

1 IN THE CIRCUIT COURT
2 OF THE FIFTH JUDICIAL CIRCUIT,
3 IN AND FOR LAKE COUNTY, FLORIDA

4 CASE NO.: 08-CA-3581

5 GREEN TREE SERVICING, LLC,
6 Plaintiff,

7 vs.

8 ERNEST C. AULLS, III A/K/A
9 ERNEST C. AULLS; UNKNOWN TENANT
10 NO. 1; UNKNOWN TENANT NO. 2;
11 AND ALL UNKNOWN PARTIES CLAIMING
12 INTERESTS BY, THROUGH, UNDER OR
AGAINST A NAMED DEFENDANT TO THIS
ACTION, OR HAVING OR CLAIMING TO
HAVE ANY RIGHT, TITLE OR INTEREST
IN THE PROPERTY HEREIN DESCRIBED,

13 Defendants.

14
15 PROCEEDINGS BEFORE THE HONORABLE
16 MARK J. HILL

17 DATE: Tuesday, February 7, 2012

18 TIME: 8:56 a.m. - 10:36 a.m.

19 LOCATION: Lake County Courthouse
20 550 West Main Street
Tavares, Florida 32779

21 REPORTER: Jennifer Little, FPR
22 Court Reporter

23
24 CAB REPORTING, INC.
25 Post Office Box 1684
Ocala, Florida 34478
 (352) 401-0080

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A P P E A R A N C E S

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On behalf of the Defendant

ALSO PRESENT:
Ernest C. Aulls, III

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1 P R O C E E D I N G S

2 THE COURT: Ready to go?

3 MS. SIMPSON: Yes, sir. Attorney Tanya
4 Simpson on behalf of the plaintiff.

5 THE COURT: What's your last name again?

6 MS. SIMPSON: Simpson, S-I-M-P-S-O-N. And
7 this is the case of Green Tree Loan Servicing
8 versus Ernest C. Aulls. I'd like to call our first
9 witness if I may, Gary Barnes. I'm going to waive
10 opening statement, Your Honor.

11 THE BAILIFF: Have a seat and raise your
12 right hand please.

13 THE COURT: Sir, do you solemnly swear to
14 tell the truth, the whole truth, and nothing but
15 the truth?

16 THE WITNESS: Yes, sir.

17 THE COURT: Please state your name.

18 THE WITNESS: Gary Barnes.

19 THE COURT: You're up.

20 Whereupon,

21 GARY BARNES,

22 a witness herein having been first duly sworn, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MS. SIMPSON:

1 Q. Mr. Barnes, who is your employer?

2 A. Green Tree Loan Servicing.

3 Q. That would be the plaintiff in this case; is
4 that correct?

5 A. Yes.

6 Q. What is your position with your Green Tree?

7 A. I'm a field representative.

8 Q. What does a field representative do?

9 A. I -- anything that is required of the company
10 outside of the office.

11 Q. Okay. Does it have to do with servicing
12 mortgage home loans?

13 A. Yes.

14 Q. Are you actively involved in servicing
15 mortgage home loans yourself?

16 A. Yes, I am.

17 Q. Are you familiar with the process that Green
18 Tree goes through to service home loans?

19 A. Yes, I am.

20 Q. Is your company Green Tree servicing this
21 loan for the investor who owns this loan?

22 A. Yes.

23 Q. And as a servicing agent, is your company in
24 control of the note and entitled to enforce the note in
25 this matter?

1 A. Yes.

2 Q. Did the servicer deliver the note to
3 plaintiff's counsel?

4 A. Yes.

5 Q. How do you know this?

6 A. Through loan documentation in the system and
7 from standard practices.

8 Q. Okay. By loan documentation in the system,
9 are you referring to the plaintiff's business records?

10 A. Yes.

11 MR. BRADSHAW: Objection, Your Honor.

12 Counsel has not established that the witness is a
13 records custodian or is qualified to testify about
14 loan documentation. Foundation, I guess.

15 THE COURT: Go ahead.

16 MS. SIMPSON: Your Honor, I'm not putting him
17 out here as a records custodian, so that would be
18 wrong. I believe I did just lay the foundation
19 that he's qualified to testify to the business
20 records that he's been involved actively with the
21 servicing of the loan.

22 THE COURT: Sir, do you regularly keep
23 business records?

24 THE WITNESS: I documentate [sic] every loan
25 that I come in contact with.

1 THE COURT: Are you in charge of making those
2 documentations?

3 THE WITNESS: Anytime anyone in our company
4 accesses an account, that person is responsible for
5 documenting that loan for what's transpired.

6 THE COURT: Okay. Overruled.

7 MS. SIMPSON: May I approach the witness,
8 Your Honor?

9 THE COURT: Sure.

10 BY MS. SIMPSON:

11 Q. Do you recognize this document, Mr. Barnes?

12 A. (Perused documents.) Yes.

13 Q. What is that document?

14 A. This is the note on the loan.

15 Q. How do you know that that particular note, or
16 the copy of the note that's in your hand, is the same
17 note that goes with the loan we're here on today?

18 A. Several points, with the address on the
19 document, as well as the previous servicer information
20 is correct with what we have.

21 Q. The loan amount also match what you have?

22 A. Yes, it is.

23 MR. BRADSHAW: Objection, Your Honor. Object
24 to the foundation and testifying about any
25 information contained in any previous servicer's

1 records. He's not be qualified as a witness with
2 any kind of foundation for testifying about
3 business records for a separate entity.

4 MS. SIMPSON: I don't think I asked about a
5 previous servicer.

6 THE COURT: I don't think so. He's
7 testifying about what the loan says, or the note
8 says.

9 MR. BRADSHAW: If I'm not mistaken, Your
10 Honor, he testified that his knowledge was from the
11 records of a previous servicer. That was the basis
12 of my objection.

13 MS. SIMPSON: I can rephrase the question.

14 BY MS. SIMPSON:

15 Q. Does the principal amount on the note match
16 the principal amount indicated in your company's
17 business records?

18 A. (Perused documents.) Yes.

19 Q. Does the borrower on the note match the
20 borrower on the note that we're here on for this case
21 today?

22 A. Yes, it does.

23 Q. Do you see any endorsement on that note?

24 A. (Perused documents.)

25 Q. I'll direct your attention to Page 3 of the

1 note. Do you see anything on Page 3 of the note?

2 A. Yes.

3 Q. Who is that endorsement from and who is it
4 to, according to what it says on the note you have in
5 your hand? Just read that for the Court. Which
6 company is it from?

7 A. Oh. Without recourse paid to the order of
8 SunTrust Mortgage.

9 Q. If I might direct your attention a little
10 closer to the endorsement.

11 Paid to the order of, is there a blank?

12 A. Yes.

13 Q. And underneath that, what company endorsed
14 the note?

15 A. SunTrust Mortgage, Incorporated.

16 MS. SIMPSON: I'd like to mark that as
17 Plaintiff's 1 and into evidence.

18 THE COURT: Would you like to let Mr.
19 Bradshaw take a look at it?

20 MS. SIMPSON: I did that before I brought it
21 up, Your Honor.

22 MR. BRADSHAW: Your Honor, I'd like to make
23 sure it's the same as the one I have in my file, if
24 that's all right. May I? I just want compare, if
25 that's all right.

1 THE COURT: That's quite all right.

2 MS. SIMPSON: While he's looking through
3 that, Your Honor, I'd like to direct the Court's
4 attention to the docket. The original note has
5 been in the file with the Court, and it's been
6 there for a while, since March 5th, 2009.

7 THE COURT: I'm looking at the note right
8 now. Notice of filing document is No. 27, for the
9 record, in the court file. The original note and
10 mortgage are under Document 27.

11 MR. BRADSHAW: What time was that filed, Your
12 Honor? I'm sorry, the date.

13 THE COURT: March 5th, 2009.

14 MR. BRADSHAW: Was that part of notice of
15 filing, or is that attached to another document?

16 THE COURT: Yes, notice of filing documents,
17 Document 27.

18 MS. SIMPSON: Your Honor, if it would
19 expedite matters, we could show the original note
20 and mortgage to the witness and admit that as
21 Plaintiff's 1.

22 MR. BRADSHAW: Excuse me, Your Honor. I
23 think I'm finally getting to that part in my file.

24 THE COURT: For the record, if this
25 introduced into evidence, we'll be introducing the

1 original note and original mortgage, which are
2 under Filing 27.

3 MR. BRADSHAW: Your Honor, in my record, I
4 have the notice of filing; however, it does not
5 have attached to it the note.

6 THE COURT: Well, I don't know what happened
7 there, but I'm looking at the note.

8 MS. SIMPSON: We also provided a copy on at
9 least two occasions in response to request for
10 production of documents.

11 MR. BRADSHAW: Just looking through to make
12 sure it wasn't misfiled.

13 Your Honor, if I may look at the court file?

14 THE COURT: Sure.

15 MR. BRADSHAW: If it please the Court, Your
16 Honor, the reasoning is that no copy of the note
17 was attached to the original complaint. No
18 certificate of service is attached to the notice of
19 filing either, Your Honor, I might add.

20 Thank you, Your Honor.

21 THE COURT: Okay.

22 MS. SIMPSON: May I continue?

23 THE COURT: Do you want to introduce it into
24 evidence?

25 MS. SIMPSON: If I may show that to the

1 witness, I'll go ahead and introduce the original
2 note as Exhibit 1. That will probably be the
3 easiest way to do this.

4 THE COURT: Note and mortgage are attached.

5 MS. SIMPSON: Thank you, Your Honor.

6 BY MS. SIMPSON:

7 Q. Take a quick look at the note and mortgage
8 there.

9 A. (Perused documents.)

10 Q. Do those appear to be the same note and
11 mortgage that go with the loan that we're here on
12 today?

13 MR. BRADSHAW: I'm sorry, Your Honor, I
14 didn't catch the question.

15 MS. SIMPSON: That note and mortgage, do they
16 appear to be the note and mortgage that go with
17 this loan.

18 A. Yes, it does.

19 MR. BRADSHAW: Objection, Your Honor.
20 Foundation. The witness may be able to testify
21 about what was in the court records, but he's
22 already testified that he's just a field
23 representative for Green Tree. So I'm not sure
24 what that means as far as his qualifications to
25 testify about the originality of a document.

1 MS. SIMPSON: I didn't ask whether that was
2 the original document. I asked whether that
3 appeared to him to be the note and mortgage that
4 went with the loan that we're here on today, not as
5 to the authenticity or originality.

6 THE COURT: Overruled.

7 MS. SIMPSON: I'd like to move to admit those
8 into evidence as Plaintiff's 1.

9 THE COURT: Let me see those, please.

10 Any objections for the record?

11 MR. BRADSHAW: As to the copy of the note
12 being entered?

13 THE COURT: No. As to the purported original
14 note and mortgage being offered into evidence.

15 MR. BRADSHAW: No, Your Honor.

16 THE COURT: Ma'am, please mark this as
17 Composite Exhibit No. 27, the original note and
18 mortgage, as Plaintiff's No. 1 in evidence.

19 (Whereupon Plaintiff's Exhibit No. 1 was
20 admitted into evidence.)

21 BY MS. SIMPSON:

22 Q. Mr. Barnes, is it your company's regular
23 practice to keep and maintain records regarding
24 transactions related to loans that your company is
25 servicing, such as this loan?

1 A. Yes.

2 Q. Are these business records compiled as a
3 normal part of the business practice at your company?

4 A. Yes.

5 Q. Are you personally aware of how information
6 reflected in the business records that you've reviewed
7 regarding this loan is compiled by your company?

8 A. Yes.

9 Q. Do these procedures require a person to input
10 the data when a transaction -- at or near the time a
11 transaction concerning the loan occurs?

12 A. Yes.

13 Q. Do those procedures require that person input
14 the data truthfully and accurately?

15 A. Yes.

16 Q. Would the person who inputs the data do so at
17 or near the time the transaction occurs?

18 A. Yes.

19 Q. Would the person have knowledge of the
20 transaction at the time they're inputting the data?

21 A. Yes.

22 MR. BRADSHAW: Your Honor, I object to the
23 witness being qualified under the business records
24 exception to the hearsay rule to admit business
25 records for the company. If I might be allowed a

1 short voir dire, I think my objection would become
2 more clarified.

3 THE COURT: Okay. You're up.

4 VOIR DIRE

5 BY MR. BRADSHAW:

6 Q. Mr. Barnes, you testified that you are a
7 field representative for Green Tree Loans; is that
8 correct?

9 A. Yes, sir.

10 Q. How long have you held that position?

11 A. I've been with Green Tree currently for three
12 years.

13 Q. And during your three years with Green Tree,
14 how long have you held the position of field
15 representative?

16 A. All three years.

17 Q. And prior to that, by whom were you employed?

18 A. I've been employed by Vanderbilt Mortgage and
19 Loan. I've been employed by Associates Housing and
20 Finance, Green Point Credit, and previously by Green
21 Tree from '94 to '98.

22 Q. Mr. Barnes, were you ever employed by Litton
23 Loan Servicing?

24 A. No, sir.

25 Q. And, Mr. Barnes, were you ever employed by

1 SunTrust Bank?

2 A. No, sir.

3 Q. And as a field representative, I believe you
4 testified earlier -- and please correct me if I'm
5 wrong, I wrote this down -- that you're duties involved
6 anything out of the office?

7 A. Correct.

8 Q. Do you have an office in or -- hold on. Let
9 me rephrase the question, please.

10 Where is Green Tree Loans located?

11 A. The office I work out of is in Tampa,
12 Florida.

13 Q. When you say the office you work out of,
14 where is the company located?

15 A. Headquarters are in Minnesota.

16 Q. Okay. Now, Mr. Barnes, have you ever worked
17 out of the office in Minnesota?

18 A. No, sir.

19 Q. How often do you visit the office in
20 Minnesota?

21 A. Never visited it.

22 Q. So you were hired in Tampa and have been in
23 Tampa during the three years of your employment; is
24 that correct?

25 A. Correct.

1 Q. Out of -- let me start this another way.
2 How many hours a week do you put in with
3 Green Tree?

4 A. Between 40 to 50 hours.

5 Q. How many of those hours are in the office in
6 Tampa?

7 A. Approximately five to six hours a week.

8 Q. Per week?

9 A. Correct.

10 Q. And of the other approximately 45 hours, what
11 would those duties entail?

12 A. Myriad of going into repossessed and
13 foreclosed homes, inspecting those, contacting current
14 for -- to generate contact about the servicing of the
15 loan.

16 Q. And so when you say field representative,
17 you're actually going out into the field and
18 reviewing -- or should I say, contacting customers,
19 looking at homes --

20 MS. SIMPSON: Objection. Asked and answered.

21 MR. BRADSHAW: Clarifying his duties, Your
22 Honor.

23 THE COURT: Answer the question, sir.

24 A. Yes, sir.

25 BY MR. BRADSHAW:

1 Q. In the five to six hours per week that you
2 spend in the office, what would your duties entail?

3 A. Preparing an itinerary, gathering loan
4 documentation required to perform my duties.

5 Q. When you say gathering loan documentation,
6 does that mean gathering loan documentation as it
7 relates to your field services?

8 A. In gathering to the loans that I'm going to
9 be covering that week.

10 Q. Okay. When you say covering that week, you
11 mean as a field representative?

12 A. Correct.

13 Q. And, Mr. Barnes, how often have you been
14 asked to testify on behalf of Green Tree?

15 A. Twice before.

16 Q. Twice before. Okay.

17 And when were those times?

18 A. It would be August of last year and then
19 again January of this year.

20 Q. And is there a particular -- well, let me put
21 it to you a different way here.

22 Is there a particular activity that you do to
23 prepare for testifying at a trial such as this?

24 A. Other than -- just review all the
25 documentation to verify loan amounts, to verify all the

1 documents that would be normally presented in a matter
2 as this, to review those and become more familiar with
3 them.

4 Q. So your entire knowledge of this loan comes
5 from your review of these documentations; is that
6 correct?

7 A. Yes, sir.

8 Q. And you were not involved with the preparing
9 of any of these documents; is that correct?

10 A. That is correct.

11 Q. Okay. And you were not involved with the
12 input of any of the data that's represented by any of
13 these documents; is that correct?

14 A. That is correct.

15 Q. And have you met any of the folks whose job
16 it is to input that data?

17 A. As obtaining to the actual notes?

18 Q. The records that you reviewed.

19 A. Yes, because any of the records would be --
20 there's a myriad of people that access each account.

21 Q. Okay. Are the documents that you reviewed in
22 preparation for your testimony today, are those
23 documents from the office in Minnesota?

24 A. (Perused documents.) No, because these are
25 the notes that were generated not by our company.

1 Q. So none of the company documents that you
2 have with you today are documents that were generated
3 by Green Tree; is that correct?

4 A. Well, I've got a lot of documents here; and
5 some documents were generated by our company, some were
6 not.

7 Q. Okay. Let me limit this then. The documents
8 that were generated by Green Tree that you reviewed for
9 your testimony today, were those documents generated,
10 meaning created, in Minnesota?

11 A. They would...

12 Q. In other words, did somebody in Tampa type
13 those up and input the data, or somebody in Minnesota
14 do that?

15 A. It could have been very possible that both
16 locations...

17 Q. So we're not really sure where exactly that
18 data was inputted?

19 A. It was inputted through the Green Tree
20 computer system, and access to those accounts are
21 throughout the corporation. So they could be entered
22 anywhere from any of our regional offices.

23 Q. And any employee of Green Tree has access to
24 these accounts?

25 A. Only certain employees, depending on their

1 job functions, are guaranteed access to the accounts.

2 Q. Okay. And at what level would you say that
3 that is, from where to where, in, I guess, the
4 hierarchy of employment there?

5 A. I'm not familiar with every employee's status
6 and access to our system.

7 Q. Let me clarify: Would the president of the
8 company be able to get in there and access the data and
9 input data?

10 A. Yes, he would.

11 Q. The vice president of the company?

12 A. Yes.

13 Q. Would a field representative be able to get
14 in there and input data?

15 A. I would be able to input notes into the
16 system concerning the loans or anything that I did with
17 the loan.

18 Q. Okay. And what employee would it be that
19 would have input the data that you reviewed for today's
20 trial? What type of employee? A secretary, a vice
21 president?

22 A. Account reps, clerks out of the local
23 offices, any of our legal counsel.

24 Q. So as far as legal counsel, you mean people
25 other than employees of Green Tree?

1 A. Yes.

2 MR. BRADSHAW: Your Honor, I object to
3 Mr. Barnes' testimony concerning any of the
4 documents that he's here for today. Obviously,
5 he's not qualified under the business records
6 exception to the hearsay rule, 90.8036. He's not
7 been able to testify, with any degree of certainty,
8 as to the records, as to whether or not the records
9 were made at the time by a person with knowledge.
10 He's not been able to testify where these records
11 were created nor by whom, or even within or without
12 this company, has there been any change to these
13 records. They certainly do not qualify as
14 exceptions to the hearsay rule under 90.8036.

15 THE COURT: How could any records custodian,
16 for instance AT&T, show or ever testify to that?
17 Because that would be impossible. Because if
18 they're a records custodian for a large corporation
19 that employs many people, all they have to testify
20 to is that these are the type of records made at or
21 near the time of their formation, which he's
22 testified to; the recorded information is of the
23 type that would be recorded by a person with
24 knowledge, he's testified to that; the type of
25 document recorded is in the regular course of

1 business, the type of document would be in regular
2 practice to record such record.

3 MR. BRADSHAW: But, Your Honor, he's
4 testified he's a field representative, that making
5 or creating this document is not part of his job,
6 which I understand that's not one of the
7 requirements; however, in order for the records to
8 be entered, the person who's testifying to get past
9 that hearsay rule has to be familiar -- and I
10 quote here -- has to be familiar with the records.
11 They have to testify about the processes involved.

12 Mr. Barnes has testified that he, using your
13 records custodian for AT&T, I hope that a records
14 custodian for AT&T would know who had access to the
15 information that is input into the business
16 records. Mr. Barnes has not been able to testify
17 to that.

18 THE COURT: Any response?

19 MS. SIMPSON: Yes, Your Honor.

20 The witness did testify that he himself has
21 personally input system notes when he has performed
22 actions, and he's input them at or near the time
23 he's performed those actions. And so he's now
24 testified as to his familiarity with that, how that
25 process works. He's also testified that he's

1 familiar with the procedures of Green Tree Home
2 Loan Servicing and all of the things that are
3 mentioned that are required to get through the
4 business records exception. He's familiar with all
5 of those and testified that's the regular practice
6 and procedure of the company.

7 There's no requirement that each and every
8 person and where they were sitting and in what
9 state they were sitting in of the country while
10 they were inputting the records, there's no
11 requirement that he know exactly the name of every
12 single person that needs to be able to access the
13 record. He's testified, with sufficient
14 familiarity, what the business procedures of Green
15 Tree Home Loan Servicing is to overcome the
16 business records exception.

17 MR. BRADSHAW: May I continue my voir dire,
18 Your Honor?

19 THE COURT: No, sir. Objection's overruled.
20 Continue, ma'am. What's next, ma'am?

21 MS. SIMPSON: I need to show this to the
22 witness, but I'm letting opposing counsel take a
23 peak first.

24 MR. BRADSHAW: I got a packet of stuff from
25 them yesterday, Your Honor. I just want to make

1 sure that the records she's showing to the witness
2 are the same as the records that were provided to
3 me yesterday.

4 THE COURT: All right.

5 MR. BRADSHAW: (Perused documents.) These
6 were not part of the records you sent me.

7 MS. SIMPSON: I sent you the -- this is the
8 one I'm looking for. I might have grabbed the
9 wrong one. Yeah. Here it is. Sorry. This one
10 right here.

11 MR. BRADSHAW: Pages 1 through 4?

12 MS. SIMPSON: Yes, sir.

13 MR. BRADSHAW: Okay.

14 DIRECT EXAMINATION (CONT'D)

15 BY MS. SIMPSON:

16 Q. Mr. Barnes, do you recognize that document?

17 A. (Perused documents.) Yes.

18 Q. And what is the document I've just handed
19 you?

20 A. The payment history report.

21 Q. Is that payment history report part of the
22 business records that are kept by Green Tree Home Loan
23 Servicing?

24 A. Yes, it is.

25 Q. Have you reviewed those records that are in

1 your hands now?

2 A. Yes.

3 Q. Do those records reflect that the borrower is
4 in default on the mortgage?

5 A. Yes.

6 Q. Do the records indicate the amounts that are
7 due and the amounts of the payments that were made?

8 A. Yes, it does.

9 Q. Have you reviewed the final judgment that was
10 prepared by plaintiff's counsel to be presented to this
11 Court today?

12 A. Yes.

13 Q. And do the records that you have reviewed
14 match the numbers on the final judgment that we're
15 going to presenting to this Court today?

16 A. Yes.

17 MR. BRADSHAW: Your Honor, I object to the
18 documentation and witness's testimony based upon
19 foundation. The witness --

20 THE COURT: Ma'am, you wish to respond?

21 MS. SIMPSON: Your Honor, I can rephrase the
22 question.

23 THE COURT: Please.

24 BY MS. SIMPSON:

25 Q. Do the records in your hand reflect the

1 amounts that are owed by the borrower?

2 A. Yes.

3 MR. BRADSHAW: Objection, foundation.

4 THE COURT: Overruled.

5 MS. SIMPSON: Thank you.

6 MR. BRADSHAW: Is it three pages?

7 MS. SIMPSON: Uh-huh.

8 Oh, before we do, I'd like to mark and admit
9 the document you were just looking at as
10 Plaintiff's 2.

11 THE COURT: Has Mr. Bradshaw had an
12 opportunity to look at it?

13 MS. SIMPSON: He has.

14 THE COURT: Have you already stated your
15 objection?

16 MR. BRADSHAW: Yes, Your Honor.

17 THE COURT: Objection's overruled, and these
18 will be admitted into evidence and this is payment
19 history report.

20 Ma'am, please staple those. Please mark them
21 into evidence. What number, for the record?

22 MS. SIMPSON: No. 2, Your Honor.

23 THE COURT: Thank you.

24 (Whereupon Plaintiff's Exhibit No. 2 was
25 admitted into evidence.)

1 BY MS. SIMPSON:

2 Q. Mr. Barnes, I've just handed you another
3 document.

4 Do you recognize that document?

5 A. (Perused documents.) Yes, I do.

6 Q. What's that document?

7 A. It's the notice of default and intent to
8 accelerate.

9 Q. How do you know that notice goes with the
10 loan that we're here about today?

11 A. With the property address, customer
12 information, and the -- after reviewing the loan
13 documents, that this was a system-generated letter.

14 MR. BRADSHAW: Objection, Your Honor. Object
15 to foundation. The witness had testify he didn't
16 work for Litton, and this letter is from Litton
17 Loan Servicing.

18 MS. SIMPSON: Your Honor, if I'm allowed to
19 continue, we can clean that up.

20 THE COURT: We're getting there, right?

21 MS. SIMPSON: Uh-huh.

22 THE COURT: Okay.

23 MS. SIMPSON: Thank you.

24 BY MS. SIMPSON:

25 Q. Is Green Tree the only company that's

1 serviced this loan?

2 A. No.

3 Q. Who was the company who serviced this loan
4 prior to Green Tree Home Loan Servicing?

5 A. I do not know all the different companies
6 that may or may not.

7 Q. Immediately prior. I'm sorry.

8 A. I'm not aware of the company who immediately
9 serviced this loan prior to Litton.

10 Q. Prior to Green Tree.

11 A. Prior to Green Tree, it was Litton.

12 Q. Litton Home Loan Servicing?

13 A. Litton Loan Servicing.

14 Q. And the document you have in your hand --

15 MR. BRADSHAW: Objection, Your Honor,
16 leading.

17 THE COURT: I think we're trying to get to
18 qualifications, and I'm going to allow this.

19 Go ahead, ma'am.

20 BY MS. SIMPSON:

21 Q. The document that you have in your hand, who
22 does that appear to be generated by based on what it
23 says on the letter?

24 A. (Perused documents.) Litton Loan Servicing,
25 LLP.

1 Q. Have you reviewed Litton Loan Servicing,
2 LLP's system notes as to this loan?

3 A. Yes, I have.

4 Q. How is it that Litton Loan Servicing, LLC's
5 [sic] system notes happen to be with Green Tree?

6 A. They are forwarded -- when we take over
7 servicing of the loan, we're forwarded all their notes,
8 and those are included into our system.

9 Q. Are you familiar with how loans are boarded
10 when loans are transferred from one servicer to another
11 servicer, for example, from Litton to Green Tree? Just
12 generally, within the industry, are you familiar with
13 how that works?

14 A. Yes.

15 Q. And when you examine the records from Litton
16 Home Loan Servicing that are now part of Green Tree's
17 records, did that appear to purport with your
18 familiarity of the industry standards of how records
19 are transferred?

20 MR. BRADSHAW: Objection, foundation.

21 THE COURT: Overruled.

22 BY MS. SIMPSON:

23 Q. What was your answer?

24 A. Yes. Everything they had performed is a
25 standard industry practice that we follow ourselves.

1 Q. Is there a date on that letter that's in
2 front of you?

3 A. (Perused documents.) Yes.

4 Q. What does that date say?

5 A. June 9th, 2008.

6 Q. When you reviewed Litton Home Loan
7 Servicing's loan records, did you come across any
8 system notes in those servicing records that indicate
9 what date that letter was generated?

10 A. Yes. On the notes, it stated that, On this
11 date, this letter was generated by Litton Loan
12 Servicing.

13 MR. BRADSHAW: Objection, Your Honor. He's
14 testifying about the records of another company.
15 When we get to 90.8036, how can he testify about
16 whether or not Litton Loan Servicing met the
17 qualifications for their records to be admitted
18 under the exception to the hearsay rule? He
19 admitted he's never worked for Litton Loan
20 Servicing.

21 MS. SIMPSON: Your Honor, he's testifying as
22 to records that now belong to Green Tree Home Loan
23 Servicing. Green Tree, as the witness testified,
24 this loan used to be serviced by Litton and is now
25 serviced by Green Tree. He's testified as to what

1 the industry standard is as to transferring loans.
2 He's testified what the industry standard is for
3 keeping system notes, and he's testified as to
4 multiple, different types of documentation that
5 he's reviewed to confirm that these have gone out.

6 We're at a hearing, at a civil trial, not a
7 criminal trial; so we're looking at the
8 preponderance of the evidence. We're introducing
9 multiple forms of evidence that indicate that this
10 demand letter did go out.

11 MR. BRADSHAW: Your Honor, if I may, the
12 witness did not testify to those things. He
13 testified vaguely how he's familiar with how loans
14 are forwarded, I believe was the phrase that
15 counsel used. He did not testify about his
16 familiarity with the various functions of the
17 industry in that detail or what those functions
18 were. So I'm at a bit of a loss here as far as
19 where my objection was or as to what specifically
20 the witness testified to.

21 MS. SIMPSON: I can ask a few more questions
22 to clean it up.

23 BY MS. SIMPSON:

24 Q. Are you familiar with the industry standard
25 as to how loans are serviced by various different

1 servicers, or are you only familiar with Green Tree?

2 A. I'm familiar with several different entities.

3 Q. How would you have become familiar with how
4 various different entities work?

5 A. The fact that I've worked at four separate
6 entities and participated also in the review of due
7 diligence in transferring the loans from one company to
8 another.

9 Q. In your review of the system notes that have
10 come from Litton Home Loan Servicing, do you have any
11 reason to believe, based on your review of those notes
12 from Litton for this loan, that there was anything that
13 did not go like industry standard?

14 MR. BRADSHAW: Objection, Your Honor. The
15 witness did not testify he was familiar with
16 industry standard. He testified he was familiar
17 with the standards at, quote, several entities.

18 THE COURT: Overruled.

19 MS. SIMPSON: Madam Court Reporter, could you
20 read the last question.

21 THE COURT REPORTER: Sure.

22 (Whereupon the record was read back.)

23 THE COURT: Do you understand the question?

24 THE WITNESS: Yes.

25 A. Everything appears as would be expected to be

1 found.

2 BY MS. SIMPSON:

3 Q. Back earlier when I asked you if you were
4 familiar with how loans are forwarded, I wanted to ask
5 a couple more questions about that.

6 Are you familiar with when loans are
7 forwarded into Green Tree whether or not there's any
8 kind of review that's conducted to ascertain that
9 servicing that Green Tree is now hiring was done
10 according to industry standards?

11 A. Yes. As they import all the information from
12 the previous servicer to us, all the notes are brought
13 over, and they're reviewed, at that time, by different
14 of our, like, collection representatives, or account
15 managers, that take over the actual day-to-day
16 servicing of the loan.

17 Q. Okay. So I'm going to go back to the
18 questioning with the documents that you have in front
19 of you --

20 MS. SIMPSON: Unless there are additional
21 objections that need to be addressed regarding
22 that.

23 MR. BRADSHAW: I have a myriad of objections
24 regarding that. Primarily, my objections have to
25 do with the fact that the witness has not stated

1 that he -- he stated he did not work for Litton.
2 He stated that these records came from Litton and
3 that they were reviewed by somebody when they were
4 brought over, but he's not testified about any of
5 the criteria necessary for Litton's records to be
6 admissible under the hearsay exception to the --
7 under the business records exception to the hearsay
8 rule.

9 THE COURT: He's not testifying about Litton.
10 He's testifying about his company and the company's
11 records, which are now this company's records,
12 because they've been transferred into this company,
13 how they're received.

14 MR. BRADSHAW: But the records were generated
15 by Litton, Your Honor; and the hearsay exception
16 says that it's required that there be testimony
17 confirming when they were made, how they were made,
18 whether they were made by a person of knowledge.
19 There's a whole litany of things that would be
20 required for Litton to do so.

21 Your Honor, I have a case.

22 THE COURT: I think what it says is that
23 records custodians really don't have to testify
24 that these are the types of records made at or near
25 the time of their formation, which he's testified

1 to, whether it's Litton or another company;
2 recorded information is the type to be recorded by
3 a person with knowledge. He's testified to that.
4 These are the type of documents recorded in the
5 regular course of business, whether it's his
6 business or Litton; and it's regular practice to
7 make these type of records. He's testified to
8 that, because he's familiar with at least four of
9 the different types of company in this industry.
10 He meets the criteria.

11 MR. BRADSHAW: Being familiar with four
12 companies, Your Honor, is not the same. And if
13 you'll humor me for just a second, I have a case on
14 point. The case is -- may I approach, Your Honor?

15 THE COURT: Do you have a copy for counsel?

16 MR. BRADSHAW: I do indeed. The case is
17 Thompson v. Citizens National Bank of Leesburg. I
18 would like to direct the Court, in this case, there
19 was testimony involving a transfer of records from
20 a failed bank that went through the FDIC to a new
21 bank. The Court, in reviewing the testimony from
22 the FDIC representative who had taken those
23 records, said here -- and I quote -- The affiant
24 did not, nor could he state, that he had personal
25 knowledge of the matters contained in the metro

1 business records nor that the records were complete
2 or correct or kept under supervision or control.
3 Meaning, he could not testify about the records of
4 another business or entity if he did not have
5 personal knowledge as to how the records were
6 created, whether or not they failed in those
7 exception -- that exception to the hearsay rule.

8 THE COURT: I don't believe any --
9 practically, in a large corporation, I don't
10 believe that any records custodian could actually
11 testify he has personal knowledge of matters
12 contained in the business records. No records
13 custodian has to say that.

14 MR. BRADSHAW: No, Your Honor, but they have
15 to say that they have personal knowledge of how the
16 records were created, that they were created by a
17 person with knowledge at the certain time. And in
18 order to do that, you have to at least be a member
19 of that organization, whether it's a records
20 custodian or somebody with knowledge of that
21 organization, to testify to those things.

22 THE COURT: Overruled.

23 BY MS. SIMPSON:

24 Q. Going back to the document that you have in
25 front of you, Mr. Barnes, again, what is the date on

1 that document?

2 A. (Perused documents.) June 9th, 2008.

3 Q. Does that document reflect that the loan is
4 in default? Does it inform the borrower that it's in
5 default?

6 A. Yes, it does.

7 Q. Does it inform the borrower what's needed to
8 cure the default?

9 A. Yes, it does.

10 Q. Does it give the borrower a period of time of
11 30 days or more to cure?

12 A. Yes, it does.

13 Q. Does it advise the borrower that a court
14 action may be filed if he does not cure the default?

15 A. Yes, it does.

16 Q. Does it instruct the borrower how he can cure
17 the default?

18 A. Yes, it does.

19 Q. From your review of the records, has the
20 default been cured, or is the loan still in default?

21 A. The loan is still in default.

22 MS. SIMPSON: At this time, Your Honor, I
23 would like to admit those documents as Plaintiff's
24 Exhibit 3.

25 THE COURT: Over counsel's objection. Go

1 ahead. I'm sorry.

2 MR. BRADSHAW: Just so I'm clear, the
3 objection had to do with whether or not those
4 records were -- or documents were found within the
5 business records of Litton; is that correct? Is
6 that what my objection was overruled as to?

7 THE COURT: I honestly don't remember,
8 frankly.

9 MR. BRADSHAW: I'm pretty sure that's all
10 I've objected to concerning this one, Your Honor.

11 THE COURT: All right. That's fine.

12 MR. BRADSHAW: And that was marked as?

13 MS. SIMPSON: Three.

14 (Whereupon Plaintiff's Exhibit No. 3 was
15 admitted into evidence.)

16 BY MS. SIMPSON:

17 Q. Mr. Barnes, just a couple more questions.

18 Did your company hire the law firm of Smith,
19 Hiatt & Diaz to represent the plaintiff in this action?

20 A. Yes.

21 Q. And has the plaintiff, by way of your
22 company, agreed to pay Smith, Hiatt & Diaz reasonable
23 attorney fees for its services in this case?

24 A. Yes.

25 Q. And has plaintiff, by way of your company,

1 agreed to reimburse Smith, Hiatt & Diaz for its
2 expenses and costs incurred in this case?

3 A. Yes.

4 MS. SIMPSON: No further questions, Your
5 Honor. I do observe the right to redirect.

6 THE COURT: Okay. You're up, sir.

7 MR. BRADSHAW: Your Honor, at this time, I
8 would like to move for a, I guess, directed
9 verdict. I feel that the defense feels that the
10 plaintiff has not met their burden on a number of
11 different issues.

12 THE COURT: I don't think she's finished. I
13 think she's just finished with this witness.

14 MS. SIMPSON: Oh, no further witnesses. I'm
15 sorry. Plaintiff rests. No further witnesses.

16 (Whereupon Plaintiff rested at 9:43 a.m.)

17 MR. BRADSHAW: If I may?

18 THE COURT: Go ahead.

19 MR. BRADSHAW: First of all, Your Honor, the
20 witness has not testified as to date of default.
21 The witness' testimony was that there was a
22 default. The witness has not testified as to any
23 specific amount of money that was due, other than
24 testifying that the witness had reviewed documents
25 that were prepared by counsel. Documents prepared

1 by counsel definitely are not an exception to the
2 hearsay rule as far as the amounts due and owing
3 and so on.

4 With that in mind, Your Honor, it's felt that
5 the plaintiff has not met their burden, and the
6 verdict should be entered for the defendant.

7 THE COURT: Any response, ma'am?

8 MS. SIMPSON: Yes, Your Honor.

9 I did ask the witness whether he had reviewed
10 the payments on this loan and whether he had
11 reviewed the amounts that were owed and whether or
12 not the loan was in default. He said, Yes. I did
13 ask a question -- there was an objection. I'm not
14 sure whether it was ruled upon or not, as to
15 whether he had compared what Green Tree's notes say
16 are due against the order that we're going to
17 present today. I can go through those one by one,
18 but he did answer in the affirmative that he had
19 compared them, and they do match.

20 MR. BRADSHAW: Your Honor, I object --

21 THE COURT: What about the amounts owed?

22 MS. SIMPSON: That's what I was referring to,
23 Your Honor.

24 MR. BRADSHAW: Your Honor, if I may, the
25 document that counsel has referred to, I believe

1 the witness testified is a compilation of the
2 business records, as such -- may I approach, Your
3 Honor?

4 THE COURT: Sure.

5 MR. BRADSHAW: As such, under Rule 90.956, in
6 order to use a summary of business records, or a
7 compilation of business records, a party's required
8 to provide notice and shall make all originals or
9 duplicates of that data by or from which the
10 summary was compiled available for examination or
11 copying or both. They failed to do so in this
12 case, Your Honor.

13 THE COURT: Ma'am, you want to take a look at
14 that?

15 MS. SIMPSON: Your Honor, first of all, what
16 was introduced into evidence was not a compilation
17 of data -- or not a compilation of the records; it
18 was the records for this loan. They all happen to
19 appear in one place. That doesn't necessarily mean
20 they're a compilation from various different
21 things.

22 Secondly, those documents were provided by
23 way of copy to opposing counsel. So making
24 available for copying, he's got copies.

25 THE COURT: Okay.

1 MR. BRADSHAW: And --

2 THE COURT: Overruled.

3 MR. BRADSHAW: I just want to be clear, Your
4 Honor, that it's the position of the plaintiff that
5 for page record that's Exhibit No. 2 contains all
6 the data necessary for the entry of an order
7 against the defendant?

8 THE COURT: That's what she's arguing.

9 Ma'am, you understand that Mr. Bradshaw's
10 argument is that you're arguing that this document
11 in evidence, No. 2, explains what the amount owed
12 is --

13 MS. SIMPSON: Your Honor, I can certainly ask
14 the witness additional questions as to the specific
15 amounts owed. I thought I covered that when I
16 asked if his review of his records matched what was
17 on the order that we're presenting to Your Honor.
18 He's obviously reviewed many more records than what
19 are here today. We didn't introduce them all into
20 evidence as evidentiary documents because I
21 introduced testimony.

22 THE COURT: I understand you asked a question
23 about whether or not you've reviewed the proposed
24 final judgment; and as I recall, he said, Yes. And
25 I think you asked if the amounts contained in that

1 final judgment -- I don't know the exact words, but
2 paraphrasing -- are the amounts that are due and
3 owing. He said, Yes.

4 MS. SIMPSON: I can certainly ask him the
5 amounts one by one, because I know he's familiar
6 with those as well.

7 THE COURT: Any objection, sir, so the
8 record's clear?

9 MR. BRADSHAW: Your Honor, I would object to
10 the witness testifying to any records that are not
11 in evidence before this Court. It is clear from
12 cases such as Bifulco v. State Farm -- I have a
13 copy here -- that the hearsay exception -- should I
14 say, the business record exception to the hearsay
15 rule is just that, an exception for the business
16 records, not for testimony concerning business
17 records. In other words, if he were to testify
18 about records that were not in evidence, it would
19 be, in essence, double hearsay.

20 In other words, if they need the records to
21 prove their case, then the records need to be here,
22 and the records need to be here in a form other
23 than some sort of compilation, Your Honor, without
24 the proper notice under 9.956.

25 THE COURT: I guess you're going to go

1 through each one of those. Are you asking to
2 reopen your case?

3 MS. SIMPSON: Yes, Your Honor.

4 THE COURT: You may reopen.

5 DIRECT EXAMINATION (CONT'D)

6 BY MS. SIMPSON:

7 Q. Mr. Barnes, you've reviewed the amounts that
8 are owed on this case, correct?

9 A. (Perused documents.) Yes.

10 Q. Can you tell me what the principal balance is
11 that's owed on this case?

12 A. \$57,171.23.

13 MR. BRADSHAW: Objection, foundation.

14 THE COURT: Sustained. What's the foundation
15 for him to know this?

16 BY MS. SIMPSON:

17 Q. From the business records that you've
18 reviewed that have been admitted into evidence, the
19 payment history, does that indicate what the principal
20 balance is on this loan?

21 A. Yes.

22 MS. SIMPSON: Can we hand Exhibit 2, I
23 believe, back to the witness?

24 THE COURT: Sure.

25 A. (Perused documents.) Yes.

1 BY MS. SIMPSON:

2 Q. What does that document that's already been
3 admitted into evidence indicate?

4 A. \$57,171.23.

5 MS. SIMPSON: Can we hand Exhibit 1 back to
6 the witness?

7 BY MS. SIMPSON:

8 Q. Between Exhibit 1 and Exhibit 2, are you able
9 to identify the interest rate on this loan?

10 A. (Perused documents.) Yes.

11 Q. And is that interest rate -- what is that
12 interest rate?

13 A. 6.75 percent.

14 MR. BRADSHAW: Objection. Foundation, Your
15 Honor.

16 THE COURT: Ma'am, you wish to respond?

17 MR. BRADSHAW: I mean, where is that stated,
18 I guess?

19 BY MR. SIMPSON:

20 Q. Which record are you looking at, Exhibit 1 or
21 2?

22 A. (Perused documents.) I'm looking at Exhibit
23 1.

24 Q. Which is the?

25 A. Note, the original note.

1 MR. BRADSHAW: Okay.

2 THE COURT: Okay.

3 BY MS. SIMPSON:

4 Q. From your review of Exhibit 2, are you able
5 to tell how much the plaintiff has advanced for the
6 purposes of paying property taxes?

7 A. (Perused documents.) I'd need a calculator
8 to add them up, because there's several entries from...

9 MS. SIMPSON: Does counsel want me to have
10 him calculate all this?

11 MR. BRADSHAW: If he could show me which
12 entries he's referring to.

13 BY MS. SIMPSON:

14 Q. Can you point out which entries you're
15 referring to Mr. Barnes?

16 A. Yes. (Perused documents.).

17 MR. BRADSHAW: I have a calculator. On a
18 housekeeping note, counsel keeps referring to the
19 proposed judgment that the witness has testified
20 to. That's never been provided to me, Your Honor.

21 MS. SIMPSON: I could give you a copy right
22 now, but I've been referring to Exhibit 2.

23 MR. BRADSHAW: I understand that, but earlier
24 you were asking the witness whether or not these
25 numbers reflected the numbers in the judgment. I

1 want to make sure we're comparing apples with
2 apples.

3 MS. SIMPSON: Of course. I had them in my
4 hand a minute ago. Oh, here they are.

5 MR. BRADSHAW: Thank you. And I'm not trying
6 to be obstinate, Your Honor. I'm not asking the
7 witness to show some sort of math wizardry for
8 which I certainly don't exhibit. When I get past
9 ten, I have to take my shoes off when it comes to
10 counting. But if you could just point out to me in
11 Exhibit 2 where these numbers are coming from.

12 THE COURT: That's fine.

13 MS. SIMPSON: May it please the Court? I may
14 be able to make this process a little bit faster.

15 The Exhibit 2 that he's looking at is not the
16 composite exhibit, which is why he's having to do
17 all this math. I do have a composite exhibit
18 available if counsel would like to see it, and we
19 could go that route if you prefer, which has all
20 the totals already done so he doesn't have to
21 calculate them. He's looking at individual entry
22 right now..

23 MR. BRADSHAW: Just so we're clear, I haven't
24 asked him to calculate it. Just point out the
25 entries that are part of the evidence that has been

1 propounded as the records, which of them show the
2 taxes, which of them show -- I'm not asking him to
3 add them up. Lord knows I wouldn't be able to do
4 that myself. I'm just trying to figure out which
5 is which.

6 BY MS. SIMPSON:

7 Q. Can you point out on that exhibit where the
8 taxes are, which pages.

9 A. This page refers to the escrow adjustments,
10 so I would have -- to be 100 percent accurate, I'd have
11 to compare them to the actual notes.

12 Q. That are in the system?

13 A. That are in our system.

14 MS. SIMPSON: I would like to show this to
15 opposing counsel. I know he's going to object, but
16 I'll show it to him anyway, and then he can object.

17 MR. BRADSHAW: Fannie Mae?

18 MS. SIMPSON: Yeah. What's wrong with that?

19 THE COURT: I think it's a bad word.

20 MR. BRADSHAW: Well, the only problem I have
21 with that is that previous counsel testified that
22 Litton Loan Servicing was the owner of this note.

23 MS. SIMPSON: I don't know what previous
24 counsel did, but not the owner. Litton Loan
25 SErviceing was the servicer.

1 MR. BRADSHAW: I moved to dismiss earlier on,
2 and they testified --

3 MS. SIMPSON: Counsel testified?

4 MR. BRADSHAW: Counsel propounded that Litton
5 Loan Servicing was the owner of the note.

6 MS. SIMPSON: I don't know at what point
7 that testimony was taken. Plaintiff has since
8 amended its complaint, but our amended complaint
9 lists Green Tree Home Loan Servicing as plaintiff
10 and servicer of the loan.

11 THE COURT: That's in your amended complaint?

12 MS. SIMPSON: Yes.

13 MR. BRADSHAW: Your Honor, previously what
14 they said was that Litton Loan Servicing was the
15 servicer; and when I moved to ask who the owner of
16 the note was -- and this was at a hearing before
17 Your Honor on my motion to dismiss that was dated
18 March 5, 2009 --

19 MS. SIMPSON: Prior to the amended complaint.

20 THE COURT: The motion to dismiss I think
21 you're referring to was filed October 14th, 2008,
22 heard in March, I think.

23 MR. BRADSHAW: He goes on to say that, If a
24 third party were to come in and challenge that,
25 whoever the actual note holder, or the owner of the

1 note, didn't have the note, a copy of the note
2 would be required. It does not state that the copy
3 must be attached to the complaint.

4 It further goes on to say that, Where a
5 complaint filed is brought against the original
6 mortgager by the original mortgagee it is not
7 necessary to allege the plaintiff is the owner.
8 The actual case law that counsel was referring
9 to -- I guess, there's no need to attach the note
10 to the complaint.

11 And, again, Your Honor, I would say that this
12 is nothing facially deficient about our complaint.
13 Our complaint merely pleads in the alternative.

14 MS. SIMPSON: Your Honor, I have a copy of
15 the original complaint here, which pleads that
16 plaintiff is servicer. It's possible that counsel
17 misspoke in a hearing that's been heard and ruled
18 upon, but even the original complaint states that
19 plaintiff is servicer.

20 Would you like to see a copy of that? I can
21 bring it up.

22 THE COURT: I've got a copy. Just show me
23 the paragraph.

24 MS. SIMPSON: I can identify the paragraph,
25 Your Honor.

1 MR. BRADSHAW: Your Honor, they originally
2 filed a complaint without even so much as a copy of
3 the note. And when I moved to dismiss it, they
4 said they only need to have a copy of the note,
5 because they're the owner of the note; and you
6 denied my motion to dismiss based upon that.

7 THE COURT: Well, you need to be specific.
8 Are they the owner or the holder? There's a
9 difference.

10 MS. SIMPSON: Paragraph 15 of the complaint,
11 Your Honor, Plaintiff, as servicer for the owner
12 and acting on behalf of the owner with authority to
13 do so, is the present designated holder.

14 MR. BRADSHAW: Which complaint is that?

15 THE COURT: The original complaint, Page 4.

16 MS. SIMPSON: The original complaint from
17 2008; Paragraph 15, Page 4.

18 MR. BRADSHAW: And Page 6 of the transcript,
19 Plaintiff in this complaint is Litton Loan
20 Servicing acting as a servicer for the owner and
21 the holder of the note; however, we don't have to
22 have the note. And we feel this complaint fails to
23 properly state a cause of action -- wait a minute.
24 That's my argument. I'm sorry.

25 One is that we don't have standing, which if

1 Your Honor would look at the original note and
2 mortgage --

3 MS. SIMPSON: Your Honor, I'm going to object
4 as to him continuing to argue a motion that's
5 already been decided. If he wants to argue a new
6 motion, that's great; but he's reading the old
7 motion again. That's already been determined.

8 MR. BRADSHAW: Your Honor, this was clearly
9 fraud on the court when he says, Litton Loan
10 Servicing is the owner and holder of the note, as
11 well as the servicer of their own note. So I'm not
12 sure where the confusion is. There's no
13 contradictory statements at all. They do own the
14 note, and they have submitted it to the Court. I'd
15 be happy to show you the certified transcript.

16 Part of the problem here is the obfuscation,
17 Your Honor, from the very beginning. They now,
18 here at trial, have showed a document that, I
19 guess, they're trying to get in, which is actually
20 counsel's. It appears to be some sort of billing
21 records.

22 MS. SIMPSON: It's the composite records of
23 the servicer.

24 MR. BRADSHAW: Composite records of the
25 servicer that shows drive-by inspection, attorney

1 fees, attorney fees, title costs. They're not the
2 records of the servicer, Your Honor; these are the
3 records of the attorney.

4 MS. SIMPSON: Those are the records of the
5 servicer.

6 MR. BRADSHAW: This is the first time, after
7 four years, that they say they want to introduce
8 records, that Fannie Mae is the owner, after
9 they've lied to this Court, for lack of a better
10 phrase. Not they, not her in particular, Your
11 Honor. I'm not directing anything at counsel here,
12 however --

13 THE COURT: Let me see the note. They don't
14 allege that. They don't allege that Fannie Mae's
15 the owner of the note in the complaint.

16 MS. SIMPSON: What I believe he's addressing
17 is we're foreclosing in the plaintiff's capacity as
18 servicer. This document happens to show who the
19 owner is, but that's not relevant. We're
20 foreclosing as owner and servicer.

21 MR. BRADSHAW: And their standing to bring
22 this was the part of the grounds of the motion to
23 dismiss and was also raised as an affirmative
24 defense, Your Honor.

25 THE COURT: It says, Plaintiff, as servicer

1 for the owner and acting on behalf of the owner
2 with the authority to do so, is the present
3 designated holder of the note and mortgage with the
4 authority to pursue the action.

5 Tell me how that's not the case. Tell me how
6 they're not -- that that's not true.

7 MR. BRADSHAW: They've introduced no evidence
8 that they have the authority from anybody. As a
9 matter of fact --

10 THE COURT: The note is endorsed in blank.
11 Whoever holds this note has the authority to move
12 forward, because it's the bearer of the note.

13 MR. BRADSHAW: Your Honor, if I may --

14 THE COURT: I could be wrong, but I think the
15 note's endorsed in blank. If the note's endorsed
16 in blank, whoever the holder is, is the one who has
17 the power to move forward.

18 MR. BRADSHAW: Your Honor, at the onset of
19 this litigation, which was filed on behalf of
20 Litton, they did have a note. As a matter of fact,
21 they filed a claim for a lost note. It wasn't
22 until a year or so later that they showed up in
23 court on my motion to dismiss -- matter of fact,
24 they didn't even have a copy of the note. They
25 showed up a year later with a note endorsed in

1 blank, conveniently, and represented to the
2 Court -- and I quote -- I'm sure where the
3 confusion is. There's no confusion. We own the
4 note.

5 So their standing was an issue at the
6 beginning, and their standing is also an
7 affirmative defense that's been raised.

8 THE COURT: Maybe the word "owner" might be
9 inappropriate, but they're certainly the holder.
10 If they hold this note -- it's in their hands --
11 they're the holder of the note. They have a right
12 to enforce the note if they're the holder.

13 MR. BRADSHAW: Your Honor, I know we're
14 getting a bit off topic here, but I do object to
15 the records that plaintiff is seeking to admit on a
16 number of reasons. First of all, they were made
17 for the purpose of litigation, so they were not --
18 under the business records exception to the rule,
19 they must be made at or near the time and in the
20 regular course and scope of business. And matter
21 of fact, the rule itself says that records that are
22 made for the purposes of litigation are suspect and
23 shouldn't be admitted.

24 MS. SIMPSON: Your Honor, I withdraw. I
25 don't need to admit these.

1 THE COURT: Don't interrupt. Are you
2 finished?

3 MR. BRADSHAW: I can give you some case
4 citations, Your Honor, but that's...

5 THE COURT: So you're withdrawing those?

6 MS. SIMPSON: I don't need to admit these. I
7 was just trying to speed up the process.

8 THE COURT: We need to move on, so let her go
9 through them.

10 MR. BRADSHAW: All I asked him to do was
11 direct me to the notes that they say are the, I
12 guess, Composite 2 --

13 MS. SIMPSON: Two is not a composite.

14 MR. BRADSHAW: Well, it's four pages. That's
15 why I referred to it as a composite. I apologize.
16 I just meant more than one page. My objection on
17 that was overruled earlier, but which of these
18 entries show what these amounts are that are
19 supposedly contained in this judgment?

20 If you recall, Your Honor, all this goes back
21 to my asking for verdict on behalf of the
22 defendant, because the plaintiff hasn't proven
23 their case yet with the evidence they put on.

24 MS. SIMPSON: I think that I pointed out with
25 one of the questions --

1 THE COURT: For the record, I allowed the
2 counsel to reopen her case; and all we're doing so
3 far is going through this documentation, and he's
4 trying to calculate how he reaches certain numbers.

5 MR. BRADSHAW: Your Honor, all I asked is
6 that he point out to me which of these is which. I
7 have a calculator here. I'm not asking for some
8 feat of mathematic --

9 THE COURT: Repeat the question. Maybe he
10 didn't understand the question.

11 BY MS. SIMPSON:

12 Q. Mr. Barnes, I'm going to rephrase the
13 question. It might make things go a little quicker
14 here.

15 Does Exhibit 2 that you have in front of you
16 indicate amounts that were paid out by Green Tree,
17 escrowed amounts, such as taxes and insurance?

18 A. (Perused documents.) Yes.

19 Q. Does that particular document that you have
20 break down which are for taxes and which are for
21 insurance?

22 A. It does not discuss exactly. It just refers
23 to an escrow amount.

24 Q. From your knowledge of Green Tree's
25 servicing, would anything else be included in escrow,

1 other than taxes and insurance?

2 A. No.

3 Q. So when you see amounts that are paid out for
4 escrowed amounts, what would you conclude those amounts
5 are for?

6 A. Taxes and insurance.

7 Q. Can you point to the places on Exhibit 2
8 where the escrowed amounts are paid out for taxes and
9 insurance?

10 A. Yes.

11 Q. Please do.

12 A. (Perused documents.) That would be the line
13 item showing the 210 disbursement to escrow only.
14 Several cases of the -- it appears, based on how our
15 taxes are paid, would be the November entries, in
16 particular to the taxes.

17 Q. Anything else on there?

18 A. There are the other July entries, which would
19 be for the insurance. It's -- the line item is the
20 same, the 210 disbursement, for escrow only.

21 Q. So those are the things that went out for
22 escrow for taxes and insurance; is that what you're
23 saying?

24 A. Correct.

25 Q. Does Exhibit 2 that you have in front of you

1 indicate late charges?

2 A. (Perused documents.) Yes.

3 Q. Can you point out where on Exhibit 2 the late
4 charges appear.

5 A. That would be the QFA, the fee assessed with
6 late charges.

7 Q. What page are you on?

8 A. Actually, those are tabulated on each page.

9 Q. Okay.

10 A. The fee of the 2973 is the recurring.

11 Q. Does Exhibit 2 that you have in front of you
12 show amounts that were paid out for property
13 inspection?

14 A. It is not Line Item 2, actually, display for
15 the property inspections.

16 MS. SIMPSON: Your Honor, if counsel objects,
17 we can strike that \$307 amount for property
18 inspections.

19 THE COURT: I don't know.

20 MR. BRADSHAW: Again, are we talking about
21 the proposed order?

22 MS. SIMPSON: Yes. Did I give you a copy of
23 that?

24 MR. BRADSHAW: No, ma'am. I still don't have
25 a copy. I'm sorry. Actually, you did. I put my

1 book on top of it. I apologize.

2 MS. SIMPSON: At any rate, if he can't pick
3 out where exactly the property inspection amounts
4 are, we're willing to waive the property inspection
5 amounts, is what I'm getting at.

6 THE COURT: It's waived.

7 MS. SIMPSON: I'm sorry?

8 THE COURT: It's waived then.

9 MS. SIMPSON: No problem.

10 BY MS. SIMPSON:

11 Q. And then just to repeat one previous
12 question, your firm has hired Smith, Hiatt & Diaz and
13 has agreed to pay us reasonable attorney fees and
14 costs?

15 A. Yes.

16 Q. Would those costs have included performing a
17 title search?

18 A. Yes.

19 Q. Would those costs include this court's filing
20 fee?

21 A. Yes.

22 Q. Would those costs include service of process?

23 A. Yes.

24 MS. SIMPSON: Thank you. No further
25 questions.

1 THE COURT: Are you positive?

2 MS. SIMPSON: Yes, sir.

3 THE COURT: You're up, sir.

4 MR. BRADSHAW: Once again, Your Honor, I'd
5 like to renew my request for a verdict in favor of
6 the defendant. The plaintiff has failed to prove
7 when the default occurred.

8 THE COURT: I thought you were going to
9 continue on. I'm sorry.

10 MR. BRADSHAW: Well, Your Honor, they failed
11 to prove when a default occurred. They've also
12 failed to prove the amounts due and owing. As the
13 witness testified, Paragraph 2 -- I'm sorry, not
14 paragraph, Exhibit 2, did not show whether or not
15 any payments had been made.

16 THE COURT: Okay. And are you complete?
17 Have you completed your argument?

18 MR. BRADSHAW: Yes, Your Honor.

19 THE COURT: Ma'am, you may respond.

20 MS. SIMPSON: Yes, Your Honor.

21 The witness testified as the amount due and
22 that the loan is in default. Specifically when the
23 loan went into default is not something that's
24 required, but that it's in default and how much
25 it's in default. He did testify to those amounts.

1 MR. BRADSHAW: Your Honor, the event of
2 default is a necessary element to the action. So
3 just going into default at some time isn't specific
4 enough. It requires an event of default in order
5 for them to have a foreclosure action, Your Honor.

6 THE COURT: I see. Do you have the items in
7 evidence, or did you give them back to me?

8 THE WITNESS: I gave them back to you, sir.

9 THE COURT: Would you repeat your arguments
10 again, please.

11 MR. BRADSHAW: Sir?

12 THE COURT: Make your arguments again,
13 please.

14 MR. BRADSHAW: Yes, Your Honor.

15 In order to win a foreclosure action, the
16 plaintiff has to prove an event of default with
17 specificity. And the reason being, Your Honor
18 is -- and I don't have it with me today, but there
19 was a Supreme Court case in 2004 where a
20 foreclosure action was brought based upon a
21 specific event of default and failure to make a
22 payment, because the plaintiff wasn't able to prove
23 their case concerning that particular event of
24 default, and the defendant prevailed.

25 When the defendant failed to make the next

1 payment, they brought another action based on a new
2 event of default. There was conflict between the
3 districts, and the Supreme Court came back and
4 said, Each failure to make each payment is the
5 free-house case, meaning that's a fallacy.

6 Meaning, if they don't prevail today, my client
7 doesn't make the next payment, then they can file
8 another foreclosure action. The Supreme Court has
9 ruled that each payment is a new event of default.
10 That's one of their prerequisites, Your Honor,
11 that's part of Form 1.944 forms of Florida rules of
12 procedure as well. It's one of their requirements.

13 THE COURT: Ma'am, do you want to respond?

14 MS. SIMPSON: I rest on the witness
15 testimony, Your Honor, that the loan was in default
16 and the letter went out indicating what would be
17 required to cure the default and the default was
18 not cured. I'm not aware of any case -- and
19 counsel has not cited a case -- that says that
20 there's a specific default date required to be
21 proven.

22 MR. BRADSHAW: Just so the record's clear,
23 the witness never testified about any letter going
24 out. The witness testified that that letter was
25 found in the records that were transferred by

1 Litton. Just so we're clear, as far as the notice
2 defense -- and I haven't gotten to my affirmative
3 defenses yet. Once again, we're here on my motion
4 for a verdict on this. There's been no testimony
5 concerning whether or not that letter went out.

6 THE COURT: Okay. Motion for directed
7 verdict is respectfully denied.

8 Do you wish to call any witnesses or
9 cross-examine or call this witness on your case
10 chief?

11 MR. BRADSHAW: I would like to examine
12 Mr. Barnes, Your Honor.

13 THE COURT: So he's considered your witness
14 right now.

15 MR. BRADSHAW: Yes, Your Honor; and a hostile
16 witness at that, Your Honor.

17 THE COURT: That's fine.

18 MR. BRADSHAW: Your Honor, would it be
19 possible to take a quick break?

20 THE COURT: Sure, sure. Let's take five
21 minutes.

22 (Whereupon a short break was taken at 10:18
23 a.m. and resumed at 10:21 a.m.)

24 MR. BRADSHAW: Mr. Barnes is still under
25 oath, Your Honor?

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 MR. BRADSHAW:

4 Q. Mr. Barnes, when did Green Tree take over
5 servicing of this loan? And I apologize if I asked
6 that question before, because I didn't write that date
7 down.

8 A. (Perused documents.)

9 Q. Would that information be contained in
10 Exhibit 2 of the records?

11 A. I would have to look at Exhibit 2 to see if
12 it's contained in there.

13 MS. SIMPSON: Can the witness take another
14 look at Exhibit 2?

15 MR. BRADSHAW: By all means.

16 THE COURT: Sure.

17 A. (Perused documents.) It should be -- it's
18 listed in the payment history report as being 5/8/2008
19 as when the conversion was established.

20 BY MR. BRADSHAW:

21 Q. 5/8/2008; is that correct?

22 A. Yes.

23 Q. And on page -- just for my own edification,
24 on Page 4 of Exhibit 2, where the date says 5/8/2008,
25 it says, Conversion loan established, is that the

1 record you're referring to?

2 A. Yes.

3 Q. On the right-hand side of that page at the
4 top, what does it say right there?

5 A. I'm not sure exactly where you're referring
6 to.

7 Q. These records appear to be in some sort of a
8 line format. The left-hand side, it says, Transaction
9 date, which has 5/8/2008, transaction code, total
10 principal due, insurance.

11 Do you see what I'm getting at here?

12 A. Right.

13 Q. On the far right-hand side, what does that
14 say?

15 A. Back date.

16 Q. Where you were testifying that Green Tree
17 took over servicing on 5/8/2008, it said to back date
18 that to 8/10/2004; is that correct?

19 A. That's what it says.

20 Q. What does that mean?

21 A. I'm not familiar with that term.

22 Q. Okay. Earlier, you testified with these
23 disbursement amounts for your escrow here, where it
24 says -- for instance, on that same page 11/10/2008, you
25 describe the disbursements amounts as No. 210. It

1 shows a transaction amount and a total, and it shows
2 that same amount under escrow, but it doesn't show it
3 as being for insurance; is that correct?

4 A. Correct.

5 Q. As a matter of fact, none of these
6 disbursements for escrow show them as under the
7 category of insurance, do they?

8 A. Correct.

9 Q. And there is no category for taxes; is that
10 correct?

11 A. Well, the escrow identifies as taxes and
12 insurance.

13 Q. The escrow does?

14 A. Yes.

15 Q. What escrow would that be? Looking here it
16 just says, 210 disbursement, escrow only. And then
17 under, Categories, it has total, principal, insurance,
18 interest, escrow, late charges, back date.

19 Where is the word taxes anywhere in these
20 records?

21 A. (Perused documents.) It doesn't.

22 Q. And just so I'm clear, Mr. Barnes, you
23 started working for Green Tree approximately three
24 years ago; is that correct?

25 A. Correct.

1 Q. So you were not working for Green Tree on
2 5/8/2008; is that correct?

3 A. Correct.

4 Q. And I believe you already testified you did
5 not, at any time, work for either Litton or SunTrust;
6 is that correct?

7 A. That's correct.

8 MR. BRADSHAW: And I don't know what I did
9 with Exhibit 3. I know you handed it to me,
10 counselor. Excuse me, Your Honor, I've got a big
11 mess going.

12 MS. SIMPSON: You want to use this one?

13 MR. BRADSHAW: Yes, thank you.

14 Your Honor, would it be possible for the
15 witness to see Exhibit 3 again?

16 BY MR. BRADSHAW:

17 Q. I believe you testified that it was -- that
18 this was found in the records of Litton Loan Servicing;
19 is that correct?

20 A. (Perused documents.) Yes.

21 Q. I believe you testified that the date on the
22 letter was 6/9/2008; is that correct?

23 A. Yes.

24 Q. Perhaps I don't understand, but you testified
25 earlier that the servicing of this loan was transferred

1 to Green Tree on 5/8/2008; is that correct?

2 A. That's correct.

3 Q. So the time this notice of default letter was
4 created, if the date is correct, Litton Loan Servicing
5 was no longer servicing that loan; is that correct?

6 A. If the date was correct.

7 Q. Okay. Do you have any knowledge as to what
8 Green Tree's policies and procedures are for mailing?

9 A. Of?

10 Q. Letters, correspondence, anything.

11 A. Yes.

12 Q. Okay. Could you please explain those to us.

13 MS. SIMPSON: Objection, Your Honor.

14 Question is vague. Policies for mailing?

15 MR. BRADSHAW: Well, Your Honor, I believe
16 that the witness testified that he's familiar with
17 the documents, how they were created, and how they
18 were used. If that document was a letter, then
19 whether or not it was mailed or how it went about
20 getting into the mail, I think, is certainly
21 relevant.

22 MS. SIMPSON: Objection. Relevance. There's
23 no indication that this letter was sent by Green
24 Tree, and he's asking about Green Tree's policies
25 and procedures for mailing this letter.

1 MR. BRADSHAW: Well, I'm beginning there,
2 Your Honor, because he already testified he didn't
3 work for Litton. I'm just seeing if we can work
4 back from that.

5 THE COURT: Overruled. Answer the question
6 if you can, sir.

7 A. Standard industry practice, when it comes to
8 mailing a letter like this, is we'll send multiple
9 copies. We'll send one via first class mail, and then
10 we send a second via certified mail.

11 BY MR. BRADSHAW:

12 Q. Okay. Where would that letter be generated?

13 A. Whichever office was currently assigned that
14 loan.

15 Q. Okay. And as of 5/8/2008, what office would
16 that have been?

17 A. I cannot tell that.

18 MR. BRADSHAW: Your Honor, I would once again
19 renew my objection to the letter, Exhibit 3. The
20 witness has testified now that Litton Loan
21 Servicing was not the servicer; therefore, I think
22 it's highly suspect that this letter should be
23 contained in their records if they were not the
24 servicer on the date that this letter was
25 purportedly to have been produced.

1 THE COURT: Ma'am, any response?

2 MS. SIMPSON: Yes, Your Honor.

3 The witness has not testified that the letter
4 was sent out or that Litton Loan Servicing wasn't
5 servicing the loan at the time the letter was sent
6 out. The witness testified that, if the date on
7 Exhibit 2 accurately reflects the date that Green
8 Tree began servicing then... So that's a lot of if
9 and then. He hasn't definitively testified one way
10 or the other and, in fact, he couldn't; other than
11 the business records, which he has testified to.

12 Secondly, Your Honor, if I could ask a couple
13 of questions, I could clear up easily how it is
14 that the letter could have gone out on Litton's
15 stationary at the time that Green Tree was taking
16 over servicing of the loan.

17 MR. BRADSHAW: No offense, Your Honor, but
18 I'm --

19 THE COURT: Our time is up. We got started a
20 half hour late, and therefore I have other hearings
21 scheduled at 10:30. I suggest that you both go up
22 to my office and meet with my judicial assistant
23 and set a date for this trial to be continued.
24 Until then, I'll see you all.

25 MR. BRADSHAW: Thank you, Your Honor.

1 THE COURT: Thank you.

2 Ma'am, I would suggest that these issues that
3 Mr. Bradshaw's brought up -- one of them being
4 whether or not the records custodian was qualified
5 concerning business records and the person that he
6 is and was, however, is an issue that you might be
7 prepared to argue again, in addition to when this
8 notice of default was entered. It would seem to me
9 that, if he says, as he testified, that there's a
10 certified copy somewhere, or a certified letter,
11 that would prove the date it was sent.

12 MS. SIMPSON: Exhibit 2, Your Honor. It
13 shows the certified numbers on there, and the
14 numbers on the envelope match. The certified
15 registration numbers on the copy of the envelope
16 match the certified registration numbers on the
17 letter.

18 THE COURT: And the return receipt?

19 MS. SIMPSON: There was no return receipt.

20 MR. BRADSHAW: Your Honor, just so we're
21 clear, the witness never testified this was mailed.
22 The witness has only testified it was found within
23 the records when they were transferred to Green
24 Tree at some time after 5/8/2008.

25 THE COURT: And also, as far as the qualified

1 witness, it's still my opinion as any witness who
2 has knowledge of the business methods by which a
3 particular record was entered and recorded,
4 traditionally, the witness laying the foundation
5 must not have personal knowledge of the facts in
6 the record, but must have knowledge of the
7 recordkeeping system; and that's why I've ruled in
8 the manner that I have.

9 You might want to take a look at these cases,
10 though, ma'am, that he provided. And you'll be
11 upstairs in just a few minutes. Thank you.

12 MR. BRADSHAW: Thank you, Your Honor.

13 (Whereupon the proceedings were concluded at
14 10:36 a.m.)

1 C E R T I F I C A T E

2 STATE OF FLORIDA }

3 COUNTY OF MARION }

4 I, Jennifer Little, Court Reporter and Notary
5 Public, hereby certify that I was authorized to and did
6 stenographically report the foregoing proceedings in
7 the above-styled cause before the HONORABLE MARK J.
8 HILL; and that the transcript, pages 4 through 74, is a
9 true record of the foregoing proceedings.

10 I further certify that I am not a relative,
11 employee, attorney, or counsel of any of the parties,
12 nor am I a relative or employee of any of the parties'
13 attorneys or counsel connected with the action, nor am
14 I financially interested in the action.

15 Dated this ____ day of March, 2012.

16

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19 JENNIFER LITTLE

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