

**In the Matter Of:**  
**US BANK vs ESLAHI**

09-CA-032471

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**TRIAL**

*November 13, 2018*

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
FOR HILLSBOROUGH COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION  
CASE NO.: 09-CA-032471

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

vs.

MAHNAZ ESLAHI; FAIRCLOTH ESTATES HOA, INC.,

Defendant.

/

Trial before the Honorable  
Judge Perry A. Little

November 13, 2018  
1:39 p.m. - 3:26 p.m.

Hillsborough County Courthouse  
800 East Twiggs Street, Courtroom 409  
Tampa, Florida 33602

REPORTED BY:  
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APPEARANCES :

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PROCEEDING

THE COURT: Good afternoon.

MR. TORRENS. Good afternoon, Judge.

THE COURT: You may be seated. Okay. Are we ready to proceed in the matter of U.S. Bank National Association versus Faircloth Estates Homeowner's Association and Mr. Eslahi --

MR. TORRENS: Eslahi, and Mrs. Eslahi and Mr. Barakat.

THE COURT: Okay. All right. I got it close.

MR. TORRENS: You were close. It took me a while to get it down too.

THE COURT: Yeah. Okay then. I notice they're not present? They're not going to be here?

MR. TORRENS: No, Your Honor. They weren't placed under subpoena or anything, no, sir.

THE COURT: Okay. All right. You ready to proceed?

MS. HEGGESTAD: Yes, Your Honor.

THE COURT: All right. At this time, I'm going to ask your witness to please stand and raise your right hand and I'll swear you in. Do you swear or affirm that any testimony or statements you give today will be the truth?

THE WITNESS: I do.

THE COURT: All right. You may be seated.

1 Do you care to make an opening statement, either side or --

2 MS. HEGGESTAD: Briefly, Your Honor,  
3 Lauren Heggestad on behalf of the plaintiff. I just wanted  
4 to point out to the Court that this was filed as a two-count  
5 foreclosure --

6 THE COURT: Right.

7 MS. HEGGESTAD: -- the Court has already granted  
8 summary judgment as to count two --

9 THE COURT: And this is the --

10 MS. HEGGESTAD: The equitable lien count. I have a  
11 copy of the order if Your Honor wishes to review it. So we  
12 will be proceeding today only on the first count, the  
13 foreclosure count, as the second count has already been  
14 resolved.

15 THE COURT: Okay. All right. You may proceed.

16 MR. TORRENS: I could make a brief opening,  
17 Your Honor, if you want to just do a brief --

18 THE COURT: If you care to.

19 MR. TORRENS: Sure. Your Honor, in this case,  
20 we're going to show that plaintiff simply cannot prove  
21 standing to foreclose, and I think at the close of  
22 plaintiff's evidence that will be abundantly clear, and,  
23 accordingly, a judgment should be entered for the defendants  
24 in this case, and that's all I would say from my --

25 THE COURT: Okay. All right. You may proceed.

1 MS. HEGGESTAD: The defendant calls Bryan Heifner.

2 THE COURT: Mr. Heifner, maybe you want to have a  
3 seat there, sir, and bring whatever notes you want to bring  
4 with you. It's up to you.

5 THE WITNESS: I think I'm good.

6 THE COURT: Okay. Do you want to spell your name  
7 for the court reporter?

8 THE WITNESS: Bryan, B-R-Y-A-N, Heifner,  
9 H-E-I-F-N-E-R.

10 THE COURT: H-E-I-F --

11 THE WITNESS: N-E-R.

12 THE COURT: Okay.

13 THEREUPON:

14 BRYAN HEIFNER,  
15 a witness, having been previously sworn by the Court,  
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MS. HEGGESTAD:

19 Q. Mr. Heifner, who is it that you work for?

20 A. U.S. Bank National Association.

21 Q. And how long have you worked for U.S. Bank?

22 A. Since March of 2011.

23 Q. And what is your current job title?

24 A. I am a corporate representative for our default and  
25 foreclosure departments.

1 Q. And can you generally explain some of your duties  
2 in that position?

3 A. I review our business records in preparation for  
4 any litigations, mediations, trials, depositions, advocacy  
5 for home saving modification options for the bank at this  
6 time.

7 Q. As part of your job function, are you familiar with  
8 the business records and practices of U.S. Bank?

9 A. Yes.

10 Q. And is it part of your job duties to be familiar  
11 with defaulted loans in the cases in which you provide  
12 testimony?

13 A. Yes.

14 Q. And are you familiar with the record keeping  
15 systems at U.S. Bank?

16 A. Yes.

17 Q. And what are those servicing platforms or record  
18 keeping systems that U.S. Bank has?

19 A. We service the loans through a main portal or LPS,  
20 and that system we also use to image copies of documents,  
21 take notes, payment histories, all that information is housed  
22 in that system, and then we communicate with our attorneys  
23 through a similar system set up the same way by the same  
24 company. Most of our systems are built around the LPS  
25 platform.



1 Q. And do you have access to these systems?

2 A. Yes.

3 Q. And have you received training on these systems?

4 A. Yes.

5 Q. And does U.S. Bank regularly keep their records in  
6 these systems?

7 A. Yes.

8 Q. All right. Are you familiar with the Mahnaz Eslahi  
9 mortgage loan account?

10 A. Yes.

11 Q. And when did you first become familiar with this  
12 loan?

13 A. It's been a couple of years, in preparation for a  
14 deposition maybe a year ago or a year and a half. I've been  
15 working and monitoring this file since a month probably prior  
16 to the deposition that took place.

17 Q. And what did you review in preparation for today?

18 A. I went ahead and reviewed all my notes that I've  
19 previously taken, as well as anything that has transpired  
20 since the deposition. I -- in preparation for the  
21 deposition, I reviewed copies of the note, the mortgage,  
22 collections notes, loss mitigation notes, payment histories,  
23 any -- the complaint that was filed and the answers that were  
24 filed. Anything related to the file.

25 Q. In -- in review of those notes, is this loan in

1 default?

2 A. Yes.

3 MS. HEGGESTAD: Your Honor, the original note was  
4 filed with the Court on March 3rd of 2015. I don't know if  
5 the Court -- you have it. Perfect. If I may approach?

6 MR. TORRENS: And if I can take just a quick look  
7 at that? I guess it's in here.

8 THE COURT: Yes.

9 MS. HEGGESTAD: I have -- and I'll defer to the  
10 Court on this. What I'd like to do is leave the original in  
11 the court file and proceed with a copy, if that's okay with  
12 you, and let the Court take judicial notice of the original?

13 MR. TORRENS: That's fine. I don't intend to  
14 object to the note and mortgage coming in anyways.

15 THE COURT: Okay.

16 MS. HEGGESTAD: Your Honor, I'll bring the original  
17 back up to the Court.

18 MR. TORRENS: One thing I didn't check, is the  
19 original mortgage in there, as well?

20 MS. HEGGESTAD: No. I have a certified copy of the  
21 mortgage.

22 MR. TORRENS: Oh, okay.

23 THE COURT: I thought I saw -- what is it, the  
24 assignment of the mortgage here --

25 MR. TORRENS: Could I see the certified copy of the

1 mortgage?

2 MS. HEGGESTAD: Sure.

3 (Plaintiff's Exhibit No. 1 was marked for  
4 identification.)

5 Q. (By Ms. Heggstad) All right. I'm going to  
6 approach the witness with what's been marked as  
7 Plaintiff's Exhibit 1. And can you identify for the record  
8 what this document is?

9 A. This is a copy of the note.

10 MS. HEGGESTAD: Well, Your Honor, we move to admit  
11 the copy of the note into evidence as Plaintiff's Exhibit 1  
12 without objection.

13 MR. TORRENS: No objection.

14 THE COURT: It's admitted.

15 Q. (By Ms. Heggstad) All right. So identifying the  
16 copy of that note, can you describe the note for me and tell  
17 me who the originating lender is?

18 A. The originating lender was Encore Credit Corp.  
19 It's a California corporation doing business as  
20 ECC Credit -- Credit Corporation of Florida.

21 Q. And can you tell me the individual -- the  
22 individuals' names that purport to have executed the note?

23 A. Mahnaz Eslahi.

24 Q. And does this note bear an endorsement of any kind?

25 A. Yes.

1 Q. And what is that endorsement?

2 A. From ECC, Encore Credit Corporation of Florida to  
3 blank.

4 MR. TORRENS: And, Your Honor, just so the record  
5 is clear, I just want the record to reflect that the original  
6 note that I looked at in the court file has that endorsement  
7 on the back of the very last page, not in the front, as I  
8 think is on the copy. So I just wanted the record to --

9 MS. HEGGESTAD: Right. It's a photocopy. We  
10 didn't print back and front. That is correct. The  
11 endorsement is on the back of the last page.

12 Q. (By Ms. Heggstad) Now, have you reviewed a copy  
13 of this note in your case management system?

14 A. Yes.

15 Q. And is this the same copy you reviewed in your case  
16 management system?

17 A. Yes.

18 Q. Now, going to that endorsement on the note, is it  
19 U.S. Bank's policy to place endorsements for other entities?

20 A. No.

21 Q. So when U.S. Bank received this note, that  
22 endorsement was contained on the -- on the note?

23 A. Yes.

24 MR. TORRENS: Objection. Lack of knowledge,  
25 hearsay. Your Honor, if I may have a couple questions?

1 THE COURT: Sure.

2 VOIR DIRE

3 BY MR. TORRENS:

4 Q. So you just testified that when this note was  
5 received by U.S. Bank that that endorsement was there,  
6 correct?

7 A. I testified in regards to our -- our policy and  
8 procedures in regards to endorsements on notes.

9 Q. Okay. So the testimony wasn't about this note  
10 specifically?

11 A. It was in regards to our policy and relating to  
12 them when we're purchasing a note -- a loan, what would take  
13 place if the loan came to us without proper endorsements, it  
14 would not have been purchased.

15 Q. Okay. So for this note, was it at any point  
16 scanned into a computer system?

17 A. The copy of note was scanned into our system, yes.

18 Q. Okay. And -- and when was this note scanned into  
19 the computer system?

20 A. It would have probably -- it could have been  
21 scanned many times, and also copies of it could be viewed  
22 from the transmittal. If I am viewing the origination file,  
23 I review the file that the original lender would have scanned  
24 to us during the process of underwriting the file. Then the  
25 note was scanned prior to receiving it and after receiving it

1 with the endorsement, as well. There was multiple scans of  
2 the file in the system. It's been in default for some time  
3 with the foreclosure pending.

4 Q. Okay. So can you tell when this note was  
5 originally scanned into the computer system and what computer  
6 system that is?

7 A. It would have been scanned by the original lender  
8 prior to us receiving it or acquiring file. We acquired the  
9 file June 30th of 2006, and without being on our system, I  
10 can't say exactly what date it was scanned. It would have  
11 been during that process of it going through quality checks.

12 Q. Okay. So you can't testify on what date this note  
13 was originally scanned into the computer system for this?

14 A. No, it would have been scanned likely multiple  
15 times at different times throughout its servicing life.

16 Q. Okay. Thank you.

17 THE COURT: Let me just for point of clarification,  
18 I thought you said it wasn't actually -- when was the first  
19 time it showed up as having been scanned into, I guess,  
20 U.S. Bank's system?

21 THE WITNESS: The loan closed on June -- the loan  
22 is dated June 1st, 2006. U.S. Bank purchased and acquired  
23 the loan 30 days afterwards.

24 THE COURT: Okay. Like, around June 30th --

25 THE WITNESS: I reviewed -- I see -- we get the

1 origination file, as well, so I can see, like, a copy of that  
2 that was provided by the previous -- by the original lender,  
3 and then I can see copies of the note with the endorsement  
4 after that. So there's multiple copies of the note in our  
5 system, and sometimes the same copy is in our system more  
6 than once.

7 THE COURT: Let me ask you this for point of  
8 clarification, the first time you saw it was on or about  
9 when?

10 THE WITNESS: The first time --

11 THE COURT: That you saw the scanned -- the note  
12 that had it scanned into U.S. Bank's system was on or about  
13 what date?

14 THE WITNESS: We have -- I do -- I can say for sure  
15 that one of our -- our system will show that we have copies  
16 of the note scanned in June of 2006.

17 THE COURT: Okay.

18 MR. TORRENS: Objection. Hearsay. May I ask him  
19 some follow-up?

20 THE COURT: Sure.

21 VOIR DIRE

22 BY MR. TORRENS:

23 Q. Okay. So you just testified that the note was  
24 scanned into the system in June of 2006; is that right?

25 A. There are copies in 2006, June -- the end of 2006.

1 I can't -- but I won't testify which exact day. I don't  
2 recall which day. The time stamp in the system, I would  
3 click a link that's dated when this file was created, and  
4 then I can view what was included in that file.

5 Q. Okay. And were you working for U.S. Bank in 2006?

6 A. I was not.

7 Q. You started working for U.S. Bank in 2011?

8 A. Correct.

9 Q. Okay. Now, I need those records that would reflect  
10 this note being initially scanned in in 2006. Were any of  
11 those records brought to court today?

12 A. I can't bring a hyperlink in a computer that I  
13 click a file. The hyperlink is actually the date --

14 MS. HEGGESTAD: Your Honor --

15 MR. TORRENS: Objection. Your Honor, it's hearsay.  
16 He's testifying as to these things. There's no record  
17 evidence that it was scanned in in 2006. He's testifying off  
18 of this computer system.

19 No screen shots were shown, were brought today to  
20 show that the loan -- or that the note was initially scanned  
21 in in 2006, and he's sitting on the stand testifying as to  
22 these things happening with no record evidence to  
23 substantiate it. It's hearsay and his testimony as to -- in  
24 that regard should be stricken.

25 MS. HEGGESTAD: Judge, I will submit additional



1 evidence that may help along with this --

2 THE COURT: So to his point, then I will sustain  
3 his objection --

4 MS. HEGGESTAD: Okay.

5 THE COURT: -- at this point and come back to it on  
6 the issue of when it was scanned, is the issue at this point.

7 MS. HEGGESTAD: Judge, here's Exhibit 1, if you  
8 want to mark that exhibit.

9 (Plaintiff's Exhibit No. 2 was marked for  
10 identification.)

11 DIRECT EXAMINATION (Continued)

12 BY MS. HEGGESTAD:

13 Q. I'm now showing you what's been identified as  
14 Plaintiff's Exhibit 2. Can you identify this document?

15 A. This is a screen shot of our system of the  
16 acquisition information.

17 Q. And where have you seen this document before?

18 A. We -- this -- this servicing page is on every loan  
19 that we have that identifies acquisition information on each  
20 loan.

21 Q. And is this record kept in the ordinary course of  
22 U.S. Bank's business?

23 A. Yes.

24 Q. Is it the regular practice of U.S. Bank to maintain  
25 a record such as this?

1 A. Yes.

2 Q. Have you been trained to research and interpret  
3 these records?

4 A. Yes.

5 Q. And is one of the responsibilities of your job to  
6 research and interpret this record?

7 A. Yes.

8 Q. And was this record made by an individual with the  
9 responsibility to enter data accurately and contemporaneously  
10 of the events recorded?

11 A. Yes.

12 Q. And was this record made by or from information  
13 transmitted by a person with knowledge of that event?

14 A. Yes.

15 MS. HEGGESTAD: Your Honor, at this time, we would  
16 like to move the acquisition screen shot into evidence as  
17 Plaintiff's Exhibit 2.

18 THE COURT: Have you seen it?

19 MR. TORRENS: Yes, I've seen it. Your Honor, the  
20 objection is hearsay. If I may have a brief follow-up on  
21 this one?

22 THE COURT: Sure.

23 VOIR DIRE

24 BY MR. TORRENS:

25 Q. So this -- what computer system was it that

1 produces this -- I guess we'll call it the acquisition screen  
2 shot?

3 A. Yes.

4 Q. What computer system was it?

5 A. Our lending portal system, LPS also known as.

6 Q. LPS. Okay. And when was the first time that you  
7 reviewed this particular screen shot?

8 A. I -- I viewed it many times. We house this on  
9 every loan when it's brought into our system. This  
10 information is input into the system, so we -- I viewed this  
11 on this file any time I looked at the file and I'm working  
12 it, as well as any other file that we would service.

13 Q. Okay. So just give me a ballpark figure, when was  
14 the first time?

15 A. I can't say without speculating. It would have  
16 been prior to the deposition at some point.

17 Q. Prior to the deposition at some point and that was  
18 a couple years ago?

19 A. I believe so.

20 Q. Okay. And this is -- you testified this is a  
21 U.S. Bank record, right?

22 A. Correct.

23 Q. Okay. And you're familiar with the record keeping  
24 system?

25 A. Yes.

1 MR. TORRENS: Okay. Your Honor, I'll withdraw the  
2 objection. It's a U.S. Bank record.

3 THE COURT: Okay.

4 MR. TORRENS: I just wanted to clarify a couple of  
5 things.

6 THE COURT: Off the record.

7 (Thereupon, there was a discussion off the record  
8 at 1:57 p.m.)

9 THE COURT: All right. Exhibit -- back on the  
10 record. Exhibit No. 2 is admitted as Plaintiff's Exhibit 2,  
11 a screen shot, I assume, of the acquisition --

12 MS. HEGGESTAD: That's correct, Judge. We labeled  
13 it acquisition screen shot.

14 THE COURT: Yeah. Do you -- has that -- has it  
15 been marked yet --

16 MS. HEGGESTAD: I'm not -- do you want me to mark  
17 them as we go? What's easier?

18 THE JUDICIAL ASSISTANT: You can just hand them to  
19 me as you go and then I'll just mark them, and if you need me  
20 to give them back, I'll give it to you.

21 MS. HEGGESTAD: Okay.

22 THE JUDICIAL ASSISTANT: I can do it quickly.

23 DIRECT EXAMINATION (Continued)

24 BY MS. HEGGESTAD:

25 Q. Mr. Heifner, can you explain what this document

1 says?

2 A. The document will list the information that was  
3 boarded into our system when we acquired the loan. It starts  
4 with the date -- acquisition date of June 30th, 2006. It  
5 gives the principal balance at the time of acquisition. It  
6 will also indicate the type of acquisition it was, indicated  
7 by the number two, which there's -- states it was purchased,  
8 and it says that number two means purchased.

9 And there is a note below that would  
10 house the information in regards to the note and  
11 mortgage. In this case, it states original note held and  
12 then -- (inaudible) -- and the abbreviation --

13 THE COURT REPORTER: What was that, I'm sorry?

14 THE WITNESS: Original note held --

15 THE COURT REPORTER: Held?

16 THE WITNESS: -- H-L-D, abbreviated, and then the  
17 abbreviation N-M, as in note and mortgage.

18 THE COURT REPORTER: Okay. That's what I didn't  
19 understand. Thank you.

20 Q. (By Ms. Heggstad) So this document, just to  
21 clarify, shows that U.S. Bank purchased this loan on  
22 June 30th of 2006; is that correct?

23 A. Yes.

24 Q. And this document shows that the note and mortgage  
25 were held by U.S. Bank, as well; is that correct?

1 A. Yes, at the time of boarding on June 30th, 2006,  
2 the original note and mortgage were held.

3 (Plaintiff's Exhibit No. 3 was marked for  
4 identification.)

5 Q. (By Ms. Heggstad) I'm now going to you what's  
6 been premarked as Plaintiff's Exhibit 3. Can you identify  
7 what this document is?

8 A. This is a loan purchase sheet from U.S. Bank in  
9 regards to the purchasing of the loan.

10 Q. And have you seen this document before?

11 A. I have.

12 Q. Is this record kept in the ordinary course of  
13 U.S. Bank's business?

14 A. Yes.

15 Q. Is it the regular practice of U.S. Bank to make and  
16 maintain a record such as this?

17 A. Yes.

18 Q. Have you been trained to research and interpret  
19 this record?

20 A. Yes.

21 Q. Was this record made by an individual with the  
22 responsibility to enter data accurately and contemporaneously  
23 with the events recorded?

24 A. Yes.

25 Q. And was this record made by or from information

1 transmitted by a person with knowledge of that event?

2 A. Yes.

3 MS. HEGGESTAD: Your Honor, at this time, we would  
4 like to move Plaintiff's Exhibit 3 into evidence.

5 MR. TORRENS: Your Honor, it's clearly a U.S. Bank  
6 record. I have no objection to that coming in.

7 THE COURT: It's admitted.

8 Q. (By Ms. Heggstad) Mr. Heifner, can you explain  
9 the purpose of this document?

10 A. This document is in regards to the purchasing of  
11 the -- of the loan from the original lender. It states the  
12 information of the loan, the loan number, borrowers' names,  
13 the due date, the purchase price, and when the date of  
14 acquisition will be.

15 Q. And what is the date of acquisition?

16 A. June 30th, 2006.

17 Q. And this corresponds with the screen shot that's  
18 already been placed into evidence?

19 A. Yes. It also indicates the application date, as  
20 well.

21 Q. And this corresponds with the respective loan at  
22 issue here today, correct?

23 A. The application is going to be in regards to the  
24 bid for the purchase.

25 Q. Right. I meant the document as a whole?

1 A. Yes.

2 MS. HEGGESTAD: Your Honor, what I have is  
3 Exhibit 4, the mortgage, which counsel has indicated he is  
4 not objecting to.

5 THE COURT: Okay.

6 MS. HEGGESTAD: We can go ahead and mark this one.  
7 (Plaintiff's Exhibit No. 4 was marked for  
8 identification.)

9 THE JUDICIAL ASSISTANT: Do you need three back?

10 MS. HEGGESTAD: No.

11 Q. (By Ms. Heggstad) Mr. Heifner, can you identify  
12 for the record what this document is?

13 A. This is a certified copy of the recorded mortgage.

14 THE COURT: This is Exhibit 4?

15 MS. HEGGESTAD: This is four, yes.

16 Q. (By Ms. Heggstad) And is this document recorded?

17 A. Yes. It bears the recorded information on the  
18 first page.

19 Q. Can you tell me the individuals' names that  
20 executed this mortgage?

21 A. Mahnaz Eslahi.

22 Q. And does this correlate with the property address  
23 of the note that's been placed into evidence?

24 A. Yes.

25 Q. And does this mortgage provide for acceleration and



1 foreclosure if the borrower defaults on the note?

2 A. Yes.

3 MR. TORRENS: They're the same, right?

4 MS. HEGGESTAD: I might actually have an extra  
5 copy.

6 MR. TORRENS: Okay. Yeah, I'm not going to object  
7 to that.

8 (Plaintiff's Exhibit No. 5 was marked for  
9 identification.)

10 Q. (By Ms. Heggstad) I'm showing you what's been  
11 marked as Plaintiff's 5. Can you identify this document for  
12 the record?

13 A. This is a breach letter.

14 MS. HEGGESTAD: Your Honor, counsel has indicated  
15 that he is not objecting. If we could move this into  
16 evidence as Plaintiff's 5?

17 THE COURT: It's admitted.

18 Q. (By Ms. Heggstad) Who was this demand letter sent  
19 by?

20 A. Sent by?

21 Q. Yes.

22 A. It was sent by U.S. Bank National Association, my  
23 employer.

24 Q. And who was it sent to?

25 A. Mahnaz Eslahi, 15901 Dover Cliff Drive

1 in -- (inaudible) --

2 Q. And -- oh, I'm sorry.

3 THE COURT REPORTER: What did you say after that?

4 THE WITNESS: In Lutz, Florida.

5 Q. (By Ms. Heggstad) And what does this letter  
6 advise?

7 A. This letter is -- advises that the loan is in  
8 default. It gives a time frame to cure that default, which  
9 is 30 days. It lists the amount to cure the default,  
10 remedies to cure the default.

11 Q. And what was the date of this letter?

12 A. June 30th, 2009.

13 Q. And was the default outlined in --

14 A. I'm sorry, July 30th, 2009.

15 Q. July 30th of 2009, is the date of the letter?

16 A. Yes.

17 Q. And was the default outlined -- (inaudible) --

18 A. No.

19 THE COURT REPORTER: Was the what, I'm sorry?

20 MS. HEGGESTAD: Was the default outlined in the  
21 letter cured?

22 A. No, it was not.

23 Q. (By Ms. Heggstad) What date is the loan due and  
24 owing for?

25 A. I would be able to tell you by the payment history.

1 From memory, I -- with all the other dates I have in my mind,  
2 I don't want to mess that one up.

3 Q. Okay. That's fine. We'll come back to that.

4 (Plaintiff's Exhibit No. 6 was marked for  
5 identification.)

6 Q. (By Ms. Heggstad) I'm showing you what's been  
7 marked for identification purposes as Plaintiff's Exhibit 6.  
8 Can you identify this document for the record?

9 A. This is a screen shot of our collection notes, loan  
10 activity notes.

11 Q. So have you seen this record before?

12 A. Yes.

13 Q. And is this record kept in the ordinary course of  
14 U.S. Bank's business?

15 A. Yes.

16 Q. Is it the regular practice of U.S. Bank to maintain  
17 a record such as this?

18 A. Yes.

19 Q. As part of your job training, have you been trained  
20 to research and interpret records like this one?

21 A. Yes.

22 Q. And was this made by an individual with the  
23 responsibility to enter data accurately and contemporaneously  
24 with the events recorded?

25 A. Yes.

1 Q. And was this record made by or from information  
2 transmitted by a person with knowledge of that event?

3 A. Yes.

4 MS. HEGGESTAD: Your Honor, at this time, we'd  
5 like to move the letter log into evidence -- or notes log  
6 into -- I'm sorry, notes log into evidence as  
7 Plaintiff's Exhibit 5 --

8 THE JUDICIAL ASSISTANT: Six.

9 THE COURT: Six.

10 MS. HEGGESTAD: Six.

11 MR. TORRENS: No objection, Your Honor. Again,  
12 it's a U.S. Bank record.

13 Q. (By Ms. Heggstad) Now, can you tell me the  
14 purpose of this document?

15 A. This document will list any activity taking place  
16 on a loan during the time frame of this page, which covers  
17 July and early August of 2009. It's going to show the  
18 payments received, any conversations we had with the  
19 borrowers, any letters that are sent, that would be indicated  
20 in the -- the note log.

21 Q. And does this document indicate any letters were  
22 sent during that time period?

23 A. It indicates the letter being sent on  
24 July 30th, the 30-day demand letter, as well as a document  
25 early August in regards to the homeowner's insurance being

1 canceled.

2 Q. Okay. This letter shows the demand letter was  
3 sent; is that correct?

4 A. Yes.

5 Q. I am now showing you --

6 MS. HEGGESTAD: This is six in evidence. I forgot  
7 to mark it.

8 (Plaintiff's Exhibit No. 7 was marked for  
9 identification.)

10 Q. (By Ms. Heggstad) Can you please identify what's  
11 been premarked as Plaintiff's Exhibit 7 for the record?

12 A. The documents I have in front of me are  
13 collectively the payment history for the loan.

14 Q. And where have you seen this document before?

15 A. The payment history, I view in our system. I also  
16 review the records in this format, as well. There's multiple  
17 formats here, which will show the records that have been  
18 encrypted in our encrypted drive. They're printed a little  
19 bit differently. And I view them on a daily basis.

20 Q. And is this record kept in the ordinary course of  
21 U.S. Bank's business?

22 A. Yes.

23 Q. Is it U.S. Bank's --

24 MR. TORRENS: Objection. Hearsay. Your Honor, if  
25 I may have a brief voir dire?

1 THE COURT: Sure.

2

3 VOIR DIRE

4 BY MR. TORRENS:

5 Q. So the document that's been handed to you as  
6 Plaintiff's Proposed Composite Exhibit 7, I noticed that when  
7 I took a look at that, it seems like it comes from a few  
8 different computer systems. The printouts look different.  
9 Could you explain a little bit about that to me? I see the  
10 first one is called intranet, and then there's a couple other  
11 systems. Could you kind of run through that?

12 A. Yeah. I did initially cover it about it looks like  
13 the different documents because as the -- after a certain  
14 date, we will purge payment histories off of our system and  
15 encrypt them in a file that we would just reference back to  
16 if we need to pull the old payment histories. So the older  
17 file is 2014 and before.

18 And in order for our computer system to function  
19 and service the loans properly, if you were to house a  
20 payment history for thousands of loans dating back to 2006,  
21 you wouldn't really -- the computer system wouldn't function.  
22 So in order to keep it functioning properly so we can service  
23 the loans, our computer system houses 24 months readily  
24 available for any person looking at the loan in the system.

25 Any older documents are or any older dates prior to

1 24 months, if they're not printed at that time, they would be  
2 housed in our encrypted files in case they need to be  
3 referenced later.

4 Q. Okay. So this first one, home mortgage intranet, I  
5 take it that is a system you're familiar with, the system  
6 U.S. Bank uses on a regular basis, right?

7 A. It's tied to LPS. There's a button I can click in  
8 LPS and it's -- I can look at any history dating back to  
9 however long it's housed in LPS.

10 Q. But are you familiar with this intranet -- this  
11 home mortgage intranet system?

12 A. Yes. I can use it on -- it's tied to the account.  
13 If I'm looking at the account on LPS, I can click that tab on  
14 the account and look up what I need to look up in regards to  
15 any file.

16 Q. Okay. So you can use the system and this is the  
17 system that employees of U.S. Bank use regularly?

18 A. Yes.

19 Q. Okay. And my next question is, I see if you flip  
20 through you eventually get to a series of documents called  
21 customer account activity statement. I didn't see any  
22 notations about U.S. Bank on that. What -- what computer  
23 system produced this record?

24 A. Oh, it's -- well, it states below U.S. Bank under  
25 the customer activity service workstation, same loan number.

1 This is off of the LPS. This is if I'm looking at the screen  
2 and I print that --

3 Q. Oh, no, no, no. I'm talking about the one when you  
4 go past that.

5 A. Oh, the small printed ones --

6 Q. Here --

7 A. -- towards the end?

8 MR. TORRENS: If I may approach the witness?

9 THE COURT: Sure.

10 Q. (By Mr. Torrens) I think it's towards the back. I  
11 think it's after that. There you go.

12 A. This one right here?

13 Q. Yeah, yeah. Tell me about that. What computer  
14 system produced that record?

15 A. This is going to be the same system as the one  
16 behind it --

17 Q. Okay.

18 A. -- where they requested in our system to print off  
19 a certain period of time of payment history.

20 Q. So these also were produced by the customer service  
21 workstation?

22 A. Yes. The one -- let me check one thing really  
23 quick. Yes, this is all housed within the servicing of the  
24 loan. The ones towards the end where the print gets much  
25 smaller, those are the ones that are in the encrypted file.



1 Q. So these -- the customer account activity  
2 statement, why does this look so different from all of the  
3 other records?

4 A. This one was likely printed at a different time.  
5 It looks like this one was printed --

6 Q. My copy says September 14th, 2015.

7 A. I believe that would be correct. When this one was  
8 printed, that's why there's a supplement on top, because the  
9 payment history continues to occur as we -- not that payments  
10 were received after this date, but we continue paying taxes  
11 and insurance on the property, so they're still reflected in  
12 here.

13 Q. Okay. And why is there no notations anywhere in  
14 this -- in these records that this is a U.S. Bank record?

15 A. On this file right -- on this page you have here?

16 Q. Correct.

17 A. It references the same loan number that's tied to  
18 the account, as well as the borrowers' name --

19 Q. Oh, no, I -- yeah. No, I know that. I'm asking  
20 why is there no indication that it's a U.S. Bank record like  
21 the others?

22 A. Because the employee that's viewing it knows  
23 they're viewing it on U.S. Bank's system. This is just  
24 printed from that system. This isn't what goes to the  
25 borrower. This is just a record that we would house in

1 servicing our loans. So assuming that they're in one of our  
2 secure facilities and looking at it on our computers, they  
3 wouldn't need to see that it's U.S. Bank.

4 Q. Okay. And what system is that?

5 A. All of our loan servicing is LPS.

6 Q. So this was produced by LPS?

7 A. Yes. All this is created and made by LPS except  
8 for what we have to purge off the system after 24 months.  
9 Some of these are printed at different dates because we -- as  
10 the case has gone on since, was it nine -- 12 --

11 Q. Nine.

12 A. -- whenever the case started, we've had to  
13 continuously add more as those payment histories become  
14 available. So that's why you would see a different  
15 date, such as this one was printed and provided in  
16 September of 2015, and the more current ones, which show the  
17 most up-to-date payment history dating into October of 2018.

18 MR. TORRENS: Okay. Your Honor, I think that is  
19 sufficient. I'll withdraw the objection.

20 THE COURT: Okay. The payment history is admitted.

21 DIRECT EXAMINATION (Continued)

22 BY MS. HEGGESTAD:

23 Q. In reviewing this payment history, what date is  
24 this loan due and owing for?

25 A. May 1st, 2009.

1 Q. So no payment has been received on this loan after  
2 May 1st of 2009?

3 A. The loan is currently due for that payment. I can  
4 tell you when the last payment was received. That is  
5 correct, no payments have been received after --

6 THE COURT: I'm sorry?

7 THE WITNESS: No payments have been received since  
8 May 1st, 2009.

9 Q. (By Ms. Heggstad) And does this payment history  
10 contain records of all payments that were made on this loan?

11 A. Yes, all payments that were made and applied to a  
12 loan would be contained in this payment history.

13 Q. And in review of this composite payment history, do  
14 you know what the principal amount is due on this loan?

15 A. Yes, it's stated on the -- \$373,438.47 is the  
16 current principal balance.

17 Q. This loan is currently due and owing for the  
18 March 1st payment of 2009, and all subsequent payments? Is  
19 that what the payment history shows?

20 A. Yes, May 1st, 2009.

21 Q. And did the plaintiff advance any other funds on  
22 behalf of the borrower according to the payment history?

23 A. Yes, we continue paying other expenses in regards  
24 to the property, such as taxes and insurance.

25 MR. TORRENS: Your Honor, I'm going to have to

1 object to this being admitted into evidence. I wasn't  
2 provided that in advance as an exhibit. I received  
3 everything else, but that's a pretty thick stack of financial  
4 data that I didn't receive.

5 Additionally, it looks like there's summaries in  
6 there, as well, and I didn't receive any notice of intent to  
7 use summaries. They're asking for a very significant sum of  
8 money for hazard insurance and for other amounts that are  
9 contained in there. I haven't had an opportunity to review  
10 those records. And so since it wasn't disclosed, I would ask  
11 that that be excluded.

12 MS. HEGGESTAD: Your Honor --

13 THE COURT: Response?

14 MS. HEGGESTAD: -- I don't -- (inaudible) --

15 THE COURT REPORTER: I'm --

16 MS. HEGGESTAD: -- showing what was disclosed.

17 However, these -- the information contained in this also  
18 corresponds with the payment history that's been disclosed  
19 multiple times. I believe this was produced at the  
20 deposition, but I'm not sure. I was not at the deposition.  
21 But we would have usually in preparation would bring the  
22 judgment figures. This has the detailed breakdown for hazard  
23 insurance and --

24 THE COURT: The payment history does?

25 MS. HEGGESTAD: I have the -- these have, like, the

1 screen shots. The payment history, I believe, has summaries,  
2 if -- if that's correct?

3 THE WITNESS: Do you want me to speak in regards to  
4 it? The payment history will show each disbursement on each  
5 item in regards to taxes and insurance or anything that was  
6 made in regards to the loan.

7 MR. TORRENS: So I don't -- I don't know why this  
8 would really be needed anyway if the pay history contains all  
9 of the --

10 THE COURT: You have an objection based on the fact  
11 that she -- he's indicated that the payment history has all  
12 of those, I guess, expenditures that have occurred over the  
13 life of the loan. What -- what's the need for that? If you  
14 want to -- why would you need to have that?

15 MS. HEGGESTAD: I mean, Your Honor, I don't need  
16 it. However, it's an easier breakdown for the Court to see  
17 each --

18 THE COURT: Okay. All right. I'm going to  
19 overrule the objection.

20 MR. TORRENS: Okay. Thank you, Judge.

21 THE COURT: Sure.

22 (Plaintiff's Exhibit No. 8 was marked for  
23 identification.)

24 Q. (By Ms. Heggstad) I'm showing you what's been  
25 marked for identification purposes as Plaintiff's Exhibit 8.

1 Can you identify what this document is for the record?

2 A. These documents would make up the judgment figures,  
3 which would contain information in regards to what we'd be  
4 seeking in regards to a judgment for foreclosure.

5 Q. And is this record kept in the ordinary course of  
6 U.S. Bank's business?

7 A. Yes.

8 Q. Is it the regular practice of U.S. Bank to maintain  
9 a record such as this?

10 A. Yes.

11 Q. Have you been trained to research and interpret a  
12 record like that?

13 A. Yes.

14 Q. And was this record made by an individual with  
15 responsibility to enter data accurately and contemporaneously  
16 with the events recorded?

17 A. Yes.

18 Q. And was this record made by or from information  
19 transmitted by a person with knowledge of that event?

20 A. Yes.

21 MS. HEGGESTAD: Your Honor, at this time, we'd  
22 like to move this document into evidence as  
23 Plaintiff's Exhibit 8.

24 MR. TORRENS: Your Honor, I know that you overruled  
25 my prior objection, but just for purposes of the record I

1 would renew the objection on the basis that it wasn't  
2 disclosed pursuant to your -- to the Court's trial order.  
3 And, additionally, there's a summary contained in there and  
4 notice wasn't provided to me as required by the statute for  
5 statistical summaries. And so on those grounds I would  
6 object to the admission of that document.

7 THE COURT: The Court ruled, yes. Now, my ruling  
8 was based on the fact that the payment history apparently has  
9 all of those entries that are referred to in Exhibit 8, and I  
10 think you have the payment history?

11 MR. TORRENS: That's correct, Judge, I do have the  
12 payment history. That was eight, right?

13 THE COURT: Yes.

14 MS. HAGGESTAD: Yes.

15 MR. TORRENS: Okay.

16 Q. (By Ms. Heggstad) You previously testified that  
17 the principal due and owing on this loan is \$373,438.47; is  
18 that correct?

19 A. Yes.

20 Q. Is there any interest due on this loan?

21 A. Yes.

22 Q. And what is the current interest that is due and  
23 owing?

24 A. Interest due through today -- or actually this is  
25 interest through November 1st, 2018, at \$300,260.40.

1 THE COURT: I'm sorry, 300 --

2 THE WITNESS: \$300,260.40.

3 Q. (By Ms. Heggstad) Were there any other payments,  
4 such as taxes due on this loan or advanced on behalf of this  
5 loan?

6 A. Yes, the taxes totaled at \$45,867.

7 THE COURT: Even?

8 THE WITNESS: Even.

9 A. And the homeowner's insurance or hazard insurance,  
10 \$52,167.81.

11 Q. (By Ms. Heggstad) And were there any other  
12 property preservation or other fees advanced on this loan by  
13 U.S. Bank?

14 A. Yes.

15 Q. And what are those amounts?

16 A. Property preservation, \$920.

17 Q. And what is the total amount that plaintiff is  
18 seeking today?

19 A. The total amount is \$774,752.68.

20 Q. I have no further questions at this time.

21 MR. TORRENS: Your Honor, just a few questions on  
22 cross.

23 THE COURT: Sure. Okay.

24

25



CROSS-EXAMINATION

1  
2 BY MR. TORRENS:

3 Q. Just a couple questions for you. Regarding the  
4 promissory note, when the original complaint -- you said that  
5 you had the opportunity to review the pleadings. When the  
6 original complaint was filed in this case, was the promissory  
7 note attached?

8 A. From my review of the original complaint, it was  
9 not. There was information in regards to the note, but the  
10 note was not attached to the original complaint.

11 Q. Okay. And it's my understanding that an amended  
12 complaint was eventually filed attaching the note in this  
13 case; isn't that correct?

14 A. To my knowledge, yes.

15 Q. Okay. And do you recall when that original  
16 complaint -- or when that amended complaint was filed?

17 A. I do not recall the date when the amended complaint  
18 was filed. I do not.

19 Q. Okay. If I say it was filed in 2014, would that  
20 jog your memory at all?

21 A. I -- I didn't memorize dates on any filings. I  
22 mostly focused on our business records, so it's possible, but  
23 I --

24 Q. Okay.

25 A. -- the document I'm assuming would reflect that.

1 Q. And since you testified that you had an opportunity  
2 to review the pleadings, I'm going to show you a document,  
3 which is an affidavit that was filed in this case previously  
4 by the plaintiff.

5 MR. TORRENS: If I may approach, Your Honor?

6 MS. HEGGESTAD: Ryan, can I see that?

7 MR. TORRENS: Oh, sure. It's the affidavit in  
8 support of our motion for summary judgment.

9 MS. HEGGESTAD: Your Honor, I'd object to this  
10 being shown to the witness for a number of reasons. One,  
11 there was no witness and exhibit list filed by defendants --

12 THE COURT: I'm sorry --

13 MR. TORRENS: That's not correct. There was.

14 MS. HEGGESTAD: There was no witness and exhibit  
15 list filed by the defendants for this trial. You can read  
16 the docket and you'll see that there was no witness list  
17 filed for this trial, the trial set to occur today.

18 And, secondly, I was not provided any exhibits that  
19 counsel intended on proceeding with. Lastly, we're in my  
20 case in chief. This is outside the scope of what I placed  
21 into evidence.

22 MR. TORRENS: Your Honor, we did file a witness and  
23 exhibit list, which has remained unchanged. This trial got  
24 continued, I think, several times at this point. Nothing  
25 changed, and so I didn't feel the need to file the same thing

1 all over again. On that witness and exhibit list, we do  
2 include any affidavits and any documents attached to any  
3 affidavits.

4 This is -- the plaintiff just a moment ago admitted  
5 documents that haven't been produced to me, including  
6 summaries, and I wasn't provided any notice. This is an  
7 affidavit that was filed in 2011 -- or, I'm sorry, 2010 by  
8 the plaintiff, by U.S. Bank, signed under penalty of perjury  
9 by U.S. Bank, filed about five months after this lawsuit was  
10 filed, where they testify under oath in this affidavit that  
11 they can't find the promissory note.

12 THE COURT: (Inaudible) -- can print it --

13 MR. TORRENS: I was just going to ask the Court to  
14 take notice. I wasn't even going to introduce it as a formal  
15 exhibit.

16 THE COURT: Your objection, ma'am, is overruled,  
17 okay? And you may ask him a question about it.

18 MR. TORRENS: Thank you, Your Honor.

19 THE COURT: Sure.

20 MR. TORRENS: Will the Court take judicial notice  
21 of the affidavit?

22 THE COURT: It's in the court file?

23 MR. TORRENS: Yes. Thank you, Judge. May I  
24 approach the witness?

25 THE COURT: Sure.

1 Q. (By Mr. Torrens) Okay. Sir, I'm handing you an  
2 affidavit that was filed by U.S. Bank in 2010 in this case.  
3 As a part of your review of the pleadings, did you review  
4 this document?

5 A. I have not seen this document prior to today.

6 Q. Okay. Why don't you take a moment or two to review  
7 that document and tell us what it is and what it says.

8 THE COURT: Do you want to direct him to the  
9 relevant pages so he knows where to look?

10 MR. TORRENS: Sure.

11 THE COURT: I'm not sure how many pages it is,  
12 but --

13 MR. TORRENS: Yes, it's just the affidavit part,  
14 which I think is two or three pages.

15 Q. (By Mr. Torrens) If you could just take a quick  
16 review of that and let us know what U.S. Bank is stating  
17 under oath in that affidavit.

18 MS. HEGGESTAD: Your Honor, just for the record, I  
19 want to object to him testifying from a document that has not  
20 been placed into evidence.

21 MR. TORRENS: Your Honor, the Court has already  
22 taken judicial notice. I'm just asking him to advise us of  
23 what it says. Otherwise, I can just go off of it in  
24 arguments later, but --

25 THE COURT: He asked me to take judicial notice of

1 it and I can. It's in the court file. And I think he's  
2 indicated that he's given it to you before.

3 MS. HEGGESTAD: Your Honor --

4 MR. TORRENS: We -- we mentioned any affidavits and  
5 any attachments --

6 THE COURT: Okay. All right.

7 MR. TORRENS: -- in our exhibit list, and this is a  
8 document obviously under oath by the plaintiff, so -- and  
9 it's already in the court file. It's been there for years.  
10 And it's directly contrary to some of the prior testimony  
11 that was offered by the plaintiff.

12 MS. HEGGESTAD: Just so the record is clear, it was  
13 not provided to me previously.

14 THE COURT: Okay. But it's in the court file?

15 MS. HEGGESTAD: That is correct, Judge.

16 THE COURT: All right, ma'am -- or not ma'am, sir,  
17 you can take a look at it, please, and see if you understand  
18 it and what it says.

19 A. I mean, this is an affidavit in support of a motion  
20 for final summary judgment. I do not have a law degree, so I  
21 can read it verbatim, but I can't make any speculations.

22 Q. (By Mr. Torrens) Okay. And in -- in that  
23 affidavit, is U.S. Bank stating that it held the original  
24 promissory note, or is it stating that the original  
25 promissory note was lost as of May of 2010?

1           A. I'll reference paragraph 7 of this  
2 document. It's -- to summarize, it states that  
3 U.S. Bank National Association was the owner and holder.  
4 It gives the borrower's name, the date of the loan,  
5 July -- June 1st, 2006, when the mortgage was recorded, as  
6 well as book and page number and county.

7           It states -- it's referencing copies of these  
8 documents being attached to this motion -- or affidavit.  
9 It's -- it goes on to state that the original note was lost  
10 and is not in the custody or control of the plaintiff.  
11 However, the plaintiff and/or servicer was in possession of  
12 the note and was entitled to enforcement of it when the loss  
13 occurred. It goes on to state balances at this time in  
14 regards to the principal balance, interest.

15          Q. Okay. And could you refer to the front of it and  
16 just let us know the date that -- the date that that was  
17 filed?

18          A. Well, I will say that it was signed on  
19 May 5th, 2010, and it looks like this is May 12th, 2010, a  
20 filing stamp.

21          Q. Okay. Thank you. Okay. Now, would you just  
22 quickly review the promissory note attached to that affidavit  
23 and let us know if it contains that endorsement in blank?

24          A. It does not appear that the document I'm holding  
25 has copies of the back of the pages, so with that endorsement

1 being on the back of the page of the note, it's not in this  
2 affidavit --

3 Q. Okay.

4 A. -- or the affidavit in support of the motion for  
5 final summary judgment.

6 Q. Okay. Thank you.

7 A. I'm just seeing the fronts of the pages.

8 MR. TORRENS: And, Your Honor, as to the noticed  
9 document, does Your Honor prefer to have this marked as a  
10 document that was judicially noticed, or me just state for  
11 the record when it was filed, that the Court's taken notice?  
12 Does Your Honor have a preference?

13 THE COURT: I don't.

14 MR. TORRENS: Okay. Just for the record, the Court  
15 has taken judicial notice of an affidavit in support of a  
16 motion for final summary judgment filed in the court record  
17 on May 12th, 2010, filed at 11:41 a.m.

18 Q. (By Mr. Torrens) Just a few more questions for  
19 you, sir. I believe that you testified earlier that you were  
20 not working for U.S. Bank in 2009 when this lawsuit was  
21 filed; is that correct?

22 A. I began working in 2011.

23 Q. In 2011. Okay. So two years after this lawsuit  
24 was filed. Now, as -- I know that the original note was not  
25 attached to the complaint in this case, to the original

1 complaint. Do you remember when the original note and  
2 mortgage were actually filed in this case?

3 A. When the original note was filed?

4 Q. Correct.

5 A. She referenced it previously when she requested the  
6 court file, but I don't know the exact date.

7 Q. Okay. And so going back to the beginning of this  
8 court case, can you tell us where the physical original  
9 promissory note was located when this case was filed in 2009?

10 A. When the -- when the case was physically filed in  
11 2009, I can't tell you specifically where it was at that  
12 moment. If it wasn't with counsel, which we normally send  
13 our originals to upon the filing of the complaint, it's -- to  
14 shed a little light on it, in 2009 most of our foreclosure  
15 complaints were being filed with David Stern's office.

16 And if -- I'm not sure if that could be an  
17 indication -- I don't know if it was their practice to file  
18 complaints in that -- in that way, but based upon my review  
19 of our records, we were -- had the original note when we  
20 acquired the loan in 2006, and at some point the lost  
21 note -- (inaudible) --

22 THE COURT REPORTER: The what?

23 THE WITNESS: The lost note information.

24 A. -- was filed in 2010, I believe, with the document  
25 you showed me, prior to my employment at the bank. But I



1 can't state specifically without looking at the -- any  
2 documents in regards to the note on where it was at that  
3 exact moment.

4 Q. Okay. So then no documents that may exist on where  
5 the note was located when the suit was filed, none of those  
6 documents were brought to court today, were they?

7 A. The documents that we've entered into evidence show  
8 that we purchased the loan --

9 Q. I'm talking about physical possession of the  
10 loan -- of the note -- of the original note --

11 A. And we held it at the time that we purchased it,  
12 and the affidavit states that -- references that, as well,  
13 that we were the proper --

14 Q. Correct. And what I'm talking about is not  
15 acquisition of the loan, purchase of the loan. I'm talking  
16 about physical possession of the loan. Can you testify where  
17 the original note was located when this suit was filed?

18 A. I can testify that we had possession and we held it  
19 as the acquisition states, but the date that the suit was  
20 filed, I can't -- I can't testify day by day on exactly  
21 what --

22 Q. Yeah, I --

23 A. -- if it was sent to counsel and counsel -- I can't  
24 make a speculation on that exactly. I can just testify that  
25 we had possession and purchased the note --

1 Q. And when you say you had --

2 A. -- (inaudible) -- indicates that we held the  
3 originals, note and mortgage, in 2006, and in regards to any  
4 specific date, I can't out of memory tell you that  
5 information. I can testify based upon the records that I've  
6 testified to and are in evidence today --

7 Q. And so your testimony is -- is based off of the  
8 records that are before the Court today, right?

9 A. And the testimony of my preparation of those  
10 records and -- yes.

11 Q. Okay. And do you know if there is a screen shot  
12 that shows the date that the loan was -- well, if -- well,  
13 you are testifying the plaintiff had physical possession when  
14 the suit was filed, but you don't know where the original  
15 note was. Is there a screen shot out there somewhere that  
16 would show the date that it was originally scanned in?

17 MS. HEGGESTAD: Objection. Calls for speculation.

18 MR. TORRENS: I'm just asking him off his knowledge  
19 from the records, Judge.

20 THE COURT: All right. Do you understand the  
21 question?

22 THE WITNESS: He wants to know the date that --

23 THE COURT: Yeah, a screen shot that shows when it  
24 was --

25 Q. (By Mr. Torrens) The original note, if it was

1 scanned into the computer system, is there a screen shot  
2 anywhere out there with a date that would show us when that  
3 original note was scanned into the system initially?

4 A. The -- it's difficult to provide a document which  
5 would likely be a link that I would click that would have the  
6 date, if I would then print -- I could print a link that says  
7 the date something was scanned in, and I would click to view  
8 the document, but that wouldn't show the document, or I can  
9 scan -- print the document, but it wouldn't show the link.  
10 So that's kind of a catch 22.

11 When we board our loans through the boarding  
12 process, they input the information on our acquisition  
13 screen. I can't edit that information. It's locked after  
14 boarding. So if I were to go into a loan and try to edit the  
15 information that was entered through the acquisition screen,  
16 I wouldn't be able to.

17 The information at the time of boarding the loan in  
18 2006 was indicated by the person who boarded the loan that  
19 they had physical possession of the note and mortgage, and we  
20 would not purchase -- purchase a loan that didn't bear the  
21 endorsement on the loan that would give us the rights to  
22 enforce that loan. So and it's --

23 Q. Okay. And --

24 A. -- it's in our boarding documents that shows at  
25 that time the person that boarded that file was in possession

1 and verified that we held the note and mortgage.

2 Q. Okay. And were there -- are there any records from  
3 that person that were brought today?

4 A. The acquisition screen shot, that is the record  
5 that was input by that person, and that record stays -- I  
6 can't go in and edit that record, so it -- it stays as it is  
7 from boarding onwards. It's an information screen that we  
8 can look at if we want to know anything in regards to the  
9 acquisition.

10 Q. Okay. And -- and I was asking that question  
11 because we see sometimes in some of these foreclosures  
12 there's screen shots from a computer system that will have an  
13 entry and it will say original note uploaded into the  
14 computer system. Is there anything -- I take it there's  
15 nothing like that?

16 MS. HEGGESTAD: Objection. Asked and answered.

17 A. Not to my knowledge.

18 THE COURT: I'm sorry?

19 MR. TORRENS: Oh, I'm sorry, go ahead.

20 MS. HEGGESTAD: I objected, Your Honor, based on  
21 the question being asked and answered.

22 THE COURT: You can answer if --

23 A. I'm -- I'm not sure exactly. The documents that  
24 were provided indicate that we held it, the date we held it,  
25 when -- how we -- how we acquired it, that we purchased it,

1 the date that the purchase took place, the principal balance  
2 at the time of purchase. All that was input into our system  
3 at boarding dated the day of the acquisition,  
4 June 30th, 2006, I believe.

5 Q. (By Mr. Torrens) Okay. And let me ask you this,  
6 if -- I know you're -- you're testifying that the plaintiff  
7 was in possession, but you're not really sure where it was.  
8 You said it could be a David Stern case or something like  
9 that. Why was the note not attached to the complaint? Do  
10 you have any testimony as to that?

11 MS. HEGGESTAD: Objection. Calls for speculation.

12 THE COURT: If you know, sir, you can answer the  
13 question.

14 A. I -- I can't. You know, that would be speculating.  
15 I honestly don't know.

16 Q. (By Mr. Torrens) Oh, you don't know?

17 A. I don't know why it was not attached to the  
18 complaint, no, I do not.

19 Q. Okay. And from your review of the -- of the  
20 pleadings and the records in this case, do you have any  
21 knowledge or testimony as to why an amended complaint  
22 attaching that note wasn't filed until 2014?

23 MS. HEGGESTAD: Objection, Your Honor. This was a  
24 decision made by the attorneys in the --

25 THE COURT: Do you know?

1 THE WITNESS: No, I do not.

2 Q. (By Mr. Torrens) You don't know. Okay. And my  
3 last question in that regard, would the affidavit that I  
4 showed you from 2010, where U.S. Bank is stating they  
5 couldn't find the note in 2010 after the suit was filed, do  
6 you know why that would have been filed?

7 MS. HEGGESTAD: Objection. Calls for speculation.

8 THE COURT: You can answer the question if you  
9 know, sir.

10 A. I don't specifically.

11 Q. (By Mr. Torrens) Okay. So moving on, it's a  
12 substantial amount -- and moving on to the amounts. For  
13 taxes, about \$45,000. For insurance, about \$52,000. If I go  
14 through all of these pages from your records line by line and  
15 add everything up, will every one of those entries be  
16 in -- in these documents here and come up with that precise  
17 figure for the taxes and insurance?

18 A. Yes.

19 Q. Okay.

20 MR. TORRENS: Your Honor, no further questions.

21 MS. HEGGESTAD: Your Honor, I just have a few on  
22 redirect.

23 THE COURT: Sure.

24 MS. HEGGESTAD: If I may approach the clerk?  
25

RE-DIRECT EXAMINATION

BY MS. HEGGESTAD:

Q. I just want to show you Plaintiff's Exhibit 2, and you've testified this document indicates that U.S. Bank held possession of the original note and mortgage; is that correct?

A. Yes.

Q. And that document cannot be edited -- it is created at the time it's completed and cannot be edited by anyone else; is that correct?

A. That's correct.

Q. And U.S. Bank is both the owner and servicer for the loan; is that correct?

A. That's correct.

MS. HEGGESTAD: I have no further questions. Plaintiff rests and asks for a final judgment to be entered in the amount previously testified to.

THE COURT: Let's see if Mr. -- if Mr. Torrens has any witnesses he's going to call.

MR. TORRENS: No, Your Honor, we don't have any witnesses, but I have a motion for an involuntary dismissal.

THE COURT: Sure.

MR. TORRENS: Okay. Your Honor, the basis of the motion for involuntary dismissal is lack of standing. I have a case that is directly on point from the Second District

1 Court of Appeal. If I may approach? I have a copy for  
2 opposing counsel, as well. May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. TORRENS: Thank you. This is a Second District  
5 Court of Appeal case from 2016. This is Corrigan,  
6 C-O-R-R-I-G-A-N, Corrigan versus Bank of America located at  
7 189 So.3d 187. And this case really falls squarely within  
8 Corrigan. In Corrigan, just like here, you had a lawsuit  
9 that was filed with a lost note count. They attached no note  
10 to the complaint.

11 Here, just like in Corrigan, a long time after the  
12 lawsuit was filed, they then apparently found the note, filed  
13 an amended complaint, and they get to trial. And just like  
14 here where we have an initial complaint with not -- not just  
15 even an unendorsed note, no note attached.

16 The Second District said under those circumstances  
17 that they could not prove standing at inception, that there  
18 was no standing at inception. And, in fact, the case that we  
19 have here before you today is so much more egregious than  
20 even Corrigan.

21 We have an initial complaint in 2009 filed. No  
22 note attached. An amended complaint not filed attaching that  
23 note until 2014, five years later. Six years later, 2015, we  
24 have finally what looks to be the original note getting filed  
25 in 2015.



1           Even more egregious, in 2011, five months after  
2 this lawsuit was filed, you have the plaintiff filing a sworn  
3 affidavit under oath and penalty of perjury stating that,  
4 Judge, we can't find the note, that we had the rights to  
5 enforce it, but, gee, we still can't find it. And that's  
6 five months into this lawsuit.

7           That note that the Court has before you there was  
8 not filed until six years after this litigation. The  
9 plaintiff has tendered into evidence what they're calling an  
10 acquisition screen, and that acquisition screen seems to say  
11 that the loan was purchased.

12           You heard me ask -- Your Honor heard me ask the  
13 witness where was the note located when this suit was filed.  
14 His answer was we don't know. Maybe it was a David Stern  
15 case. He had no knowledge of where the original note was  
16 filed. He had no knowledge of why it took so long to file  
17 the original note. He had no knowledge why that affidavit  
18 was filed directly contrary to the testimony today.

19           So the facts of this case are so much worse than  
20 even Corrigan. In Corrigan, they didn't have sworn  
21 affidavits directly contradicting the testimony like they  
22 have here today. So not only is there no evidence that they  
23 physically possessed the note, and the portion that I  
24 highlighted for the Court is where the Second District states  
25 here no note, not even a copy was filed with the original

1 complaint.

2           Though Bank of America later filed the original  
3 note and mortgage along with an assignment, these documents  
4 did not establish standing at the time that the original  
5 complaint was filed because the endorsement was undated, and  
6 the assignment was dated after the initial complaint was  
7 filed.

8           That's the precise set of facts we have here. We  
9 have an undated endorsement. No testimony whatsoever as to  
10 when that endorsement was placed on that note. A note that  
11 was filed in the court record six years after the  
12 commencement of this litigation, and an assignment of  
13 mortgage that was placed there with the original note in the  
14 record that is dated after this lawsuit was filed, but  
15 appears to be cleverly back dated to May of 2009.

16           And the appellate courts have held repeatedly that  
17 a back dated assignment doesn't really get the plaintiff  
18 anywhere. And so the facts of this case are egregious,  
19 Judge. The plaintiff has no evidence that it had standing at  
20 inception, and the motion for involuntary dismissal should be  
21 granted on the basis of lack of standing, Judge.

22           THE COURT: Ms. --

23           MS. HEGGESTAD: Your Honor, well, firstly, I would  
24 like to point out to the Court that the plaintiff did not  
25 introduce that assignment of mortgage. That's not part of

1 our case in chief and should not be relied on today.

2 Secondly, there are some differences to the  
3 Corrigan case. Most importantly, if you read what was placed  
4 into evidence at the trial of the Corrigan case, the only  
5 documents placed into evidence were the note and mortgage,  
6 assignment, and payment history.

7 That's not the case here. We placed those  
8 documents into evidence, as well as two additional documents  
9 showing that U.S. Bank held physical possession of the note  
10 and mortgage. There's been no testimony presented --

11 THE COURT: And those documents are?

12 MS. HEGGESTAD: The documents that show that  
13 U.S. Bank held the note and mortgage are the acquisition  
14 screen shot, Plaintiff's Exhibit 2, and the loan  
15 purchase -- purchase agreement, Plaintiff's 3. This differs  
16 from the Corrigan case, where they placed -- they  
17 showed -- they had no evidence showing that they ever held  
18 possession.

19 We have two documents in evidence today showing  
20 U.S. Bank held that possession, you know, to prevail on  
21 standing -- to prove standing at the time of filing and  
22 standing today. If the note gets lost in the middle, they  
23 can't find it in the middle, but I have it today and I can  
24 prove that we had it in 2009, I don't see how the Court can  
25 follow this case.

1           It's -- we have two documents in evidence showing  
2 possession by U.S. Bank. No testimony showing the note was  
3 sent anywhere else. No evidence presented that the note was  
4 anywhere else other than U.S. Bank when this was filed. I  
5 believe we have proven our standing burden, Your Honor.

6           THE COURT: Okay. I'm going to deny the motion for  
7 involuntary dismissal --

8           MR. TORRENS: Oh, I was going to say something  
9 very briefly, Judge, for the record, if I may?

10          THE COURT: I already denied the motion for  
11 involuntary dismissal.

12          MR. TORRENS: Okay, Judge.

13          THE COURT: Okay. Are you going to call any  
14 witnesses?

15          MR. TORRENS: No, Your Honor.

16          THE COURT: All right. You can make your closing  
17 arguments.

18          MR. TORRENS: Thank you, Judge.

19          MS. HEGGESTAD: Your Honor, plaintiff has placed  
20 into evidence today eight documents, the note, the  
21 acquisition screen shot, the loan purchase agreement, the  
22 mortgage, the demand letter, the letter log showing the  
23 demand letter was sent, the payment history, and the judgment  
24 figures.

25          The plaintiff has proven standing at the time of

1 filing, as well as standing at possession. There has been no  
2 other testimony outside of my witness's testimony that the  
3 note was in the possession of U.S. Bank in 2006, and the  
4 blank endorsement is in the court file today and has been in  
5 the court file since 2015 filed by the plaintiff.

6 The plaintiff proved that there was a default of  
7 this loan in May of 2009, that that default has not  
8 cured -- has not been cured, and that regular payments have  
9 not been received by U.S. Bank. U.S. Bank has proven that  
10 they advanced numerous taxes and insurance and additional  
11 payments on behalf of -- on behalf of this property, and  
12 U.S. Bank is entitled to final judgment today.

13 THE COURT: Yes?

14 MR. TORRENS: Your Honor, so in our closing  
15 argument, I would -- I know the Court just denied the motion  
16 for involuntary dismissal, but I think as the case law  
17 requires me to do, I'd renew the arguments and advance that  
18 motion for involuntary dismissal in the form of a motion for  
19 final judgment.

20 Now that the case has been completed, I would  
21 renew the arguments that have already been made. And,  
22 additionally, I would point out to the Court that there was  
23 no Bailey Letter introduced into evidence. There was no  
24 correspondence like you see in some of these cases that the  
25 original note was sent to the attorneys, that the original

1 note was received.

2 Again, no Bailey Letter, no screen shot showing  
3 that the original note was uploaded into the computer system,  
4 which we see in some of these cases. That kind of evidence  
5 may have gotten the plaintiff there. But a simple screen  
6 shot that says, oh, we purchased the loan, that has no  
7 bearing whatsoever on physical possession of the original  
8 note, especially in a case like this where you have  
9 affidavits directly contrary to that.

10 You have the witness who has testified he had no  
11 idea where the original note was in 2009, when this case was  
12 filed. A witness who didn't start working for the bank until  
13 two years after the commencement of this litigation.

14 If plaintiff had a Bailey Letter, if they had that  
15 type of correspondence, something like that that showed we  
16 received the original note. Plaintiff's counsel argued that,  
17 well, maybe we lost it in the middle. Well, that  
18 doesn't -- that doesn't work. That's just another  
19 contradiction in their case.

20 They simply have not proven by competent,  
21 substantial evidence that they had physical possession of the  
22 original note at the time that this case was filed, and  
23 therefore the judgment should be entered for the defendants.

24 MS. HEGGESTAD: Your Honor, if I may briefly  
25 respond?

1 THE COURT: Uh-huh.

2 MS. HEGGESTAD: I just once again would point the  
3 Court to the acquisition screen shot. It shows physical  
4 possession of the note and mortgage in 2006 --

5 THE COURT: How does it show that --

6 MS. HEGGESTAD: That was what was testified to. If  
7 I may direct the Court, I can indicate where my witness  
8 testified where it shows physical possession. Do you have  
9 the document?

10 THE JUDICIAL ASSISTANT: They should all be here.

11 THE COURT: Show me the document --

12 MS. HEGGESTAD: Yes, sir.

13 THE COURT: -- itself that shows the acquisition  
14 date --

15 MS. HEGGESTAD: That's correct, and Mr. Heifner --

16 THE COURT: -- on June 30th of 2006 --

17 MS. HEGGESTAD: -- he further indicated, Judge,  
18 that this line here, original note held, note and mortgage,  
19 and it shows that they were in possession of the original  
20 note and the mortgage as of the date of that acquisition.

21 THE COURT: All right. That's about the fifth or  
22 sixth line from the bottom of the acquisition screen --

23 MR. TORRENS: Yes, Judge, and --

24 THE COURT: She's still arguing --

25 MR. TORRENS: Oh, sorry, Judge.

1 MS. HEGGESTAD: Yes, Judge, and that is our  
2 testimony that shows physical possession of the note and the  
3 mortgage by U.S. Bank. There's been no evidence presented  
4 that the note was in anyone else's possession. There's been  
5 no evidence presented to show that it was transferred to any  
6 other entity or lost or in the possession of some other  
7 servicer. U.S. Bank had possession in 2006. U.S. Bank  
8 presented a blank endorsement note to the Court today.

9 THE COURT: Has U.S. Bank been the only entity  
10 that's --

11 MS. HEGGESTAD: That's correct, Judge.

12 THE COURT: -- the only servicer --

13 MS. HEGGESTAD: U.S. Bank is the servicer and owner  
14 of this loan.

15 THE COURT: Okay. You said you wanted to say one  
16 final comment?

17 MR. TORRENS: Oh, yes, Your Honor, and it's that  
18 they're showing the Court that screen shot and arguing that  
19 that somehow shows they were in physical possession. But yet  
20 we have a case here where a lawsuit was filed in 2009, where  
21 they couldn't even find the note. They couldn't find the  
22 note. They didn't produce the note until six years after  
23 this case was filed.

24 Again, that's a screen shot that purportedly is  
25 showing that -- there is no direct evidence that they were in



1 physical possession. Sure the screen shot shows it. And we  
2 have a lawsuit filed where they couldn't find it and sworn  
3 affidavits that the Court has taken notice of saying we still  
4 can't find the note, and the lawsuit has been going on for  
5 five months, so it's not -- it's not sufficient, Judge.

6 THE COURT: Okay. All right. Give me a minute to  
7 digest Corrigan and -- and look at some of these exhibits.

8 MR. TORRENS: Okay.

9 THE COURT: I'll be right back. I'm taking a  
10 five-minute -- or 15-minute recess.

11 (Thereupon, a recess was taken from 2:57 p.m. to  
12 3:21 p.m.)

13 THE COURT: Okay. All right. The Court has  
14 considered the testimony of the witness and the exhibits that  
15 have been submitted by the plaintiff and the defendant, and  
16 the Court has also reviewed the Corrigan case again in  
17 chambers.

18 And after having considered all of that, the Court  
19 is going to find that the plaintiff did not prove it had  
20 standing at the time that the lawsuit was filed. They did  
21 not prove that they had physical possession of the note at  
22 the lawsuit -- at the time that the lawsuit was filed,  
23 coupled with some other things in the file, the affidavit by  
24 U.S. Bank at some point in time indicating they didn't know  
25 where the note was.

1           And there's a back dated assignment of the mortgage  
2 and note after the lawsuit was filed -- I think it was after  
3 the lawsuit was filed. And the fact that the notice of  
4 filing the actual note itself was March 2015. So I think  
5 there's some holes in the plaintiff's position on standing  
6 that it cannot and did not cover. So you can draft an --

7           MR. TORRENS: Thank you, Your Honor. Do you want  
8 me to do a judgment here or send you one on JAWS or --

9           THE COURT: You can send me one on JAWS and give  
10 her a chance to look at it.

11           MR. TORRENS: Okay. It will be cleaner that way,  
12 and I'll show it to plaintiff's counsel before we --

13           MS. HEGGESTAD: That's fine, Judge. I just want to  
14 make clear that this is only as to count one, as count two  
15 has already been ruled on by the Court.

16           THE COURT: What was count two?

17           MS. HEGGESTAD: Count two was --

18           MR. TORRENS: Was the title issue --

19           THE COURT: Oh, yeah, yeah.

20           MR. TORRENS: Yeah. So, yeah, that's my  
21 understanding that this is as to count one.

22           MS. HEGGESTAD: Okay. Thank you, Judge.

23           THE COURT: Okay. Thank you very much.

24           MR. TORRENS: Oh, and just on the record,  
25 Your Honor, I would submit a proposed judgment where it just

1 has a reservation for a determination on entitlement to fees  
2 and costs?

3 THE COURT: You weren't going to do that, were you?

4 MR. TORRENS: I just wanted the record to reflect  
5 that.

6 THE COURT: Sure.

7 MR. TORRENS: Thank you.

8 THE COURT: Okay. All right. Thank you very much.

9 MS. HEGGESTAD: Thank you, Judge.

10 MR. TORRENS: Thank you, Judge.

11 (Thereupon, the proceeding concluded at 3:26 p.m.)  
12  
13  
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CERTIFICATE OF REPORTER

STATE OF FLORIDA )

COUNTY OF HILLSBOROUGH )

I, Julie Johnson, certify that I was authorized to and did stenographically report the trial, and that the foregoing pages are a true and complete record of my stenographic notes taken during said trial.

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 23rd day of January, 2019.



JULIE JOHNSON, COURT REPORTER  
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53:13	<b>2</b>	<b>2011</b>	<b>30th</b>	<b>8</b>
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<b>11:41</b>	22:16		9:4	<b>n</b>
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	45:5	55:5	<u>          </u>	
<b>12</b>	47:20	<b>2018</b>	<b>4</b>	<b>abundantly</b>
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<b>12th</b>	50:18	38:25	<b>4</b>	<b>acceleratio</b>
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