sent to us.

5 Q. You saw them in their office before you came  
6 here today?

7 A. I did not personally see them in their office.  
8 I saw them in my attorney's hands.

9 Q. Prior to filing the lawsuit, where was the  
10 note and mortgage kept?

11 A. Prior to filing the complaint?

12 Q. Yes.

13 A. It was submitted to Brock and Scott prior to  
14 filing the complaint. When we received them, they are  
15 stored in our office in a fireproof safe until they are  
16 sent over to the attorneys.

17 Q. Okay. So were they kept at CMC or at the law  
18 firm prior to lawsuit? Rather, on the day of the  
19 lawsuit. Let's make it easy.

20 A. On the day of the complaint, it was with Brock  
21 and Scott.

22 Q. You admitted into evidence through your  
23 counsel a screen shot that shows on 11/7/2012, which was  
24 a few months before the lawsuit -- I'm showing you what  
25 has been marked in evidence as Exhibit 5. It shows the

1 date and time as 11/7/2012, correct?

2 A. Yes.

3 Q. And it shows that the custodian was Wells  
4 Fargo Bank, correct?

5 A. That's who we ordered them from, correct.

6 Q. Let's take a look at the note one more time.  
7 Let's take a look at the final judgment of foreclosure  
8 that has been -- that you used to refresh your  
9 recollection, and we can take a look at the pay history,  
10 too.

11 So the pay history has been introduced as  
12 Plaintiff's Exhibit 4, and I'm showing you that along  
13 with Plaintiff's Exhibit 1, the note. And in the note,  
14 I want to turn your attention to paragraph 3 D in the  
15 note. It says limit on my unpaid principal. Correct?

16 A. Yes.

17 Q. My unpaid principal can never exceed a maximum  
18 amount equal to 115 percent of the principal amount I  
19 originally borrowed, correct?

20 A. Yes.

21 Q. And the original amount was \$650,000, correct?

22 A. Correct.

23 Q. Would a calculator assist you in conducting  
24 some math?

25 A. That would be great.

1 Q. Okay. As far as you know, would this  
2 calculator on your phone help you conduct math  
3 accurately?

4 A. Sure.

5 Q. Okay. So let's say 650,000 times 1. --  
6 rather, let's do that again. 650,000 times 1.15 equals  
7 \$747,500, correct?

8 A. Correct.

9 Q. And the amount on the judgment and the amount  
10 on the pay history for principal that's being sought is  
11 \$760,323.46, correct?

12 A. Yes.

13 Q. And that's because there's a loan  
14 modification, correct?

15 A. Yes.

16 Q. I have no further questions.

17 THE COURT: Any redirect?

18 MR. HERBERT: I have a brief redirect, Your  
19 Honor.

20 REDIRECT EXAMINATION

21 BY MR. HERBERT:

22 Q. You testified on cross-examination at the  
23 payment history you have that Central Mortgage Company  
24 produced starts I believe in April, 2007?

25 A. Yes.

1 Q. Okay. There were payments that were made  
2 prior to that date?

3 A. Yes, to the prior servicer.

4 Q. Was that date prior to Central Mortgage  
5 Company onboarding the loan?

6 A. Yes.

7 Q. When Central Mortgage Company onboarded the  
8 loan, did Central Mortgage Company verify the principal  
9 balance and the other figures and data that were given  
10 to it?

11 A. Yes.

12 MR. ROSEN: Objection, speculation.

13 THE COURT: Overruled.

14 THE WITNESS: Yes. That's part of the  
15 onboarding process.

16 BY MR. HERBERT:

17 Q. So the figures that are on -- I guess April  
18 1st, 2007, which is the first entry on the payment  
19 history, those figures were verified by Central Mortgage  
20 Company as part of its onboarding process?

21 A. Yes, sir.

22 MR. ROSEN: Same objection.

23 THE COURT: Overruled.

24 BY MR. HERBERT:

25 Q. The breach letters. Okay. On the breach



1 letter, counsel asked you questions regarding parag  
2 22?

3 A. Yes.

4 Q. And I would just like to go through A, B, C,  
5 and D in paragraph 22.

6 A. Okay.

7 Q. It does indicate as counsel has stated that  
8 the notice shall specify the default. Is there anywhere  
9 on that breach letter that you can see in your review  
10 that it notifies the borrower of a default under this  
11 loan?

12 A. Yes.

13 MR. ROSEN: Objection, Judge. Legal  
14 conclusion. We already said the documents will  
15 speak for themselves, and I was cut off on that.  
16 We can just save that for argument as to whether  
17 legally it complies with the contract or not.

18 THE COURT: I would agree with that, Counsel.

19 MR. HERBERT: Well, these are the same  
20 questions before that counsel on cross-examination  
21 got to ask as to what it says on the breach letter.  
22 All I'm asking her is is there a notice to default  
23 on the breach letter.

24 THE COURT: The document can speak for itself  
25 and is in evidence.

1 BY MR. HERBERT:

2 Q. Okay. The limited power of attorney. I would  
3 like you to take a look on page three of the limited  
4 power of attorney.

5 At the bottom -- near the bottom of the page,  
6 there's a paragraph that starts with the undersigned  
7 gives that attorney full power and authority to execute  
8 those instruments.

9 Can you read that paragraph regarding the  
10 powers that were enumerated and given to Central  
11 Mortgage Company as the servicer?

12 A. Yes.

13 MR. ROSEN: Judge, it's the same. I was cut  
14 off on that.

15 THE COURT: You are allowed to pull from this  
16 document. I don't have a problem with that, but  
17 I've already read it. Counsel was going over it,  
18 and I had a copy of it, and I read along with it.

19 MR. HERBERT: Okay. Well, he referred to that  
20 paragraph. We'll talk about it at closing. I have  
21 no further questions.

22 MR. ROSEN: Judge, just a brief recross based  
23 on something that came up and now she's verified  
24 prior data that is not in CMC's records. I just  
25 want to briefly cross on that process, because that

1 was never testified to before.

2 THE COURT: She testified to the boarding  
3 process, Counsel. You can step down. There's no  
4 recross. Are you going to call any other  
5 witnesses?

6 MR. HERBERT: No, Your Honor.

7 THE COURT: You rest?

8 MR. HERBERT: Yes, Your Honor.

9 THE COURT: Are you calling any other  
10 witnesses?

11 MR. ROSEN: I have a motion for involuntary  
12 dismissal at the time the plaintiff rests.

13 THE COURT: Go ahead.

14 MR. ROSEN: Judge, the motion for voluntary  
15 dismissal is the mechanism similar to a directed  
16 verdict in a jury trial in which the Court is asked  
17 to consider the evidence in a light most favorable  
18 to the nonmoving party as to whether or not they've  
19 established a prima facie case to establish  
20 foreclosure.

21 Prima facie elements of a foreclosure case are  
22 four prongs under the Ernest v Carter case, one,  
23 that there is a contract, two, that there is a  
24 breach, three, that there was a proper  
25 acceleration, and four, damages to satisfy the mind

1 of a prudent and impartial person of a definitive  
2 amount as to the contract.

3 Judge, you have unrefuted testimony that there  
4 was a written agreement that modified this loan  
5 that is not in evidence. It was not attached to  
6 the complaint, and it was not pled.

7 Under the best evidence rule, they are seeking  
8 to foreclose based upon a note which is not before  
9 the Court. It cannot be done. We have no idea  
10 what the terms are. That's exactly why we have the  
11 best evidence rule.

12 That contract should be before the Court so we  
13 can see exactly what was said and what wasn't said,  
14 what was required and what wasn't required in order  
15 to determine if there was, in fact, a breach.

16 As to the acceleration, we have no evidence  
17 admittedly before this Court that the letter was  
18 sent. We have testimony that it sent every time.  
19 Under the Alexander v Allstate case -- I just want  
20 to give the Court a copy of that -- testimony that  
21 something is done is a business practice.

22 Without saying it was done here and without  
23 knowledge it was done here is hearsay. Let me hand  
24 the Court and opposing counsel a copy of that case,  
25 as well. She didn't do it here.

1           The only way she would know it was here is  
2 because there's a business record that said it was  
3 done, and there's no business record that shows it  
4 was done. All she can testify to is generally this  
5 is what we do. And that's not enough pursuant to  
6 paragraph 15.

7           As to the default, the letter itself specifies  
8 that the default and the complaint is supposed to  
9 say there's a default as of August 1st, 2012. But  
10 as you saw, and we walked the witness through this  
11 on the pay history, payments were made through  
12 August, through September, through October.

13           On their own, Central Mortgage Company without  
14 any indication or interest or intent offered or  
15 demanded decided to not apply payments, to put them  
16 in an unapplied category.

17           At some point, she was then paying in advance,  
18 months ahead. And there was no testimony, again,  
19 or business record again that she was instructed to  
20 do so, nor that this was permitted.

21           And I would hate to get cheeky here with the  
22 Court. Part of me -- it is what it is from when I  
23 did jury trials. CMC in this instance -- the  
24 plaintiff wants it to stand for Central Mortgage  
25 Company, but to me, it stands for creating mortgage

1 chaos.

2 MR. HERBERT: Your Honor --

3 MR. ROSEN: They took two payments, misapplied  
4 them, creating a default. Meanwhile, she's ahead  
5 paying all the way through October, and then sent a  
6 letter in October saying you're in default. She  
7 even paid October. They just put it in the wrong  
8 category.

9 As to the action required to cure, the  
10 borrower is not to be placed in the position of  
11 detective. I have case law on that if the Court  
12 would like to see it with regards to conditions  
13 precedent.

14 In the letter and on cross-examination, it was  
15 admitted that in order to find out what they needed  
16 to do to cure, they have to contact Central  
17 Mortgage Company.

18 Paragraph 15 says it has to be in writing  
19 what's needed to be done, and paragraph 22 is very,  
20 very clear what needs to be done. Let's talk about  
21 overall paragraph 22 in just one second and why  
22 it's so important that the letter be correct and  
23 accurate.

24 And before I get to that, there's just one  
25 other thing that's missing, and those are the words

1 foreclosure by judicial proceeding. That if you  
2 fail to cure, those words are not mentioned at all.  
3 We know the word shall in the law has very specific  
4 meaning.

5 Paragraph 22 says the letter shall in all  
6 bold. The letter shall give notice to borrower.  
7 Paragraph 15 defines giving notice at mail. Again,  
8 we don't have that.

9 Then, we get onto the next sentence. The  
10 notice shall specify. Specify, according to the  
11 Supreme Court of Florida, has a very, very unique  
12 meaning on top of shall, and I would like to hand  
13 the Court a case on that. It's a Florida League of  
14 Cities case, a Florida Supreme Court from 1992.

15 I highlighted a section which defines the word  
16 shall -- I'm sorry, the word specify. It's on page  
17 three, Judge. Thank you. Specify, according to  
18 the Florida Supreme Court, means to mention  
19 specifically, to state in full and explicit terms,  
20 to point out, to tell or state precisely or in  
21 detail, to particularize or to distinguish by words  
22 one thing from another.

23 Specify means a statement explicit detail and  
24 specifics of a misunderstanding is impossible. And  
25 here, what do we have? We have a letter that is

1 not particularizing the default properly, not  
2 particularizing what needs to be done to cure, nor  
3 particularizing the words foreclosure by judicial  
4 proceeding.

5 There's a Samaroo case, Judge, that came out a  
6 number of months back which addresses the  
7 substantial compliance issue. In that case, the  
8 appellate court said that substantial compliance is  
9 an argument we cannot credit. I'll hand the Court  
10 a copy of that.

11 The rehearing was denied in May of 2014. That  
12 letter did not mention the right to reinstate.  
13 That Gabriel case did not mention the right to  
14 reinstate or the right to assert a defense.  
15 Similarly, as here, words were just left out.

16 And I'll hand the Court Gabriel, as well.  
17 It's a short opinion. I'm handing opposing counsel  
18 the case, as well. There's also a Judy case where  
19 the letter did not specify the breach.

20 It just said generally, you're in default.  
21 I'm not making that argument here factually, but  
22 again, more law that shows examples of what specify  
23 and shall are and how those are to be interpreted.

24 The Destabo case, there's a great quote I want  
25 to read to the Court, and that is the importance of



1 a conditions precedent. And in Destabo, the 2nd  
2 District held that the mortgage is right to the  
3 security for a -- a mortgage is dependent on its  
4 compliance with the terms of the mortgage contract.

5 It cannot foreclose until it has proven  
6 compliance. Here's a copy of the Destabo case for  
7 the Court. Thank you. The Sheriff of Orange  
8 County versus Bolty case states that a specific  
9 denial of a general allegation of the performance  
10 or occurrence or conditions precedent shifts the  
11 burden to the plaintiff to prove the allegations of  
12 the subject matter of the specific denial.

13 We've done that. We all know the basic  
14 interpretation. I'm not going to waste the Court's  
15 time on handing the Court cases on how contracts  
16 are to be construed.

17 They are construed in accordance with their  
18 plain language as bargained for by the parties. I  
19 know from another case, Security First Federal SNL  
20 v Garjin, parties are bound by their contract no  
21 matter how inconvenient it turns out to be.  
22 Excelsior Insurance versus Ponomo Park Bar and  
23 Package Store, every provision of a contract should  
24 be given its full meeting and effect.

25 And Florida Recycling versus Greater Orlando,

1 can't interpret a contract if it's unambiguous.

2 And we all know the well settled principals that if  
3 a contract has an ambiguity -- which this doesn't,  
4 but even if it did, it would be construed against  
5 the nondrafting party, which is certainly Mr. and  
6 Mrs. Rattigan.

7 They did not draft this mortgage contract.  
8 Judge, briefly as to one last item, and that deals  
9 with -- two last items that deal with damages. And  
10 that is one, that there is a gap.

11 And if I was allowed to recross, which  
12 certainly the Court was well within its discretion  
13 not to allow that, I would have asked about this  
14 process of checking things that are not even in  
15 their system.

16 When boarding is discussed, normally, it's  
17 always about other records from another servicer  
18 that are reviewed. Well, here, there's no other  
19 records from another servicer, it's just a missing  
20 gap. So I didn't ask those questions.

21 In fact, I stipulated, because CMC's  
22 records -- there's nothing in there that's boarded.  
23 It's all their stuff. They serviced from April,  
24 2007 forward. I would have asked about analyzing  
25 the defendant's bank statements, their canceled

1 checks, tax receipts, insurance bills, etc., to  
2 really know how do you verify something other than  
3 mathematically?

4 But here, there's nothing to verify. The  
5 document just wasn't there from December, 2006 to  
6 April, 2007. And lastly, as to the amount of  
7 damages.

8 In this contract, this note, there's a  
9 provision that the principal balance cannot exceed  
10 \$747,500. It cannot exceed it. They are asking  
11 you, Judge, to enforce a provision of a contract  
12 basically in breach of their own contract.

13 And why does it exceed? We know now because  
14 there's admittedly a loan modification, which  
15 brought me to the first point. But since that loan  
16 modification is not in evidence, we can't analyze  
17 the terms, the breach, the remedies, or anything  
18 else.

19 And lastly -- this is just for really  
20 understanding the severity of this. If there is a  
21 loan mod and there are advances made over and above  
22 the principal balance, as there apparently were  
23 here -- again, we don't have it in evidence -- but  
24 as there apparently were here, excise taxes have to  
25 be paid on that document or according to the State

1 of Florida and according to the statute and how the  
2 case law interprets it, that document is void.

3 So we have a document that's not here which  
4 may or may not be recorded, which may or may not  
5 have had excise taxes paid.

6 And just to understand the severity of what  
7 all this means, Judge, I just want to show you the  
8 excise tax statute briefly, even though we  
9 really -- arguably, but the Court can tell me  
10 otherwise -- really don't need to go there, because  
11 we don't have the written agreement.

12 But I think it's important to know how  
13 important it is that one, it be in writing. I'm  
14 sure the Court understands that from evidentiary  
15 and best evidence, but also the statute on excise  
16 taxes, which is Florida statute 201.8.

17 I'm handing opposing counsel a copy of that.  
18 I'm handing the Court a copy of that, as well. And  
19 it's under subsection 1 B. And it's highlighted  
20 towards the middle of the paragraph.

21 The mortgage -- if the mortgage, trust,  
22 security, or other evidence and indebtedness  
23 subject to the tax levied by this section secures  
24 future advances, the tax shall be paid at the time  
25 or recreation of the initial debt or obligation is

1           cured, excluding future advances, and any time so  
2           often as future advances paid, the tax should be  
3           paid regardless of whether such advances were made.

4           Then, to proceed, at the very end, the  
5           mortgage, trust, deed, or other instrument shall  
6           not be enforceable -- this is the end of 1 B --  
7           shall not be enforceable in any court of the state  
8           as to any such advance unless until tax due thereon  
9           on each advance that may have been made thereunder  
10          has been paid.

11          So we're dealing with the modification  
12          agreement. It's not before the Court. No evidence  
13          of taxes were paid, and I have case law that's  
14          crystal clear on this issue, but I don't know if we  
15          need to go there, Judge. You tell me otherwise.

16          Just to summarize, we have a contract -- an  
17          alleged contract that we don't have before us, an  
18          alleged breach that we don't know the terms of to  
19          determine, improper acceleration by the terms of  
20          their own document, and we have damages that are  
21          missing from their pay history, and impossible to  
22          know what the damages should be, because we don't  
23          have the right agreement.

24          And lastly, even if we did have the right  
25          agreement, there's a breach because they are asking

1 for more money than is allowed under their own  
2 agreement.

3 So for those reasons, we feel the plaintiff  
4 has not proved their burden to foreclose and the  
5 motion should be granted.

6 THE COURT: Thank you. Yes, sir?

7 MR. HERBERT: Your Honor, a couple points were  
8 raised by opposing counsel, first dealing with the  
9 more recent one. The statute 201.08 deals with  
10 future advances.

11 Future advances are essentially new money,  
12 additional money that are loans of the borrower,  
13 not additions to principal, which arise out of  
14 interest, other advances for taxes, insurance, etc.  
15 It's not new money.

16 It even says in the statute, itself,  
17 notwithstanding the aforestated general rule, any  
18 increase in the amount of original indebtedness  
19 caused by interest accruing under an adjustable  
20 rate note, can which is what this note is, having  
21 an initial interest rate adjustment interval not  
22 less than six months shall be taxable as a future  
23 advance only to the extent such increase is  
24 computable sum certain when the document is  
25 executed.

1           The interest rate adjustments are six months  
2 on this note. The statute doesn't apply based on  
3 the terms of the note, itself, and it also doesn't  
4 apply because again, the taxes that they are  
5 talking about in 201.08 are for future advances,  
6 not for additions to a principal based on advances  
7 for security, collateral, taxes and insurance, or  
8 interest.

9           So that argument, you know -- and I'm familiar  
10 with that argument. There are cases, and obviously  
11 you can't enforce the note if you don't pay taxes,  
12 but this mortgage was recorded, and the documentary  
13 stamps were paid at the time.

14           Regarding the breach, I'm familiar with the  
15 Samaroo case. If the Court looks at Samaroo, it  
16 does say that the real reason that the Court in  
17 Samaroo reversed is they found in the breach letter  
18 that the lender had, they did not inform or put  
19 anywhere in the breach letter that Samaroo had the  
20 right to reinstate after acceleration. It wasn't  
21 there, period.

22           There is a more recent case which deals with  
23 breach letters, and it deals with conditions  
24 precedent. I have a copy of that I can show Your  
25 Honor. This is the Baskets case. This case is out

1 of the 2nd District. It was decided on March 21st,  
2 2014.

3 And in that case, it talked about the same  
4 issue, whether or not a breach letter was  
5 compliant, and it talked about substantial  
6 compliance.

7 In the case that's being cited by counsel,  
8 Samaroo, there was no compliance, whatsoever. They  
9 didn't stand for the proposition that you had to  
10 have strict compliance, they stood for the  
11 proposition that they didn't even substantially  
12 comply with it.

13 In the breach letter which is in evidence, all  
14 of the indications in paragraph 22 of the mortgage,  
15 A, B, C, and D are in there. The only thing  
16 counsel has said is it didn't say the right of a  
17 foreclosure proceeding.

18 But it did, in fact, say in the breach  
19 letter -- and I don't know if the exhibits are  
20 still available? Thank you, Your Honor. It did  
21 say in the breach letter a failure to cure on or  
22 before the date specified may result in  
23 acceleration and a foreclosure sale of your  
24 property and other remedies available to the  
25 lender.



1           It also said you have the right to assert a  
2 foreclosure proceeding, the existence of default,  
3 or any defense. Those are the exact issues that  
4 were present in Baskets.

5           It was a Mark Stober case, who was counsel on  
6 behalf of the borrower, and they examined those  
7 same type of deficiencies, and indicated that the  
8 breach letter, as it is with the Central Mortgage  
9 Company breach letter, was substantially compliant,  
10 and it informed the borrower of their rights in the  
11 foreclosure proceeding.

12           So our position is that the breach letter was  
13 a proper notification of default and acceleration  
14 of the debt when they filed the foreclosure action.

15           In addition, the witness did testify regarding  
16 the payment history. She testified when the  
17 default date was. The default dates matched both  
18 the complaint, the payment history, and the breach  
19 letters. They were all the same.

20           The amount that she testified to were the  
21 amounts that she got from her system, and those  
22 amounts were correct.

23           There is no evidence today other than the fact  
24 on cross-examination where he asked her to point  
25 out payments, etc., that changed the analysis that

1 she testified the default date was in August of  
2 2012, and that they sent out the breach letter for  
3 that amount, indicated the amount necessary to  
4 reinstate on that date within 30 days.

5 As a result of them not reinstated, then they  
6 filed the foreclosure action. I don't think that  
7 the involuntary dismissal motion is well placed.

8 I believe there was sufficient evidence that  
9 the plaintiff carried their case and gave  
10 sufficient evidence to the Court in order to prove  
11 not only the default, but the conditions precedent  
12 were complied with, and that they are entitled to a  
13 foreclosure judgment.

14 I will say in their answer in affirmative  
15 defenses, again, the only issues they raised as an  
16 affirmative defense is the issues of standish and  
17 conditions precedent.

18 None of the other issues were raised as an  
19 affirmative defense, and therefore, they are  
20 waived. From the breach of the default date and  
21 the conditions precedent, we've proved that the  
22 breach letter was sent out.

23 She testified as to the normal course for a  
24 breach letter to be sent out, and that's  
25 sufficient. It doesn't have to be acknowledged as

1 being received.

2 There's a case also talking about whether or  
3 not a breach letter has to be received or merely  
4 has to be sent. That's Roman versus Wells Fargo,  
5 and it was decided on August 1st, 2014, 5th  
6 District Court of Appeal, and at the bottom, it  
7 indicated pursuant to the terms of the mortgage, a  
8 notice is deemed to have been given to the borrower  
9 and mailed by First Class Mail.

10 Nothing in the mortgage requires the  
11 borrower -- the plaintiffs to actually receive the  
12 notice -- receive notice for the notice to have  
13 been given.

14 She testified that's the practice of Central  
15 Mortgage Company. She worked in that department,  
16 she has personal knowledge of it that that's the  
17 policy of the company, and it's business records  
18 are that the notice goes out within 24 hours of the  
19 date the letter is prepared.

20 So we don't believe that under the affirmative  
21 defenses raised in their amended answer either  
22 standing or breach, conditions precedent, that they  
23 have a well-founded motion for involuntary  
24 dismissal. I believe it should be denied, Your  
25 Honor.

1 THE COURT: Thank you. Anything else,  
2 Counsel?

3 MR. ROSEN: Thank you, Judge. Just briefly.  
4 We don't know what caused the increase in the  
5 payments.

6 There has been no evidence of that, whether  
7 tax, insurance, increase principal, because we're  
8 missing the contract. That wasn't addressed at all  
9 in plaintiff's response. Not at all.

10 They are suing on a contract that's not before  
11 this Court, and it wasn't responded to in our  
12 motion. That alone should be grounds to grant the  
13 motion. Substantial compliance words were never  
14 mentioned in Baskets. They used the words in that  
15 letter foreclosure proceedings.

16 The Court thought that was close enough to  
17 judicial proceedings, but foreclosure proceedings  
18 were not part of that phraseology at all by the  
19 letter here. There's no mention, whatsoever, about  
20 payments that were being paid in advance.

21 In July, there were payments being made for  
22 October. And again, this idea, this created  
23 mortgage chaos where she's paying in advance, and  
24 payments are not being applied, no discussion of  
25 that.

1           We pled and -- or rather, they pled that my  
2 client signed the note and mortgage. That's  
3 attached to this complaint. We admitted that.

4           But that had nothing to do with coming into  
5 court on another agreement that's not before us.  
6 And Judge, for that reason alone, the Court should  
7 grant the motion for involuntary dismissal.

8           THE COURT: Thank you. Counsel, I haven't  
9 read any of your cases. I will. Both sides have  
10 given me cases. I'll read them, so I'll defer  
11 ruling, take it under advisement. Are you going to  
12 call any witnesses?

13          MR. ROSEN: I am not, Judge.

14          THE COURT: So defense rests?

15          MR. ROSEN: Yes.

16          THE COURT: Is there any additional argument?

17          MR. HERBERT: No, Your Honor. Just that the  
18 motion should be denied, and we ask that judgment  
19 be entered.

20                 I have additional cases regarding standing and  
21 other issues, but he has not indicated at all that  
22 those are the grounds for the dismissal. He did  
23 say that the breach letter -- I do have one case,  
24 and I would like to share it with Your Honor if  
25 you're going to consider them. There's a recent

1 case that came out yesterday.

2 THE COURT: Really?

3 MR. HERBERT: This is the one that I like.

4 MR. ROSEN: Calloway?

5 MR. HERBERT: Yes. He did make the argument  
6 regarding the proposition about current servicer  
7 and prior servicer's rights and prior investors,  
8 and whether or not they were records of CMC, even  
9 though there were four months that were missing at  
10 the very beginning, can be introduced into  
11 evidence, and if they are acceptable.

12 I believe that case covers the issue regarding  
13 those first four months when it started in April of  
14 2007.

15 MR. HERBERT: It wasn't four months if I'm not  
16 mistaken. Maybe it was five months. The first  
17 payment reflected was as per May.

18 I think it was five months, but not meaning to  
19 split hairs. But regardless, that's not the crux  
20 of our argument. We admitted the CMC records in.

21 THE COURT: Okay. Counsel, do you have  
22 anything else from the other side?

23 MR. ROSEN: No, Judge.

24 THE COURT: Thank you. I'll read the cases  
25 and take it under advisement. Do you have your

1 proposed judgment?

2 MR. HERBERT: Yes, Your Honor. And I have --  
3 if you granted involuntary dismissal, I have a form  
4 that I grabbed.

5 MR. ROSEN: Thank you, Judge. Anything we can  
6 do to help you with the decision, memorandums or  
7 anything like that?

8 THE COURT: No, sir.

9 MR. ROSEN: Thank you.

10 THE COURT: I won't take too long. You should  
11 have one tomorrow.

12 MR. ROSEN: Great. Thank you so much.

13 THE COURT: We're adjourned.

14 (Thereupon, the hearing has been concluded.)  
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CERTIFICATE OF COURT REPORTER

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STATE OF FLORIDA :  
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COUNTY OF BROWARD :

I, FABIOLA JAMES, a Court Reporter in and for the State of Florida at Large, do hereby certify that I was authorized to and did report the proceedings in the above-styled cause before the Honorable JOHN J. MURPHY, at the time and place set forth; that the foregoing pages, numbered from 1 through 87, inclusive, constitute a true and complete record of my notes.

I further certify that I am not an attorney or counsel of any of the parties, not related to any of the parties, nor financially interested in the actions.

Dated this 13th day of January, 2015.

*Fabiola James*  
\_\_\_\_\_  
FABIOLA JAMES  
COURT REPORTER