

Page 1	Page 3																																																																																																
<p>1 IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA</p> <p>2</p> <p>3 CASE NO. : 09-CA-030804 DIVISION: M</p> <p>4</p> <p>5 CHRISTIANA TRUST, 6 Plaintiff, 7 vs. 8 KIRAN R. PATEL; USHA PATEL, 9 Defendants.</p> <p>10 _____/</p> <p>11</p> <p>12</p> <p>13 TRANSCRIPT OF PROCEEDINGS NON-JURY TRIAL HELD BEFORE 14 THE HONORABLE SANDRA TAYLOR (Pages 1-83)</p> <p>15</p> <p>16 Wednesday, March 25, 2015 2:28 p.m. - 3:44 p.m. 17 Hillsborough County Courthouse 800 East Twiggs Street Tampa, Florida 33602</p> <p>18 -----</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Reported By: Olivia Caldwell 23 Notary Public State of Florida at Large 24 Esquire Deposition Solutions - Tampa Office Phone - 813.221.2535, 800.838.2814 25 Esquire Job No. 313825</p>	<p>1 I N D E X</p> <p>2</p> <p>3 PROCEEDINGS</p> <p>4 WITNESSES FOR PLAINTIFF</p> <p>5 KIRAN PATEL</p> <p>6 Direct Examination by Mr. Bassett 7 Cross-Examination by Mr. Weidner 12 Redirect Examination by Mr. Bassett 14</p> <p>7</p> <p>8 USHA PATEL</p> <p>9 Direct Examination by Mr. Bassett 18</p> <p>10 RON MULHOLLAND</p> <p>11 Direct Examination by Mr. Bassett 23 Voir Dire Examination by Mr. Weidner 30 Direct Examination (Resumed) by Mr. Bassett 32 Voir Dire Examination by Mr. Weidner 36 Direct Examination (Resumed) by Mr. Bassett 42 Voir Dire Examination by Mr. Weidner 51 Direct Examination (Resumed) by Mr. Bassett 53 Voir Dire Examination by Mr. Weidner 57 Direct Examination (Resumed) by Mr. Bassett 59 Cross-Examination by Mr. Weidner 63</p> <p>14 PLAINTIFF RESTS 72</p> <p>15 WITNESS FOR DEFENDANTS</p> <p>16 GREGORY FIERCE</p> <p>17 Direct Examination by Mr. Weidner 74</p> <p>18</p> <p>19 JUDGE'S RULING 78</p> <p>20</p> <p>21 CERTIFICATE OF REPORTER 83</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																																																																
Page 2	Page 4																																																																																																
<p>1 APPEARANCES:</p> <p>2 RICHARD W. BASSETT, ESQUIRE JESSICA E. CONTE, ESQUIRE</p> <p>3 Shapiro, Fishman & Gache, LLP 4630 Woodland Corporate Boulevard, Suite 100 4 Tampa, Florida 33614 813.880.8888 5 rbassett@logs.com jconte@logs.com</p> <p>6</p> <p>7 On behalf of the Plaintiff</p> <p>8</p> <p>9 MATTHEW D. WEIDNER, ESQUIRE Matthew D. Weidner, P.A. 250 Mirror Lake Drive North 10 St. Petersburg, Florida 33701 727.954.8752 service@mattweidnerlaw.com</p> <p>11</p> <p>12 and</p> <p>13</p> <p>14 RANDALL O. REDER, ESQUIRE Randall O. Reder, P.A. 1319 West Fletcher Avenue 15 Tampa, Florida 33612 813.960.1952 reder@redersdigest.com</p> <p>16 On behalf of the Defendants</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 PLAINTIFF EXHIBITS</p> <table border="1"> <thead> <tr> <th>2 NO.</th> <th>DESCRIPTION</th> <th>OFFERED</th> <th>RECEIVED</th> </tr> </thead> <tbody> <tr> <td>3 1</td> <td>Note</td> <td>12</td> <td>14</td> </tr> <tr> <td>4 2</td> <td>Mortgage</td> <td>15</td> <td>16</td> </tr> <tr> <td>5 3</td> <td>Responses to Interrogatories</td> <td>20</td> <td>20</td> </tr> <tr> <td>6 4</td> <td>MAS1 Screen Shot</td> <td>30</td> <td>34</td> </tr> <tr> <td>7 5</td> <td>DOCLINE Report</td> <td>36</td> <td>41</td> </tr> <tr> <td>8 6</td> <td>Demand Letter</td> <td>--</td> <td>46</td> </tr> <tr> <td>9 7</td> <td>Payment History</td> <td>57</td> <td>59</td> </tr> <tr> <td>10 8</td> <td>Judgment Figures</td> <td>59</td> <td>61</td> </tr> <tr> <td>11</td> <td></td> <td></td> <td></td> </tr> <tr> <td>12</td> <td></td> <td></td> <td></td> </tr> <tr> <td>13</td> <td></td> <td></td> <td></td> </tr> <tr> <td>14</td> <td></td> <td></td> <td></td> </tr> <tr> <td>15</td> <td></td> <td></td> <td></td> </tr> <tr> <td>16</td> <td></td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	2 NO.	DESCRIPTION	OFFERED	RECEIVED	3 1	Note	12	14	4 2	Mortgage	15	16	5 3	Responses to Interrogatories	20	20	6 4	MAS1 Screen Shot	30	34	7 5	DOCLINE Report	36	41	8 6	Demand Letter	--	46	9 7	Payment History	57	59	10 8	Judgment Figures	59	61	11				12				13				14				15				16				17				18				19				20				21				22				23				24				25			
2 NO.	DESCRIPTION	OFFERED	RECEIVED																																																																																														
3 1	Note	12	14																																																																																														
4 2	Mortgage	15	16																																																																																														
5 3	Responses to Interrogatories	20	20																																																																																														
6 4	MAS1 Screen Shot	30	34																																																																																														
7 5	DOCLINE Report	36	41																																																																																														
8 6	Demand Letter	--	46																																																																																														
9 7	Payment History	57	59																																																																																														
10 8	Judgment Figures	59	61																																																																																														
11																																																																																																	
12																																																																																																	
13																																																																																																	
14																																																																																																	
15																																																																																																	
16																																																																																																	
17																																																																																																	
18																																																																																																	
19																																																																																																	
20																																																																																																	
21																																																																																																	
22																																																																																																	
23																																																																																																	
24																																																																																																	
25																																																																																																	

Page 5

1 PROCEEDINGS
2 MR. BASSETT: Richard Bassett. I'm here on
3 behalf of the plaintiff. We had requested that the
4 clerk bring up the original note and mortgage that
5 was done --
6 MR. WEIDNER: And I checked and they said it's
7 here.
8 THE COURT: Is it?
9 MR. BASSETT: Okay.
10 THE COURT: Okay. It's probably all that. I
11 don't know what --
12 MR. BASSETT: I know. You're --
13 THE COURT: My case manager is MIA this
14 afternoon --
15 MR. WEIDNER: Oh, boy. Let me --
16 THE COURT: -- so...
17 MR. WEIDNER: I see a -- I see a note sticking
18 out.
19 THE COURT: Oh, it could be from the trials this
20 morning.
21 (Discussion off the record.)
22 THE COURT: All right. I have reviewed the two
23 motions in limine that were filed yesterday and I
24 believe the motion is premature in terms of asking
25 the Court to make a ruling on admitting documents

Page 6

1 into evidence when I haven't had the opportunity to
2 actually hear the foundation that's laid.
3 I'll ask each of you to please reserve your
4 objections for the time that the plaintiff seeks to
5 admit any of those documents into evidence if the
6 foundation isn't properly laid.
7 MR. BASSETT: Very good, Your Honor.
8 THE COURT: Do you wish to make any opening
9 remarks, Mr. Bassett?
10 MR. BASSETT: I will dispense with my opening.
11 THE COURT: Mr. Weidner, Mr. Reder -- whoever is
12 lead counsel. Is that you?
13 MR. WEIDNER: No opening remarks. Thank you.
14 THE COURT: No opening remarks. Will plaintiff
15 call your first witness.
16 MR. BASSETT: The plaintiff would like to call
17 Kiran Patel to the stand.
18 THE COURT: Sir, if I could ask you to come
19 forward. I know it's kind of hard to see the floor
20 there. If you will come forward and face me and let
21 me swear you in and then you can have a seat on the
22 witness stand. I also do not have a bailiff or a
23 clerk. So I'm everything to everybody today.
24 THE WITNESS: Okay.
25 THE COURT: Will you raise your right hand for

Page 7

1 me? Do you solemnly swear or affirm that the
2 testimony --
3 THE WITNESS: Yeah.
4 THE COURT: -- you give in this cause now and
5 hearing will be the truth, the whole truth, and
6 nothing but the truth?
7 THE WITNESS: Nothing but the truth.
8 THE COURT: Okay. Thank you.
9 MR. BASSETT: Sir, come right around over here
10 and have a seat in the -- in the chair there.
11 THE COURT: Okay. And once you're seated would
12 you state your full name and spell it for the court
13 reporter?
14 THEREUPON,
15 KIRAN PATEL,
16 called as a witness by the plaintiff, having been duly
17 sworn by the Court, was examined and testified, as
18 follows:
19 DIRECT EXAMINATION
20 BY MR. BASSETT:
21 Q. Sir, what is your full legal name?
22 A. Kiran Patel.
23 Q. Can you please spell both your first and last
24 name for the court reporter?
25 A. K-i-r-a-n, and Patel, P-a-t-e-l.

Page 8

1 Q. And, sir, what is your address?
2 A. 808 Berry Bramble Drive, Brandon, Florida 33510.
3 Q. And that's Berry, B-e-r-r-y?
4 A. That's right.
5 Q. Bramble --
6 A. Yes.
7 Q. -- B-r-a-m-b-l-e --
8 A. Uh-huh.
9 Q. -- Drive?
10 A. Yeah.
11 Q. Brandon?
12 A. Yes.
13 Q. 33510?
14 A. Yes.
15 Q. Is that correct, sir?
16 A. Yes, sir.
17 Q. And who do you reside at that property with?
18 A. Sorry?
19 Q. Who do you live there with?
20 A. With my wife.
21 Q. Anybody else?
22 A. No.
23 Q. Okay. Sir, I'm going to show you a document
24 which we're going to mark for identification as
25 Plaintiff's No. 1. I'm going to show defense counsel.

Page 9

1 MR. WEIDNER: And, Judge, just as he gets into
2 that I'm going to object on relevance.
3 THE COURT: To the note and mortgage?
4 MR. WEIDNER: Correct -- to the note. That's the
5 document that he wants to show him now. The basis
6 for the objection, Judge, is what you noted in the
7 February 15th hearing in that that document was not
8 attached to the complaint; and therefore, it's not
9 relevant. They never moved to amend their complaint.
10 And so that document doesn't have any relevance.
11 MR. WEIDNER: Brief response, Your Honor. When
12 we filed the original complaint, what we believe
13 happened is the Court took apart the complaint and
14 separated both the note and the mortgage to redact
15 certain information.
16 As we proceed during the case you're going
17 to hear testimony -- there's been certain request for
18 admissions that were responded to where when we
19 served the defendant, they admitted that the copy of
20 the note with both endorsements were attached to the
21 complaint when they were served.
22 For whatever reason when we -- the file copy
23 was submitted to the Court, it was I guess taken
24 apart, for lack of a better word. I don't understand
25 why our system notes show the scanned copy that we

Page 10

1 have that we submitted to the Court had both Exhibit
2 A, which was the note, and Exhibit B attached.
3 So I would just ask that -- you know, it's
4 the original document. I would just ask the Court to
5 let me proceed with my case in chief.
6 THE COURT: Anything else?
7 MR. WEIDNER: Judge, he's made numerous
8 statements there that just aren't true or supported
9 by the facts. If he's going to assert these
10 admissions, then we need to see those.
11 If he's going to assert that somehow the
12 Court erred in proceedings, he needs something other
13 than his self-serving statement that this Court erred
14 and not taking responsibility that their firm erred
15 when they filed a complaint that didn't have the note
16 attached to it.
17 THE COURT: I'll deny the objection as to
18 relevancy and see how the rest of the case evolves.
19 MR. BASSETT: Sure. Thank you, Your Honor.
20 MR. WEIDNER: I will make one more objection as
21 to authentication, and I can get to that now or hold
22 off just a moment if you'd like.
23 THE COURT: The original document?
24 MR. WEIDNER: Correct.
25 MR. BASSETT: I haven't even attempted to move it

Page 11

1 into evidence at this point, Your Honor.
2 THE COURT: Go ahead.
3 BY MR. BASSETT:
4 Q. Mr. Patel, I'm showing you a document which we'll
5 mark for identification as Exhibit A. Do you recognize
6 that document?
7 A. Yes.
8 Q. And what is that document?
9 A. I borrow money.
10 Q. You'll have to speak up a little bit, sir.
11 A. I borrow some money.
12 Q. You borrowed some money?
13 A. Yeah.
14 Q. And is this the note for the property at 808
15 Berry Bramble Drive?
16 A. Yeah.
17 Q. And I'm going to direct your attention to page
18 number 3.
19 A. Yeah.
20 Q. Do you see where there's a printed name
21 "Kiran Patel"?
22 A. Yeah.
23 Q. Is that your signature?
24 A. Yes, sir.
25 Q. And on pages 1 and 2 are those your initials?

Page 12

1 A. Yes.
2 MR. BASSETT: Your Honor, at this time -- and, I
3 apologize.
4 BY MR. BASSETT:
5 Q. And, sir, the amount of money that you said you
6 borrowed was how much?
7 A. One ninety nine ninety one two.
8 Q. Okay.
9 MR. BASSETT: Your Honor, at this time I would
10 like to move the original note into evidence as an
11 admission of a party. Mr. Patel admitted that that
12 was his signature. The note should come in under
13 9902 as a negotiable instrument.
14 THE COURT: Okay. Mr. Weidner.
15 MR. WEIDNER: I would like to inquire with him
16 for a moment, Your Honor.
17 CROSS-EXAMINATION
18 BY MR. WEIDNER:
19 Q. Mr. Patel, you never borrowed any money from
20 E-Loans 2000, did you?
21 A. No, sir.
22 Q. And you never entered into any contract with
23 E-Loans 2000, did you?
24 A. No.
25 Q. It's an error that that name is on there, isn't

Page 13

1 it?
2 A. Yes.
3 THE COURT: Are we doing a voir dire or
4 cross-examination?
5 MR. WEIDNER: Cross.
6 THE COURT: If we're doing voir dire -- well, he
7 hasn't finished his direct.
8 MR. WEIDNER: Okay.
9 THE COURT: If we're doing voir dire, then you're
10 leading and --
11 MR. WEIDNER: Well, Your Honor, I object to this
12 coming in. In 2011 Mr. Reder raised as an
13 affirmative defense the fact that E-Loans 2000 was
14 not the lender on this part. He in fact called it
15 fraud.
16 He said that a fraud was being committed on
17 the Court in 2011 because the name that appears on
18 there was not any party that loaned any money to this
19 person or to Mrs. Patel who's sitting back there.
20 He --
21 THE COURT: Okay. Well -- and I'll certainly
22 allow you to examine the witness on that.
23 MR. WEIDNER: Okay.
24 THE COURT: In terms of an original document
25 where he's identified his signature as an admission,

Page 14

1 as Mr. Basset has indicated, I'm going to mark it
2 into evidence as Plaintiff's Exhibit 1. The weight
3 that the Court should give it will be determined at
4 the point in time --
5 MR. WEIDNER: Thank you, Your Honor.
6 THE COURT: -- prior to the conclusion of this
7 trial.
8 (Exhibit 1 marked for identification.)
9 MR. WEIDNER: Thank you, Your Honor.
10 THE COURT: Go ahead, Mr. Bassett.
11 MR. BASSETT: When the Court is finished, I'm
12 going to ask the Court for the mortgage as well.
13 REDIRECT EXAMINATION
14 BY MR. BASSETT:
15 Q. Now, Mr. Patel, in connection with your execution
16 of the note did you also sign a mortgage with respect to
17 the property?
18 A. Whatever paper they gave me on the -- they -- I
19 sign. I can't remember too much.
20 Q. Okay. The next document I'm showing you, which
21 we're going to mark for identification as Plaintiff's
22 No. 2, was the original mortgage.
23 MR. BASSETT: Counsel, do you need to see this
24 again?
25 MR. WEIDNER: I've seen it. Thank you.

Page 15

1 BY MR. BASSETT:
2 Q. Sir, do you recognize this document?
3 A. Yes.
4 Q. And what is this document?
5 A. The mortgage.
6 Q. It's the mortgage document?
7 A. (Nods head up and down.)
8 Q. Is this the mortgage document with respect to the
9 property that you've just testified to that you
10 purchased, that you borrowed money from, to use your
11 words?
12 A. 808, yes.
13 Q. And on page -- on page 15 of this document, do
14 you see where it's typed "Kiran R. Patel"?
15 A. Yes.
16 Q. Is that your signature?
17 A. Yes, my signature.
18 MR. BASSETT: At this time, Your Honor, we would
19 like to move the original mortgage into evidence.
20 MR. WEIDNER: Brief couple questions. You never
21 gave --
22 MR. BASSETT: Can I just -- can I just finish
23 my --
24 THE COURT: If you're going to voir dire, you
25 just need to ask the regular questions instead of

Page 16

1 cross-examining him.
2 MR. WEIDNER: Right.
3 MR. BASSETT: I would just like to -- can I just
4 ask, I wanted to move it in, Your Honor, under
5 section 9801, subsection 14, a record -- or 83,
6 subsection 14, a record affecting an interest in the
7 property. Mr. Patel has again indicated that that is
8 his original signature on the original mortgage.
9 MR. WEIDNER: And, Judge, I -- again, I'm going
10 to object on authenticity, hearsay, and relevance.
11 E-Loans 2000 never acquired a security interest in
12 their property.
13 THE COURT: Okay. And that's certainly an
14 argument I'll entertain; but in terms of the
15 identification of the document and its reliability as
16 far as that being the document that he signed, I'll
17 admit it as Plaintiff's Exhibit 2.
18 (Exhibit 2 marked for identification.)
19 MR. WEIDNER: And reserving to --
20 THE COURT: Yes.
21 MR. WEIDNER: -- consider the arguments. Thank
22 you, Your Honor.
23 MR. BASSETT: Your Honor, I have no further
24 questions for Mr. Patel at this time.
25 THE COURT: Okay. Do you have any cross of the

Page 17

1 witness at this time?
2 MR. WEIDNER: No, Your Honor.
3 THE COURT: Okay. Thank you, sir. You may step
4 down and go back to your seat.
5 THE WITNESS: Thank you, Judge.
6 THE COURT: Okay. Plaintiff, call your next
7 witness.
8 THE WITNESS: Yeah.
9 MR. BASSETT: Plaintiff would like to call
10 Usha Patel to the stand, Your Honor.
11 THE COURT: All right. Mrs. Patel, before you're
12 seated would you raise your right hand, please. Do
13 you solemnly swear or affirm that the testimony
14 you'll give at this cause now and hearing will be the
15 truth, the whole truth --
16 THE WITNESS: Yes.
17 THE COURT: -- and nothing but the truth?
18 THE WITNESS: Yes.
19 THE COURT: Okay. Thank you, ma'am. You may sit
20 down.
21 THEREUPON,
22 USHA PATEL,
23 called as a witness by the plaintiff, having been duly
24 sworn by the Court, was examined and testified, as
25 follows:

Page 18

1 DIRECT EXAMINATION
2 BY MR. BASSETT:
3 Q. Ma'am, good afternoon. How are you today?
4 A. Fine. Thank you.
5 Q. Good. Would you please state and spell your full
6 legal name for our court reporter?
7 A. Usha Patel, U-s-h-a, last name P-a-t-e-l.
8 Q. And, Mrs. Patel, what is the address that you
9 reside at?
10 A. 808 Berry Bramble Drive, Brandon, Florida 33510.
11 Q. And who do you reside at that property with?
12 A. With my husband, Kiran Patel.
13 Q. And how long have you-all resided in that
14 property?
15 A. Since we bought the property.
16 Q. And when was that?
17 A. I don't recall. It's 2000-something.
18 Q. 2000-something? Okay. I'm going to show you a
19 document which we're going to mark for identification as
20 Plaintiff's Exhibit No. 3, and I'm going to show defense
21 counsel. It's your responses to plaintiff's first set
22 of interrogatories.
23 (Exhibit 3 marked for identification.)
24 BY MR. BASSETT:
25 Q. Mrs. Patel, I'm going to show you a document,

Page 19

1 which we've marked as Plaintiff's 3, and I'm going to
2 ask you if you recognize this document and if you
3 recognize the handwriting contained within this
4 document. Mrs. Patel, is that your handwriting?
5 A. Yes.
6 Q. I'm going to direct your attention to
7 interrogatory number 8. If you would just please turn
8 to number 8, and the question posed to you was, "Please
9 indicate the date you submitted your last mortgage
10 payment." Do you see that, ma'am?
11 A. Yes.
12 Q. And what was your response?
13 A. Based off my recollection, June 2009.
14 Q. So to the best of your recollection your last
15 mortgage payment was submitted on June of 2009; is that
16 correct?
17 A. Yes.
18 Q. And if you turn to the next page, number 9, it
19 says, "Specifically in regards to the mortgage loan at
20 issue in this case please indicate whether you have ever
21 made a payment to Chase Home Finance, LLC." Do you see
22 that, ma'am?
23 A. Yes.
24 Q. And what was your response?
25 A. Yes.

Page 20

1 Q. And down towards the middle of the page do you
2 see a typed name, "Usha Patel"?.
3 A. Yes.
4 Q. And is that your signature above that?
5 A. Yes.
6 Q. And this document was also notarized August the
7 12th of 2012?
8 A. Yes.
9 Q. And you attested that the information you
10 provided in these interrogatory responses were true and
11 accurate?
12 A. Yes.
13 Q. Okay.
14 MR. BASSETT: I would like to admit defendants'
15 responses to plaintiff's interrogatories as
16 Plaintiff's No. 3, Your Honor.
17 MR. WEIDNER: No objection, Your Honor.
18 THE COURT: Admitted.
19 BY MR. BASSETT:
20 Q. Now, Mrs. Patel, is your home that you live in
21 with your husband, is it a single-family home?
22 A. Yes.
23 Q. And how many bedrooms do you have in the home?
24 A. Five.
25 Q. Five bedrooms?

Page 21

1 A. (Nods head up and down.)
2 Q. How many bathrooms?
3 A. Three.
4 Q. And do you have a mailbox at your house?
5 A. Yes.
6 Q. And where is the mailbox located?
7 A. Left side of the driveway.
8 Q. And does your mailbox, does it have a lock? Do
9 you need a key to get into the mailbox?
10 A. No.
11 Q. It just opens and the door folds down; is that
12 correct?
13 A. Yes.
14 Q. And have you received correspondence or anything
15 from either Chase Home Finance or JPMorgan Chase Bank?
16 A. I don't recall.
17 Q. Who at your house is responsible for retrieving
18 or going to the mailbox to get your mail?
19 A. My husband does.
20 Q. Your husband does that?
21 A. (Nods head up and down.)
22 Q. Have you noticed or have you made any claims to
23 any postal authority or any police department about any
24 mail being missing?
25 MR. WEIDNER: Judge, we're not going to object;

Page 22

1 and if he wants to get to the letter, I want to be
2 respectful of your time.
3 THE COURT: "Get to the letter" meaning that
4 there's no questions about whether or not she
5 received it.
6 MR. BASSETT: Well, Judge, I -- he's making
7 speaking objections. I'm trying to lay a foundation
8 with this -- this witness. I think it --
9 THE COURT: Okay. Go ahead.
10 MR. BASSETT: Okay.
11 BY MR. BASSETT:
12 Q. Have you ever notified any postal authorities or
13 police department about anybody stealing or taking your
14 mail?
15 A. No.
16 Q. So as far as you're concerned all the mail that's
17 sent to your house is received?
18 MR. WEIDNER: Objection; relevance.
19 THE COURT: Overruled.
20 A. I have no clue.
21 BY MR. BASSETT:
22 Q. Okay.
23 MR. BASSETT: I have no further questions for
24 Mrs. Patel at this time, Your Honor.
25 THE COURT: Any cross, Mr. Weidner?

Page 23

1 MR. WEIDNER: No, Your Honor.
2 THE COURT: Okay. Thank you, Mrs. Patel. You
3 may step down. Plaintiff call your next witness.
4 MR. BASSETT: Plaintiff calls Ron Mulholland.
5 THE COURT: Okay. Sir, would you raise your
6 right hand, please. Do you solemnly swear or affirm
7 that the testimony you'll give at this cause now and
8 hearing will be the truth, the whole truth, and
9 nothing but the truth?
10 THE WITNESS: I do.
11 THE COURT: Okay. Please have a seat.
12 THEREUPON,
13 RON MULHOLLAND,
14 called as a witness by the plaintiff, having been duly
15 sworn by the Court, was examined and testified, as
16 follows:
17 DIRECT EXAMINATION
18 BY MR. BASSETT:
19 Q. Sir, would you please state and spell your name
20 for the court reporter?
21 A. It's Ron Mulholland, R-o-n M-u-l-l-h-o-l-l-a-n-d.
22 Q. And, Mr. Mulholland, who are you employed by?
23 A. I work for JPMorgan Chase Bank, NA.
24 Q. And would you please explain for the Court what
25 your job responsibilities and your job title is?

Page 24

1 A. I'm a mortgage banking research officer. I
2 research a few loans currently in default with the bank
3 in preparation for trials, depositions, and mediations.
4 Q. And how long have you been working in this
5 current position?
6 A. In this current position about a year and a half.
7 Q. And prior to this current position did you hold
8 other -- any other -- any other positions with JPMorgan
9 Chase Bank?
10 A. I have. I've been with the bank since August of
11 2008.
12 Q. And what was the initial position you had with
13 the -- with the bank?
14 A. Prior to this role the bulk of my time has been
15 in servicing and default, short sales, modifications,
16 collections.
17 Q. And did you ever work for the original plaintiff
18 in this case, Chase Home Finance, LLC?
19 A. I did.
20 Q. And what was your role or job responsibilities
21 with that company?
22 A. That's when I was in servicing and default as a
23 short sale negotiator up until May 1st, 2011, where they
24 became JPMorgan Chase Bank.
25 Q. And can you explain to the Court what's the

Page 25

1 relationship between Chase Home Finance and our current
2 plaintiff, JPMorgan Chase Bank?
3 A. Chase Home Finance was the servicing arm of
4 JPMorgan Chase Bank. However, as of May 1st, 2011, they
5 just merged into one. Everything operates now under
6 JPMorgan Chase Bank.
7 Q. You said that was June of --
8 A. May.
9 Q. May.
10 A. 2011.
11 Q. So would it be fair to say that you're a legacy
12 employee from Chase Home Finance to JPMorgan Chase Bank?
13 A. Correct.
14 Q. And are you familiar with the loan servicing
15 practices of Chase Home Finance?
16 A. I am.
17 Q. And are you familiar also with the loan servicing
18 practices of JPMorgan Chase Bank?
19 A. Yes, I am.
20 Q. And did Chase Home Finance utilize a servicing
21 platform to manage its consumer home loans?
22 A. They did.
23 Q. And are you familiar with how that platform
24 operated?
25 A. I am.

Page 26

1 Q. And did it have a specific name?
2 A. The servicing platform for Chase Home Finance as
3 well as JPMorgan Chase Bank is -- the main servicing
4 platform is MSP.
5 Q. And is it the same platform?
6 A. It's the exact same platform.
7 Q. So when Chase Home Finance merged into its parent
8 company -- is that fair to say?
9 A. Correct. There was no operational changes, just
10 a name change.
11 Q. Just a name change. Okay. So the same servicing
12 platform for both companies?
13 A. Correct. Yes.
14 Q. And are you authorized to testify on behalf of
15 JPMorgan Chase Bank today?
16 A. I am.
17 Q. And are you familiar with the mortgage accounts
18 of Kiran and Usha Patel?
19 A. I am.
20 Q. And how did you become familiar with this
21 account?
22 A. Through our servicing platform and business
23 records, reviewing all the exhibits that we have here
24 today.
25 Q. Can you just be specific? What exactly did you

Page 27

1 review to prepare for your -- for trial today?
2 A. I've reviewed the note and mortgage, the breach
3 letter, payment history.
4 MR. WEIDNER: And, Judge, I'm going to object to
5 any testimony about a notice being outside of the
6 scope of the pleadings.
7 THE COURT: I understand. Objection's overruled.
8 MR. WEIDNER: Thank you. And just for the
9 record, too, we're not consenting to try anything
10 outside of the scope of pleadings.
11 THE COURT: Yes, sir.
12 MR. WEIDNER: Thank you.
13 BY MR. BASSETT:
14 Q. Go ahead. If you can just --
15 A. Okay. I'm sorry. The note, the mortgage, the
16 payment history, breach letters, I've reviewed our
17 system notes as well as DOCLINE report which would show
18 the location of the original collateral file at all
19 times. Again, just various system notes as well.
20 Q. You mentioned the DOCLINE report.
21 A. Uh-huh.
22 Q. What exactly is that?
23 A. The DOCLINE report is a report that we have. It
24 tracks the location of the original collateral file at
25 all times so we can see when Chase took possession of a

Page 28

1 original collateral file -- note, mortgage, assignment
2 of mortgage, and when we would have sent it out.
3 Q. And I had an opportunity -- you were deposed in
4 this case; is that correct?
5 A. Correct.
6 Q. And during your deposition counsel asked you
7 about where the original collateral was stored?
8 A. Uh-huh.
9 Q. Where is it stored and have you had an
10 opportunity to go there? Please take me through the
11 process of, you know --
12 A. Right.
13 Q. -- how Chase secures its collateral documents.
14 A. We have a secure location. It's the Chase vault
15 in Monroe, Louisiana, which I have had a chance to visit
16 to see the boarding process one on one, see where the
17 files are stored. And this -- this report that we're
18 talking about shows the files coming in and out of that
19 vault.
20 Q. Okay. I'm showing you a document which we're
21 going to mark for identification as Plaintiff's No. 4.
22 I'm going to show defense counsel first. We'll call it
23 the MAS1.
24 MR. WEIDNER: Do you have a copy?
25 MR. BASSETT: It was all provided to you-all.

Page 29

1 MR. WEIDNER: Okay. I think I may have -- that's
2 fine.
3 (Exhibit 4 marked for identification.)
4 BY MR. BASSETT:
5 Q. Mr. Mulholland, I'm showing you a document which
6 is marked for identification as Plaintiff's No. 4. Do
7 you recognize that document?
8 A. I do.
9 Q. And what is that document?
10 A. This is a screen shot -- it's a screen shot of
11 the MSP system, the servicing platform. This screen is
12 our acquisition screen. This screen shows when and how
13 Chase acquired this loan.
14 Q. And were the entries on that MAS1 or screen shot
15 made at or near the time that JPMorgan Chase Bank
16 received the original collateral?
17 A. They are.
18 Q. And are the entries on the MAS1 made by a person
19 with knowledge of receipt of the original collateral
20 documents?
21 A. They are.
22 Q. And is this MAS1 kept in the ordinary course of
23 business activity by JPMorgan Chase Bank?
24 A. It is.
25 Q. And it is the regular business practice of

Page 30

1 JPMorgan Chase Bank to maintain MAS1 screen shots for
2 loans that it services?
3 A. It is.
4 MR. BASSETT: Your Honor, at this time move
5 Plaintiff's No. 4 into evidence under 90.803(6) as a
6 business record of JPMorgan Chase Bank.
7 MR. WEIDNER: Brief voir dire, Your Honor.
8 THE COURT: Uh-huh.
9 VOIR DIRE EXAMINATION
10 BY MR. WEIDNER:
11 Q. Sir, looking at that document right there, it
12 indicates on there -- well, let me ask you this
13 question. What is the acquisition date indicated on
14 there?
15 MR. BASSETT: Objection, Your Honor. This has
16 not been moved into evidence yet. He's asking
17 questions directly from the document. We either need
18 to move it into evidence and then he can ask
19 questions about it or he needs to voir dire about
20 this witness's specific knowledge of how documents
21 are stored and maintained.
22 THE COURT: I agree.
23 MR. WEIDNER: Okay.
24 MR. BASSETT: May we move it into evidence, Your
25 Honor --

Page 31

1 THE COURT: Do you have --
2 MR. BASSETT: -- as Plaintiff's 4?
3 MR. WEIDNER: I'll object on hearsay and just
4 want to voir dire a couple questions.
5 THE COURT: Okay. As to the authenticity,
6 certainly.
7 MR. WEIDNER: Okay.
8 THE COURT: Okay?
9 BY MR. WEIDNER:
10 Q. Your attorney asked a question whether that
11 document was made at or near the time of the event?
12 A. Correct.
13 Q. What was the event that was memorialized by that
14 document?
15 A. Well, this shows that the loan service
16 transferred on May 6th, 2003, and that's when this would
17 have taken place during the boarding process.
18 Q. Isn't it true, however, that the loan was
19 serviced transferred from Chase Manhattan Mortgage
20 Group, not Chase Finance?
21 A. That could be true, but JPMorgan Chase, the
22 umbrella company, received it May 6th, 2003.
23 Q. But you just testified that that's a JPMorgan
24 Chase record when, in fact, the loan was held in 2003 by
25 a different entity, Chase Manhattan Mortgage Group,

Page 32

1 correct?
2 A. Who still worked under the same platform.
3 MR. WEIDNER: Okay. There's no testimony about
4 that. So, Judge, I'd object. It's not a JPMorgan
5 Chase record.
6 THE COURT: Sustained. If you wish to continue
7 to lay your foundation, Mr. Barrett, you may?
8 MR. BASSETT: Bassett. Yes, Your Honor.
9 THE COURT: Bassett. Excuse me.
10 MR. BASSETT: That's okay.
11 THE COURT: Old habit.
12 MR. BASSETT: That's okay.
13 THE COURT: I have a friend of mine named
14 Richard Barrett.
15 MR. BASSETT: That's -- that's fine, Your Honor.
16 THE COURT: Okay.
17 DIRECT EXAMINATION (RESUMED)
18 BY MR. BASSETT:
19 Q. You testified earlier that Chase Home Finance was
20 the original servicer for this loan; is that correct?
21 A. Correct.
22 Q. Okay. And it will be fair to say that that
23 document --
24 MR. WEIDNER: I'm going to object to that
25 statement. That was not what he said, but -- and in

Page 33

1 clarification that was vague. "The original
2 servicer," what does that mean?
3 THE COURT: Could you restate your question?
4 MR. BASSETT: Sure.
5 BY MR. BASSETT:
6 Q. Did JPMorgan Chase Home Finance service this
7 loan?
8 A. Chase Home Finance serviced this loan.
9 Q. And again, we went through this before, when did
10 Chase Home Finance merge into the parent company of
11 JPMorgan Chase Bank?
12 A. In May of 2011.
13 Q. Okay. And the document that you're looking at,
14 is that a JPMorgan Chase Bank document?
15 A. It is.
16 Q. And it's maintained in your system of records?
17 A. It is.
18 Q. And that specific document is maintained in the
19 account servicing the Patels' account; is that correct?
20 A. Correct.
21 MR. BASSETT: Again, Your Honor, we would like to
22 move Plaintiff's into -- into evidence. It's clearly
23 a business record of JPMorgan Chase Bank maintained
24 in their serving platform for this very specific
25 borrower, the Patels.

Page 34

1 THE COURT: And it's offered to show what?
2 MR. BASSETT: Show proof that JPMorgan Chase Bank
3 or Chase Home Finance had the original collateral
4 prior to the complaint being filed. He testified
5 that the document shows that Chase Home Finance or
6 JPMorgan Chase Bank, one and the same, had the
7 original collateral as far back as 2003.
8 THE COURT: Okay. All right. It will be
9 admitted for that purpose.
10 MR. BASSETT: Thank you, Your Honor.
11 MR. WEIDNER: And over -- over objections?
12 THE COURT: Yes.
13 MR. BASSETT: And that will be No. 4, Your Honor.
14 THE COURT: Thank you.
15 BY MR. BASSETT:
16 Q. Mr. Mulholland, I'm showing you what we'll mark
17 for identification as Plaintiff's No. 5. Do you
18 recognize this document?
19 A. I do.
20 Q. And what is that document?
21 MR. WEIDNER: I'm sorry, Counsel. What was that?
22 MR. BASSETT: That's No. 5.
23 MR. WEIDNER: Okay. Mine aren't numbered, so...
24 And, Counsel, just so I'm looking at the same thing,
25 is this what you're showing him?

Page 35

1 MR. BASSETT: Yes, it is.
2 MR. WEIDNER: Okay.
3 MR. BASSETT: We'll call it the DOCLINE report.
4 MR. WEIDNER: Okay.
5 BY MR. BASSETT:
6 Q. And, sir, have you seen that document before?
7 A. I have.
8 Q. And what is that document?
9 A. This is the document that we spoke about earlier,
10 our DOCLINE report, which tracks the location of the
11 original collateral file.
12 Q. And were the entries on that DOCLINE report made
13 at or near the time that JPMorgan Chase Bank either
14 received or scanned the original collateral?
15 A. Yes.
16 Q. And are the entries on the DOCLINE report made by
17 a person with specific knowledge of receipt in scanning
18 of the original collateral?
19 A. They are.
20 Q. And was this DOCLINE report kept in the ordinary
21 course of business activity by JPMorgan Chase Bank?
22 A. It was.
23 Q. And is it the regular business practice of
24 JPMorgan Chase Bank to maintain DOCLINE reports for
25 loans that it services?

Page 36

1 A. Yes, it is.
2 MR. BASSETT: I would like to move Plaintiff's
3 No. 5 into evidence, the DOCLINE report, under
4 90.803(6) as a business record of JPMorgan Chase
5 Bank, Your Honor.
6 MR. WEIDNER: Brief voir dire, Your Honor.
7 THE COURT: Yes, sir.
8 VOIR DIRE EXAMINATION
9 BY MR. WEIDNER:
10 Q. Sir, I would like to draw your attention to the
11 last page.
12 MR. BASSETT: And again, Your Honor, this has not
13 been admitted into evidence. It needs to be admitted
14 into evidence before counsel can specifically ask
15 questions about the document.
16 THE COURT: I'll let Mr. Weidner ask the question
17 and then I'll determine whether or not it's directed
18 to the contents of the document as to -- as opposed
19 to its admissibility.
20 MR. BASSETT: Thank you, Your Honor.
21 BY MR. WEIDNER:
22 Q. You testified under the leading questionings of
23 counsel about this being a business record maintained by
24 JPMorgan Chase, correct?
25 A. It is a business record, yes.

Page 37

1 Q. Okay. But JPMorgan Chase did not service this
2 loan prior to 2005, correct?
3 A. Correct. Whatever date was on that last exhibit,
4 correct.
5 Q. Which is an important point because you don't
6 have any personal recollection of this loan or these
7 documents. You're relying on all these records,
8 correct?
9 A. I'm relying on my review of the business records.
10 Q. Okay.
11 A. Correct.
12 Q. So the last page there, what is the event that's
13 memorialized in -- on April 3rd, 2007?
14 MR. BASSETT: Again, Your Honor, I'm going to
15 object. He's questioning him specifically on items
16 contained within the document. It needs to be
17 admitted into evidence first before Counsel's
18 permitted to ask questions.
19 THE COURT: Mr. Weidner, tell me how it goes to
20 its authenticity rather than to what the contents say
21 to the Court.
22 MR. WEIDNER: Sure. Because of course the prong
23 of their business record made at or near the time of
24 the event, I would proffer that this event, this
25 document was not made at or near when they didn't

Page 38

1 service this in 2007.
2 THE COURT: Okay. Is that the question you're
3 going to ask?
4 MR. WEIDNER: That's the question.
5 BY MR. WEIDNER:
6 Q. So what is the event memorialized that's dated
7 4/3/2007?
8 A. That shows that we did have the note in our
9 possession prior to filing of the complaint.
10 Q. Okay. But it wasn't you. There was Chase
11 Mortgage -- Chase Manhattan Mortgage Group, or are you
12 aware of that?
13 A. Chase Home Finance at that date.
14 Q. Okay. But are you aware of the prior servicer,
15 Chase Manhattan Mortgage Group?
16 A. Not in this case; but even if it was, everything
17 would still apply because all that - Chase Home Finance,
18 Chase Manhattan, JPMorgan Chase all use the same
19 servicing platforms and business records.
20 Q. Okay. But you provided no testimony about Chase
21 Manhattan Mortgage Group, correct?
22 A. Correct.
23 Q. Okay. And you don't know anything about Chase
24 Manhattan Mortgage Group, correct?
25 A. Regarding this account?

Page 39

1 Q. Correct.
2 A. No.
3 Q. Thank you.
4 MR. WEIDNER: No further questions, Your Honor.
5 We'd object as to the foundation. It's not a
6 document that memorializes an event made by that
7 witness's company.
8 MR. BASSETT: And I would object. He clearly
9 testified, and that's why we went through very early
10 on the relationship between Chase Home Finance, the
11 prior servicer, and now the parent company JPMorgan
12 Chase Bank. Essentially one and the same, same
13 servicing platform, the witness has testified --
14 THE COURT: What about the third entity that
15 Mr. Weidner referenced, the Chase Manhattan -- what
16 was it, Mr. Weidner?
17 MR. WEIDNER: Mortgage Group. Your Honor, just
18 so the record's clear, it's Chase Manhattan Mortgage
19 Group.
20 THE COURT: There's been no testimony from this
21 witness regarding that entity.
22 MR. WEIDNER: Correct. And that entity does not
23 apply. I think that that's a -- that's a red
24 herring, Your Honor. Chase Home Finance has been
25 servicing this loan. They then transferred the

Page 40

1 servicing rights to their parent company.
2 If counsel would like to call his witness to
3 the stand to testify to that, that document was
4 clearly made and maintained by the plaintiff,
5 JPMorgan Chase Bank, or its predecessor, Chase Home
6 Finance.
7 You're just hearing argument of counsel.
8 There's been no evidence about Chase Manhattan Bank
9 doing anything with this case. I believe that's a --
10 that's a red herring.
11 We're simply asking to have the Court
12 introduce this into a -- into a business record. I
13 can then ask my witness specific questions about the
14 information contained in there. I think it clearly
15 is a business record and we've satisfied the four
16 prongs of the business record exception.
17 MR. WEIDNER: I didn't want to interrupt counsel,
18 but I do want to object to the continued assertion
19 that there is just one servicer.
20 Again, this witness's testimony is based on
21 business records. If he has some records to support
22 that statement, then he can certainly testify, but
23 he's just said he has no knowledge, personal
24 knowledge of the facts of this case. It's based on
25 business records.

Page 41

1 So if they've got business records that
2 support that statement specifically that we were the
3 servicer from the beginning, he can provide testimony
4 and introduce those records, but not that document.
5 THE COURT: I thought that what he had testified
6 to is that they've been the servicer since at least
7 2003 --
8 MR. BASSETT: Yes, ma'am.
9 THE COURT: -- as opposed to always have been the
10 servicer, if I -- if I understood the testimony
11 correctly?
12 MR. BASSETT: Correct.
13 THE COURT: All right. I'll admit the exhibit in
14 as Plaintiff's Exhibit 5.
15 (Exhibit 5 marked for identification.)
16 MR. WEIDNER: And, Judge, I would interpose an
17 objection in to -- as to relevance of that. All of
18 these things don't come in and shouldn't come in when
19 the note and mortgage do not come in.
20 THE COURT: Okay. The note and mortgage have
21 been admitted --
22 MR. WEIDNER: Okay.
23 THE COURT: -- as Exhibits 1 and 2. Go ahead,
24 sir.
25 MR. BASSETT: May I have that back, Your Honor?

Page 42

1 THE COURT: Yes. Let me put the case number on
2 it.
3 MR. BASSETT: I know, you're doing -- doing
4 double work.
5 DIRECT EXAMINATION (RESUMED)
6 BY MR. BASSETT:
7 Q. Now, Mr. Mulholland, what's been admitted over
8 objection as Plaintiff's Exhibit No. 5, the DOCLINE
9 report, what does that tell us about the original
10 collateral in this case?
11 A. Again, the report tracks the location of it, and
12 in this case the date on the last page does show as it
13 was actually imaged into our system prior to the filing
14 of the complaint.
15 Q. And what was the date that the note was imaged
16 into your system?
17 A. April 3rd, 2011.
18 Q. And do you know when this complaint was filed?
19 A. Two thousand -- I'm going off memory. 2009, I
20 believe.
21 Q. So based on your review, and just to be very
22 clear, JPMorgan Chase Bank had physical control and
23 custody of the original note prior to this complaint
24 being filed?
25 A. That is correct. This is when they imaged in the

Page 43

1 original into our system in Monroe, Louisiana.
2 Q. And then what else -- does it show the tracking?
3 Does it show the original note leaving the vault?
4 A. Yes. Excuse me. It was released to Shapiro,
5 Fishman & Gache on June 8th, 2010.
6 Q. And then there's no further entries? Shapiro
7 Fishman didn't send it back to Chase, did they?
8 A. No.
9 Q. Okay. Thank you.
10 MR. BASSETT: Plaintiff's 5, Your Honor.
11 BY MR. BASSETT:
12 Q. Mr. Mulholland, what is the status of the Patels'
13 account?
14 A. It's currently still in default.
15 MR. WEIDNER: Objection, Your Honor. If he's got
16 a business record he wants to support that by, he can
17 do it, but he doesn't have any personal knowledge and
18 no business records are in front of him.
19 THE COURT: I believe that the -- Mrs. Patel
20 herself admitted that the last payment that was made
21 just looking at these interrogatories was in 2009.
22 MR. WEIDNER: I'm not sure that's the basis for
23 his testimony, Your Honor.
24 THE COURT: Is it a fact at issue?
25 MR. WEIDNER: No, Your Honor.

Page 44

1 THE COURT: Okay. Go ahead.
2 BY MR. BASSETT:
3 Q. What is the current status of the Patels'
4 account?
5 A. It is currently in default.
6 Q. And you've reviewed the business records for
7 JPMorgan Chase Bank, correct?
8 A. I have.
9 Q. Do you know when this loan went into default?
10 A. The last payment was made June of 2009, due for
11 July 2009.
12 MR. WEIDNER: Your Honor, I'd object again. If
13 he's going to testify about business records, they
14 should be admitted. He doesn't have any personal
15 knowledge and under Sas he should be testifying
16 pursuant to records.
17 MR. BASSETT: Your Honor, he testified he
18 reviewed all the business records. He doesn't need
19 personal knowledge. Counsel is misstating what
20 the --
21 THE COURT: I know he doesn't --
22 MR. BASSETT: Yeah.
23 THE COURT: -- need personal knowledge --
24 MR. BASSETT: Yes.
25 THE COURT: -- but there's no documents that --

Page 45

1 that he's -- he's obviously making reference to a
2 document that's not in evidence. If he knows by
3 looking at that file what it is, when the last time
4 payment was made.
5 MR. BASSETT: Okay.
6 BY MR. BASSETT:
7 Q. Mr. Mulholland, when a loan goes into default,
8 does JPMorgan Chase Bank have a procedure in place to
9 advise the borrowers?
10 A. They do.
11 Q. And what is that?
12 A. The procedure would be based on different loans,
13 have different dates, but there's a trigger date that
14 sends out a breach letter to the borrower which advises
15 them of the past due amount and what's required to bring
16 the account current.
17 Q. And do you know which department generates these
18 letters?
19 A. That's the breach letter department.
20 MR. WEIDNER: Judge, I'm going to be respectful
21 of your time. We're going to stipulate to the
22 letter. We object to the contents of it, but in
23 order to save counsel time --
24 THE COURT: All right.
25 MR. WEIDNER: And again --

Page 46

1 THE COURT: Thank you.
2 MR. WEIDNER: -- just so the record's clear, we
3 assert as we did in our affirmative defenses that the
4 contents of the letter is not correct. That's a
5 legal argument. So as to when the letter that was
6 sent --
7 THE COURT: Okay. You'll stipulate the
8 admissibility -- the admission of the document into
9 evidence?
10 MR. WEIDNER: Correct, Your Honor.
11 THE COURT: That will be Plaintiff's Exhibit 6.
12 MR. BASSETT: And you're stipulating that the
13 letter was mailed?
14 MR. WEIDNER: Yes.
15 MR. BASSETT: Okay. Plaintiff's 6 admitted
16 without objection, Your Honor?
17 MR. WEIDNER: Preserving the argument as we did,
18 Your Honor, that the content --
19 THE COURT: Yes.
20 MR. WEIDNER: -- of that letter was not
21 sufficient? Okay.
22 (Exhibit 6 marked for identification.)
23 BY MR. BASSETT:
24 Q. Mr. Mulholland, what's been admitted into
25 evidence as Plaintiff's 6 without objection, the demand

Page 47

1 letter. Does the demand letter advise the borrower that
2 their loan is in default?
3 MR. WEIDNER: And, Judge, the document speaks for
4 itself.
5 MR. BASSETT: I still have an opportunity to keep
6 my record and --
7 THE COURT: Yes.
8 MR. BASSETT: -- and make my record.
9 THE COURT: I'll allow that.
10 MR. BASSETT: Okay.
11 BY MR. BASSETT:
12 Q. Does it advise the borrowers that their loan is
13 in default?
14 A. Yes, it does.
15 Q. Does it advise the borrowers of the action
16 required to cure the default?
17 A. Yes, it does.
18 Q. And what is that action?
19 A. It advises them that they have an amount past due
20 of 4,103.08, which would be required to bring the
21 account current.
22 Q. And does it advise the borrowers what the
23 potential consequences are for failure to cure that
24 default?
25 A. Yes.

Page 48

1 MR. WEIDNER: And, Judge, I'm going to object to
2 the extent that anything might be a legal conclusion.
3 Factually, the letter says what it says; but if
4 Counsel's asking him to make a legal conclusion about
5 the impact of those words, then I would object to
6 that.
7 THE COURT: The extent that you're asking this
8 witness for a legal conclusion, that objection is
9 sustained.
10 MR. BASSETT: Okay.
11 BY MR. BASSETT:
12 Q. Does the letter specifically advise the borrowers
13 what could happen to them if they don't pay the amount
14 to cure the default?
15 A. It does.
16 Q. And what could happen?
17 A. They could be foreclosed on.
18 Q. And in this particular case did the Patels cure
19 the default in the time frame?
20 A. They did not.
21 Q. And it remains in default?
22 A. It does.
23 Q. Okay. I'm going to show you what we have marked
24 for identification as Plaintiff's 7, the loan payment
25 history. And do you recognize that document?

Page 49

1 A. I do.
2 Q. And what is that document?
3 A. It's the statement, Chase detail transaction
4 history, the payment history on the account.
5 Q. And before we get into specific questions about
6 that account, does Chase -- JPMorgan Chase Bank and
7 Chase Home Finance, one and the same, do they have
8 procedures in place to accept payments and disburse
9 payments?
10 A. Correct.
11 Q. And can you please just briefly explain for the
12 Court how payments are processed with Chase?
13 A. Well, it depends on how the payment's received,
14 whether it's online, whether it's made at a branch, or
15 whether it's a mailed-in check.
16 But in any case, the payments are posted within
17 24 hours of the -- receiving the money online and posted
18 and credited at the same time. Other methods have 24
19 hours and then they get postdated back the day it was
20 received, and it's broken down into principal and
21 interest payments.
22 Q. And which department is responsible for posting
23 payments?
24 A. There's a payment processing department.
25 Q. And does that payment department -- is there a

Page 50

1 separate department that handles disbursements like
2 escrow and -- and taxes?
3 A. There is -- we have a separate escrow department
4 as well.
5 Q. Would escrow -- the escrow department, would that
6 information also be contained in an individual's loan
7 payment history?
8 A. It is. The loan history shows all the escrow
9 advances that were sent out on the account.
10 Q. Now the loan payment history you have in front of
11 you, were the entries on that loan payment history made
12 at or near the time that either payments were received
13 from the Patels or disbursements went out from JPMorgan
14 Chase Bank?
15 A. They are.
16 Q. And you testified just a minute ago that the
17 entries are made by a person with knowledge?
18 A. Correct.
19 Q. And are they made within 24 hours of receiving
20 the payment?
21 A. Correct.
22 Q. And is this loan payment history maintained in
23 the ordinary course of business by JPMorgan Chase Bank?
24 A. It is.
25 Q. And is it the regular business practice of

Page 51

1 JPMorgan Chase Bank to maintain loan payment histories
2 for accounts that it services?
3 A. Yes, it is.
4 Q. And have you had a chance to thoroughly review
5 that loan payment history?
6 A. I have.
7 Q. Does it accurately reflect the payments and
8 disbursements to this account?
9 A. Yes, it does.
10 MR. BASSETT: We would like to move Plaintiff's 7
11 into evidence, Your Honor.
12 MR. WEIDNER: Brief voir dire, Your Honor.
13 THE COURT: Yes, sir.
14 VOIR DIRE EXAMINATION
15 BY MR. WEIDNER:
16 Q. Sir, I'd like you to flip all the way to the last
17 pages that are in this sequence.
18 A. Okay.
19 Q. When you're looking at the very last page, which
20 is marked page 2, right in front of that -- that's going
21 to be the second to the last page, that's not a Chase
22 Finance record, is it?
23 A. This one, no. This is the payment history loan
24 back to the beginning of the loan.
25 Q. Okay.

Page 52

1 A. No.
2 Q. So your statement -- when you answered Counsel's
3 question about whether this was Chase's record, that's
4 not entirely correct, is it?
5 A. Well, the Chase detail and transaction history
6 apportion in Chase's record. This one in the very back
7 is not -- is not called the Chase detail transaction
8 history.
9 Q. Because in fact, it's not Chase's, it's some
10 other company, correct?
11 MR. BASSETT: Objection. Your Honor, he is
12 asking specific questions about a document that has
13 not been admitted into evidence yet.
14 THE COURT: Objection overruled. And,
15 Mr. Mulholland, if you would answer the question.
16 A. I'm sorry. Can you repeat it?
17 BY MR. WEIDNER:
18 Q. The question is, these last two pages are not
19 Chase records, correct? And as part of that statement
20 up in the top left-hand corner this was requested by
21 Chase, that's what "REQ by Chase" means, correct?
22 A. Give me one second to review it.
23 Q. Okay. It's the second to the last page at the
24 top.
25 A. Actually, the second to last page is a Chase

Page 53

1 record.
2 Q. Let me make sure we're looking at the same thing.
3 A. I'm sorry. I'm looking -- no, this would have
4 been from the original servicer. I mean when this was
5 originally serviced, we didn't acquire it until 2003.
6 Q. So you're clear now that you did not service this
7 loan from the beginning, there was another servicer,
8 correct?
9 A. Right. I don't think I ever said we serviced it
10 from the beginning.
11 Q. Okay.
12 A. All right.
13 Q. So the statement that you made when your attorney
14 asked a question, "Is this Chase's record" is not
15 entirely correct, is it?
16 A. Well, the last three pages of the original
17 servicer, the last two pages, correct.
18 MR. WEIDNER: Okay. Judge, we'd object. The
19 witness has just provided very clear testimony it's
20 not entirely their business record.
21 MR. BASSETT: May I continue?
22 THE COURT: Yes, sir.
23 DIRECT EXAMINATION (RESUMED)
24 BY MR. BASSETT:
25 Q. Does Chase Home Finance or JPMorgan Chase Bank,

Page 54

1 does it have an occasion to sometimes take over
2 servicing of loans from other servicers?
3 A. Correct. And that's what happened in this case.
4 We would have boarded it --
5 MR. WEIDNER: Objection, Your Honor, foundation.
6 THE COURT: Overruled for the time being. Go
7 ahead.
8 BY MR. BASSETT:
9 Q. In this particular case -- well, in general, you
10 said that JPMorgan Chase Bank has --
11 MR. WEIDNER: Objection, Your Honor, relevance.
12 I don't hear about and neither should the Court about
13 general procedures. If he knows something specific
14 about that case, that would be relevant.
15 MR. BASSETT: General procedures --
16 THE COURT: Overruled. I understand --
17 MR. BASSETT: Okay.
18 THE COURT: -- general procedures.
19 BY MR. BASSETT:
20 Q. JPMorgan Chase Bank has policies in place when it
21 takes over servicing of prior servicers' loans; is that
22 correct?
23 A. Correct.
24 Q. Can you please explain for the Court what those
25 procedures are?

Page 55

1 MR. WEIDNER: Judge, we know what the procedures
2 are for boarding and that has no relevance. The
3 question is, what does he know about the records that
4 were kept for this particular loan?
5 THE COURT: Overruled.
6 BY MR. BASSETT:
7 Q. Please explain the boarding process.
8 A. The boarding process in this case this was
9 originated by E-Loans 2000 --
10 MR. WEIDNER: Objection, Your Honor, foundation.
11 Witness has no basis for that testimony.
12 THE COURT: Go ahead and continue to lay your
13 foundation, how we got these -- how he got these
14 records into evidence.
15 MR. BASSETT: Sure.
16 THE COURT: I mean into his computer, rather.
17 MR. BASSETT: Okay.
18 BY MR. BASSETT:
19 Q. We were discussing the boarding process a little
20 bit. JP -- did JPMorgan Chase Bank or Chase Home
21 Finance begin servicing this loan?
22 A. Not during origination, no.
23 Q. Okay. When did you-all beginning servicing this
24 loan? When I say "you-all," I mean Chase Home Finance
25 and/or JPMorgan Chase Bank?

Page 56

1 A. Correct, that would have been in 2003.
2 Q. And who did you-all take over the servicing
3 rights from?
4 A. E-Loans 2000.
5 MR. WEIDNER: Objection, Your Honor, foundation.
6 He's got no foundation for that testimony.
7 THE COURT: Overruled. It's his testimony. It's
8 determined all the weight that I give it after I hear
9 all of the evidence in the case.
10 A. At that point it would have been boarded into
11 our -- the same location I talked about in Monroe,
12 Louisiana. That's when the original files show up in
13 our location there.
14 At that time they're broken down into a
15 collateral file and a credit file, checked for accuracy,
16 if there's two different QA processes. They would have
17 QC'd the payment history that came from the prior
18 servicer.
19 Once it was deemed accurate, that's when it would
20 have been uploaded into our system and boarded. So I
21 mean the fact that it's been boarded, we look at that as
22 an accurate payment history.
23 BY MR. BASSETT:
24 Q. And so that was done with this particular file?
25 A. It was.

Page 57

1 Q. Okay.

2 MR. BASSETT: Again, Your Honor, I would like to

3 move Plaintiff's 7, the loan payment history, into

4 evidence.

5 MR. WEIDNER: Brief question based on his

6 statements, Your Honor.

7 THE COURT: Uh-huh.

8 VOIR DIRE EXAMINATION

9 BY MR. WEIDNER:

10 Q. You have no foundation for any testimony that

11 E-Loans originated this loan or that those were their

12 records, correct?

13 MR. BASSETT: Object to relevancy, Your Honor.

14 MR. WEIDNER: Your Honor, we've raised as an

15 affirmative defense fraud, that E-Loans did not

16 originate this loan, E-Loans did not loan any money

17 or make a mortgage payment.

18 He's trying to get in business records based

19 on testimony. This witness -- this witness says

20 E-Loans. He has no foundation for that.

21 MR. BASSETT: May I just --

22 THE COURT: So your question is, "How do you know

23 that?"

24 MR. WEIDNER: Yes, Your Honor.

25 THE COURT: "How do you know it came from

Page 58

1 E-Loan?"

2 MR. WEIDNER: Yes. Thank you, Your Honor.

3 BY MR. WEIDNER:

4 Q. How do you know?

5 A. From review of the business records and the note

6 itself.

7 Q. What business record?

8 A. The note.

9 Q. Okay. Other than the note, which we object to,

10 do you have any foundation that E-Loans in fact loaned

11 any money?

12 A. The note itself is what I would rely upon. I

13 would have no reason to think otherwise.

14 Q. You recall your deposition was taken September

15 2014 --

16 THE COURT: Okay. We're going into cross now.

17 MR. WEIDNER: Oh, sorry, Your Honor.

18 THE COURT: Admissibility --

19 BY MR. WEIDNER:

20 Q. Other than the note you have no other basis for

21 the statement that E-Loans originated this loan,

22 correct?

23 A. I can't -- let me -- as far as I can recollect

24 that's what I'm relying upon is the note.

25 Q. Okay. But nothing else, correct?

Page 59

1 A. Nothing I've seen here today, no.

2 MR. WEIDNER: Okay. Your Honor, we object to the

3 introduction of payment history, which the witness

4 has no basis to assert, is their payment history. It

5 clearly wasn't made at or near the time of the event.

6 It has no relevance to these proceedings when the

7 note and mortgage likewise are not evidencing the

8 events that he thinks they do.

9 THE COURT: Objection overruled.

10 MR. BASSETT: No. 7, Your Honor.

11 (Exhibit 7 marked for identification.)

12 DIRECT EXAMINATION (RESUMED)

13 BY MR. BASSETT:

14 Q. Mr. Mulholland, I'm showing you, which we have

15 marked for identification as No. 8, we'll call them the

16 judgment figures. Do you recognize those documents?

17 A. I do.

18 Q. And can you please review those documents and

19 tell me if you've had an opportunity to personally

20 review those judgment figures?

21 A. I have.

22 MR. BASSETT: Your Honor, at this time I would

23 like to move the judgment figures into evidence under

24 99.5(6) as a summary. Under a -- under a -- under a

25 summary there needs to have been written objection.

Page 60

1 We provided our exhibit and witness list

2 timing -- timely. We identified the use of the

3 summary in our exhibit list.

4 Counsel, if he wanted to object, needed to

5 do so in writing. There's been no objection. It

6 comes in as a summary of the loan payment history

7 under 99.5(6).

8 MR. WEIDNER: And, Judge, we did find -- file the

9 objection. That was one of the bases in the motion

10 in limine.

11 And quite frankly, I didn't want to

12 interrupt counsel, but I wanted to see what he's

13 handed as well. And so we did object; and to the

14 extent that there are other hearsay statements

15 contained within there, we object to use of the

16 summary.

17 MR. BASSETT: Your Honor, it's not being

18 introduced as a business record or a hearsay.

19 There's no hearsay objection to the use of a summary.

20 There was no specific objection received by plaintiff

21 or plaintiff's counsel prior to today's trial

22 specifically objecting to the use of that summary.

23 THE COURT: I'm just checking the objections that

24 were filed. And the two motions in limine that were

25 filed, neither one of them address the summary as

Page 61

1 identified in plaintiff's exhibit list. So the
2 objection on that grounds is denied.
3 MR. BASSETT: Thank you, Your Honor.
4 (Exhibit 8 marked for identification.)
5 MR. BASSETT: It looks like you have some help
6 now, Your Honor. The calvary has arrived.
7 BY MR. BASSETT:
8 Q. Now, Mr. Mulholland, what's been admitted into
9 evidenced as Plaintiff's No. 8, what is that document?
10 A. These are the judgment figures.
11 Q. And did you personally review the judgment
12 figures?
13 A. I have.
14 Q. And are those judgment figures contained within
15 the loan payment history?
16 A. They are.
17 Q. And what is the principal due on the note, note
18 and mortgage?
19 A. The principal amount is \$183,170.85.
20 Q. And did JPMorgan Chase Bank advance taxes in this
21 case?
22 A. Yes.
23 Q. And what are the taxes that you-all paid?
24 A. Bear with me one second here. The total taxes
25 are eight thousand thirty one -- or, I'm sorry. Yeah --

Page 62

1 well, it's kind of mixed together here.
2 Q. Does it include taxes and insurance?
3 A. It includes taxes and insurance. The total
4 escrow advance is 31,929.28 and 18,113.86 would be the
5 total taxes.
6 Q. And are there any other numbers or figures that
7 are contained within that document that would support
8 plaintiff's proposed final judgment?
9 MR. WEIDNER: Judge, I'm going to object. It's a
10 document created for litigation; and if you attempt
11 to -- you do want to enter judgment -- we know that's
12 the numbers you want, but the witness's statement,
13 his answer to that question would --
14 THE COURT: Sustained.
15 MR. WEIDNER: Thank you.
16 MR. BASSETT: Okay.
17 BY MR. BASSETT:
18 Q. And what is the grand total of judgment that
19 plaintiff is seeking today?
20 A. Bear with me one second here. The total amount
21 sought is 297,128 and 86 cents.
22 Q. Okay. And did you have an opportunity to review
23 the proposed final judgment in this case?
24 A. I did.
25 Q. You did. Does the proposed final judgment

Page 63

1 comport with the judgment figures that have been
2 admitted into evidence as Plaintiff's No. 8?
3 A. It does.
4 Q. Okay.
5 MR. BASSETT: I have no further questions for
6 this witness at this time, Your Honor.
7 THE COURT: Okay. Mr. Weidner, cross?
8 MR. WEIDNER: Yes, Your Honor.
9 CROSS-EXAMINATION
10 BY MR. WEIDNER:
11 Q. Mr. Mulholland, you had your deposition taken
12 September 10th, 2014, correct?
13 A. Correct.
14 Q. Mr. Reder took your deposition, correct?
15 A. Correct.
16 Q. In that deposition there were a lot of questions
17 about E-Loans 2000, correct?
18 A. Correct.
19 Q. And do you remember the statements specifically
20 where Mr. Reder asserted that E-Loans didn't make this
21 loan?
22 A. I do remember him saying that.
23 Q. Okay.
24 MR. BASSETT: I'm objecting to relevancy. Your
25 Honor, the note has been admitted as an original

Page 64

1 document. There has been no allegation, there has
2 been no testimony about anything nefarious with this
3 case.
4 Mr. -- it was admitted into evidence by the
5 Patels. My witness has not reviewed the original
6 note while he was on the stand. It was admitted as
7 as admission of a party opponent specifically in this
8 case.
9 THE COURT: It's a document in evidence.
10 MR. BASSETT: Okay.
11 THE COURT: And then if your witness needs to see
12 it in order to answer these questions --
13 MR. BASSETT: Okay.
14 THE COURT: -- he may, but really that -- that
15 wasn't the question as I heard it.
16 MR. WEIDNER: It wasn't. I'm sorry.
17 THE CLERK: Which document?
18 MR. WEIDNER: The note.
19 THE COURT: It's in the yellow -- orange file.
20 BY MR. WEIDNER:
21 Q. I'm going to show you what has previously been
22 marked as 1. It's the note in the file.
23 A. Okay.
24 Q. Is that the same note that you saw as part of the
25 deposition?

Page 65

1 A. It wasn't the original note in the deposition, I
2 don't believe; but yes, this is the note that I've
3 reviewed in our system.
4 Q. Okay. And you have no basis of personal
5 knowledge that E-Loans loaned any money, that statement
6 that's included in that note, correct?
7 MR. BASSETT: Objection; the document speaks for
8 itself.
9 MR. WEIDNER: And, Judge, this is exactly what we
10 objected to.
11 THE COURT: I'm sorry. The witnesses seemed to
12 say that yes, they recognize those signatures and
13 that they borrowed money. I'm not sure where we're
14 going here with the fact that this -- they didn't
15 fund this loan, is that --
16 MR. WEIDNER: That's exactly correct. And, Your
17 Honor --
18 THE COURT: So they signed all the papers, but
19 they never got the money? That's what your clients
20 are going to swear to?
21 MR. WEIDNER: Yes, Your Honor. The document that
22 is before this witness -- and this was the whole
23 basis of the deposition, over and over again --
24 THE COURT: So your clients are going to present
25 sworn testimony that that loan was never funded?

Page 66

1 MR. WEIDNER: My clients -- well, I'm willing to
2 present evidence that E-Loans did not loan this
3 money.
4 THE COURT: Are you talking about another entity
5 loaned it other than E-Loans?
6 MR. WEIDNER: Your Honor, the -- yes, yes, but
7 the critical issue -- and this is the whole point of
8 this case. If you look at our affirmative defense,
9 in 2011 Mr. Reder advised Chase that E-Loans did not
10 make this loan.
11 E-Loans did not loan money to the Patels.
12 E-Loans did not give a mortgage to the Patels.
13 E-Loans had no basis and Chase nor MERS had any basis
14 to provide an assignment of mortgage because E-Loans
15 is not and was not ever a member of MERS.
16 So someone fabricated an assignment of
17 mortgage, committed a fraud on the Court, and that's
18 the language that's used in the answer and
19 affirmative defenses.
20 MR. BASSETT: Judge, can I just -- can I object
21 to Counsel grandstanding and authenticating? This is
22 cross-examination.
23 THE COURT: All right. And let's start with the
24 fact that the parties have acknowledged signing that
25 particular document that says E-Loan --

Page 67

1 MR. WEIDNER: 2000.
2 THE COURT: -- 2000 --
3 MR. WEIDNER: Right.
4 THE COURT: -- and gave them the money.
5 MR. WEIDNER: No, they -- they signed that
6 document. We admit that.
7 THE COURT: Okay.
8 MR. WEIDNER: The critical issue, Your Honor --
9 THE COURT: All right. And -- well, save it for
10 closing as counsel for the plaintiff suggests.
11 MR. WEIDNER: Sure.
12 THE COURT: But your question to him is, does he
13 have any personal knowledge as to whether or not they
14 physically gave him the money? Is that the question?
15 MR. WEIDNER: His testimony was that E-Loans gave
16 a loan. His testimony was E-Loans Service. He
17 asserted that was based exclusively on this document.
18 And let me ask that question.
19 BY MR. WEIDNER:
20 Q. Your testimony that E-Loans gave a note, gave a
21 mortgage, was the servicer based exclusively on that
22 note, correct?
23 A. I'm testifying that I am basing -- this note
24 shows E-Loans. I have no reason to think that's not
25 accurate.

Page 68

1 Q. Okay. Except that during the deposition that you
2 took where you were repeatedly questioned about that and
3 whether or not E-Loans had any authority --
4 A. Right.
5 Q. -- you had no basis for that, correct?
6 A. Basis for what exactly?
7 Q. That E-Loans lent the money, correct? And we can
8 go back to the deposition if you'd like.
9 A. I'm relying on the note.
10 Q. Okay.
11 A. I realize that he questioned it --
12 Q. Right.
13 A. -- but I have -- I've seen nothing to make me
14 believe that.
15 Q. Okay.
16 A. I have not seen anything to show me that.
17 Q. Fair enough. But again, your sole basis is the
18 documents that's in front of you, correct?
19 A. I'm looking -- I'm looking at this and it says,
20 "E-Loans." I would think that E-Loans loaned that
21 money.
22 Q. Okay. And in the deposition you'll recall
23 testimony -- or questions repeatedly by Mr. Reder about
24 the endorsement that appears on the bottom of there in
25 which a name -- and you couldn't actually read it off,

Page 69

1 but you surmise that it was Michael Leddy?
2 A. Right.
3 Q. You -- and it says as power of attorney.
4 Mr. Reder asked you, "Did you have a power of attorney?"
5 And you said, "No." Do you remember that?
6 A. Listed attorney in fact for -- correct.
7 Q. And Mr. Reder asked whether you had examined your
8 records to see whether in fact one existed, and you --
9 you said that one didn't or you couldn't find one,
10 correct?
11 A. Correct.
12 Q. After that deposition did you undertake to try to
13 find the power of attorney?
14 A. I actually did search for one prior to today and
15 still have not seen one.
16 Q. Couldn't find one? And as to whether or not
17 E-Loans in fact loaned this money or had any authority
18 to, after that deposition you took no opportunity to
19 inquire further of that, correct?
20 A. No, I don't know what I would do to see if they
21 loaned the money other than look at the note, but --
22 Q. And same thing with the mortgage, you have no
23 basis for knowing whether or not E-Loans in fact
24 obtained a mortgage interest in our clients' property,
25 correct?

Page 70

1 A. Correct, other than relying on the mortgage.
2 Q. Okay. And you have no basis of knowledge of how
3 Michael Leddy had any authority, if any at all, to
4 execute that other endorsement, correct?
5 MR. BASSETT: Objection to relevancy. Your
6 Honor, the document is a self-authenticating document
7 and I've got the case law and I can reserve and
8 handle this at closing.
9 THE COURT: Okay. All right. Go ahead. Do you
10 have any other questions of this witness,
11 Mr. Weidner?
12 MR. WEIDNER: I believe there's a question out
13 there about the endorsement.
14 A. Oh, I'm sorry. I don't know who that person is.
15 So no, I couldn't.
16 BY MR. WEIDNER:
17 Q. Okay. Do you remember during that deposition you
18 were shown the affidavit that I'm showing you here?
19 A. I do.
20 Q. Okay. And just so the record's clear, that was
21 the affidavit of Gregory Fierce that was marked as
22 Exhibit A and attached to that deposition transcript?
23 A. Correct.
24 Q. In that -- will you read the affidavit, paragraph
25 3?

Page 71

1 MR. BASSETT: Objection, Your Honor. This is a
2 document that has not been admitted into evidence.
3 It is improper to try to introduce --
4 THE COURT: Sustained.
5 MR. BASSETT: Thank you.
6 THE COURT: Sustained. Sustained. Go ahead.
7 BY MR. WEIDNER:
8 Q. Do you remember questions in your deposition
9 where that affidavit was presented to you and
10 Mr. Fierce, the owner of E-Loans 2000, asserted under
11 oath that he did not make the loan in question?
12 A. I remember seeing this affidavit, yes.
13 Q. And that lengthy affidavit where Mr. Fierce
14 asserts that he's owned E-Loans since 2002 and that he
15 didn't broker this loan and that E-Loans didn't make the
16 loan and wasn't a party to the transaction --
17 THE COURT: Okay. So is this an affidavit that
18 has been stipulated to --
19 MR. BASSETT: No.
20 THE COURT: -- by the parties for admission into
21 evidence.
22 MR. BASSETT: No, absolutely not. And I'm --
23 again, I'm going to object, Your Honor. That is a
24 document that has not been stipulated to, it is not
25 in evidence. The individual that executed that

Page 72

1 affidavit not here today.
2 THE COURT: Is that -- is that you, sir?
3 MR. FIERCE: Yeah, that's me.
4 THE COURT: Okay.
5 MR. BASSETT: Okay. Well, then certainly they
6 can call him, you know, to the stand.
7 THE COURT: I agree. I agree. The affidavit
8 is --
9 MR. BASSETT: But not during plaintiff's
10 case-in-chief.
11 THE COURT: But not during plaintiff's case.
12 MR. WEIDNER: Okay. I have no further questions,
13 Your Honor.
14 THE COURT: Any redirect, Mr. Bassett?
15 MR. BASSETT: No, ma'am.
16 THE COURT: Thank you, Mr. Mulholland. You may
17 step down.
18 THE COURT: Plaintiff call your next witness.
19 MR. BASSETT: Plaintiff rests at this time, Your
20 Honor.
21 THE COURT: All right. Defense call your first
22 witness.
23 MR. WEIDNER: Okay. Judge, I just want to
24 quickly move for an involuntary dismissal based on
25 the fact that the note was not attached to the

Page 73

1 complaint. That's an issue that you've raised
2 February 2015.
3 Everything else is outside the -- those --
4 everything -- all the testimony is outside the
5 proceedings. And therefore, we're entitled to an
6 involuntary dismissal based on that.
7 Furthermore, they don't have records that
8 support that a default in fact occurred when the
9 records, which were based on the E-Loans 2000, were
10 not part of that default.
11 THE COURT: Mr. Bassett, response.
12 MR. BASSETT: A trial court is required to view
13 the evidence in light most favorable to the plaintiff
14 resolving every inference. The note, the mortgage,
15 the demand letter, the loan acquisition screen shot,
16 the DOCLINE report, the loan payment history, it has
17 all been admitted into evidence.
18 It's improper for the Court to grant
19 defendants' motion for involuntary dismissal. That
20 goes to now the weight of the evidence, and we would
21 ask that the Court deny defendants' motion for
22 involuntary dismissal.
23 THE COURT: The motion for involuntary dismissal
24 is denied. Defense, call your first witness.
25 MR. BASSETT: Thank you, Your Honor.

Page 74

1 MR. WEIDNER: Your Honor, the defense calls
2 Mr. Fierce, Greg Fierce.
3 THE COURT: Okay, sir. If you can come forward,
4 please. You can go ahead and take the witness stand
5 and I'll swear you in once you get on the stand.
6 Do you solemnly swear are affirm that the
7 testimony you'll give at this cause now and hearing
8 to be the truth, the whole truth, and nothing but the
9 truth?
10 THE WITNESS: I do.
11 THE COURT: Okay. Thank you. Please have a
12 seat. State your name and spell it for the court
13 reporter.
14 THE WITNESS: Gregory Fierce. G-r-e-g-o-r-y,
15 Fierce, F -- as in Frank -- i-e-r-c-e.
16 THEREUPON,
17 GREGORY FIERCE,
18 called as a witness by the defendants, having been duly
19 sworn by the Court, was examined and testified, as
20 follows:
21 DIRECT EXAMINATION
22 BY MR. WEIDNER:
23 Q. Good afternoon, Mr. Fierce.
24 MR. BASSETT: Your Honor, at this time we would
25 object to this witness being called. Defendant did

Page 75

1 not disclose this witness timely in accordance with
2 this Court's trial order.
3 The trial order specifically said, "All
4 witnesses and exhibits must be disclosed 10 days
5 prior to trial." That did not happen in this case.
6 We would ask that this witness be struck and
7 not be permitted to testify. Plaintiff has not had
8 an opportunity to depose this witness due to the late
9 disclosure.
10 MR. WEIDNER: Your Honor --
11 THE COURT: It was disclosed on March 18th?
12 MR. WEIDNER: Correct.
13 THE COURT: And that was a week ago as opposed to
14 10 days?
15 MR. WEIDNER: That may be correct, Your Honor.
16 I'll get the date exactly.
17 THE COURT: Was there any --
18 MR. REDER: It was disclosed on the 17th.
19 THE COURT: I don't recall any attempt to impose
20 this sanction prior to the beginning of trial so that
21 I could have provided a continuous to give this
22 witness -- give you the opportunity to depose this
23 witness.
24 If you're saying now that this is a surprise
25 witness that wasn't on the witness list that was

Page 76

1 submitted a week ago and that it's prejudicing your
2 case, is that --
3 MR. BASSETT: That's what I'm saying. And I
4 think, Your Honor, the Binger case specifically
5 addresses that -- that issue. With that case we have
6 a witness that was not timely disclosed. In this
7 case we have the exact same issue.
8 The Court's trial order gives 10 days. 10
9 days means 10 days. 10 days does not mean 7 days.
10 They submitted their trial witness list 7 days ago.
11 That would have only given us three business days to
12 potentially take the deposition of this man.
13 THE COURT: Actually, Mr. Patel's was filed 8
14 days ago.
15 MR. BASSETT: Still, outside the Court's trial
16 order. I think the Court meant what it says when it
17 said witnesses and exhibits shall be disclosed 10
18 days prior to trial.
19 THE COURT: All right.
20 MR. BASSETT: At the very least, Your Honor, we
21 would like an opportunity to have a brief continuous
22 to take the deposition of this -- of this witness and
23 reconvene this trial when Your Honor is back up in
24 this area. I think plaintiff is -- is severely
25 prejudice with this.

Page 77

1 MR. REDER: May I respond, Your Honor?
2 THE COURT: Yes, sir.
3 MR. REDER: Yes, Your Honor, I was remiss. It
4 was my fault that I, you know, did it on the 8th day
5 as opposed to the 10 days.
6 There were -- the circumstances were, was
7 that there was some confusion between the Patels also
8 calling in Mr. Weidner as co-counsel was one factor
9 in terms of we were playing telephone tag and trying
10 to get our act together in terms of who was
11 responsible for what in terms of, you know, preparing
12 things.
13 I've -- I'll take full responsibility that
14 it was --
15 THE COURT: Okay. And I'm not looking --
16 MR. REDER: -- expected on me to do it within the
17 10.
18 THE COURT: Okay. It's sad, but true that I have
19 this problem almost every day --
20 MR. REDER: Yeah.
21 THE COURT: -- but it doesn't change the
22 situation. Mr. -- is it Feary?
23 THE WITNESS: Yeah, Fierce.
24 THE COURT: Fierce?
25 THE WITNESS: Fierce.

Page 78

1 THE COURT: Mr. Fierce, where do you live?
2 THE WITNESS: I live in Palm Harbor.
3 THE COURT: Okay. So that's not -- you wouldn't
4 be flying back from California --
5 THE WITNESS: No.
6 THE COURT: -- if I reset this for a couple of
7 weeks for you to -- I just want to make sure that you
8 would still be available to provide --
9 THE WITNESS: Yeah.
10 THE COURT: -- the testimony this Court needs at
11 the next -- at the reset. Because I'll reset the
12 trial and let you take his deposition.
13 MR. BASSETT: That would be terrific, Your Honor.
14 THE COURT: You know, this is a very important
15 issue to this Court. So --
16 MR. BASSETT: Well --
17 THE COURT: -- I'm not going to exclude it, but I
18 won't by that -- the same token prejudice the fact
19 that you didn't have the opportunity to prepare
20 yourself with this witness.
21 MR. BASSETT: Thank you, Your Honor.
22 MR. WEIDNER: Your Honor --
23 MR. BASSETT: That will be fine.
24 MR. WEIDNER: -- I would just like to make a
25 statement and ask you to reconsider that; and the

Page 79

1 basis for that is, they were aware of this witness
2 since the filing of an affidavit a year ago. They
3 were aware of this issue since the filing of the
4 affirmative defenses in 2011. They were aware of
5 this issue in February when we brought the issue
6 before you on motion for summary judgment.
7 So to assert that they are prejudiced and
8 that they didn't have the opportunity to take the
9 deposition of this witness is simply not true.
10 They've known it for six years that this was an issue
11 and this witness has been specifically identified
12 since that -- since that affidavit was filed.
13 MR. BASSETT: Issues, yes; affidavits, different
14 thing. The witness list was not timely disclosed.
15 We had no idea that this gentleman was going to be
16 coming in to testify until -- until 8 days ago. We
17 would just ask for a brief continuous to reset it
18 till the next time Your Honor is here.
19 I think we're -- we're halfway through the
20 trial already. I think we probably only need about
21 another hour. The deposition will probably only take
22 about an hour and we're just asking for the Court's
23 indulgence to take the brief deposition.
24 THE COURT: I appreciate your argument,
25 Mr. Weidner. I've made my ruling. I'm not going to

Page 80

1 go through this trial twice because of --
2 MR. WEIDNER: Okay.
3 THE COURT: -- something like the opportunity to
4 have deposition and be properly prepared for this
5 witness.
6 So 10 days should be the minimum that
7 anybody gets. I should probably do that 20 days so
8 that I can deal with this issue in between the time
9 you must disclose and the time of trial.
10 But -- sir, I apologize to you, but I'm
11 going to allow this because I think your case,
12 Mr. Reder and Mr. Weidner, rises and falls on what
13 this witness will have to say.
14 MR. WEIDNER: I certainly respect the Court's
15 judgment.
16 THE COURT: So we -- we will stop now since this
17 witness has not provided any real testimony up to
18 this point, that we have closed the plaintiff's case?
19 MR. BASSETT: Yes, ma'am, I've rested.
20 THE COURT: And if you want anything else, you'll
21 certainly have to show me grounds for reopening it.
22 And we'll reset for -- we probably need another two
23 hours --
24 MR. BASSETT: Okay.
25 THE COURT: -- to flush this issue out, which I

Page 81


1 don't have to give you today anyway even if this
2 witness were to proceed as it is. I think we only
3 had an hour and a half scheduled for this trial.
4 MR. BASSETT: And just -- and just so I can have
5 it on the record that -- that counsel, either one,
6 will coordinate with our office the deposition of
7 Mr. Reder.
8 THE COURT: Mr. Fierce?
9 MR. BASSETT: Fierce. I'm sorry.
10 THE COURT: Fierce. Okay. All right. I would
11 suggest -- and we'll give you a date now, and before
12 you leave, sir, if you would meet with the counsel
13 and coordinate a date for your deposition to be
14 taken.
15 THE WITNESS: Absolutely.
16 THE COURT: Okay. All right.
17 (Discussion off the record.)
18 THE CLERK: Okay. 1:30?
19 MR. BASSETT: The trial is --
20 THE CLERK: May 1st at 1:30.
21 MR. BASSETT: May 1st, 1:30?
22 THE COURT: No, say -- let's just do it -- you're
23 right, let's do it in the morning at 9 o'clock.
24 MR. BASSETT: Okay.
25 THE COURT: And we'll make sure we stop by 11:30.

Page 82

1 That's two and a half hours.
2 MR. BASSETT: That's -- that's -- I thank you for
3 your courtesy, Judge.
4 MR. WEIDNER: I'm sorry. What date was that?
5 MR. BASSETT: May 1st.
6 THE CLERK: May 1st.
7 THE COURT: May 1st --
8 MR. BASSETT: May 1st.
9 THE COURT: -- at 9 a.m.
10 MR. WEIDNER: 9 a.m. Okay.
11 MR. BASSETT: And will the Court hold on to the
12 trial exhibits?
13 THE COURT: They've already been admitted.
14 MR. BASSETT: They've -- okay.
15 THE COURT: They're a part of the court file now.
16 MR. BASSETT: Gotcha.
17 THE COURT: All right. Thank you. We'll be in
18 recess in this case until that time.
19 MR. BASSETT: Thank you, Your Honor.
20 THE COURT: Thank you.
21 MR. WEIDNER: Thank you, Your Honor.
22 (Proceedings adjourned at 3:44 p.m.)
23
24
25

Page 83

CERTIFICATE OF REPORTER

1
2
3 STATE OF FLORIDA)
4 COUNTY OF HILLSBOROUGH)
5
6 I, Olivia Caldwell, certify that I was authorized to
7 and did stenographically report the proceedings; and
8 that the foregoing pages, 1 through 82, are a true and
9 complete record of my stenographic notes taken during
10 said proceedings.
11
12 I further certify that I am not a relative, employee,
13 attorney, or counsel of any of the parties, nor am I a
14 relative or employee of any of the parties' attorneys or
15 counsel connected with the action, nor am I financially
16 interested in the action.
17
18 Dated this 16th day of April, 2015.
19
20 
21
22 Olivia Caldwell
23 Notary Public
24 State of Florida at Large
25 My Commission Number: FF065809
Expires: 11/24/2017