

**In The Matter Of:**  
*Bank of America, N.A. VS*  
*Jeff Lymburner - Rennie Smythe*

---

*Before Judge Baird*  
*December 10, 2014*

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*Kanabay Court Reporters*  
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1 THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
 2 IN AND FOR PINELLAS COUNTY, FLORIDA  
 3  
 4 CASE NO.: 09-015848-CI  
 5  
 6 BANK OF AMERICA, N.A.,  
 7 Plaintiff,  
 8 vs.  
 9 JEFF LYMBURNER AKA JEFFREY M.  
 10 LYMBURNER; RENNIE S. SMYTHE; ET AL,  
 11 Defendants.  
 12  
 13 PROCEEDINGS: Continuance of Non-jury Trial.  
 14 BEFORE: The Honorable W. Douglas Baird,  
 15 Circuit Judge.  
 16 DATE: December 10, 2014, at 9:00 a.m.  
 17 PLACE: Courtroom,  
 18 Judicial Building,  
 19 St. Petersburg FL.  
 20 REPORTED BY: Phyllis B. Pennington, RPR, CP,  
 21 Notary Public,  
 22 State of Florida at large.  
 23  
 24 (Pages 1 through 25)  
 25

1 \_\_\_\_\_  
 2 (THE TRIAL COMMENCED AS FOLLOWS:)  
 3 \_\_\_\_\_  
 4 MR. MURPHY: Your Honor, we have just one  
 5 matter. We have the unknown spouse of --  
 6 MR. WEIDNER: Can we -- excuse me. I want  
 7 to make sure the court reporter catches us.  
 8 THE COURT: This is Bank of America versus  
 9 Smythe?  
 10 MR. MURPHY: Yes, sir. Lymburner, yes.  
 11 THE COURT: Okay.  
 12 MR. MURPHY: The complaint was filed  
 13 against Mr. Lymburner and unknown spouse and we  
 14 would like to drop the unknown spouse -- under  
 15 her name Rennie Smythe.  
 16 MR. WEIDNER: May it please the Court,  
 17 Judge. Matt Weidner on behalf of Rennie Smythe  
 18 who is here in the courtroom.  
 19 Judge, this matter was originally noticed  
 20 for trial in front of Judge Fleming, and that  
 21 was in September. I'm handing you the order  
 22 that was signed by Judge Fleming where the  
 23 plaintiff at the conclusion of that trial asked  
 24 for a continuance, uh, to try and fix the  
 25 problems with their case.

1 APPEARANCES: JUSTIN E. MURPHY, ESQ.,  
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 3 1 Progress Plz, #200,  
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 13 Matthew D. Weidner, P.A.,  
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 18 Counsel for Defendant.  
 19  
 20 ALSO PRESENT: Nathan Caputo.  
 21  
 22  
 23  
 24  
 25

1 I'm going to stipulate that -- or I'm  
 2 going to assert that they can't do that. It  
 3 would be futile -- to try and do that right  
 4 now.  
 5 I also want to hand you the front page  
 6 of -- there's Judge Fleming's handwriting, I  
 7 believe, which gives us some landmark for where  
 8 we were in that trial.  
 9 Judge Fleming, you will note if you look  
 10 at it right there, it's her mark down at the  
 11 bottom admitting the evidence which was  
 12 dispositive of the issues in this case.  
 13 And, counsel, I made a copy for you.  
 14 Let me explain procedurally where we are,  
 15 Judge.  
 16 Bank of America is trying to foreclose.  
 17 My client owned the property, was the only  
 18 record title owner of the property at the time  
 19 that the Bank of America's mortgage was taken  
 20 out by her then ex-husband.  
 21 Any judgment that you would enter in this  
 22 case would be void because the mortgage that  
 23 they seek to foreclose did not join the title  
 24 owner at that time.  
 25 The reason why what you're holding in your

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1 hand is important is because at that trial in  
2 front of Judge Fleming we established those  
3 facts in Exhibit 1, which she marked, which is  
4 the order transferring marital home. And  
5 importantly, Exhibit 2, which is what Judge  
6 Fleming marked, which is B, showing that she's  
7 the only one that owned it at the time.  
8 They can't just cure this problem by  
9 dropping her. She's named as a defendant.  
10 She's litigated in this case. They can't just  
11 come in one morning at the continued trial and  
12 say you know what, let's just drop her and get  
13 her out of the way. She's necessary and  
14 indispensable because she's the owner of the  
15 property at the time their mortgage was taken  
16 out.  
17 THE COURT: What good is the mortgage if  
18 it's not signed by the person that owns the  
19 property?  
20 MR. WEIDNER: Your Honor, you've exactly  
21 stated the legal principle. The necessary and  
22 indispensable party is the owner of the  
23 property -- at the time the mortgage is taken  
24 out.  
25 THE COURT: Okay. How does the bank have

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1 security over property that the owner never  
2 signed an instrument -- I mean I could -- I  
3 could sign a mortgage and give you a mortgage  
4 for her property, too. But that wouldn't --  
5 that wouldn't allow you to foreclose any more  
6 than in this situation.  
7 MR. MURPHY: Well, your Honor, here the  
8 husband signed after this order of transfer of  
9 the marital home where he got the home through  
10 the divorce proceedings and it should have been  
11 transferred over to him. He signed the  
12 mortgage after that, the dissolution of  
13 marriage, and the --  
14 THE COURT: So there's a dissolution of  
15 marriage?  
16 MR. MURPHY: There's a dissolution of  
17 marriage.  
18 THE COURT: And the husband was given or  
19 awarded ownership of the property?  
20 MR. MURPHY: Yes, he was.  
21 This is the order that I think Mr. Weidner  
22 handed you and handed me as well.  
23 THE COURT: The order of transfer?  
24 MR. MURPHY: The order of transfer of  
25 marital home, uh, December 3, 2007. The wife

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1 vacated by January 15, 2008.  
2 THE COURT: And when was the mortgage  
3 signed?  
4 MR. MURPHY: Let me double-check, your  
5 Honor. That would be -- it was signed on  
6 December 26, 2007, so about three weeks or just  
7 under three weeks after.  
8 MR. WEIDNER: Judge the dispositive issue  
9 is the recording of that mortgage. Look at the  
10 top. It's 1-9-2008. They've simply gotten  
11 them out of order.  
12 MR. MURPHY: Well, we -- it was signed on  
13 December 26, 2007. We can't record it before  
14 it's signed.  
15 THE COURT: Well, the order indicates that  
16 it will serve as the legal conveyance of all of  
17 her interest in the home to the husband upon  
18 the payment to her in accordance with the  
19 terms, right?  
20 MR. WEIDNER: Paragraph 6 of that  
21 quitclaim deed. But, yes, Judge, 7 is the  
22 operative --  
23 THE COURT: It says the wife shall sign.  
24 But then it says in the event the wife fails to  
25 sign or refuses to sign, uh, then this order

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1 will in fact convey the property.  
2 MR. WEIDNER: Correct.  
3 THE COURT: And she didn't sign.  
4 MR. WEIDNER: Correct.  
5 THE COURT: And the order conveyed the  
6 property and it conveyed the property prior to  
7 the execution of the mortgage, right?  
8 MR. WEIDNER: The mortgage was not  
9 recorded correctly, your Honor, and was not in  
10 the --  
11 THE COURT: What do you mean it was not  
12 recorded correctly?  
13 MR. WEIDNER: So we got a 1-9-2008  
14 recording of the mortgage. That's the  
15 operative date.  
16 THE COURT: Yeah, but this date, uh,  
17 which -- this order was filed in December,  
18 uh -- right?  
19 MR. WEIDNER: Yes.  
20 THE COURT: And it says as of January 15  
21 that she has to do all of this stuff, right?  
22 MR. WEIDNER: Yes.  
23 THE COURT: Okay. So the mortgage was --  
24 what date, the 9th?  
25 MR. WEIDNER: 1-9-2008, yes.

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1 MR. MURPHY: The mortgage was taken out  
2 December 26, 2007. I can't speak for what the  
3 husband's rationale was, but I believe he was,  
4 you know, preparing to take over --  
5 THE COURT: Well, I wouldn't worry about  
6 his rationale. I'm worried about the bank's  
7 rationale. I mean obviously he wanted to get  
8 some money.  
9 MR. MURPHY: Well, we would argue then,  
10 your Honor, that if she did not sign the  
11 quit-claim deed, uh, that it's retroactive back  
12 to the date of the order, which was December 7  
13 -- December 3, 2007. It looks like it was  
14 entered December 12, 2007. So as of December  
15 12, 2007, all her interest passed.  
16 MR. WEIDNER: And -- Judge, just so the  
17 record is clear, we're not trying anything by  
18 consent. They didn't plead anything within  
19 their complaint. It's filed through the normal  
20 foreclosure. They didn't plead up any of this.  
21 If they want to make these arguments, they're  
22 required to plead any of this equitable  
23 theories of -- they didn't do it at all. They  
24 just filed a regular foreclosure. We're bound  
25 by the recording of the documents. First in

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1 time. First in right. That's all they have  
2 recorded.  
3 THE COURT: Well, it seems to me we're  
4 bound by whatever the interpretation of this  
5 final order of conveyance is that Judge Fleming  
6 signed back in December of 2007.  
7 MR. WEIDNER: Judge, just so the record is  
8 clear, that's Judge Ramsberger on that December  
9 12, 2007 --  
10 THE COURT: Oh, it was?  
11 MR. WEIDNER: Yes, sir.  
12 THE COURT: Judge Fleming did this  
13 order --  
14 MR. WEIDNER: Yes.  
15 THE COURT: -- on the continuance, right?  
16 MR. WEIDNER: Correct.  
17 THE COURT: Well, here's the way I think I  
18 have to interpret this order. That is, that  
19 the wife is given until the 15th of January,  
20 2008, in order to execute the proper documents;  
21 that if she fails and refuses to execute those  
22 documents, then this order will transfer the  
23 property.  
24 Uh, I don't know how else I can interpret  
25 that other than to, uh, define the meaning as,

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1 uh, she's got until the 15th of January. And  
2 then, you know, failing to do whatever she  
3 needed to do by the 15th, then it would  
4 transfer property to him.  
5 I don't know what legal theories you have  
6 that somehow it reverts back or whatever. I --  
7 MR. MURPHY: Well --  
8 THE COURT: Excuse me, I would like to  
9 see -- excuse me -- I would like to see some  
10 authority on that, if you have some, that  
11 indicates that something like this reverts back  
12 to the execution.  
13 I know there are equitable theories  
14 involved. Mr. Weidner suggested that -- maybe  
15 he's wrong -- but you haven't suggested any of  
16 those equitable theories that -- you just  
17 demonstrate foreclosure, mortgage. He signed  
18 the mortgage, he owned the -- I presume you  
19 alleged that at the time he signed the mortgage  
20 he owned the property. But he didn't at the  
21 time he signed the mortgage. So I don't know,  
22 you know, where this leaves us.  
23 It sounds to me like you need to, uh -- to  
24 allege some sort of -- I think you probably  
25 have a pretty good equitable argument to make,

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1 uh, but apparently it hasn't been made at this  
2 point.  
3 MR. MURPHY: Thank you.  
4 MR. WEIDNER: And just so the record is  
5 clear, we've got the operative complaint, which  
6 is the complaint filed September, 2009. And,  
7 Judge, it's exactly as you've articulated.  
8 It's just a straight mortgage.  
9 THE COURT: Well, in order to have a  
10 straight mortgage, you have to allege that, you  
11 know, he's the owner of the property and they  
12 executed that document. And I presume that you  
13 have alleged that. And apparently, according  
14 to this order, you haven't proved it or are  
15 unable to prove it. Because it wasn't until  
16 the 15th that this property was to transfer.  
17 Now, you can have a -- obviously, you can  
18 just have a judgment for the note, you know.  
19 Obviously, you're entitled to that. Because  
20 you loaned him some money, he didn't pay it  
21 back, and so you can have a judgment on the  
22 note. But absent the proper allegation of an  
23 equitable basis for securing that note by the  
24 property, it seems to me that you're out of  
25 luck today.

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1 MR. MURPHY: Your Honor, I'm  
2 double-checking the pleadings filed by defense  
3 counsel. I don't believe any of this has been  
4 brought before the Court prior --  
5 THE COURT: It doesn't have to be. You're  
6 the one who alleged that he was the owner of  
7 the property at the time he executed the  
8 mortgage and it's your responsibility to prove  
9 that he was. But it appears to me that he was  
10 not, so.  
11 MR. WEIDNER: Judge, I have an order that  
12 I've presented to counsel that lays out those  
13 facts.  
14 THE COURT: Well, who do you represent,  
15 Mr. Weidner?  
16 MR. WEIDNER: Ms. Smythe.  
17 THE COURT: Well, if -- if the plaintiff  
18 wants to drop Ms. Smythe as a party so that she  
19 has no obligation, then what's -- what's the  
20 problem? I mean you're not representing Mr.  
21 Smythe --  
22 MR. WEIDNER: Lymburner. Yes.  
23 THE COURT: -- Lymburner, or whatever his  
24 name is.  
25 MR. WEIDNER: The issue is, your Honor,

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1 that she's the necessary and indispensable  
2 party. You can't allow a void judgment  
3 affecting her interest in the property to be  
4 entered by the Court. It's a void judgment.  
5 MR. MURPHY: Your Honor, she has no  
6 interest in the property regardless of whether  
7 we did the mortgage too early, that it was  
8 taken out too early. Her -- every bit of her  
9 interest was extinguished as of January 15,  
10 2008. And so we can drop her. I believe we  
11 can drop her --  
12 THE COURT: Well, I don't see why you  
13 can't just drop her as a party.  
14 MR. WEIDNER: Well, so the record is  
15 clear. In their complaint, Judge, paragraph  
16 16, they identify her as a lien holder of the  
17 property.  
18 THE COURT: And then they're dropping her  
19 now.  
20 MR. WEIDNER: So that's an interest. If  
21 you enter a final judgment seeking to foreclose  
22 the interest, it's a void judgment.  
23 THE COURT: I'm not -- I'm not seeking  
24 anything. The plaintiff is -- has suggested  
25 that they want to drop your client as a party.

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1 So she will have no further obligation under  
2 this transaction. It sounds to me like that's  
3 as successful as you want to be.  
4 Your client has no obligation. You walk  
5 away. You seek whatever fees for representing  
6 her in this matter that you want. But I don't  
7 understand why I would have to dismiss the  
8 entire thing. She's not the only party. Mr.  
9 Lymburner -- is that his name?  
10 MR. MURPHY: Yes. Who has agreed to a  
11 consent judgment.  
12 MR. WEIDNER: It's like a void judgment,  
13 because you're entering a judgment of  
14 foreclosure based on --  
15 THE COURT: Wait a minute. We drop her as  
16 a party. Okay. He is now the owner of this  
17 property. If he consents to a judgment, what  
18 interest of that is yours?  
19 MR. WEIDNER: Judge --  
20 THE COURT: I mean I appreciate you're  
21 trying to do everybody's work for them. But,  
22 you know, your client's safe. No problem. End  
23 of story. He's consenting to it, which in  
24 effect, uh, you know, renders this whole thing  
25 meaningless.

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1 MR. WEIDNER: She has a lien interest,  
2 which has been identified in their complaint in  
3 -- separate and distinct from the void  
4 mortgage.  
5 THE COURT: She has a lien interest?  
6 MR. WEIDNER: Yes, sir. I mean that's --  
7 MR. MURPHY: I disagree, your Honor. We  
8 -- in paragraph 16 we say she is joined because  
9 she may -- "may" claim some interest or lien  
10 upon the subject property. "May." It's --  
11 THE COURT: Has she ever asserted  
12 anything?  
13 MR. WEIDNER: Yes.  
14 MR. MURPHY: Other than her -- she did  
15 file an answer and affirmative defenses and  
16 we've come through -- at the complaint stage  
17 we've come to, through the course of this case,  
18 finding she has no interest in this property by  
19 virtue of this dissolution of marriage and the  
20 order of transfer of marital home, and we want  
21 to drop her because she has no interest in the  
22 property.  
23 We included her because she was a spouse  
24 and she, as we said "may" claim some interest.  
25 Not "does."

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1 MR. WEIDNER: Judge, that's -- counsel is  
2 not correct at all. They didn't just join her  
3 because of some marital interest. They joined  
4 her because of a recorded money judgment  
5 interest. OR book and page number 16451, page  
6 2685, a 2008 final money judgment of under two  
7 thousand dollars.  
8 MR. MURPHY: Well, I still think we're  
9 allowed to drop her if we don't have to, uh --  
10 I mean she has no interest in the property.  
11 MR. WEIDNER: She does by virtue of that  
12 money, Judge. That's the issue. That's the  
13 asset that she seeks to collect from.  
14 THE COURT: Well, then if they drop her as  
15 a party, that's not going to foreclosure that  
16 interest.  
17 MR. WEIDNER: It's a void judgment, Judge.  
18 The issue before the Court is the mortgage  
19 is void. Any interest that the Court may enter  
20 based on that is void because the mortgage is  
21 void. It does not join the owner of the  
22 property.  
23 And, again, they failed to address any of  
24 this in their complaint.  
25 So now we have the facts before the Court

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1 that Judge Fleming entered. Any judgment  
2 entered with those facts before the Court is  
3 void. And they can't just drop us in the  
4 middle of this litigation because of that.  
5 MR. MURPHY: Your Honor. The -- we don't  
6 reference that money judgment in our complaint.  
7 That's not the -- even suggest it.  
8 MR. WEIDNER: Let's make sure the record  
9 is clear here.  
10 MR. MURPHY: It's 16470 and you said  
11 16451.  
12 MR. WEIDNER: Judge, paragraph 16 of  
13 plaintiff's complaint -- I'll make sure you  
14 have it -- this is what we will be  
15 referencing -- they reference the final money  
16 judgment that you're holding in your hand -- is  
17 the reason why the mortgage -- the defendant in  
18 this action -- we're in the middle of the trial  
19 now --  
20 THE COURT: Okay. So she's dropped as a  
21 party. Then that interest is not foreclosed.  
22 That's what's being sought here, is the  
23 foreclosure of that interest.  
24 MR. WEIDNER: No.  
25 THE COURT: So in terms of your client,

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1 her, uh -- her interest in the property,  
2 whatever they may be, be it this final judgment  
3 or whatever, are not being foreclosed. So she  
4 still has it. It's still there. She can still  
5 do whatever she wants with it.  
6 MR. WEIDNER: The final judgment that you  
7 would seek to enter is void because the record  
8 that has been established by the --  
9 THE COURT: Well, who is going to tell me  
10 it's void?  
11 MR. WEIDNER: Well --  
12 THE COURT: I mean you're not because  
13 you're not going to have any interest if they  
14 drop you as a party. So you don't -- you  
15 wouldn't have, uh, the ability to appeal that  
16 because you're not a party, you have no  
17 interest in it. Your client hasn't lost  
18 anything as a result of this. The interest  
19 that she has today would be the same interest  
20 that she would have following the entry of the  
21 final judgment.  
22 MR. WEIDNER: I'm objecting to -- in the  
23 middle of trial dropping my client as a  
24 defendant.  
25 THE COURT: I have never heard of an

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1 attorney who insists on their client being kept  
2 in a lawsuit when they can be released with no  
3 further obligation. That seems to me to be --  
4 MR. MURPHY: And for what it's worth, your  
5 Honor, we tried to drop her at the outset of  
6 the trial, not the beginning of this, so that  
7 Mr. Weidner would have no reason to be here.  
8 He wouldn't have to spend his time or his  
9 client's time here so far this morning. It's  
10 the first thing that we asked for, that we  
11 needed to drop her.  
12 THE COURT: So who is going to tell me  
13 this is a void document? That's my question.  
14 Other than you.  
15 MR. WEIDNER: There's a place over at  
16 Lakeland.  
17 THE COURT: And how is Lakeland ever going  
18 to see this case? They're not going to appeal  
19 it. You can't appeal it because you've been  
20 dropped as a party so you have no interest.  
21 MR. WEIDNER: I'm suggesting that dropping  
22 is the -- is improper. We're objecting to that  
23 based on our interest in the litigation, based  
24 on our interest in the property. The mortgage  
25 is void. The judgment is void.

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1 THE COURT: Well, that's going to be a lot  
2 of fun and I will look forward to that.  
3 You are dropping Ms. Smythe as a party.  
4 And how are you doing that?  
5 MR. MURPHY: We'll -- I'm saying we're  
6 dropping the party. We can prepare a notice,  
7 uh, of dropping party and file it today and  
8 maybe request a brief continuance to get  
9 everything cleared up. We'll come back early  
10 next month and -- well, apparently they were  
11 e-filing it. It should be filed by now.  
12 THE COURT: It looks like your work here  
13 is done, Mr. Weidner.  
14 MR. WEIDNER: For today at least.  
15 MS. SMYTHE: Your Honor, may I say  
16 something since --  
17 MR. WEIDNER: No, no, no.  
18 MS. SMYTHE: May I explain --  
19 THE COURT: We're deep in the weeds here,  
20 Ms. Smythe, and I'm not sure that we're ever  
21 going to get it straightened out. But the way  
22 I see it, you're the big winner here. You're  
23 dropped as a party. You still have your  
24 interest in this property. Uh, nothing has  
25 changed. And congratulations. Mr. Weidner has

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1 done a very nice job for you.  
2 MR. WEIDNER: Thank you, Judge.  
3 THE COURT: Okay.  
4 MR. WEIDNER: So, Judge, you've got the  
5 complaint. I guess we don't need to mark that.  
6 But then it's just the two prior things that  
7 Judge Fleming --  
8 THE COURT: This --  
9 MR. WEIDNER: We can keep those there.  
10 But as you go with the proceedings, I just want  
11 to make sure that those are before the Court,  
12 acknowledged by the Court.  
13 THE COURT: I've got copies of all this.  
14 MR. WEIDNER: Okay.  
15 THE COURT: I'm going to give you that  
16 back.  
17 MR. WEIDNER: Yes, sir. Thank you. It  
18 will be interesting.  
19 THE COURT: Oh, I know.  
20 Now, who is the other party?  
21 MR. MURPHY: Jeff Lymburner.  
22 THE COURT: Also known as Jeff M.  
23 Lymburner?  
24 MR. MURPHY: Yes.  
25 THE COURT: And then it says Rennie

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1 Smythe, et al. Who's the "et al"?  
2 MR. MURPHY: I believe there were some  
3 other, uh, unknown tenants, things of that  
4 nature.  
5 THE COURT: Have they been defaulted?  
6 MR. MURPHY: Yes, they have.  
7 THE COURT: All right. All the parties,  
8 except, uh, Ms. Smythe, who has been dropped,  
9 and Mr. Lymburner, who is -- who has consented  
10 to this judgment, uh, have been defaulted,  
11 correct?  
12 MR. MURPHY: Yeah. I'm double-checking  
13 one, uh -- the homeowners association, your  
14 Honor, to -- yes, the homeowners have been  
15 defaulted, the homeowners association has been  
16 defaulted.  
17 THE COURT: Okay.  
18 MR. MURPHY: I have his, Mr. Lymburner's  
19 stipulation to consent to the judgment.  
20 THE COURT: Okay. Mr. Orsatti was the  
21 attorney representing Mr. Lymburner?  
22 MR. MURPHY: Yes.  
23 THE COURT: I mean he appears as counsel  
24 of record on behalf of Mr. Lymburner, is that  
25 correct?

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1 MR. MURPHY: He did.  
2 THE COURT: Okay.  
3 MR. WEIDNER: And, Judge, just so the  
4 record is clear, we are objecting to moving  
5 forward without us.  
6 THE COURT: It's noted on the record.  
7 MR. WEIDNER: Yes, sir.  
8 MR. MURPHY: The original notice has been  
9 filed. I've got the original mortgage to file.  
10 Here.  
11 THE COURT: What do you want for a sale  
12 date?  
13 MR. MURPHY: Forty-five days, your Honor.  
14 THE COURT: January 26. Okay.  
15 MR. MURPHY: Thank you, your Honor.  
16 THE COURT: Okay.  
17  
18 (HEARING CONCLUDED AT 9:41 A.M.)  
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1                                   REPORTER'S CERTIFICATION  
2 STATE OF FLORIDA            )  
3 COUNTY OF PINELLAS        )  
4                                   I, Phyllis B. Pennington, Registered  
5 Professional Reporter, certify that I was authorized  
6 to and did stenographically report the foregoing  
7 proceedings and that the transcript is a true record  
8 of my stenographic notes.

9                                   DATED this 8th day of January, 2015, at  
10 St. Petersburg, Pinellas County, Florida.

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Phyllis B. Pennington, RPR, CP,  
Court Reporter

\_\_\_\_\_  
(Hearing before Judge Baird on 12-10-14)  
(Style: Bank of America vs. Lymburner and Smythe)  
(Reporter: Phyllis B. Pennington)



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