

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 09-4075 CA 01

CENTRAL MORTGAGE COMPANY,
Plaintiff,

vs.

EDUARDO GONZALEZ DEL REAL,
ET AL.,

Defendants.

_____ /

HEARING BEFORE THE HONORABLE
JUDGE MAXINE COHEN LANDO

FRIDAY, FEBRUARY 11, 2011
9:15 a.m. - 10:00 a.m.

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MIAMI, FLORIDA

- - -

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APPEARANCES:

On behalf of the Plaintiff:
BEN-EZRA & KATZ, P.A.
2901 Stirling Road
Suite 300
Fort Lauderdale, Florida 33312
BY: MARC A. BEN-EZRA, ESQ.
SUSAN ROSALES, ESQ.
DAVID KARPINIA, ESQ
DOUG HARRISON, ESQ.

On behalf of the Defendant:
1740 Northwest 93rd Avenue
Miami, Florida 33172
BY: MARIA MUSSARI, ESQ.

DAVID GORDON CORNELL, ESQ.
6510 Brava Way
Boca Raton, Florida 33433



1 (The following proceedings were had
2 at 9:15 a.m.)

3 MS. MUSSARI: Good morning, Your
4 Honor.

5 THE COURT: Good morning. I think
6 before I start anything else -- Kim?

7 THE BAILIFF: Yes, Judge.

8 THE COURT: There should be a rule
9 to show cause.

10 THE BAILIFF: This is number one.

11 THE COURT: It's number one?

12 MS. MUSSARI: Yes, Your Honor.
13 09-4075.

14 THE COURT: Do we have a court
15 reporter?

16 MS. MUSSARI: We have two, Your
17 Honor.

18 THE COURT: We only need one.

19 MS. MUSSARI: My motion to dismiss
20 with prejudice, Your Honor, is also set
21 for today.

22 THE COURT: Okay. Let me just pull
23 it all up. There were several motions,
24 but there's the Court's ordered to show
25 cause.



1 For the record, this is Central
2 Mortgage Company, Plaintiff, versus
3 Eduardo Gonzalez Del Real et al.; is
4 that correct?

5 MS. MUSSARI: Yes, Your Honor.

6 THE COURT: And, Counsel, will you
7 recite for the Court a history of this
8 case?

9 MS. MUSSARI: Your Honor, on
10 January 21st, there was a hearing held
11 on a motion to vacate judgment in this
12 matter. Based upon the record itself in
13 which the Court reviewed the file, found
14 that the original mortgage that had been
15 filed was not even the mortgage which is
16 the subject of the foreclosure case.

17 In addition, there was an
18 assignment of mortgage that was filed
19 from Argent Mortgage to Central Mortgage
20 Company, that assignment of mortgage
21 appears to be fraudulent on its face
22 where it was -- and I want to get the
23 dates right -- the assignment of
24 mortgage says that it was effective on
25 September 1st of 2009. However, a



1 representative of Argent Mortgage
2 Company signed it on January 6th of
3 2008. And it was notarized in
4 California pursuant to a California
5 All-Purpose Acknowledgement dated
6 January 20th of 2009.

7 Additionally, the first page of the
8 assignment, the bottom portion where it
9 should be notarized is X'd out. It
10 says, "see attached." And then the
11 All-Purpose Acknowledgement is attached
12 having been notarized more than a year
13 later.

14 THE COURT: For the record, who is
15 before the Court?

16 MR. BEN-EZRA: Your Honor, Marc
17 Ben-Ezra, Ben-Ezra & Katz.

18 MS. ROSALES: Susan Rosales on
19 behalf of Ben-Ezra & Katz.

20 MR. CORNELL: Attorney David
21 Cornell, self-employed.

22 MR. KARPINIA: David Karpinia on
23 behalf of Ben-Ezra & Katz.

24 THE COURT: I think that these
25 pleadings are signed by Mr. Cornell; is



1 that correct? Mr. Cornell?

2 MR. CORNELL: Well, I haven't had a
3 chance to review the file, but --

4 THE COURT: Well, Mr. Cornell --
5 Kim, do we have the file? I suggest you
6 do so.

7 MR. BEN-EZRA: Your Honor, we can
8 address the concerns that Counsel has.

9 THE COURT: Okay.

10 MR. BEN-EZRA: Shall we? The --

11 THE COURT: Then you are going to
12 need to address the concerns that the
13 Court has.

14 MR. BEN-EZRA: That's why we're
15 here first and foremost. The assignment
16 of mortgage contains a particular
17 notarization document that is used in
18 California. We have nothing to do with
19 that. Our client doesn't have anything
20 to do with that.

21 THE COURT: I'm sorry. An attorney
22 doesn't stand behind their pleadings?

23 MR. BEN-EZRA: No, no. Your Honor,
24 we didn't notarize it. We didn't
25 produce the document.



1 In California there is this
2 process, we've seen it in other
3 California documents, where they attach
4 a separate notary page like this one.

5 The question about the date is a
6 fairly simple clerical error. It makes
7 sense that this was actually executed in
8 2009, in January. It's fairly common to
9 make a clerical error at the beginning
10 of the year where you use the previous
11 year's date. So if you notice on the
12 front of the assignment of mortgage
13 somebody had typed, "signed on the 6th
14 day of January 2008," just six days into
15 the new year.

16 However, it was 2009 at that time,
17 which is consistent with what the notary
18 says --

19 THE COURT: Excuse me. Counsel,
20 this is all speculation. What we're
21 here about is lawyers practicing law
22 correctly. Lawyers reviewing the
23 documents they submit to the Court and
24 make sure that they are correct before
25 they are submitted. And "it's not my



1 fault," and "this is a clerical error,"
2 and "the dog ate my homework," isn't
3 going to do.

4 MR. BEN-EZRA: Your Honor, we're
5 not here to say it's not our fault.

6 THE COURT: Well, that's sure what
7 it sounds like to me.

8 MR. BEN-EZRA: We're talking about
9 the document. And I'm happy to
10 address --

11 THE COURT: Counsel, let's talk
12 about what was filed before the Court in
13 this case.

14 MR. BEN-EZRA: Yes, ma'am.

15 THE COURT: There is fraud alleged.

16 MR. BEN-EZRA: If there is fraud
17 alleged, I'm trying with due respect to
18 the Court, and please no disrespect
19 intended, trying to be able to address
20 the question.

21 THE COURT: Well, is this really
22 the question, the real question is:
23 What kind of supervision you as one of
24 the named partners and your office was
25 doing on a case like this with these



1 recited facts. And what kind of review
2 Mr. Cornell -- and Mr. Cornell, here is
3 the file, take a look at it -- was doing
4 before he filed these papers and filed,
5 I think he should have filed if this is
6 a residential mortgage foreclosure, an
7 affidavit before the Court that these
8 things are true and correct, that people
9 were served, that he's reviewed all the
10 documents, that this is a proper
11 mortgage, when the mortgage that was
12 filed was -- excuse me, did I hear that
13 it was not the mortgage that belongs to
14 this case?

15 MR. BEN-EZRA: There was a
16 mortgage -- the correct note was filed,
17 and a mortgage with another borrower
18 with the same last name was attached.
19 It was later corrected in the record
20 when we realized the mistake of the
21 incorrect name of the mortgage in a
22 different county. We did file with the
23 Court the correct one. And I believe
24 that that's the set of documents that
25 the Court entered judgment upon.



1 MR. CORNELL: Your Honor, may I
2 approach the bench?

3 THE COURT: Yes.

4 MR. CORNELL: For the record, the
5 attorney who signed the filing of the
6 original mortgage and assignment is
7 Dominic --

8 THE COURT: Abreu.

9 MR. CORNELL: -- that is not me,
10 Your Honor.

11 THE COURT: Who is Dominic Abreu?

12 MR. BEN-EZRA: He was an attorney
13 with our firm, Your Honor.

14 THE COURT: And he's not there
15 anymore either, right?

16 MR. BEN-EZRA: Correct.

17 THE COURT: So --

18 MR. BEN-EZRA: You have me here and
19 you have other attorneys from our firm
20 here.

21 THE COURT: You know, Mr. Ben-Ezra,
22 the Court's experience in the matter of
23 foreclosures in general -- the Court's
24 experience with law firms in these
25 matters -- when I have to touch a file



1 more times than I need to because of
2 sloppy, shoddy, negligent work done by
3 attorneys that rises to the level of
4 gross negligence, especially in a matter
5 like this, somebody's losing their
6 house.

7 The idea that these cases should be
8 handled in some sort of factory fashion
9 may be okay for you --

10 MR. BEN-EZRA: No.

11 THE COURT: -- but it is not okay
12 for the Court.

13 MR. BEN-EZRA: Your Honor, it's not
14 okay for me either. And I regret the
15 fact that your time was wasted and I
16 apologize for that.

17 I can talk about the merits, but I
18 know that you are upset by the waste of
19 time.

20 THE COURT: Look at this.

21 MR. BEN-EZRA: May I approach?

22 THE COURT: Yes. Look at this.
23 Now tell me that a lawyer, a real lawyer
24 looking at this is not going to call
25 their client up and say, "You know, I've



1 got these papers and they just don't
2 look right to me. You resubmit them."
3 I mean, you're a lawyer. You're
4 supposed to be talking to your clients.
5 Or is it just that you do everything
6 your clients tell you to do, you blindly
7 submit papers, that gets thrown in front
8 of the Court. And that's what I'm
9 seeing with a case like this. This is
10 not the only case like this.

11 MR. BEN-EZRA: Your Honor, that is
12 very frustrating to me as well as you.
13 I can address some things --

14 THE COURT: It may be frustrating
15 to you, Counsel, but I'm sure you're
16 still -- your office collects your fees
17 on every one of these cases. And in
18 terms of that, it means you have a
19 professional responsibility. And you
20 being frustrated isn't going to do it.

21 MR. BEN-EZRA: Would you like to
22 hear things that we're doing to look at
23 systemic issues?

24 THE COURT: First I would like to
25 hear -- I mean, as far as I'm



1 concerned --

2 MR. BEN-EZRA: May I point
3 something out?

4 THE COURT: -- this case gets
5 dismissed. It gets dismissed. The
6 foreclosure will get dismissed with
7 prejudice because of unclean hands on
8 the part of the plaintiff. You can have
9 your judgment on the note. And when the
10 place gets sold, you can get your money.

11 MS. MUSSARI: Your Honor, I
12 actually want to bring something else to
13 the Court's attention, which I attached
14 to my motion to dismiss. It appears
15 that there are two documents at the very
16 end of my motion to dismiss attached as
17 Exhibit E.

18 My client was 1099 for the full
19 price of this mortgage. And this 1099
20 says -- doesn't say Central Mortgage, it
21 actually says, "Manna Mortgage Loan
22 Trust" with a trust number after it. It
23 says, "account number," which matches
24 this mortgage in the amount of
25 227,000-and change.



1 And if you see in box one it says,
2 "date of lender's acquisition or
3 acknowledgement of abandonment" is
4 September 23, 2010, but yet the
5 plaintiffs pushed forward on trying to
6 foreclose on this property. So I don't
7 even think they are entitled to judgment
8 on the note since --

9 THE COURT: I think you're right.

10 MS. MUSSARI: -- they dumped the
11 entire principal balance on a 1099 and
12 abandoned their security on the
13 property.

14 MR. BEN-EZRA: Has he deeded the
15 property to our client?

16 THE COURT: What's the difference?
17 If you decide to 1099 them and your
18 client takes it off the books, then I
19 don't care whether he deeded it or not.
20 He's paid for it. He's got the lien on
21 him. He's been charged for the income.

22 MR. BEN-EZRA: I would like to be
23 able to have the opportunity to address
24 that issue more fully --

25 THE COURT: You go right ahead.



1 MR. BEN-EZRA: -- in a separate
2 hearing. We are not prepared to --

3 THE COURT: We're not going to have
4 a separate hearing any more. We are not
5 having anymore time on this case,
6 Counsel.

7 The Court is going to make its
8 decision based on what's before the
9 Court today. Very frankly, you're
10 coming in front of me, you should have
11 walked in with these papers. Why didn't
12 you? Why didn't you walk in with these
13 papers? Why is it that Defendants come
14 in with this?

15 This was not properly researched by
16 your office. You took the Court's Rule
17 to Show Cause lightly. You are walking
18 in here, as far as I'm concerned,
19 totally unprepared, except to make a
20 bunch of flimsy excuses and to say,
21 Judge, I'm really sorry. Please don't
22 hurt us. We're going to do better now.

23 Tell me what you know about this
24 file, Mr. Ben-Ezra.

25 MR. BEN-EZRA: Your Honor, I



1 reviewed the issues about the assignment
2 of mortgage. I've reviewed the issue
3 about the note or the mortgage and I
4 reviewed the issue regarding the
5 appearance at the hearing on the 21st,
6 which I think is the hearing that made
7 the Court --

8 THE COURT: Did you review
9 Counsel's submissions?

10 MR. BEN-EZRA: I'm not familiar
11 myself with the 1099.

12 THE COURT: So you didn't review
13 the submissions that were --

14 MS. MUSSARI: They were faxed to
15 their office, Your Honor. And I believe
16 that Ms. Rosales even called my office
17 making sure that it was going to be
18 faxed.

19 THE COURT: Okay. So nobody
20 reviewed it, and you certainly didn't
21 review it. That's number one.

22 Number two, if you'll notice on my
23 Rule to Show Cause, when I tried to
24 reach your office by telephone, me, the
25 Court, on the 31st of January, I



1 couldn't even get through. I couldn't
2 get a human being on the phone. And I
3 believe, if I'm not mistaken, that
4 opposing counsel came before the Court
5 and also testified that -- or suggested
6 to the Court because she wasn't under
7 oath -- that she tried numerous times to
8 reach somebody.

9 And I hear time after time from
10 your office, which is why I had to put
11 this case over, that even when I fax you
12 things -- I have lawyers walk in here
13 and go, "Well, we don't get the faxes."
14 Now I know you get the faxes. Who the
15 heck is reading what is sent to your
16 office? You're certainly not. And this
17 is on a case where you come before the
18 Court on a Rule to Show Cause knowing
19 that I can hold you in contempt and send
20 you to the Bar.

21 If you don't care enough,
22 Mr. Ben-Ezra, to review what is supposed
23 to come in front of you, where your Bar
24 license is on the line, because you bet
25 this gets sent -- not only does the



1 president of the Florida Bar want to
2 know about these things but so does
3 Tallahassee. And if you don't think
4 that I'm going to send it to them, and
5 I'm going to send them this transcript,
6 you're wrong, sir. And the fact that
7 you have not reviewed even what was
8 submitted, tells me that you don't take
9 any of this seriously.

10 MR. BEN-EZRA: Your Honor, we take
11 it very seriously.

12 THE COURT: You know what,
13 Mr. Ben-Ezra, as a judge for 20 years
14 and a lawyer for 16 more than that, I've
15 learned to go on what people do, not
16 necessarily on what people say.

17 MR. BEN-EZRA: I'm prepared to tell
18 you about some of the things that we're
19 doing.

20 THE COURT: You better be prepared
21 to tell me about this case because this
22 is the case that you're here for
23 contempt of court.

24 MR. BEN-EZRA: May I see the
25 document that you're talking about,



1 please?

2 MS. MUSSARI: Sure.

3 THE COURT: Mr. Cornell, for the
4 record, you signed the motion for final
5 summary judgment of foreclosure.

6 MR. CORNELL: Yes, Your Honor.

7 THE COURT: That means you stand
8 behind all of the documents -- when you
9 sign a motion for summary judgment of
10 foreclosure, sir, that means that all
11 your documentation and all your ducks
12 are in a row and you stand behind it.
13 So the fact Mr. Abreu may have filed the
14 actual note and the assignment is no
15 never mind to me. That means you
16 reviewed these documents.

17 MR. CORNELL: Your Honor, that was
18 filed after I left the firm. I left the
19 firm in May of 2000 --

20 THE COURT: I'm sorry. Is that
21 your signature?

22 MR. CORNELL: Yes.

23 THE COURT: It's a motion for
24 summary judgment. That means you
25 reviewed all of your documents,



1 Mr. Cornell.

2 MR. CORNELL: All the documents
3 that had been before me I reviewed.

4 THE COURT: If you didn't have all
5 the assignments, how dare you file a
6 motion for summary judgment before this
7 Court.

8 MR. BEN-EZRA: Your Honor,
9 according to the Defendant's motion,
10 this 1099 was received on or about
11 February 1, 2011 --

12 THE COURT: Okay.

13 MR. BEN-EZRA: -- which was after
14 the date of the incidents that are
15 raised --

16 THE COURT: Mr. Ben-Ezra, do you
17 not have the obligation to walk into
18 this Court this morning fully prepared?

19 MR. BEN-EZRA: Your Honor, of
20 course our intention is to be fully
21 prepared.

22 THE COURT: No not "ours", yours,
23 Mr. Ben-Ezra. Yours personally. You're
24 standing in front of me. I'm tired of
25 "our." You -- somebody is going to



1 start taking responsibility for these
2 files. And every individual is going to
3 take responsibility for these files.
4 And as far as I'm concerned, if you are
5 the managing partner of this firm,
6 that's also going to fall on your desk
7 every single time.

8 This is not the first time that you
9 have been before me on a matter such as
10 this on carelessness. It's not the
11 first time I've dealt with carelessness
12 and it's not going to happen again.

13 MR. BEN-EZRA: Your Honor, this is
14 the first time I've been before you on
15 an issue involving carelessness. I'm
16 not personally aware of having been in
17 this situation with you before.

18 THE COURT: You better talk to some
19 of your in-court lawyers.

20 MR. BEN-EZRA: But you are talking
21 about it being a personal issue --

22 THE COURT: No.

23 MR. BEN-EZRA: -- this is the first
24 time that you --

25 THE COURT: I'm sorry. It seems to



1 me that you were in front of me on a
2 different matter. I apologize. You
3 were in front of me on a different
4 matter.

5 MR. BEN-EZRA: I was in front of
6 Your Honor on a different matter. That
7 is correct, Your Honor.

8 Also, Your Honor, although Counsel
9 points out in her motion that the
10 defendant received this 1099 on or about
11 February 1st, 2011, Counsel also points
12 out to me that it was dated 9/23 --

13 THE COURT: What Counsel pointed
14 out to you, Mr. Ben-Ezra -- excuse me
15 for interrupting -- is that she faxed it
16 to your office prior to this hearing.

17 MR. BEN-EZRA: We also don't have a
18 copy of this attached to the fax. We
19 have a copy of the motion. We don't
20 have a copy of the 1099.

21 THE COURT: I've got an officer of
22 the Court standing in front of me who
23 says, I faxed it to them and then we
24 called their office to confirm.

25 MR. BEN-EZRA: I believe her. That



1 is not the point. The final judgment --

2 THE COURT: No, the point is that
3 somebody didn't review it.

4 MR. BEN-EZRA: -- the final
5 judgment, Your Honor, was entered in
6 July, approximately two and a half
7 months before the entry of the 1099.

8 THE COURT: You're still not
9 getting it.

10 MR. BEN-EZRA: I'm getting that
11 you're upset, Your Honor, and I'm
12 concerned that you're upset --

13 THE COURT: No, it has nothing to
14 do with me being upset.

15 MR. BEN-EZRA: -- and I'm concerned
16 about the issue of being careless.

17 THE COURT: And very frankly, this
18 word that you're using, "upset," I do
19 this wearing the robe. It's nothing
20 personal. It's just that I sit here day
21 after day and I have a duty, a
22 professional responsibility, as you do,
23 to give my very best to every single
24 file that I look at. This file is not,
25 frankly, my very best because of what



1 was filed and it's not your very best by
2 any means.

3 MR. BEN-EZRA: Your Honor, I
4 understand the commitment to provide
5 your very best. I'm all in favor of
6 that.

7 The issue as far as the 1099 goes,
8 the 1099 would be relevant to the entry
9 of the judgment. The judgment was
10 entered before the 1099.

11 THE COURT: Mr. Ben-Ezra, the only
12 point I'm making is that you didn't read
13 it before you walked into this
14 courtroom. Period.

15 MS. ROSALES: Your Honor --

16 THE COURT: No, ma'am --

17 MR. BEN-EZRA: Your Honor, if
18 you're taking action --

19 THE COURT: -- you are absolutely
20 not going to say anything, because the
21 last time that you were in front of me I
22 made it very, very clear to you that it
23 was Mr. Ben-Ezra that I wanted to review
24 this and he can talk to you all he wants
25 and if needs to refer to you, he can,



1 but he is before the Court, and not you.

2 MS. ROSALES: Yes, Your Honor.

3 MR. BEN-EZRA: Your Honor, if there
4 is a suggestion that the case should be
5 dismissed or the judgment vacated based
6 on something having do with a 1099, the
7 Court should know that the judgment was
8 entered before this 1099 was issued.

9 The 1099 was entirely not an issue,
10 certainly not one that we were aware of,
11 at the time of the entry of the
12 judgment.

13 THE COURT: Mr. Ben-Ezra, so many
14 lawyers have touched this file so many
15 times that I can only -- you've got
16 this -- here is the faulty assignment
17 that was filed by Ms. Boichen, that was
18 filed April 13th, 2009.

19 Then there was an answer filed by
20 Mr. Del Real and the original
21 foreclosure was filed by Marie Potapsin
22 Nepal. And then it's also stamped
23 Celena Bibbins. I mean, you cannot even
24 tell how many lawyers touched this file.

25 There is one, two -- look, two



1 lawyers just on the foreclosure
2 complaint.

3 MR. BEN-EZRA: Yes, ma'am.

4 THE COURT: This is not going to
5 happen before me anymore. The Court is
6 finding you in contempt. And the Court
7 is finding Mr. Cornell in contempt for
8 failure to properly review your
9 documents and for submitting them to the
10 Court improperly reviewed.

11 MR. BEN-EZRA: Your Honor, I'm
12 prepared to talk to you about those
13 documents that you are questioning.

14 THE COURT: Well, what you started
15 to talk to me about is pure conclusory
16 information. So you better tell me who
17 reviewed this and what calls they made
18 to verify these documents because they
19 clearly look faulty on their face.

20 MR. BEN-EZRA: And I'm addressing
21 the Court why they are not faulty on
22 their face.

23 THE COURT: No. Those are
24 conclusory and you are just supposing.
25 You can't tell me that you talked to the



1 woman who signed this document?

2 MR. BEN-EZRA: I cannot. And I'm
3 not going to tell you something that is
4 not true, Your Honor.

5 THE COURT: Then I don't want to
6 hear it, because all you're doing is the
7 same supposition that Joe Blow on the
8 street could do. This is not lawyers'
9 work. This is not the work that lawyers
10 do. And this is not a properly filed
11 lawsuit because I'm questioning whether
12 you even had the proper documentation in
13 the first place. You filed an affidavit
14 of law -- excuse me, not an affidavit,
15 you filed a lost note count.

16 MR. BEN-EZRA: At that time -- that
17 was before the Supreme Court changed the
18 procedure and alternative pleading to
19 plead one possibility or another was
20 permitted under the rules of civil
21 procedure.

22 THE COURT: Did you know when you
23 filed the complaint, sir, whether or not
24 you had the note and assignments.

25 MR. BEN-EZRA: If we filed the lost



1 note count, chances are we didn't --

2 THE COURT: Chances --

3 MR. BEN-EZRA: -- I didn't file it.

4 But, Your Honor, if you're asking me a
5 question, I'm not going to stand here
6 and tell you something that's not true.

7 THE COURT: I don't expect you to.

8 But if you cannot hear what I'm saying
9 to you, which is you're a lawyer, you
10 can't file things until your ducks are
11 in a row. I don't care what the
12 banks -- your clients are telling you.
13 Your job is to give your clients legal
14 advice and you're not doing it.

15 You are acting as a robot for a
16 plaintiff who is not even giving you the
17 information you need to file a proper
18 foreclosure. Now, if you choose to do
19 that, you do that at your peril before
20 this Court.

21 MR. BEN-EZRA: Your Honor, we're
22 concerned about proper practice, we're
23 concerned about doing a good job. And I
24 share those same concerns that you do
25 about quality practice. I can talk to



1 you about things that can make this
2 better.

3 THE COURT: I can talk to you about
4 things that can make this better. Don't
5 file foreclosures unless you have all
6 your documentation, all your
7 assignments, your note, your mortgage
8 and everything is a row. Don't file it.
9 Period. That's proper procedure. And
10 you tell your clients you are unable to
11 file it.

12 Now, could that cost you business?
13 Gee, I don't know and that's not my
14 problem. My problem is to make you
15 practice law responsibly.

16 MR. BEN-EZRA: Your Honor, I agree
17 with the Court's concern about
18 practicing law responsibly. I've tried
19 to address -- I've tried to address the
20 substantive issues that were raised.

21 THE COURT: Mr. Ben-Ezra, you are
22 probably a really nice man.

23 MR. BEN-EZRA: I happen to be,
24 actually.

25 THE COURT: I'm sure you are.



1 Okay. And this has nothing do with
2 that. This has to do with you being a
3 part of the problem that this Court
4 faces every day where we are having to
5 go back, where lawyers are having to be
6 hired. Number one, you are going to pay
7 this lawyer's fees for having to go back
8 in and do this.

9 MS. MUSSARI: And costs, Your
10 Honor.

11 THE COURT: And costs.

12 MR. BEN-EZRA: Your Honor, it's not
13 substantiated that -- I know that you're
14 upset.

15 THE COURT: Have you brought me in
16 one witness to show me that this
17 assignment is a good assignment. What
18 this assignment is, it's crossed out on
19 the bottom. The jurat is the second
20 page --

21 MR. BEN-EZRA: Correct.

22 THE COURT: -- and on its face it
23 does not seem to be a valid document.
24 And it is misdated.

25 MR. BEN-EZRA: Your Honor, I'm



1 standing here -- you want an officer of
2 the Court -- I'm standing here talking
3 to you about my experience seeing many
4 assignments that are executed in
5 California.

6 Your Honor, I'm talking to you to
7 provide information --

8 THE COURT: And I'm talking to you
9 about my experience.

10 MR. BEN-EZRA: -- I understand
11 that --

12 THE COURT: My experience is that
13 lawyers who walk in here from these
14 firms do nothing but a bunch of
15 foreclosures every day, uncaring about
16 their professional responsibility and
17 this is a really good example of it.

18 MR. BEN-EZRA: Judge, personally
19 that disturbs me an awful lot. There is
20 an awful lot of care. There is an awful
21 lot of work, just like there is on you.
22 And I apologize for the fact that it has
23 made it more difficult for the Court. I
24 apologize for the fact that my office
25 put anything in front of you that may be



1 difficult to deal with or in any way
2 frustrating to the Court.

3 I'm here to be sincere. You point
4 out that I'm a nice guy. I actually am.
5 And I'm actually here to be sincere.
6 And I'm here to try to do the right
7 thing. I can have an in camera
8 discussion with you of some of the
9 larger issues that might --

10 THE COURT: No, you can't. There
11 is a reason why I did this in a full
12 courtroom.

13 MR. BEN-EZRA: It's very
14 embarrassing and I'm sure that it's
15 helpful to the Court.

16 THE COURT: It's not helpful to the
17 Court, but it may be helpful to every
18 single lawyer standing in this room
19 right now to understand that the
20 Eleventh Judicial Circuit -- and we have
21 had judges meetings on this, and you can
22 talk to our Chief Judge -- the Eleventh
23 Judicial Circuit does not have a rocket
24 docket.

25 We take every case seriously. We



1 believe that every case deserves the
2 Court's full attention and we expect the
3 lawyers on those cases to do the same.

4 MR. BEN-EZRA: Judge, I'm all in
5 favor of being a partner with the court
6 system. I'm all in favor of being
7 respectful. I'm all in favor of
8 treating defendants with respect, and
9 courtesy and dignity. Those are
10 principles that are used in my office
11 every day.

12 THE COURT: Courtesy and dignity?
13 I, a judge, couldn't get a lawyer on the
14 phone. You tell me how that is
15 courteous or dignified.

16 MR. BEN-EZRA: I wasn't there when
17 you called, but the first option on our
18 phone system is a judge's line. We're
19 looking into the issue that Your Honor
20 raises. We have some things that we are
21 going to put in place to make it easier
22 for a judge to be able to get into --

23 THE COURT: Not just a judge. You
24 say that you think that every litigant
25 should be treated courteously and with



1 dignity. Do you know how many litigants
2 have walked into this courtroom and
3 said, "I can't get lawyer on the phone.
4 I don't know who to talk to." They
5 can't get anybody on the phone.

6 Now, if you are going to represent
7 these banks, these mortgage companies,
8 then you will be accessible. And you
9 are not. And I know that from my own
10 experience of trying to get somebody
11 from Ben-Ezra & Katz on the phone when
12 this case came up on January 31st and
13 it's recited in the Rule to Show Cause.

14 MS. MUSSARI: January 21st, Your
15 Honor.

16 THE COURT: Sorry, 21st.

17 MR. BEN-EZRA: Your Honor, if we
18 came in and we asked for a \$3,500 fee on
19 these cases, would you grant it?

20 THE COURT: What's the difference?
21 You want to give me hours that are
22 realistic instead of telling me that
23 somebody spent an hour researching the
24 file when I know they haven't even
25 looked at it.



1 I mean, that's the -- you know, you
2 are plucking a number out of your head,
3 which very frankly is insulting to the
4 Court because if you said to me, Judge,
5 we would like to charge an hourly and we
6 would like to do this by the hour, that
7 would be honest.

8 If you want to make a deal with
9 your banks as to how much you're going
10 to charge, that's up to you.

11 MR. BEN-EZRA: Now I'm sharing a
12 concern similar to how the Court is
13 sharing a concern with me. The courts
14 and the borrowers, and the borrowers'
15 attorneys appreciate having very
16 moderate fees on these cases.

17 THE COURT: Well, they might --

18 MR. BEN-EZRA: Judge, I'm as
19 frustrated as you are. There is only --

20 THE COURT: -- it has nothing do
21 with that.

22 MR. BEN-EZRA: We can keep trying
23 to work on doing better and better. And
24 I'm standing here committing to do that.
25 We've added process experts who are



1 attorneys in our firm to be able to work
2 on improving processes and improving our
3 ability to deliver quality services.

4 THE COURT: Mr. Ben-Ezra, I hear
5 you, but if you choose to accept the
6 volume of cases that you do -- I mean, I
7 used to tell -- lawyers would walk in in
8 front of me, and any lawyer who has
9 practiced in front of me will tell you
10 that I'll tell them this straight out
11 that I don't have a problem telling
12 people what I think. If you want to
13 take these cases, it's up to you to
14 charge the fees, but then you are
15 responsible for doing them diligently.

16 I was a public defender for 11
17 years and nobody ever walked into my
18 office that didn't get my very best
19 effort. And it didn't have anything to
20 do with my salary or what I charged per
21 case, and that was whether I took a
22 private client when I was in private
23 practice, whether I did a court
24 appointment. I did my best on each case
25 for each client.



1 Do not ever stand in front of me
2 and say, "could we charge 3,500 per
3 case." That has nothing do with me.
4 Your business decisions have nothing to
5 do with me.

6 MR. BEN-EZRA: They don't --

7 THE COURT: You know what, you
8 shouldn't charge 3,500 per case. How
9 about this: You should take less cases,
10 Mr. Ben-Ezra, because you clearly can't
11 handle the cases you've got. So if that
12 means you make less money, that's not my
13 problem either. None of that is my
14 problem.

15 MR. BEN-EZRA: I probably make less
16 money than you think, but that's
17 probably another story.

18 THE COURT: None of that is my
19 problem. We all work for what we work
20 for.

21 MR. BEN-EZRA: I understand, Your
22 Honor. I'm sorry that this case was
23 upsetting to you.

24 THE COURT: It's not that it's
25 upsetting to me, it's that --



1 MR. BEN-EZRA: I am --

2 THE COURT: -- this level of
3 practice is shoddy. It is grossly
4 negligent. It is worthy of a judge
5 looking at it, and saying, what is going
6 on here? How dare you file something
7 like this? And come in front of the
8 Court on a motion for final summary
9 judgment with this sort of pleading, and
10 with this sort of backup information.
11 That is what this is about.

12 MR. BEN-EZRA: Well, there are two
13 separate issues. I'm addressing the
14 question about the backup information.
15 The Court is upset. I understand the
16 Court is upset, but the Court also
17 doesn't want to hear -- it appears to
18 me, I'm saying this with respect --

19 THE COURT: I don't want to hear
20 speculation. If you thought that this
21 case -- that the contempt that you're
22 facing was important enough, boy, I sure
23 would have had a witness here to say,
24 yeah, I signed this. I notarized this.
25 I was familiar with this file when I did



1 this affidavit. You chose not to do
2 that.

3 MR. BEN-EZRA: I believe that the
4 company that signed the assignment of
5 mortgage is not in business at this
6 point in time, Judge.

7 THE COURT: All the more reason.

8 MR. BEN-EZRA: All the more reason
9 to have a witness from a company that
10 doesn't exist?

11 THE COURT: All the more reason
12 that maybe you should have gotten a new
13 affidavit, Mr. Ben-Ezra.

14 You still don't get it.

15 MR. BEN-EZRA: I do get it.

16 THE COURT: Or maybe you should
17 have taken a voluntary dismissal before
18 it went this far, and then refiled your
19 assignments and affidavits properly.

20 I mean, I'm not going to tell you
21 how to practice law, but there certainly
22 were things you could have and should
23 have done to ameliorate this situation
24 before it got this far, including when
25 you got the Rule to Show Cause. Why



1 didn't you take an immediate voluntary
2 dismissal? Don't come in here now that
3 you're facing contempt and tell me, "I'm
4 very sorry, Judge."

5 MR. BEN-EZRA: Well, you might have
6 been upset at me then for filing a
7 dismissal --

8 THE COURT: You know what? You
9 keep saying I'm upset with you. I'm not
10 upset with you.

11 MR. BEN-EZRA: You're upset with
12 the situation.

13 THE COURT: I'm not upset with the
14 situation. I'm a judge doing my job.

15 MR. BEN-EZRA: Your Honor, can we
16 take a voluntary dismissal now? And we
17 can --

18 THE COURT: No, not now. The Court
19 has already dismissed it. It is gone.

20 And the Court is finding you in
21 contempt and you, sir, Mr. Cornell, for
22 filing this in this manner when these
23 documents are so questionable. You are
24 to pay opposing counsel's fees and
25 costs.



1 And the mortgage is dismissed with
2 prejudice. And based on the 1099 the
3 note is canceled and dismissed with
4 prejudice as it looks like the note has
5 been satisfied. And if they want to go
6 for some other sort of judgment, I
7 suppose they can do that.

8 And the Court will draft an order
9 finding you in contempt, finding you
10 grossly negligent, both of you and I'm
11 sending this to the Bar. This is just
12 enough.

13 It's time that somebody looked at
14 this stuff and reacted instead of
15 waiting until you come in front of a
16 judge, having a judge dress you down,
17 which I'm very sorry to have to do and
18 then say, "Wait a minute. We can fix
19 this."

20 When you got the first motion on
21 this case, the first time that opposing
22 counsel filed this motion, who couldn't
23 get anybody in your office on the phone;
24 is that correct, Counsel?

25 MS. MUSSARI: The first time I



1 called, they told me that they couldn't
2 find that they had that file of the
3 record.

4 THE COURT: And how many times did
5 you attempt to contact Mr. Ben-Ezra's
6 office?

7 MS. MUSSARI: Several times after
8 that, Your Honor. I would get
9 transferred to voice mails, and told
10 that somebody would call me back.

11 Even this week alone on other
12 files. I'm still waiting for somebody
13 to call me back on other files and I
14 still haven't received a call.

15 THE COURT: I suggest you start
16 addressing some of that, because this
17 case is done.

18 The Court is making its findings on
19 this case. This case should have never
20 been filed. I don't believe that you
21 had proper assignments. I don't believe
22 you properly investigated this case.
23 You have wasted the Court's time. You
24 have caused an incredible amount of
25 unnecessary work. You have caused a



1 lawyer unnecessarily to have to come in
2 and defend on this case. This case
3 should have never been filed until you
4 had your documentation. And based on
5 this jurat and this affidavit of
6 indebtedness, which is crossed out on
7 the bottom, a jurat affixed totally
8 separate to the first page, it raises
9 great speculation in the Court's mind.
10 A great question in the Court's mind as
11 to whether the jurat even belongs to
12 this affidavit of indebtedness, number
13 one.

14 Number two, the original mortgage
15 that was filed with this case was for a
16 different property. This case has been
17 sloppy from the very beginning. At no
18 time did Ben-Ezra & Katz when they had
19 the opportunity, take a voluntarily
20 dismissal on this case so that they
21 could fix or ameliorate any of these
22 problems. Instead you chose to go
23 forward.

24 In addition to that, you failed to
25 return phone calls of opposing counsel.



1 You failed to diligently pursue this
2 case by returning phone calls of
3 opposing counsel. Those are all bar
4 complaints. You failed to return the
5 Court's phone calls. You failed to even
6 make yourself available to the Court
7 because the Court could not reach you.
8 And it wasn't until I tried to reach you
9 that I think Ms. Mussari came in here --
10 was it the following week or two weeks
11 later?

12 MS. MUSSARI: The following week.

13 THE COURT: The following week
14 knowing absolutely nothing about this
15 file, by the way. And no one having the
16 good sense to say, Judge, we messed up.
17 We're taking a voluntary dismissal.
18 We're going to review this whole thing.
19 No. Instead you continued to pursue it
20 when it was patently, patently a
21 problem.

22 MR. BEN-EZRA: To address one of
23 the earlier problems that you mentioned
24 in that litany. The question about the
25 assignment of mortgage, you're



1 suggesting that there is no indication
2 that the notary -- that is the jurat
3 that's attached to the second page that
4 is connected with the first page. There
5 is in fact a connection between them:
6 The jurat indicates that Patricia
7 Olivera appeared before the notary and
8 that in fact is who signed the document
9 on the first page.

10 THE COURT: If I'm not mistaken --
11 was that -- there is an amended
12 affidavit filed by Mr. Cornell of
13 indebtedness. That's signed by a Janice
14 Davis, vice president, I don't know of
15 what. It simply says vice president.

16 MR. BEN-EZRA: If you look at the
17 beginning of the affidavit of
18 indebtedness it says --

19 THE COURT: She is an employee of
20 the plaintiff and/or plaintiff's
21 servicing agent. Who the heck is that?

22 MR. BEN-EZRA: Central Mortgage
23 Company.

24 THE COURT: Well, how do I know?
25 And that's from Arkansas. And then you



1 have something else from California.

2 MR. BEN-EZRA: Central Mortgage
3 Company, Your Honor, is located in
4 Arkansas and --

5 THE COURT: Then your affidavit of
6 indebtedness needs to say I'm a vice
7 president of Central Mortgage Company
8 and I have personally reviewed this
9 file. Not some -- and not some
10 generalized document that could be used
11 for just about anything and the blanks
12 filled in.

13 Now, if you don't start insisting
14 upon that from your clients, please
15 don't expect to bring summary judgements
16 in front of me and if you do you will
17 find them denied and set for trial. And
18 they can start flying in every single
19 person who signs these affidavits of
20 indebtedness. I'm done with this.

21 MR. BEN-EZRA: Your Honor, the
22 plaintiff is listed in the style of the
23 case and she indicates that she's the
24 vice president.

25 THE COURT: Of what?



1 MR. BEN-EZRA: Of the plaintiff or
2 the --

3 THE COURT: No, it doesn't say. It
4 says of the plaintiff or the servicing
5 agent. Which one is it? Who is the
6 servicing agent for Central Mortgage
7 Company?

8 MR. BEN-EZRA: Central Mortgage is
9 the servicing agent in this case.

10 THE COURT: Then who holds the
11 mortgage?

12 MR. BEN-EZRA: I'm not --

13 THE COURT: Who holds the mortgage?

14 MR. BEN-EZRA: The plaintiff is
15 Central Mortgage.

16 THE COURT: Who holds the mortgage?

17 MR. BEN-EZRA: We can look at the
18 complaint.

19 THE COURT: And where is your power
20 of attorney for the servicing agent?
21 How do I know that the servicing agent
22 has any connection to this mortgage?

23 MR. BEN-EZRA: Your Honor, if I can
24 go to the other point -- we can get it
25 if you'd like.



1 THE COURT: It's too late now on
2 this one.

3 MR. BEN-EZRA: Also, if you're
4 interested in referring me to the Bar,
5 Your Honor has also --

6 THE COURT: I have to send this.
7 I'm finding you in contempt. I'm
8 finding you, your firm in contempt. I
9 have to direct it to the Bar. What they
10 do with it after that is up to them.
11 It's no never mind to me. If they
12 choose not to take action, that's fine
13 with me.

14 But by the canons of the judicial
15 code, if I find a lawyer in contempt, as
16 I am doing with you and with
17 Mr. Cornell, I must forward it to the
18 Bar. I will forward it with as much of
19 a vanilla letter as I can, which is
20 simply to say, here are my findings. Do
21 as you wish. But I have to forward it
22 to the Bar --

23 MR. BEN-EZRA: Your Honor --

24 THE COURT: -- and I need to tell
25 you that.



1 MR. BEN-EZRA: Thank you for
2 telling me. You have an option of not
3 finding me in contempt. You can tell by
4 the record that you have set here today
5 that my first involvement with this case
6 started when you sent this order to show
7 cause demanding that I appear here
8 today.

9 THE COURT: But that is what is so
10 wrong. You had no supervision over --
11 did I -- was it four or five lawyers who
12 have touched this file?

13 MR. BEN-EZRA: Your Honor, if you
14 have a firm that has multiple attorneys,
15 do you expect the managing partner at --

16 THE COURT: I expect this, I expect
17 that if your firm doesn't look at these
18 papers as -- because of the way your
19 firm does run and because I know that
20 you do it through policies and
21 paralegals, that if you don't look up
22 front and say to the servicing people,
23 to the mortgage holders, look, we have
24 to file appropriate papers with the
25 Court. And you don't do that. I don't



1 know that anybody does it but right now
2 I've got you in front of me.

3 MR. BEN-EZRA: Yes, you do. And
4 I'm here. And I'm not shying away from
5 having you address me.

6 THE COURT: I understand that and I
7 appreciate it. But this --

8 MR. BEN-EZRA: And I'm prepared
9 to --

10 THE COURT: What you needed to have
11 done was to take this file and go
12 through it page by page, and then you
13 needed to have fessed up long before you
14 walked in here this morning.

15 MR. BEN-EZRA: Your Honor, I'm here
16 and I'm talking about the issues that
17 the Court raised. I'm doing my best to
18 show responsibility. I'm willing to
19 talk to the Court about some of the
20 procedural issues that you're raising.
21 The Court is upset. I understand that.
22 You're taking it out on me.

23 THE COURT: Mr. Ben-Ezra, I will
24 review -- I am inclined and you should
25 not be surprised to find an order



1 holding you and Mr. Cornell in contempt.
2 I'll review the order with Judge Bailey
3 before I send it off.

4 MR. BEN-EZRA: If I may ask, then,
5 since the issue now has become between
6 the Court and me, if you would give me
7 the courtesy of having a conversation in
8 chambers at your convenience before you
9 sign such an order, I would appreciate
10 it.

11 THE COURT: Yes.

12 MR. BEN-EZRA: Thank you.

13 MR. CORNELL: Your Honor, I would
14 ask the same privilege.

15 Many of the issues that were
16 raised, that this Court has, you know
17 transpired after I terminated my --

18 THE COURT: Mr. Cornell, you filed
19 the motion for summary judgment. You
20 were responsible for reviewing the
21 documents and making sure they were in
22 order. And I hold you no less
23 responsible than Mr. Ben-Ezra.

24 MR. CORNELL: Your Honor, I'm
25 responsible for those documents that



1 were filed. I am not responsible for
2 any breakdown in communications between
3 the Court and the firm from May on --

4 THE COURT: You are correct.

5 MR. CORNELL: -- and you called the
6 law firm on January 21st --

7 THE COURT: You had already left.
8 Mr. Cornell, you are correct.

9 MR. CORNELL: I'm just placing it
10 on the record, I apologize.

11 THE COURT: No, it's all right.

12 MR. CORNELL: For the record, since
13 May of last year, the Florida Bar had my
14 my contact information, my phone number
15 and address. So the Florida Bar had the
16 current information. So if the Court
17 needed to reach me since the Court has
18 specifically mentioned or included in
19 the contempt that we have failed to
20 properly respond to Defendant and to the
21 Court, the Court was on notice of what
22 my proper contact information was. So
23 just for the record --

24 THE COURT: Mr. Cornell, excuse me.
25 However, as far as I'm concerned, if you



1 are going to withdraw from a case, you
2 need to have filed some sort of motion
3 or some sort of notice to the Court when
4 you leave the firm.

5 MR. CORNELL: When I left the firm
6 there was -- to my knowledge, Your
7 Honor, we don't have a policy or
8 procedure for doing that.

9 THE COURT: That's not my fault.

10 MR. CORNELL: I understand that,
11 Your Honor. And nor was I given an
12 opportunity to do an inventory on my
13 files to do that --

14 THE COURT: Mr. Cornell, I will
15 find you in contempt for the matters
16 that you are responsible for.

17 MR. BEN-EZRA: Your Honor, out of
18 fairness, you certainly should not --
19 with due respect to the Court, you
20 should not hold Mr. Cornell in contempt
21 for anything he didn't have anything to
22 do with.

23 THE COURT: I agree.

24 MR. BEN-EZRA: I'm standing here
25 and telling you that. I'm not happy



1 with the rest of this proceeding, but
2 please don't blame him for something he
3 didn't do.

4 THE COURT: No, but I do blame him
5 for very carelessly filing pleadings
6 before the Court on a motion for summary
7 judgment where he clearly did not have
8 the verified documentation.

9 The Court is ordering you to pay
10 fees of opposing counsel and costs in
11 the amount of --

12 MS. MUSSARI: Your Honor, I have to
13 total the cost because the costs of
14 today.

15 THE COURT: Including court
16 reporter and transcripts. And that is
17 at a minimum. And if you want to sit
18 down and review procedures with me, I'm
19 available every day. I'm here all the
20 time. And between Judge Bailey and
21 Judge Reyes and myself and unfortunately
22 he's gone to probate, Judge Schwartz, we
23 are probably more involved in
24 foreclosures than just about any judges
25 on the bench.



1 And your lawyers, all of the
2 in-court lawyers know that they can walk
3 in any time and ask me any question
4 about what my requirements are. And
5 I've been here two years doing these
6 darn things. And nobody walks in and
7 says to me, Judge, what is the problem
8 with this or what is the problem with
9 that? Would you like us to change our
10 procedures? As I said, I can't even get
11 anybody from your firm on the phone.

12 MR. BEN-EZRA: Judge, I'm willing
13 to sit down and have a conversation with
14 the hope that the --

15 THE COURT: You are welcome to do
16 so. There is nothing personal in the
17 Court's findings.

18 MR. BEN-EZRA: Thank you. Glad to
19 know that.

20 THE COURT: Thank you.

21 THE COURT: Counsel, draft up a
22 proposed order.

23 MS. MUSSARI: Yes, Your Honor.

24 THE COURT: And you can charge for
25 that.



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MS. MUSSARI: Thank you.
(The hearing was concluded at 10:00
a.m.)



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COURT CERTIFICATE

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STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, Katiana Louis, Court Reporter and
Notary Public, do hereby certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is
a true and correct transcription of my stenotype
notes of the proceedings.

Dated this 11th day of February 2011.

Katiana Louis
Notary Public, State of Florida
Miami Office #207219

