

**IN THE DISTRICT COURT OF APPEAL  
STATE OF FLORIDA, SECOND DISTRICT**

GEORGE E. MERRIGAN,  
Petitioner

v.

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.

Case No.: 2D11-1728  
L.T. Case No. 09-CA-055758

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\* Original signed and notarized affidavit submitted under separate cover.

IN THE DISTRICT COURT OF APPEAL  
STATE OF FLORIDA, SECOND DISTRICT

GEORGE E. MERRIGAN,  
Petitioner

v.

BANK OF NEW YORK MELLON,  
FKA BANK OF NEW YORK,  
Respondent.

Case No.: 2D11-  
L.T. Case No. 09-CA-055758

\_\_\_\_\_ /

**SECOND AFFIDAVIT OF MICHAEL OLENICK**

I, MICHAEL OLENICK, declare the following under penalty of perjury, based on my personal knowledge:

1. I am a software engineer specializing in applied information systems, that is, in using computers to extract and communicate meaning from large sets of data. I am also the co-founder and chief executive officer of Legalprise, Inc.

2. On April 4, 2011, I executed an affidavit in this matter. It is my understanding that the affidavit was filed as part of the appendix to the Petition for Writ of Certiorari or Writ of Prohibition filed in the Second District Court of Appeal. In that first affidavit, I described my educational and professional background. I also described the work of Legalprise, which maintains a database of docket information from courts around the State of Florida. I attested to the technical process Legalprise uses to aggregate docket information for foreclosure cases using publicly available information downloaded from county clerks' offices, as well as the specific process I have used in analyzing data related to Lee County's foreclosure docket.

3. All of the facts asserted in my first affidavit remain true, and the processes described therein are the same ones used in the analyses described in this second affidavit.

4. In order to determine the proportion of foreclosure cases in Lee County that were not contested by the defendant, I first extracted the list of all foreclosure cases filed in Lee County from January 1, 2009 through May 25, 2011. I then extracted a list of all Motions to Dismiss and Answers filed for the same time period. I then cross-referenced the lists and, for each case, checked whether there was at least one Motion to Dismiss or Answer. Finally, I tabulated the total number of cases in which at least one Motion to

Dismiss or Answer had been filed, and compared that number to the overall number of foreclosure cases filed, to calculate the final results.

5. Based on that analysis, I found that there were a total of 33,465 foreclosure cases filed in Lee County between January 1, 2009 and May 25, 2011. In 19,691 of those cases, the defendant filed an answer or motion to dismiss (or both); in other words, in 59% of foreclosure cases filed during this time period a responsive pleading was filed. In the remaining 41% of cases (i.e., 13,774), the docket reflects no answer or motion to dismiss having been filed. It is possible that this calculation undercounts the total number of cases in which a responsive pleading was filed, because there may be cases filed near the end of the period I examined for which responsive pleadings have been filed (or will be filed) subsequent to the cut-off date of my analysis.

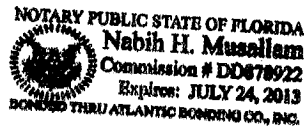
FURTHER AFFIANT SAYETH NOT

5/25/2011  
Date

Michael Olenick  
Michael Olenick

Subscribed and sworn to me on this  
27<sup>th</sup> day of MAY, 2011.

[Signature]  
Notary Public, Palm Bch. County, Florida



My commission expires:

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

ADMINISTRATIVE ORDER 3.302-5/10\*

IN RE: FORECLOSURE DIVISION – “AW”  
\_\_\_\_\_:

The Civil Division has been operating more efficiently with the foreclosure cases assigned to a specialized division. The use of technology will increase the efficiency in Division AW.

**NOW, THEREFORE**, pursuant to the authority conferred by Florida Rule of Judicial Administration 2.215 it is **ORDERED** as follows:

1. All mortgage foreclosures of real property as well as all foreclosures of delinquent homeowner association and condominium association assessments shall be assigned to Division AW. All other real property/foreclosure civil actions shall not be assigned to Division AW but shall be randomly assigned among all other Circuit Court civil divisions.
2. If the judge presiding over a division AW foreclosure matter determines that foreclosure is a secondary, rather than the primary issue in the cause, the judge may, after consultation with the civil division administrative judge, refer the case to the clerk of court for random reassignment within the civil division. If a companion case is pending in a civil division, the matter shall then be assigned to that civil division instead of by random assignment.
3. Summary Judgment Hearings: Scheduling/Noticing/Cancellations
  - a. Scheduling of Summary Judgment Hearings: Effective July 1, 2009, all requests for summary judgment hearings of less than thirty (30) minutes by parties represented by counsel who have an active email account must be made by utilizing an online calendaring system. The instructions for use of the calendaring system will be set forth on Division AW's webpage located at [www.15thcircuit.com/DivisionAW](http://www.15thcircuit.com/DivisionAW)
  - b. Courtesy Copies of Notices of Summary Judgment Hearings: Courtesy copies of Notices of Hearings on Summary Judgment Motions which are sent by parties represented by counsel shall be forwarded to the Court by electronic mail to the following email address:

CAD-DivisionAW-SummaryJudgment@pbcgov.org

- 1) Pro Se litigants may forward courtesy copies of Notices of Hearings to the Court either electronically or in a paper copy.
- 2) Pro Se litigants must receive paper copies of pleadings unless the pro se litigant provides to the Court an email address for receipt of court papers.
- 3) The Subject Line of the Email shall be as follow:

*DATE OF S.J. HEARING – PLAINTIFF V. DEFENDANT – NOH*  
*(e.g. June 25, 2009 – ABC Bank v. Smith – NOH)*

- c. Notices of Hearings on Motions for Summary Judgment: Notices shall be sent no later than ten (10) business days following the receipt of a hearing date.

4. Uniform Motion Calendar: Courtesy Copies of Motions for UMC Hearings via E-Mail

- a. If a party chooses to send the Court a courtesy copy of the Motion to be heard at UMC and if the party is represented by counsel who has an active email account, then the courtesy copy of the Motion must be sent by electronic mail. No paper courtesy copies of UMC Motions will be accepted. The optional courtesy copies shall be forwarded to the Court by electronic mail to the following email address:

CAD-DivisionAW-UMC@pbcgov.org

- 1) Pro Se litigants may forward these optional courtesy copies to the Court either electronically or in a paper copy.
- 2) Pro Se litigants must receive paper copies of pleadings unless the pro se litigant provides to the Court an email address for receipt of court papers.

- b. The Subject Line of the Email shall be as follow:

*DATE OF UMC HEARING – PLAINTIFF V. DEFENDANT – UMC MOTION*  
*(e.g. June 25, 2009 – ABC Bank v. Smith – UMC Motion)*

- c. Default and Final Judgments at UMC: In accordance with Local Rule 4, a copy of the notice of hearing and a copy of the motion shall be delivered to the Clerk of Court, marked “Attention, Uniform Motion Calendar,” at least four (4) business days before the hearing.

5. Special Set Hearings: Scheduling and Courtesy Copies of Special Set Motions, Memoranda of Law and Case Authority Via Email

- a. Scheduling of Special Set Hearings:

- 1) All requests for special set hearings by parties represented by counsel and *pro se* litigants who have an active email account must be made by

utilizing Division AW's online calendaring system. The instructions for use of the calendaring system will be set forth on Division AW's webpage located at [www.15thcircuit.com/DivisionAW](http://www.15thcircuit.com/DivisionAW).

- 2) Prior to scheduling a special set hearing on-line, attorneys and *pro se* litigants who have an active email account must:
  - a) clear the hearing date and time with ALL parties; and
  - b) have previously filed the Motion with the Clerk's office.

b. Order Setting Special Set Hearing:

- 1) Upon receipt of an on-line special set hearing date, counsel or a *pro se* litigant receiving the hearing date, will forward a proposed Order on Specially Set Hearing to the following email address:

[CAD-DivisionAW-SpecialSetHearings@pbcgov.org](mailto:CAD-DivisionAW-SpecialSetHearings@pbcgov.org)

- 2) A copy of the signed Order on Specially Set Hearing will be scanned and emailed to the counsel/*pro se* individual requesting the hearing. The counsel/*pro se* party requesting the hearing is required to serve a copy of the signed Order on Specially Set Hearing upon all parties of record.
- 3) The parties' email addresses shall be included at the end of the order.

c. Cancellation of Special Set Hearings: Special Set Hearings can only be canceled by court order. For further instructions see Division AW Standing Order on Specially Set Motions.

d. Evidentiary Hearings: Proposed orders scheduling a special set hearing during which evidence will be taken must clearly state that the hearing will be evidentiary.

e. Courtesy Copies: Courtesy copies of motions, memoranda of law (not to exceed 10 pages), and case authority may be forwarded to the Court by electronic mail to the following email address:

[CAD-DivisionAW-SpecialSetHearings@pbcgov.org](mailto:CAD-DivisionAW-SpecialSetHearings@pbcgov.org)

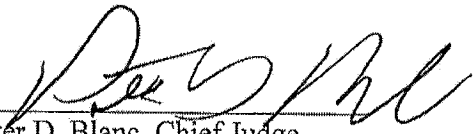
- 1) *Pro Se* litigants may forward courtesy copies to the Court either electronically or in a paper copy.
- 2) *Pro Se* litigants must receive paper copies unless the *pro se* litigant provides to the Court an email address for receipt of court papers.

3) The Subject Line of the Email shall be as follow:

*DATE OF SPECIAL SET HEARING – PLAINTIFF V. DEFENDANT*  
*(e.g. June 25, 2009 – ABC Bank v. Smith)*

f. Failure to comply with these procedures will result in the cancellation of the special set hearing.

**DONE and ORDERED**, in Chambers, at West Palm Beach, Palm Beach County, Florida  
this 5<sup>th</sup> day of May, 2010.

  
Peter D. Blanc, Chief Judge

\*supersedes admin. order no. 3.302-11/09



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

Order Number 2010-79-Civ

ADMINISTRATIVE ORDER  
ESTABLISHING CIRCUIT CIVIL CASE DISTRIBUTION,  
CONSOLIDATION OF CIRCUIT CASES,  
REASSIGNMENT OF CIRCUIT CIVIL CASES, AND  
TRANSFER OF RESIDENTIAL MORTGAGE FORECLOSURE CASES

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(a) Florida Rule of Judicial Administration 2.215(b)(3) states the chief judge shall "develop an administrative plan for the efficient and proper administration of all courts within that circuit."

(b) In accordance with the authority vested in the chief judge by Florida Rule of Judicial Administration 2.215, it is ordered:

(1) The Clerk of Court shall assign circuit civil cases at the time of filing to the designated circuit civil divisions, not including circuit civil complex litigation divisions or Division 11, in as equal a distribution as possible.

(2) The Clerk of Court shall assign all circuit residential mortgage foreclosure cases to Division 11. The Clerk of Court shall transfer to Division 11 all open and pending circuit residential mortgage foreclosure cases. The Clerk of Court shall assign any re-opened circuit residential mortgage foreclosure cases to Division 11.

(3) The Clerk of Court as of July 1, 2010 was to have randomly reassigned all pending and open Division 11 cases, except residential mortgage foreclosure cases, to Divisions 02, 03, 04, 05, 08, 09, 12, 13, 14, 18, 21, and 25.

(4) If a residential mortgage foreclosure case, after the date of this Administrative Order, is assigned to a division other than 11, upon notice to the Clerk of Court, the case shall be reassigned to Division 11.<sup>1</sup> If a condominium association lien, homeowners association lien, or mechanics lien case is assigned to Division 11, it shall be reassigned randomly to Division 02, 03, 04, 05, 08, 09, 12, 13, 14, 18, 21, or 25 upon order of the judge assigned to Division 11 or Circuit Civil Administrative Judge. If a commercial foreclosure is assigned to Division 11, it shall be reassigned upon order of the judge assigned to Division 11 or Circuit Civil Administrative Judge.

(5) Upon the filing of a pleading or paper for a case in a closed division or Division 11, the Clerk of Court shall randomly reassign the case to a circuit civil division, not including a circuit civil complex litigation division or Division 11 except as set forth herein.

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<sup>1</sup> If the assignment to another civil division is due to the entry of an order of disqualification or recusal the case shall remain in the new division.

- (6) If cases are filed and assigned to different civil divisions which concern the same subject matter or common issues the cases may be consolidated as follows:
- (a) The plaintiff or defendant shall file a notice in each case setting forth the parties and case number of the similar case(s).
  - (b) The party seeking the consolidation shall file a motion and set a hearing in the division with the lowest/earliest case number.
  - (c) If an order granting the consolidation is entered it shall indicate if it is consolidated for discovery, trial, or discovery and trial. Consolidated cases remain separate cases for the filing of pleadings and papers and only the case number for the case in which the pleading or paper is filed shall be stated with no reference to the companion case number.
  - (d) The Clerk of Court shall reflect on his case maintenance system the consolidation of cases and the division hearing the consolidated cases.
- (7) A case may be reassigned between circuit divisions as follows:
- (a) Upon the entry of an order of disqualification or recusal by the division judge the Clerk of Court shall randomly assign the case to a circuit civil division excluding complex litigation divisions and Division 11.
  - (b) Upon the entry of an order of disqualification or recusal by a complex litigation division judge the Clerk of Court shall assign the case to a complex division as directed by the Circuit Civil Administrative Judge; however if all division judges assigned to complex litigation are disqualified or recused the Clerk of Court shall randomly assign the case to a circuit civil division.
  - (c) Upon the entry of an order determining the case is complex the Clerk of Court shall assign the case to a circuit civil complex division as directed by the Circuit Civil Administrative Judge.
  - (e) Upon entry of any order reassigning a case from a circuit civil to circuit probate division the Clerk of Court shall randomly assign the case to a circuit probate division. The party seeking the transfer shall file a motion and set a hearing in the division with the lowest/earliest case number.
- (8) This Administrative Order vacates and supersedes Administrative Orders 2010-42-Civ and 2010-43-Civ.

DONE AND ORDERED in chambers at Fort Lauderdale, Broward County, Florida on October 15, 2010.

s/Victor Tobin  
Victor Tobin, Chief Judge

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

CHASE HOME FINANCE, LLC,

Plaintiff(s),

vs.

CASE NO. 09-CA-71071

NAVEED ASGHAR,

Defendant(s).

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TRANSCRIPT OF PROCEEDINGS

Before the Honorable Hugh E. Starnes,  
Circuit Judge, at a hearing in the above-styled action  
at the Lee County Justice Center, Fort Myers, Florida,  
commencing at 4:59 p.m., on the 15th day of February,  
2011.

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FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411  
FAX (239) 334-1476

**CERTIFIED  
COPY**

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

JAMES L. GOETZ, ESQUIRE  
Post Office Box 6844  
Fort Myers, Florida 33911

ON BEHALF OF THE DEFENDANT:

(No Appearance)

1 THE CLERK: No. 85, Chase Home versus Asghar.

2 MR. GOETZ: What number did you just say?

3 THE CLERK: 85.

4 MR. GOETZ: Asghar. I have --

5 THE CLERK: Clay Holtsinger, Kass Shuler.

6 MR. GOETZ: I'll stand in for Kass Shuler.

7 I have nothing on it, Your Honor.

8 THE COURT: Again, no Defendant here.

9 THE CLERK: This is the second docket sounding  
10 today.

11 THE COURT: Okay.

12 MR. GOETZ: I have nothing. It's an '09 case.

13 THE COURT: I'll put this on the trial docket  
14 for March 22nd at 8:30.

15 - - -

16 (Thereupon, at 5:00 p.m., the proceedings  
17 were concluded.)

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CERTIFICATE OF REPORTER

I, MARI B. TEMPLE, Registered Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 3, is a true and correct record of my stenographic notes.

DATED this 11~~th~~ day of March,  
2011, at Fort Myers, Lee County, Florida.



Mari B. Temple, RPR, CMRS

	concluded [1] 3/17 correct [1] 4/7	no [4] 1/5 2/7 3/1 3/8 notes [1] 4/8
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0	COURT [2] 1/1 1/21	number [1] 3/2
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1	DATED [1] 4/10 day [2] 1/15 4/10	Office [1] 2/4 Okay [1] 3/11 on the [1] 1/15
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2	<b>E</b>	p.m [2] 1/15 3/16 pages [1] 4/7 Plaintiff [2] 1/4 2/2 Post [1] 2/4 proceedings [3] 1/10 3/16 4/6 Professional [1] 4/4 put [1] 3/13
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3	<b>F</b>	record [1] 4/8 Registered [1] 4/4 report [1] 4/6 REPORTER [2] 4/1 4/5 REPORTING [1] 1/21 RPR [1] 4/15
334-1411 [1] 1/23 334-1476 [1] 1/23 33901 [1] 1/22 33911 [1] 2/4	FAX [1] 1/23 February [1] 1/15 FINANCE [1] 1/3 First [1] 1/22 FLORIDA [5] foregoing [1] 4/6 Fort [5] Fort Myers [1] 1/14	<b>S</b>
4	<b>G</b>	say [1] 3/2 second [1] 3/9 Shuler [2] 3/5 3/6 sounding [1] 3/9 stand [1] 3/6 Starnes [1] 1/12 stenographic [1] 4/8 Street [1] 1/22 styled [1] 1/13
4:59 [1] 1/15	GOETZ [1] 2/3	<b>T</b>
5	<b>H</b>	TEMPLE [2] 4/4 4/15 that [2] 4/5 4/6 Thereupon [1] 3/16 this [3] 3/9 3/13 4/10 through [1] 4/7 today [1] 3/10 transcript [2] 1/10 4/7 trial [1] 3/13 true [1] 4/7 TWENTIETH [1] 1/1
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<b>C</b>	<b>N</b>	
CA [1] 1/5 case [2] 1/5 3/12 Center [1] 1/14 CERTIFICATE [1] 4/1 certify [1] 4/5 CHASE [2] 1/3 3/1 CIRCUIT [3] 1/1 1/1 1/13 Circuit Judge [1] 1/13 CIVIL [1] 1/1 Clay [1] 3/5 CMRS [1] 4/15 commencing [1] 1/15	NAVEED [1] 1/6	

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Plaintiff,

vs.

CASE NO. 09-CA-68753

SANDRA CHAMPELOVIER,

Defendant.

---

TRANSCRIPT OF PROCEEDINGS

Before the Honorable William C. McIver,  
Circuit Judge, at the hearing of the  
above-styled action in the Lee County Justice  
Center, Fort Myers, Florida, on February 21,  
2011.

**CERTIFIED  
COPY**

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FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411 FAX (239) 334-1476



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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

JOHN SALCEDO, Esquire  
Law Offices of Marshall C. Watson  
1800 N.W. 49th Street, Suite 120  
Fort Lauderdale, Florida, 33309

ON BEHALF OF THE DEFENDANT:

Appearing In Propria Persona

---

I N D E X

WITNESS                      DIR                      CROSS                      RED                      REC

(No testimony)

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E X H I B I T S

Plaintiff's 1 & 2                                      Note and Mortgage

1 MR. SALCEDO: I'm here for the plaintiff.

2 THE COURT: Very well. Your name?

3 MR. SALCEDO: John Salcedo.

4 THE COURT: There is no one opposing?

5 MR. SALCEDO: Ms. Champelovier.

6 THE COURT: You can have a seat right there.

7 Counsel, I have no objection to you being seated as  
8 well to address the Court. Unless you feel more  
9 forceful standing.

10 MR. SALCEDO: I've got the original, if I  
11 could present it to you to be filed. As well as a  
12 couple others.

13 THE COURT: So this is the original note? The  
14 mortgage is here as well, note and mortgage?

15 MR. SALCEDO: Yes.

16 THE COURT: The note and mortgage, they will  
17 be 1 and 2 respectfully. But they are attached.

18 MR. SALCEDO: I've got copies for the Court  
19 for my exhibits. Those are just originals to be  
20 filed.

21 THE COURT: Very well.

22 The property, is that your home?

23 MS. CHAMPELOVIER: It is.

24 Mr. Salcedo, let me ask Ms. Champelovier, are  
25 you resisting the entry of judgment?

1 MS. CHAMPELOVIER: Your Honor, I'm not  
2 prepared. And the reason is -- may I read this?  
3 I'm very nervous.

4 THE COURT: Go ahead.

5 MS. CHAMPELOVIER: I'm still awaiting answers  
6 to the interrogatories, and without these answers I  
7 have not been given sufficient information to  
8 complete my discovery. The general request was  
9 October 4, 2010. We had a reminder on December 16th  
10 of this docket sounding. I called them for a verbal  
11 request on January 15th, again a reminder, and  
12 motion to compel was set on February 14th.

13 So I have none of the answers to my questions.  
14 I have followed the rules of civil procedure to  
15 substantiate the plaintiff's claim, and the  
16 plaintiffs failed to respond to my request to  
17 produce evidence and answer the interrogatories, of  
18 which I have filed a motion to compel. Therefore, I  
19 would like to request the Court to dismiss this  
20 case.

21 THE COURT: All right. Did you file a motion  
22 for sanctions?

23 MS. CHAMPELOVIER: I'm not a lawyer, and I  
24 didn't -- the last one was a motion to compel.

25 THE COURT: Motion to compel the production of

1 the -- all right.

2 Mr. Salcedo, are you aware of this?

3 MR. SALCEDO: Yes. Actually one of the  
4 documents I filed with the Court today was our  
5 responses, and I provided Ms. Champelovier with a  
6 copy of our responses. There has not been an order  
7 compelling our responses answered as of yet. They  
8 are outstanding. A motion to compel has been filed,  
9 but no order has been entered. And was informed at  
10 previous docket sounding that all motions had to be  
11 heard by this trial date or else waived. One hasn't  
12 been heard, hadn't been set, and we did --

13 THE COURT: Did you make efforts to set the  
14 hearing on the motion to compel?

15 MS. CHAMPELOVIER: Your Honor, they came to me  
16 about a half hour ago and presented the information  
17 for this, and they said, you know, here's a copy of  
18 it. And I said, no, we'll talk to the judge about  
19 it. They were trying to give me that information at  
20 that time, a half hour ago.

21 THE COURT: This is your residence?

22 MS. CHAMPELOVIER: Yes, sir.

23 THE COURT: Mr. Salcedo, you know, I know that  
24 on both sides it would appear that the Court  
25 processes have been accelerating considerably than

1           what you are used to, and part of it has to do with  
2           the enormous pressure of the volume of cases. But I  
3           still think that due process requires whatever it  
4           takes to allow each party to inform itself, himself,  
5           herself of what the other side has. And if the  
6           effort has been taken, and apparently it has for  
7           her, it might be appropriate for us to address the  
8           discovery issue today, and then I will set the case  
9           for trial say March 22nd.

10           MR. SALCEDO: I wouldn't object to that, Your  
11           Honor.

12           THE COURT: We're not going to do the trial  
13           today. Now, I would like to address today at this  
14           time, so we can get some traction in the case, what  
15           your discovery demands were and what you've  
16           received. What haven't you received?

17           MS. CHAMPELOVIER: I'm not prepared to --

18           THE COURT: You're not ready to talk about it  
19           today?

20           MS. CHAMPELOVIER: No.

21           THE COURT: Do you think you could probably --  
22           do we have days specifically for motion calendar  
23           hearings?

24           THE CLERK: We just have docket sounding and  
25           trial.

1 THE COURT: At docket sounding though a lot of  
2 times we're not listening to motions.

3 THE CLERK: She can call Judge Winesett's  
4 office since that's her judge.

5 THE COURT: Let's do this, the problem seems  
6 to me that the court processes are insufficient to  
7 allow motion time, and so -- and it's confusing,  
8 especially to a pro se litigant. So the motion to  
9 compel can be set -- the judge that was assigned to  
10 your case was Judge Winesett.

11 You can call her office and talk to her JA and  
12 inform her that you want to have a hearing on your  
13 motion to compel. You of course should file -- have  
14 you already filed your motion to compel and have you  
15 submitted a copy of it to the other side?

16 MS. CHAMPELOVIER: Yes, Your Honor.

17 THE COURT: So you would give a courtesy copy  
18 of the motion to the Court and your request for  
19 hearing time, and hopefully get a hearing between  
20 now and March 22nd.

21 MS. CHAMPELOVIER: Is there a way for it to be  
22 longer?

23 THE COURT: What I'm going to do -- yes. I'm  
24 going to set this for a docket sounding instead of a  
25 trial. So that's going to be early April.

1 THE CLERK: April 14th at 8:30.

2 THE COURT: I'm going to put this back on the  
3 docket sounding. But you have to assert yourself on  
4 this. You know, the problem with a pro se litigant  
5 is that the Court can't be your coach. The other  
6 side wonders why they hired a lawyer if the judge  
7 starts coaching the pro se litigant.

8 I can tell you about procedural things such as  
9 you've got to do this and you've got to do that.  
10 But to tell you how to proceed and what you should  
11 do next is not my job, unfortunately. I don't know  
12 whose it is. In civil cases we don't get free  
13 lawyers.

14 Maybe some day there will be a civil  
15 defender -- well, actually it would be defending or  
16 pursuing. So I guess some kind of place you could  
17 go if you have a need for a lawyer you can get one.  
18 But also I can tell you this, that there are lawyers  
19 in the community, don't ask me who they are, but  
20 they've become -- some are getting awards for doing  
21 pro bono work. And they're required to at least pay  
22 some attention to that area.

23 But, you know, you just have to do your own  
24 search on that. There may be somebody out there. I  
25 think this lady that appeared before me a little

1 earlier today, someone heard her plight and decided  
2 to help her. So we'll see.

3 MS. CHAMPELOVIER: Pro bono?

4 THE COURT: I don't know. Who knows what the  
5 arrangements are. I mean, you can -- in the early  
6 days of my lawyer career I had a friend in LaBelle,  
7 an attorney in LaBelle who accepted payment for his  
8 services with pistols, chainsaws, and broken down  
9 twenty-year old pickup trucks. But I don't know,  
10 whatever, you make your own arrangements.

11 MS. CHAMPELOVIER: So docket sounding April  
12 14th?

13 THE CLERK: April 14th.

14 THE COURT: I'm supposed to be signing it  
15 instead of yakking.

16 THE CLERK: At 8:30.

17 MS. CHAMPELOVIER: That's not a hearing, Your  
18 Honor, that's just another docket sounding?

19 THE COURT: Well, this is a docket sounding to  
20 find out when your trial date is going to be. So  
21 what I've done effectively, this will be three  
22 months out before it gets tried, but that gives you  
23 ample time to follow through. And if you don't,  
24 it's shame on you.


25 (Hearing concluded.)



CERTIFICATE OF REPORTER

I, LISA M. BOYD, Registered Professional Reporter, Florida Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript pages 1 through 9, is a true and correct record of my stenographic notes.

DATED this 10<sup>th</sup> day of March, 2011.

  
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LISA M. BOYD, RPR, FPR

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN  
AND FOR LEE COUNTY, FLORIDA

BANKUNITED, ASSIGNEE OF THE FDIC,  
AS RECEIVER FOR BANKUNITED, FSB,

Plaintiffs,

Case No. 09-CA-069295

-vs-

ANNE-MARIE PONS; PAUL CONNOLLY,  
UNKNOWN SPOUSE OF PAUL CONNOLLY,  
UNKNOWN SPOUSE OF ANNE-MARIE  
PONS; WESTMINSTER COMMUNITY  
ASSOCIATION, INC.; UNKNOWN PERSON(S)  
IN POSSESSION OF THE SUBJECT  
PROPERTY,

Defendants.

HEARING BEFORE: The Honorable Hugh Starnes

DATE: October 5, 2010

TIME: 2:32 p.m. to 2:48 p.m.

LOCATION: Lee County Justice Center  
Fort Myers, Florida

REPORTER: Michele Benza, RPR

APPEARANCES:

For the Plaintiffs:

ROBERT C. HILL, ESQ.  
Robert C. Hill, P.A.  
2131 First Street  
Fort Myers, FL 33901

For the Defendants:

AMANDA LUNDERGAN, ESQ.  
Ice Legal, P.A.  
1015 N. State Road 7, Suite D  
Royal Palm Beach, FL 33411

1 THE COURT: What's up here? Motion to vacate?  
2 Quash?

3 MS. LUNDERGAN: Good morning, your Honor. I'm  
4 Amanda Lundergan from Ice Legal representing the  
5 defendants, Anne-Marie Pons, Paul Connolly, and Sasha  
6 Kaminik. This is our motion to quash constructive  
7 service of process, motion to set aside the final  
8 judgment, and motion to arrest the judgment and  
9 withhold execution.

10 MR. HILL: Robert Hill for the Plaintiff.

11 MS. LUNDERGAN: Your Honor, at this time I would  
12 like to state my objection on the record to Mr. Hill's  
13 appearance here today. He does not work for Kahane &  
14 Associates. He has not complied with the rules  
15 regarding appearance here today.

16 THE COURT: He doesn't work for who?

17 MS. LUNDERGAN: Kahane & Associates, which is the  
18 attorney of record. He has not filed a notice of  
19 appearance and therefore has not filed -- or has not  
20 complied with the Florida Rules of Judicial  
21 Administration. We would like a ruling on the record  
22 as far as allowing him to appear here today.

23 MR. HILL: In response, A, I am a contract  
24 attorney employed by Kahane & Associates; B, the rule  
25 applies only to the filing of pleadings, and the

1 well-established Florida case law holds that if I am  
2 present with the file that that is the end of the  
3 inquiry.

4 MS. LUNDERGAN: Your Honor, we would object to  
5 it. Just want a ruling on the record.

6 THE COURT: Okay. Well, I will overrule your  
7 objection. And I guess I will just state that I come  
8 to court probably 12 days a month and Mr. Hill is here  
9 every day representing the same clients. So there  
10 really isn't any question about his representing as  
11 co-counsel this particular client or any  
12 misapprehension.

13 MS. LUNDERGAN: Your Honor, we would just ask  
14 that if he's going to appear that he file a notice of  
15 appearance as such.

16 THE COURT: Well --

17 MR. HILL: It's not required by the law.

18 THE COURT: Yeah. I'm not aware of anything that  
19 would require. If this was an individual case,  
20 there's so much about foreclosure, it would be  
21 different if it was one individual case. But the  
22 worst thing I would want to do is have anybody file  
23 any extra on legal paperwork in a foreclosure case,  
24 and that would really be unnecessary in this case. In  
25 fact, I think the appearances of all these local

1 counsel, it's actually assimilated by the court's  
2 request. It wasn't me, but the administrative judge  
3 wanted a local counsel be present on a regular basis  
4 and would represent as an officer of the court that  
5 they have reviewed all the files that come up and  
6 would represent that everything was in order and they  
7 have operated in that capacity.

8 MS. LUNDERGAN: Thank you, your Honor.

9 THE COURT: So what's next?

10 MS. LUNDERGAN: If we can, we would like to  
11 address the motion to quash first. Obviously that  
12 seems the most important. There are three clients  
13 here. As to Anne-Marie Pons, the plaintiff's process  
14 server by his own admission never attempted to serve  
15 her at her residence.

16 Florida Statute Section 49.021 provides that  
17 constructive service is only available when the  
18 regular means of process cannot be had. It is a very  
19 extremely high burden for the plaintiff to meet. It  
20 is a threshold. It is basically if there is nothing  
21 else available that should be their only other option.

22 We have filed affidavits in support of our motion  
23 to quash on all three clients. As to Anne-Marie Pons,  
24 she does live at the address.

25 MR. HILL: Objection. Counsel's testifying. The

1 affidavit doesn't say where she lives. In fact, it  
2 very clearly and fraudulently evades that question.

3 THE COURT: Just one second. You will have to  
4 make your argument based on whatever is in the written  
5 record.

6 MS. LUNDERGAN: Yes. You'll note the record  
7 states that the process server did not serve  
8 Anne-Marie at her address, but the address is clearly  
9 available; that she did receive correspondence from  
10 Bankunited at that address, and since Bankunited knew  
11 of her home address and did not attempt to serve her  
12 there, the constructive service should be quashed. It  
13 should not be available.

14 As to the Connollys, the process server's return  
15 of service says the defendants do not reside there.  
16 We ask this Court to take judicial notice of another  
17 case with the same plaintiff, the same process server,  
18 and the same law firm where they did serve the  
19 Connollys at their home address.

20 Plaintiff obviously knows where the Connollys'  
21 home address is. They know where Anne-Marie's home  
22 address is since they've had correspondence with her  
23 at that address. And for the process server to not  
24 serve them at their home address, and instead use  
25 constructive service, that should not be available to



1           them. Constructive service is only a last resort when  
2           their home address is not available.

3           MR. HILL: If I can request --

4           THE COURT: Just one second. When you say  
5           constructive notice of another case, what is the case?

6           MS. LUNDERGAN: Your Honor, it's in our motion.  
7           I have a copy of it here for you.

8           MR. HILL: It's a Miami-Dade County case, judge,  
9           and there is no indication in her motion --

10          THE COURT: Just one second. Let her make her --

11          MS. LUNDERGAN: Your Honor, the case is cited  
12          right here. The same plaintiff, the same process  
13          server. They've served them at their home before and  
14          now they're claiming that they can't find their home.

15          THE COURT: Okay, Mr. Hill.

16          MR. HILL: Judge, she claims that and she cites a  
17          Miami-Dade County case. However, she does not -- they  
18          do not attach a copy of any return service from that  
19          court file. So none of this is anything but hearsay  
20          testimony by counsel unsupported by any sworn  
21          testimony or certified copy of a return of service  
22          from the Dade County court file. So you cannot take  
23          judicial notice of that fact because there is no fact  
24          that has been put on the record to take notice of.

25          MS. LUNDERGAN: Your Honor, I believe --

1 THE COURT: Just one second.

2 Okay, going back to the other portions of her  
3 argument.

4 MR. HILL: Well, as a whole, judge, this motion  
5 and the affidavits in support of it are redolent of  
6 fraud. If you read the motion, it's very craftily  
7 drafted to give the impression that the defendants are  
8 claiming that their home -- what their home address  
9 is. But it doesn't actually say what their home or  
10 residence address is.

11 And if you look at the affidavits, they're  
12 conspicuous by the fact that the affidavit does not  
13 recite, or any of the defendants' three affidavits,  
14 none of them recite what their residence is. It just  
15 says, "I was not served at my residence." There is  
16 nothing in the motion or the affidavit which actually  
17 states what their residence is.

18 They're attempting -- the drafter of this motion  
19 is attempting to give the Court the impression that  
20 it's 8739 Caraway Lake Court, Boynton Beach, Florida.  
21 But there is nothing in the motion which actually  
22 states that that is their address.

23 And the affidavits, as I said, they simply do not  
24 state what the residence address is. They just state,  
25 "We were not served at our residence address." So

1           there is no evidence before the Court as to what the  
2           residence address of these defendants is.

3           THE COURT: Any rebuttal.

4           MS. LUNDERGAN: Your Honor, as to the Connollys'  
5           affidavit, they do state that the address is their  
6           home address. It's listed in our motion what the  
7           Connollys' home address is. The plaintiff has served  
8           them before at their home address, and now they're  
9           attempting to allege that they don't live there.

10           As to Anne-Marie Pons, the plaintiff listed three  
11           addresses that they attempted to serve her at. Her  
12           affidavit states, "Those are not my residence. They  
13           have corresponded with me at my residence, so  
14           therefore, they do know what my residence is."

15           The rules are very clear that a person must be  
16           served at their primary place of residence. The  
17           plaintiff cannot come before the court and say, "We  
18           don't know their primary place of residence. We  
19           attempted to serve A, B and C, but we know D is her  
20           primary place of residence, we just didn't go to D."

21           You can see that very clearly from the affidavits  
22           were filed both from the Connollys and from Anne-Marie  
23           Pons, the return of service was addressed for  
24           Anne-Marie Pons. They did try to serve those and not  
25           her home address. They did list the home address for

1 the Connollys but stated the Connollys didn't live  
2 there. They know the Connollys live there. The  
3 Connollys stated they never tried to evade service and  
4 that they have in fact served them before in that  
5 home.

6 MR. HILL: Judge, there's not a single statement  
7 in an affidavit of what these defendants' residence  
8 address is. Counsel is again trying to bootstrap by  
9 referring to this Miami-Dade County case where she  
10 didn't bother to attach a copy of a return of service,  
11 if it indeed shows what address they were served at  
12 then for what little relevancy that might have. But  
13 it's simply not there.

14 And this whole thing is just too slickly crafted  
15 by half with the motion giving the implication but not  
16 stating what the residence address is and the  
17 affidavits being completely silent as to what their  
18 residence address is.

19 THE COURT: You all are both going over the  
20 things you already have covered.

21 MR. HILL: And I would also say the law is  
22 well-established in Florida that the return of service  
23 of the process server is given an extremely strong  
24 presumption of correctness, can only be refuted by, A,  
25 sworn testimony that directly refutes it; and B,

1 corroborating testimony to the clear and convincing  
2 standard. And there is a total absence of, A, any  
3 testimony that directly contradicts the return of  
4 service; or B, there is total absence of any  
5 corroborated testimony.

6 THE COURT: Do you have any final argument?

7 MS. LUNDERGAN: Your Honor, I would just argue  
8 that the burden is on plaintiff to prove that a due  
9 and diligent search occurred. Our affidavits refute  
10 that a due and diligent search occurred. This is an  
11 evidentiary issue that should be decided by the Court.  
12 Constructive service should not have been available.

13 THE COURT: Okay. I'm going to take a moment and  
14 read what's here and see if I'm in a position to rule  
15 today of whether they've been served.

16 I have read through the motion and the  
17 affidavits. I'm going to have to look through the  
18 court file before I can make a ruling.

19 Would you give me each your e-mail addresses and  
20 I will send you --

21 MR. HILL: Rhill@attyhill.com.

22 MS. LUNDERGAN: Amanda@icelegal.com.

23 Your Honor, since the remaining portion of the  
24 argument hinges on the motion to quash, should we  
25 argue that today or have it reheard?

1           MR. HILL: I would I stipulate that if you grant  
2           the motion quash, the final judgment should be set  
3           aside and then there would have been no jurisdiction  
4           for its entry. So the key issue is the validity of  
5           the constructive service.

6           THE COURT: If there's any, okay. So I'll try  
7           and do that later this afternoon or tomorrow.

8           MS. LUNDERGAN: Thank you, your Honor.

9                         (Proceedings concluded at 2:48 p.m.)

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COURT CERTIFICATE

STATE OF FLORIDA  
COUNTY OF LEE

I, Michele Benza, Registered Professional Reporter,  
certify that I was authorized to and did stenographically  
report the foregoing proceedings and that the transcript  
is a true and complete record of my stenographic notes.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Michele Benza, RPR

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COURT CERTIFICATE

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STATE OF FLORIDA  
COUNTY OF LEE

I, Michele Benza, Registered Professional Reporter,  
certify that I was authorized to and did stenographically  
report the foregoing proceedings and that the transcript  
is a true and complete record of my stenographic notes.

Dated this 6 day of October, 2010.

  
\_\_\_\_\_  
Michele Benza, RPR

NOTARY PUBLIC-STATE OF FLORIDA  
Michele Benza  
Commission #DD817696  
Expires: OCT. 10, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

BANK OF NEW YORK MELLON,

Plaintiff(s),

vs.

CASE NO. 10-CA-50102

TERRANCE MCCARTY,

Defendant(s).

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TRANSCRIPT OF PROCEEDINGS

Before the Honorable Hugh E. Starnes,  
Circuit Judge, at a hearing in the above-styled action  
at the Lee County Justice Center, Fort Myers, Florida,  
commencing at 5:02 p.m., on the 15th day of February,  
2011.

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FORT MYERS COURT REPORTING  
2231 First Street  
Fort Myers, Florida 33901  
(239) 334-1411  
FAX (239) 334-1476

**CERTIFIED  
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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

JAMES L. GOETZ, ESQUIRE  
Post Office Box 6844  
Fort Myers, Florida 33911

ON BEHALF OF THE DEFENDANT:

(No Appearance)

1 THE CLERK: No. 90, Bank of New York versus  
2 McCarty.

3 MR. GOETZ: Well, that's -- Ashley is with  
4 Kass Shuler --

5 THE CLERK: Kass Shuler.

6 MR. GOETZ: -- and I'll stand in for Kass  
7 Shuler and Ashley.

8 I don't have anything on it, Your Honor.  
9 Seems like the end of the day I --

10 THE CLERK: I'm sorry.

11 THE COURT: Could you just look at the docket,  
12 LJ, and see --

13 MR. GOETZ: See what's --

14 THE COURT: -- any answers or -- we have no  
15 Defendant here.

16 THE CLERK: There was an answer by Terrance  
17 McCarty.

18 MR. GOETZ: Oh, okay. That's one of the  
19 Defendants.

20 THE CLERK: Hardship.

21 THE COURT: So pro se answer.

22 THE CLERK: Motion for summary was filed  
23 December 17th.

24 THE COURT: Of 2010?

25 THE CLERK: Uh-huh.

1 THE COURT: So it sounds like it's capable of  
2 a summary judgment. The Defendant hasn't  
3 appeared --

4 MR. GOETZ: Uh-huh.

5 THE COURT: -- and the hardship answer sounds  
6 like it's not a valid defense. So if you think the  
7 Plaintiff's -- new Plaintiff's attorney, Mr. Goetz,  
8 is going to move on a motion for summary judgment,  
9 I'm willing to put it on a docket sounding.

10 MR. GOETZ: Yes, if you would, please. I mean  
11 it's --

12 THE COURT: April 14th at 8:30.

13 - - -

14 (Thereupon, at 5:04 p.m., the proceedings  
15 were concluded.)

16 - - -

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CERTIFICATE OF REPORTER

I, MARI B. TEMPLE, Registered Professional Reporter, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 4, is a true and correct record of my stenographic notes.

DATED this 11<sup>th</sup> day of March,

2011, at Fort Myers, Lee County, Florida.



Mari B. Temple, RPR, CMRS



<b>1</b>	commencing [1] 1/15 concluded [1] 4/15 correct [1] 5/7 Could [1] 3/11 COUNTY [3] 1/1 1/14 5/11 COURT [2] 1/1 1/18	<b>L</b> LEE [3] 1/1 1/14 5/11 like [3] 3/9 4/1 4/6 like the [1] 3/9 LJ [1] 3/12 look [1] 3/11
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<b>Y</b>		
Yes [1] 4/10 YORK [2] 1/3 3/1 you [3] 3/11 4/6 4/10 Your [1] 3/8		

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

US BANK NATIONAL ASSOCIATION,  
TRUSTEE,

Plaintiff,

vs.

CASE NO. 09-CA-059070

CANDY SHIVELY, et al.,

Defendants.

---

TRANSCRIPT OF PROCEEDINGS

Before Magistrate Stella Diamond, at a  
hearing in the above-styled action at the Lee County  
Justice Center, Fort Myers, Florida, commencing at  
9:13 a.m., on the 24th day of March, 2011.

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

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(954) 453-0365

ON BEHALF OF THE DEFENDANTS CANDY AND DARRELL SHIVELY:

MICHELE S. BELMONT, ESQUIRE  
Law Offices of Michele S. Belmont  
8695 College Parkway, Suite 1112  
Fort Myers, Florida 33919  
(239) 848-6552

---

1 THE COURT: Number 12, US Bank versus Shively.

2 MS. KRUMHOLZ: Barrie Krumholz on behalf of  
3 the plaintiffs, Your Honor. Barrie Krumholz.

4 THE COURT: Spell your last name for me.

5 MS. KRUMHOLZ: K-R-U-M-H-O-L-Z, and the first  
6 is B-A-R-R-I-E.

7 MS. BELMONT: Good morning, Your Honor.  
8 Michele Belmont on behalf of the defendants.

9 THE COURT: Belmont or Beaumont?

10 MS. BELMONT: B-E-L-M-O-N-T.

11 THE COURT: Is this your witness,  
12 Ms. Krumholz?

13 MS. KRUMHOLZ: Yes, it is.

14 I believe she has a preliminary motion.

15 MS. BELMONT: Yes, your Honor. I filed a  
16 motion in limine this morning.

17 THE COURT: Okay. Just a second. I don't  
18 have it -- okay, there is one dated January 31st.

19 MS. BELMONT: No. I have another one, Your  
20 Honor. You're welcome to my copy. It was just  
21 filed this morning.

22 MS. KRUMHOLZ: Your Honor, I'm going to object  
23 to the motion. The pleadings were closed. It  
24 wasn't timely filed. She filed it this morning. I  
25 got a copy this morning.

1 MS. BELMONT: That's true, Your Honor. I was  
2 retained yesterday at 3:30 in the afternoon and  
3 filed an appearance at 4:30 and faxed it to  
4 co-counsel. As the motion in limine will show, we  
5 have many different issues of things that were not  
6 done in a timely fashion.

7 THE COURT: I'm going to allow it.

8 MS. BELMONT: Thank you, Your Honor.

9 THE COURT: Okay. It seems -- one, obviously,  
10 is the late filing of the witness and exhibit list,  
11 one ground, and the second ground -- let me just  
12 read this again. The other ground is that you  
13 don't want them to be able to present the  
14 promissory note?

15 MS. BELMONT: The original, Your Honor, which  
16 I was informed this morning that they have now  
17 found the original. But the fundamental issue that  
18 we have with this case, Your Honor, is that at the  
19 time the complaint was filed there's a lost note  
20 count, and the note that is attached to the  
21 complaint has a blank endorsement on it. This is  
22 page 34 of 37 of the complaint that we discussed  
23 earlier.

24 At some point during discovery -- my client  
25 was pro se until yesterday -- they produced this

1 (indicating), which is the one that they're now  
2 claiming is the original that they say that they  
3 have in their possession now. With the fact that  
4 the --

5 THE COURT: You're saying that the  
6 endorsements are different, so that you don't think  
7 they should be able to present it?

8 MS. BELMONT: That they shouldn't be able to  
9 present it, and there was a lost note count in the  
10 complaint.

11 Now, in the hallway this morning I asked  
12 plaintiff's counsel, "When was this endorsement  
13 done?" Because of course that becomes an issue if  
14 we have two different notes that were presented,  
15 and I was told that it was certainly endorsed prior  
16 to the filing of the complaint. The complaint has  
17 a lost note count, and the note attached to the  
18 complaint has a blank endorsement. So if the note  
19 attached to the complaint, if we're to believe that  
20 one, it's blank. If we're to believe what I was  
21 told by plaintiff's counsel, that the one that was  
22 specially endorsed was actually endorsed prior to  
23 the filing of the complaint, then the complaint  
24 itself is based on a fraudulent statement and the  
25 complaint should be stricken.

1 THE COURT: I'm not going to exclude the note  
2 without -- I mean, they can present the note into  
3 evidence, you can cross-examine their witness about  
4 the note, and then I can make a decision based on  
5 that. I'm just not going to automatically exclude  
6 it because of the difference in the endorsements  
7 before I hear any testimony about it.

8 The second thing is that you're saying that a  
9 witness list wasn't timely presented. The  
10 problem -- you're right, it wasn't filed within the  
11 time constraints on the pretrial orders, but I'm  
12 not automatically striking them anymore. Okay?  
13 Because as a practical matter it's just -- it's  
14 impractical to do that.

15 Were your clients represented before this?

16 MS. BELMONT: They were in the very beginning  
17 of the case, Your Honor. They've been pro se for  
18 quite some time, I believe. The Shivelys are in  
19 the courtroom, and they can fill me in on that  
20 again. Just several hours of having been retained,  
21 I'm not exactly sure when their last attorney  
22 resigned, but it was certainly before the last  
23 trial date was set.

24 The last trial date was set for January 31st.  
25 They didn't file the witness list and exhibit list



1 until the day after trial.

2 THE COURT: Yeah, I'm not going to strike it,  
3 but let me take a look at the pleadings for a  
4 minute just to see what's going on here.

5 MS. BELMONT: Okay.

6 THE COURT: Has this case been mediated now?

7 MS. BELMONT: No, Your Honor. And that's  
8 another issue. At the last hearing Mr. Shively and  
9 Mrs. Shively were pro se, and Your Honor told the  
10 plaintiff that they were to schedule a mediation  
11 prior to the trial date. The Shivelys are here.  
12 They never heard from plaintiff's counsel. The  
13 mediation was never scheduled, so --

14 THE COURT: Do you know anything about that?

15 MS. KRUMHOLZ: I -- I don't, Your Honor. To  
16 be honest, I'm the covering attorney on the file.  
17 We have no objection to mediating the case. I  
18 don't know that they've ever reached out to us. I  
19 do understand that we were supposed to schedule it.  
20 However, it doesn't appear that they reached out to  
21 us to attempt to coordinate it either, so --

22 THE COURT: Well, the report and  
23 recommendation and the order adopting it stated the  
24 plaintiff should schedule mediation which shall be  
25 held prior to the next date of March -- next trial

1 date of March 24th, 2011.

2 MS. KRUMHOLZ: Correct.

3 THE COURT: What I'm going to do is I'm going  
4 to continue it, but I'm not going to continue it  
5 for a great deal of time. All right?

6 MS. KRUMHOLZ: Okay.

7 THE COURT: That way you'll have an  
8 opportunity to look into your questions about the  
9 note, and it can be mediated prior to the next  
10 trial date. I'm not going to put in -- on my order  
11 that it's going to be mediated prior to the next  
12 trial date. The parties are just going to do it,  
13 and if it doesn't happen, it doesn't happen,  
14 because this is now the second continuance and I'm  
15 not going to continue it anymore after this. All  
16 right?

17 MS. BELMONT: Respectfully, Your Honor, given  
18 that the plaintiffs did not -- specifically did not  
19 comply with the last court order which stated, "The  
20 plaintiff shall schedule mediation," we would  
21 request that you do make it part of the order,  
22 because they've -- I mean, I'm on the verge of  
23 asking for damages for attorney's fees for their  
24 failure --

25 THE COURT: Well, what I'm going to do is --

1 MS. KRUMHOLZ: Based on what?

2 THE COURT: -- since it hasn't happened, is  
3 I'm going to ask you to schedule the mediation, and  
4 that way it will be done --

5 MS. BELMONT: Okay.

6 THE COURT: -- and you won't have to worry  
7 about it.

8 MS. BELMONT: That's fine.

9 Are we able to schedule that today?

10 MS. KRUMHOLZ: Sure.

11 MS. BELMONT: Great.

12 THE COURT: All right. So we're going to  
13 continue it for -- this isn't an RMFM mediation,  
14 right?

15 MS. KRUMHOLZ: I don't believe so.

16 THE COURT: I'm sorry. It's 2009.

17 All right. So I can continue it for -- I'll  
18 give you a three-week continuance, and that should  
19 give everybody enough time to do what they want to  
20 do. And I do want to stress that this is the last  
21 continuance, so we're all clear on that.

22 MS. KRUMHOLZ: Absolutely.

23 THE COURT: You'll get a date right now. Hold  
24 on for a moment.

25 MS. KRUMHOLZ: Okay.

1 THE COURT: Okay. The new trial date's  
2 April 14th at 8:30.

3 I'm going to give you your motion in limine  
4 back. Do you need it? Ms. Belmont, do you want  
5 that back?

6 MS. BELMONT: Thank you, Your Honor.

7 MS. KRUMHOLZ: Thank you, Your Honor.

8 - - -

9 (Thereupon, at 9:22 a.m., the proceedings  
10 were concluded.)

11 - - -

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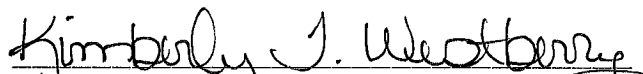
## COURT CERTIFICATE

STATE OF FLORIDA )

COUNTY OF LEE )

I, Kimberly T. Westberry, RPR, CRR, do hereby certify that I was authorized to and did report the foregoing proceedings, and that the transcript, pages 1 through 10, is a true and correct record of my stenographic notes.

Dated this 25th day of March, 2011.

  
Kimberly T. Westberry, RPR, CRR  
Fort Myers Court Reporting

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<b>T</b>	<p>take [1] 7/3  testimony [1] 6/7  Thank [3] 4/8 10/6 10/7  that [42]  that's [3] 4/1 7/7 9/8  their [4] 5/3 6/3 6/21 8/23  them [2] 4/13 6/12  then [2] 5/23 6/4  there [2] 3/18 5/9  there's [1] 4/19  Thereupon [1] 10/9  they [14]  they're [1] 5/1  they've [3] 6/17 7/18 8/22  thing [1] 6/8  things [1] 4/5  think [1] 5/6  this [19]  three [1] 9/18  three-week [1] 9/18  through [1] 11/9  time [5] 4/19 6/11 6/18 8/5 9/19  timely [3] 3/24 4/6 6/9  today [1] 9/9  told [3] 5/15 5/21 7/9  transcript [2] 1/10 11/9  trial [8] 6/23 6/24 7/1 7/11 7/25 8/10 8/12  10/1  true [2] 4/1 11/9  TRUSTEE [1] 1/3  TWENTIETH [1] 1/1  two [1] 5/14</p>
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<b>U</b>	<p>understand [1] 7/19  until [2] 4/25 7/1  us [4] 1/3 3/1 7/18 7/21</p>
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<b>V</b>	<p>verge [1] 8/22  versus [1] 3/1  very [1] 6/16</p>
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<b>W</b>	<p>want [4] 4/13 9/19 9/20 10/4  was [17]  wasn't [3] 3/24 6/9 6/10  Watson [1] 2/4  way [2] 8/7 9/4  we [8] 4/4 4/18 4/22 5/14 7/17 7/19 8/20</p>
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IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT IN  
AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

U.S. BANK, NA AS TRUSTEE FOR  
CHEVY CHASE FUNDING LLC  
MORTGAGE BACKED CERTIFICATES  
SERIES 2006-3,

Plaintiff,

vs. CASE NO. 09-CA-063473

JASON G. WEBSTER; THE UNKNOWN  
SPOUSE OF JASON G. WEBSTER;  
CARA D. WEBSTER; THE UNKNOWN  
SPOUSE OF CARA D. WEBSTER; IF  
LIVING, INCLUDING ANY UNKNOWN  
SPOUSE OF SAID DEFENDANT(S),  
IF REMARRIED, AND IF DECEASED,  
THE RESPECTIVE UNKNOWN HEIRS,  
DEVISEES, GRANTEEES, ASSIGNEES,  
CREDITORS, LIENORS, AND  
TRUSTEES, AND ALL OTHER  
PERSONS CLAIMING BY, THROUGH,  
UNDER OR AGAINST THE NAMED  
DEFENDANT(S); BRANCH BANKING  
AND TRUST COMPANY; BELLE LAGO  
HOMEOWNERS ASSOCIATION, INC.;  
WHETHER DISSOLVED OR PRESENTLY  
EXISTING TOGETHER WITH ANY  
GRANTEEES, ASSIGNEES,  
CREDITORS, LIENORS, OR  
TRUSTEES OF SAID DEFENDANT(S)  
AND ALL OTHER PERSONS CLAIMING  
BY, THROUGH, UNDER, OR AGAINST  
DEFENDANT(S); UNKNOWN TENANT  
#1; UNKNOWN TENANT #2,

Defendants.

\_\_\_\_\_/

PROCEEDINGS:	MOTION HEARING
BEFORE:	Honorable Hugh E. Starnes
DATE:	February 10, 2011
TIME:	8:50 a.m. to 9:00 a.m.

1 LOCATION: Lee County Courthouse  
1700 Monroe Street, 5-F  
2 Ft. Myers, FL 33901

3 APPEARANCES:

4 For the Plaintiff: (No Appearance)

5

For the Defendants: FERNANDO RAMIREZ, ESQ.  
6 Ice Legal, P.A.  
1015 N. State Rd. 7  
7 Suite D  
Royal Palm Beach, FL 33411

8

REPORTER: Christi K. Cole,  
9 Certified Professional  
Court Reporter

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1 PROCEEDINGS

2 MR. RAMIREZ: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. RAMIREZ: This is Fernando Ramirez from  
5 Ice Legal on behalf of the defendants, the  
6 Websters.

7 THE COURT: Who is the plaintiff's law firm?

8 MR. RAMIREZ: Daniel Consuegra.

9 THE COURT: Is anyone here for them? Have  
10 they checked in?

11 THE CLERK: Nobody has checked in from that  
12 firm.

13 MR. HILL: Judge, they've usually had their  
14 own attorney, but Mr. Goetz has represented them  
15 when they haven't. You could pass now, send him  
16 an E-mail and ask if he's going to do it today.

17 THE COURT: Well, this --

18 MR. HILL: I know their attorney has been  
19 coming here.

20 THE COURT: Right.

21 MR. HILL: She left the firm, and Tuesday was  
22 her last day, so --

23 THE COURT: Is that Ms. Dunn?

24 MR. HILL: Yes.

25 THE COURT: The motion is a motion to vacate?

1           MR. RAMIREZ: An ex parte order, Your Honor.  
2 Do you want me to proceed?

3           THE COURT: Well, it says, correct  
4 scrivener's error. Is this your motion?

5           MR. RAMIREZ: No, that was plaintiff's  
6 motion.

7           THE COURT: Okay.

8           MR. RAMIREZ: However, plaintiff --

9           THE COURT: Tell me what you understand  
10 they're seeking, and I'll see if it's something  
11 that we need to --

12           MR. RAMIREZ: This is what happened.  
13 Plaintiff filed a motion to correct that  
14 scrivener's error in the complaint caption in the  
15 lis pendens, and to reform the assignment of  
16 mortgage. However, plaintiff moved ex parte, and  
17 the Court granted the order.

18           However, plaintiff went behind defendants'  
19 back. We were not aware they were trying to do  
20 that. And right now --

21           THE COURT: Okay. What was it -- what was it  
22 exactly that they were correcting, because that is  
23 something that we do on an ex parte -- or what we  
24 do on an ex parte basis if it's clear that it's  
25 some mistake in the name or there's been a change

1 of ownership. We do that ex parte, with the  
2 understanding that if there is some alleged  
3 prejudice, the defendant can raise it.

4 So, first, what specifically did they change?

5 MR. RAMIREZ: This is our motion for you.

6 THE COURT: Okay.

7 MR. RAMIREZ: On the title you can see --

8 THE COURT: Is it something you set today?

9 MR. RAMIREZ: We sent it -- we filed it with  
10 the Court December 21st. So this is --

11 THE COURT: Okay. But did you set this  
12 today?

13 MR. RAMIREZ: Yes, for today, yes.

14 THE COURT: Okay. Let me read this.

15 Okay. So they're saying they had the name  
16 wrong, correct?

17 MR. RAMIREZ: That's right.

18 THE COURT: Okay.

19 MR. RAMIREZ: Not only in the complaint, but  
20 also in the assignment of the mortgage. However,  
21 Your Honor, when they filed their motion --

22 THE COURT: Not only in the name, but in  
23 what?

24 MR. RAMIREZ: In the assignment of the  
25 mortgage. They were trying to also reform --

1 THE COURT: Okay.

2 MR. RAMIREZ: -- the assignment of the  
3 mortgage.

4 THE COURT: Okay.

5 MR. RAMIREZ: When plaintiff filed its motion  
6 for summary judgment -- this is the affidavit  
7 that's submitted to the Court, if you would like  
8 to look at it.

9 THE COURT: Okay. I just need to know kind  
10 of the status. So the ex parte order that came in  
11 was after judgment?

12 MR. RAMIREZ: No, final judgment hasn't been  
13 entered.

14 THE COURT: Okay. So where is the prejudice  
15 from your side?

16 MR. RAMIREZ: Because we haven't had a chance  
17 to actually contest that. When they filed --

18 THE COURT: Well, you do now. I mean,  
19 nothing has been -- the order that I've entered --  
20 I'm sure it's the same form that I've usually  
21 seen -- does not take any position on whether the  
22 name is correct.

23 All we're doing is saying, you can, in  
24 effect, substitute the party. If you have an  
25 objection and you think that's not right, there's

1 nothing -- there's no ruling on the merits that  
2 that's correct. That's basically their  
3 allegation.

4 MR. RAMIREZ: Well, Judge, at the very least,  
5 we should have an opportunity to contest what  
6 they're saying.

7 THE COURT: Well, you do have the  
8 opportunity.

9 MR. RAMIREZ: Right. And it's not only that  
10 they substitute a party plaintiff, they're saying  
11 that it was a scrivener's error, apparently some  
12 excusable neglect argument. They need affidavits.  
13 Actually, I have an affidavit saying that somebody  
14 else is the plaintiff.

15 As I was saying, when they filed their motion  
16 for summary judgment, the affidavit they submitted  
17 to the Court said that the previous name was the  
18 actual owner and holder of the note.

19 So I have an affidavit. They don't. And how  
20 could that order be entered? At the very least,  
21 we should have a hearing.

22 THE COURT: You have an affidavit from whom?

23 MR. RAMIREZ: It's from the plaintiff. This  
24 is the affidavit they filed, affidavit in support  
25 of motion for summary judgment. And if you go

1 to --

2 THE COURT: Okay. But this motion for  
3 summary judgment hasn't been filed.

4 MR. RAMIREZ: No, it has been filed.

5 THE COURT: I mean, hasn't been heard. I'm  
6 sorry.

7 MR. RAMIREZ: That is correct. However, the  
8 affidavit has been filed with the Court.

9 THE COURT: I think that's the place for you  
10 to challenge it. If they seek a summary judgment  
11 and you submit these, you have the right to ask  
12 that the summary judgment not be granted. And  
13 they've got a pleading asking for something that I  
14 presume the judge would say there's a dispute on.  
15 I mean, I understand what you're saying.

16 MR. RAMIREZ: Right.

17 THE COURT: And, again, sometimes I feel  
18 apologetic in making this statement, but I don't  
19 really think there's any need to apologize under  
20 the circumstances.

21 We have a caseload that is unmanageable in  
22 normal circumstances. We simply don't have the  
23 luxury on every thing that if we had individual  
24 cases we may say, yes, we'll set up a hearing on  
25 this. And our policy is, both Judge Thompson and



1           myself, if somebody is alleging something that's  
2           in effect, the way I deem this, it's comparable to  
3           amending a complaint, and we liberally allow that  
4           to be done.

5           This is no ruling on the merits. It's no  
6           ruling that they can prove that that's the  
7           appropriate person. It's their allegation. And  
8           we've allowed them to substitute that party. If  
9           that party cannot prove they -- they are the owner  
10          or the properly named person in the note, then  
11          they get no relief.

12          MR. RAMIREZ: Judge, I appreciate that you're  
13          trying to move the cases along, but this is the  
14          law, too. In the Florida Rules of Judicial  
15          Administration it says that an ex parte order are  
16          only left for emergency situations.

17          There was no emergency to change the name of  
18          the plaintiff or to change the actual assignment.  
19          They're changing an assignment that they didn't  
20          even file with the Court. That's an issue that  
21          also is going to be probably relevant for a  
22          standing.

23          So in this case, there was no emergency. In  
24          the past when we have seen that they have moved ex  
25          parte, we usually set the hearing, and if we lose,

1 we lose, and if we win, we win. But in this case,  
2 they cannot go behind our backs.

3 It's not just the name, it's an actual  
4 assignment of mortgage that they're trying to  
5 correct, and there's nothing in the record showing  
6 that they filed the original assignment to begin  
7 with. And now they're trying to correct that  
8 assignment without we having even seen it. At the  
9 very least, we should have the right to contest  
10 that. It should be --

11 THE COURT: I'll grant -- I'm sorry. I  
12 wasn't trying to push that on you. I grant your  
13 relief. You can prepare an order.

14 MR. RAMIREZ: Thank you.

15 (Proceedings concluded at 9:00 a.m.)

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COURT CERTIFICATE

STATE OF FLORIDA  
COUNTY OF LEE

I, Christi K. Cole, Certified Professional Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 10th day of February, 2011.

  
Christi K. Cole  
Certified Professional  
Court Reporter

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IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT  
IN AND FOR LEE, FLORIDA

CASE NO: 09-CA63473

US BANK NA )  
Plaintiff, )  
vs. )  
JASON G. WEBSTER )  
Defendant. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS

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Pages 1 through 6

Wednesday, December 8, 2010  
8:35 a.m. to 8:37 a.m.  
LEE COUNTY COURTHOUSE  
1700 Monroe Street  
Fort Myers, Florida 33901

REPORTED BY:  
DANIELLE AHREN, FPR  
Florida Professional Reporter

2

1 APPEARANCES

2

3 On Behalf of the Plaintiff (s):

4 Robert Hill

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18 By: Steven Brotman, Esquire

19

20

21

22

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1 appearing for them today?

2 MR. HILL: Yes, sir.

3 JUDGE THOMPSON: Okay. That's acceptable

4 to me.

5 MR. BROTMAN: Thank you, Your Honor. We

6 agree that the case is not ready to set for

7 trial yet, although we would object to a

8 continuance on the basis that this case is not

9 at issue as we have not filed our answer yet.

10 We only just recently accepted service.

11 JUDGE THOMPSON: No answer has been filed

12 yet?

13 MR. BROTMAN: No. It's due on the 13th,

14 Your Honor.

15 MR. HILL: Okay. Well, let's set it for

16 another docket sounding. That will give you a

17 chance to file your answer. Our new docket

18 sounding date will be February 1st at 8:30 in

19 the morning.

20 MR. BROTMAN: If I could clarify, Your

21 Honor, docket sounding on the order requires

22 that the case be at issue. Are you claiming

23 our case is at issue today?

24 JUDGE THOMPSON: No. The case is not at

25 issue because you haven't filed an answer yet.

3

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3 --- PROCEEDINGS ---

4 JUDGE THOMPSON: Mr. Hill, you want to

5 call the case for the court reporter?

6 MR. HILL: Yes, Your Honor. US Bank

7 versus Jason Webster, 09-CA63473. Robert Hill

8 for the plaintiff.

9 MR. BROTMAN: Steven Brotman for the

10 defendant, Jason Webster.

11 JUDGE THOMPSON: Good morning.

12 MR. HILL: Good morning, Judge.

13 JUDGE THOMPSON: This is set for a

14 continued docket sounding. We do not have a

15 package. Cross continuance of the docket

16 sounding.

17 MR. BROTMAN: First of all Your Honor, we

18 object to the appearance of Mr. Hill in this

19 case since he has not filed a notice of

20 appearance, especially considering your order.

21 These docket soundings should require someone

22 here that can --

23 JUDGE THOMPSON: Who hired you, Mr. Hill?

24 MR. HILL: Dan Consuego's Office.

25 JUDGE THOMPSON: All right. You're

5

1 MR. BROTMAN: Thank you, Your Honor.

2 JUDGE THOMPSON: If it was at issue, I'd

3 set it for trial.

4 MR. BROTMAN: Thank you, Your Honor.

5 (Whereupon, hearing concluded at 8:37

6 a.m.)

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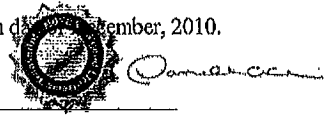
CERTIFICATE OF REPORTER

STATE OF FLORIDA  
COUNTY OF LEE

I, Danielle Ahren, Court Reporter and Notary Public, certify that I was authorized to and did stenographically report the proceedings and that it is a true record of my stenographic notes.

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

Dated this 8th day of September, 2010.



DANIELLE AHREN, Notary Public

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