IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR MIAMI DADE COUNTY, FLORIDA

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FR FREMONT HOME LOAN TRUST 2005-B,MORTGAGE-BACKED CERTIFICATES, SERIES 2005-B,

Plaintiff,

vs.

JOSEPH T. BUSET A/K/A JOSEPH THOMAS BUSET AND MARGARET BUSET A/K/A MARGARET JEAN BUSET, *et. al.*,

Defendant.
_____/

GENERAL JURISDICTION DIVISION

CASE NO.: 12-38811 CA 01

JUDGE: BEATRICE BUTCHKO

ORDER GRANTING DEFENDANT'S MOTION FOR INVOLUNTARY DISMISSAL FOR UNCLEAN HANDS AND LACK OF SUBSTANTIAL COMPETENT EVIDENCE

AND

ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE SANCTIONED FOR FRAUD UPON THE COURT UNDER THE COURT'S INHERENT CONTEMPT POWERS

THIS CAUSE having come before the Court for Trial on March 17 and 18, 2016, and the Court having reviewed Defendant's Motion for Sanctions Under the Court's Inherent Contempt Powers for Fraud Upon the Court, and being otherwise advised in the premises, it is hereupon:

ORDERED AND ADJUDGED that Defendant's Motion for Involuntary Dismissal after Trial is GRANTED for the following reasons:

I. **The Court Finds Unclean Hands In Plaintiff's Prosecution of This Action That Bars the Equitable Relief of Foreclosure**

1. The Florida Supreme Court has long recognized the maxim that in equitable actions such as this foreclosure, "he who comes into equity must come with clean hands." *Bush v. Baker*, 83 So. 704 (Fla. 1920).

2. In *Bush*, the Florida Supreme Court instructed that the "principal or policy of the law in withholding relief from a complaint because of 'unclean hands' is punitive in nature."

3. The Court finds several examples of Plaintiff's unclean hands that mandate punitive action that affirmatively bars plaintiff's entitlement to the equitable relief of foreclosure.

A. **Unclean Hands Involving the Specific Endorsement and Assignment of Mortgage That Both Reflect a Transaction that Never Happened**

4. Plaintiff's trial witness, Sherry Keeley, an Ocwen employee, gave extensive testimony regarding the Assignment of Mortgage (AOM) that Ocwen prepared in June of 2012 and recorded in the Public Records of Miami-Dade County in July of 2012.

5. On its face, this AOM purports to document a sale of Defendant's loan from Mortgage Electronic Registration Systems, Inc ("MERS") as nominee for the originator, Freemont Investment and Loan, directly to the securitized trust identified as the plaintiff.

6. Ms. Keeley testified that Ocwen prepared this assignment in preparation for filing the foreclosure complaint. The Ocwen employee identified the originator of the promissory note and prepared the AOM to reflect a transfer from MERS, as Nominee of that originator to the same party as Ocwen intended to name as Plaintiff in the foreclosure action.

7. The Court takes judicial notice that on July 25, 2008, Freemont Investment and Loan ("Freemont") entered into a voluntary liquidation and closing which did not result in a new institution. https://www5.fdic.gov/idasp/confirmation_outside.asp?inCert1=25653. As such, the status of MERS as nominee for Freemont ended when Freemont closed on July 25, 2008, which renders the AOM created in 2012 *void ab initio*.

8. Ms. Keeley further testified the Pooling and Servicing Agreement for this securitized trust backed up the veracity of the AOM. However, Ms. Keeley later conceded that, according to the PSA, the chain of title for any loan within this trust went as follows:

Originator

FREEMONT INVESTMENT AND LOAN

Depositor

FREEMONT MORTGAGE SECURITIES CORPORATION

Trust

HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FR FREMONT HOME LOAN TRUST 2005-B, MORTGAGE-BACKED CERTIFICATES, SERIES 2005-B

9. This Court finds the AOM created in 2012 does not document a transaction that occurred in 2005, as Plaintiff suggests. The transaction described in the AOM never legally occurred. There was never a transaction between MERS and/or Freemont Investment and Loan that sold Defendant's loan directly to the Trust. Not in 2012, not in 2005, not ever.

10. The AOM is missing a key party in the chain of ownership, the Depositor, Freemont Mortgage Securities Corporation.

11. Similarly, the undated, specific endorsement affixed to the back of the promissory note reflects the same defective transfer from the originator to the Plaintiff, without reference to the depositor.

12. This endorsement is contrary to the unequivocal terms of the PSA, in evidence over Plaintiff's objection, which required all intervening endorsements be affixed to the face of the note because there was ample room for endorsements on the face of the note. There is also no evidence the endorsement was affixed before the originator went out of business in 2008.

13. The Court finds unclean hands in the AOM and undated endorsement reflect a transaction that never happened, and could never happen for a securitized trust.

14. The Court accepts the testimony of Defendant's well qualified expert witness, Kathleen Cully, who explained the securitization model which required the protection of assets from future bankruptcy clawbacks. There could be no direct sale from the originator to the trust directly.

15. The Court accepts Ms. Cully's testimony that Securitization always required a sale from the Depositor acting as a "middleman" between the originator and the Trust to provide bankruptcy remoteness in the event the originator went bankrupt.

B. **Unclean Hands For Violating the Court's Discovery Order Despite Plaintiff's Representations That It Fully Complied With That Order**

16. The Court also finds unclean hands in Plaintiff's failure to comply with the Court's Discovery Order of April 27, 2015.

17. In that order, the Court overruled plaintiff's blanket objections and found no basis for Plaintiff to object to providing any discovery under Fla. Stat. 655.059.

18. The Court then ordered Plaintiff to provide (1) the final executed documents evidencing the chain of title for the subject loan; (2) all records of any custodian related to the chain of custody of the note; and (3) all records showing how and when the specific endorsement on the promissory note was created.

19. On January 14, 2016, the Court's Order on Defendant's Motion for Sanctions for Deposition Abuses and Violations of the Court's Order Compelling Discovery reflected: "Plaintiff submits it has fully complied with the Court's Order of April 27, 2015."

20. At trial and deposition, Ms. Keeley admitted that Ocwen, Plaintiff's servicer, received the Order compelling discovery. However, Ms. Keeley could not testify to any action taken by Ocwen to obtain responsive documents admittedly under Plaintiff's care, custody, and control. Defendant clearly established that Plaintiff did not comply with the discovery order.

21. The Court fails to comprehend why Plaintiff would not fully comply with the Court's Order compelling discovery when the evidence sought by the Defendant would actually assist Plaintiff in establishing the missing link in the chain of ownership in the endorsement and assignment of mortgage.

22. **The Court hereby enters an Order to Show Cause why Plaintiff should not be Sanctioned for violating the Court's order on April 27, 2015, after representing that it fully complied on or before January 14, 2016.**

23. **Moreover, the Court hereby enters an Order to Show Cause why Plaintiff should not be sanctioned for the reasons set forth in Defendant's Motion for Sanctions Under the Court's Inherent Contempt Powers for Fraud Upon the Court filed on March 16, 2016.**

24. **Defendant is hereby ordered to conduct further discovery in support of these orders to show cause and set an evidentiary hearing on them at the Court's earliest convenience.**

II. **Defendant's Motion For Involuntary Dismissal Is Also Granted For Plaintiff's Failure to Prove Damages, Conditions Precedent, and Standing**

25. At trial, Plaintiff produced Ms. Keeley as an "other qualified witness" to introduce Ocwen's business records in accordance with Fla. Stat. §90.803(6).

26. During her testimony, Ms. Keeley attempted to lay a predicate to introduce the business records from Litton Loan Servicing, a prior servicer.

27. This Court fully understands and abides by analysis regarding prior servicer's records set forth in the Fourth DCA's opinion in *Bank of New York v. Calloway,* 2015 WL 71816, 40 Fla. L. Weekly D173 (Fla. 4th DCA 2015)). In *Calloway,* the Fourth DCA held a trial court could exercise discretion to deem the prior servicer's records trustworthy if there were evidence that during the loan boarding process, records were reviewed for accuracy. *Id. at* *8.

28. Notwithstanding the holding of the Fourth DCA, the Defendant challenges *Calloway* citing to Professor Charles Ehrhardt, who warns against allowing the poor evidentiary practices in foreclosure courts to "erode the requirement of reliability upon which section 90.803

(6) and the other hearsay exceptions are premised." 1 Fla. Prac., Evidence § 803.6 (2015 ed.).

Professor Ehrhardt further argues:

> While the decision seems to focus on records in the mortgage servicing industry, **which are plagued by inaccuracies**, its rationale extends to all records offered under 90.803(6) which are records of a prior business and are presently located in the records of the current business.... The [Calloway] decision is a significant change in Florida law and inconsistent with many other Florida decisions." 1 Fla. Prac., Evidence § 803.6 (2015 ed.)(emphasis added).

29. In addition, Defendant further suggested the Court should follow another Fourth DCA opinion dealing with business records from a prior company which does not verify for accuracy. *Landmark Am. Ins. Co. v. Pin-Pon Corp.,* 155 So. 3d 432, 435-43 (Fla. 4th DCA 2015), where the Fourth DCA held:

> [W]e find that Pin–Pon did not establish that the architect was either in charge of the activity constituting the usual business practice or was well enough acquainted with the activity to give the testimony. Although the documents in Exhibit 98 might have qualified as the general contractor's business records, the mere fact that these documents were incorporated into the architect's file did not bring those documents within the business records exception. In short, Pin–Pon failed to lay the necessary foundation for the admission of Exhibit 98 as a business record. *Id.*

Hence, in this case, the Court cannot exercise its discretion to admit the prior servicer's records into evidence as Plaintiff's witness failed to satisfactorily establish a foundation to warrant finding those records are trustworthy.

A. **The Legal Fiction That Ocwen's Loan Boarding Process In This Case Verifies The Accuracy, Reliability of Correctness of the Prior Servicer's Records**

30. At trial, Ms. Keeley explained that she received training on Ocwen's loan boarding process which qualified her to give testimony to lay the foundation for the prior servicer's records under the business records exception.

31. Ms. Keeley testified the loan boarding process involved two steps. First, Ocwen confirmed that the categories for each column of financial data from the prior servicer matched or corresponded to the same name Ocwen used for that same column of financial data. Second,

Ocwen confirmed the figures from the prior servicer transferred over such that the top figure from Litton became the bottom figure for Ocwen. The court notes that when testifying about Ocwen's boarding process, Ms. Keeley appeared to be merely repeating a mantra or parroting what she learned the so called boarding process is without being able to give specific details regarding the procedure itself. [1] Her demeanor at trial although professional, was hesitant and lacking in confidence in this court's estimation as the trier of fact.

32. Ms. Keeley admitted there was absolutely no math done to check the accuracy of the prior servicer's records or numbers. The loan boarding process' verification to ensure the trustworthiness of the prior servicer's records is therefore a legal fiction. In this case, Ocwen simply accepted the prior servicer's numbers as true without any effort to audit or confirm their accuracy. The only confirmation appears to have been the check a carryover of figures from one servicer's columns to the columns of another.

33. Moreover, Ms. Keeley testified loans with "red flags" would never be allowed to board onto Ocwen's system until the prior servicer resolved them. However, Ms. Keeley also admitted she has witnessed loans that went through the boarding process that had misapplied payments and substantially incomplete loan payment histories from the prior servicer.

34. The existence of misapplied payments and incomplete payment histories in loans that went through the loan boarding process contradicts any suggestion that the boarding process identifies red flags and/or clears them, such that Courts can trust the reliability of their records.

35. To support the court's concern regarding the lack of foundation of the so called boarded records in this case, the Court takes Judicial Notice of the Consent Order entered in the matter of Ocwen Financial Corporation, Ocwen Loan Servicing, LLC by the New York State Department of Financial Services dated December 22, 2014. This Consent Order documents

[1] This Court estimates that it has presided over hundreds of foreclosure bench trials since being assigned to the Civil Division in 2011. The court has accordingly heard hundreds of bank witnesses testify regarding their company's boarding process and has accepted thousands of documents into evidence pursuant to same. The boarding process and training of personnel regarding the boarding of documents varies greatly from one institution to another.

Ocwen's practice of backdating business records that it failed to fully resolve "more than a year after its initial discovery."

36. Therefore, the Court finds Plaintiff failed to inquire into the accuracy, reliability or trustworthiness of the prior servicer's payment history. Ocwen's own payment history merely accepts the prior servicer's records as accurate without question unless the numbers were challenged at some point after the loan boarding process. That is simply not enough to for this court to accept the prior servicer's records as trustworthy and admit them into evidence here. A mere reliance by a successor business on records created by others, although an important part of establishing trustworthiness, without more is insufficient. Bank of New York v. Calloway, 157 So.3d 1064, 1071 (Fla. 4th DCA 2015). As such, this Court exercised its discretion to sustain Defendant's objections to both payment histories as inadmissible hearsay. Therefore Plaintiff lacked evidence of an essential element of proof, damages, warranting an involuntary dismissal.

B. **Plaintiff's Failure To Lay A Predicate For Prior Servicer Litton's Breach or Default Letter**

37. Plaintiff made the unusual effort of seeking to introduce over an inch thick stack of default letters generated by Litton prior to filing this action.

38. Plaintiff failed to lay a proper business record foundation for these default letters and the Court exercised its discretion to sustain Defendant's hearsay objection to their admission.

39. Ms. Keeley testified there was no attempt during Ocwen's loan boarding process to check the accuracy of the breach letters. The loan boarding process merely verified that all the prior servicer's PDF documents for the subject loan were uploaded to Ocwen's system.

40. At the onset, the Court noted that the first two default letters in the inch thick stack which Plaintiff sought to admit into evidence were inexplicably dated a week apart and had a $1,900 difference in the amount required to cure the default. The Court rejects Plaintiff's mere

suggestion that the difference is explained by the fact that the loan has an adjustable rate mortgage. Plaintiff produced no reasonable explanation for the $1,900 difference.

41. Moreover, Ms. Keeley testified that in the training she received about Ocwen's loan boarding process, she learned that Litton, the prior servicer used an outside vendor to actually mail out the default letters. Therefore, without more, the admission of the default letters mailed by an outside entity not testifying in court creates a double hearsay problem as there is no evidence of a boarding process of that third party vendor's mailing practices and procedures. Nor did the Ocwen representative testify that she had received training regarding the procedure used by the third party vendor in mailing the default letters.

42. Furthermore, to compound the double hearsay hurdle, Defendant's counsel impeached Ms. Keeley's testimony at trial with her deposition taken in December of 2015, wherein she testified she did not know how the prior servicer mailed the default letters. The Court cannot reconcile Ms. Keeley's deposition testimony and her trial testimony where she testified she learned about the third party vendor's mailing procedure during her Ocwen boarding process training. This inconsistent testimony calls into question the veracity of her testimony and further undercut's Plaintiff's evidentiary foundation for the proposed documents.

C. **Plaintiff Failed To Prove Standing By Virtue of an Endorsement and an Assignment of Mortgage Created For Purposes of Litigation That Both Miss a Key Line in the Title of Ownership, namely the Depositor**

43. Plaintiff, HSBC Bank USAS, National Association, as trustee for Freemont Home Loan Trust 2005-B mortgage Backed Certificates, Series 2005-B, failed to prove it is the proper owner and holder of the Defendant's loan by virtue of the endorsement on the note or the assignment of mortgage.

44. Both the endorsement and the assignment omit the Depositor, Freemont Mortgage Securities Corporation, from the transaction which constitutes a fatal break in the chain of title.

45. The Defendant presented the testimony of their expert witness, Ms. Cully, who testified that the endorsement on the note is contrary to the instructions in §2.01 of the PSA that required a complete chain of endorsements, which would include the Depositor, to be placed on the face of the note so long as space allowed.

46. The Court notes there is ample space on the face of the note for endorsements. Therefore, the Court finds that the undated specific endorsement from the originator directly to the trust found on the back of the note is inherently untrustworthy.

47. The Court further questions the validity of the endorsement in that Plaintiff violated the Court's order to produce the custodian's records or documents showing when and how the endorsement was affixed to the original note.

48. In addition, the Court accepts Ms. Cully's testimony that the form of the endorsement and assignment would be grounds for the Trust to reject this loan pursuant to the PSA. There is not a complete chain of endorsements on the face of the note. The PSA required no assignment of mortgage, only that the Trust appear in the MERS system as the loan owner.

49. For these reasons, the Court finds Plaintiff failed to prove its standing to foreclose the note and mortgage in this action.

III. **The Promissory Note Is Not A Negotiable Instrument**

50. The Court gives great weight as the trier of fact to the testimony of Defendant's expert witness, Kathleen Cully. Ms. Cully is a Yale Law School graduate that worked her entire career in structured finance transactions since 1985. She was extremely well versed in the Uniform Commercial Code. Among many other tasks and accomplishments, Ms. Cully testified that she led the Citigroup team that created the first pooling and servicing agreement ever. She led Citigroup's Global Securitization strategy. The Court finds Ms. Cully eminently qualified as an expert witness in the area of securitized transactions and their interplay with the Model Uniform Commercial Code.

51. Ms. Cully gave extensive testimony explaining that the negotiability of a promissory note is not a consideration in the securitization model. Securitization sells pools of thousands of mortgages with ever having an intention to sell each loan by individual negotiation.

52. Moreover, securitization routinely involves the sale of non-negotiable instruments such as car loans, rent receivables, even David Bowie's intellectual property rights.

53. The Court finds Ms. Cully's testimony gives a highly credible analysis of the Model Uniform Commercial Code as it related to the note and mortgage for the subject loan. Her testimony on the negotiability of the promissory note is attached as Exhibit A. The Buset Note is attached as Exhibit B and the Buset Mortgage is attached as Exhibit C.

54. The Court applies Ms. Cully's reasoned analysis as it relates to the note and mortgage for the subject loan and to Article 3 of Florida's Uniform Commercial Code. However, it is axiomatic that all promissory notes are not automatically negotiable instruments.

55. The Court recognizes that no Florida appellate court has yet to consider Ms. Cully's analysis. The Court has reviewed the recent Fourth DCA opinion in *Onewest Bank FSB v. Nunez*, (2016 WL 803542 (Fla. 4th DCA March 2, 2016)) which found the Uniform Secured Note provision contained in the promissory note does affect its negotiability because it merely references the mortgage and cites provisions governing rights in collateral and acceleration.

56. The *Nunez* opinion states the controlling UCC law on negotiability as:

> "Florida has adopted the Uniform Commercial Code, including its provision on negotiability and enforcement of negotiable instruments. Under section 673.1041(1), Florida Statutes (2013), the term "negotiable instrument" means:
>
> > [A]n unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
> > ....
> >
> > (c) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money . . .
>
> Section 673.1061, Florida Statutes (2013), defines "unconditional" by stating those conditions that prevent it from being unconditional:

(1) Except as provided in this section, for the purposes of s. 673.1041(1), a promise or order is unconditional unless it states:

(a) An express condition to payment;

(b) That the promise or order is subject to or governed by another writing; or

(c) That rights or obligations with respect to the promise or order are stated in another writing.

A reference to another writing does not of itself make the promise or order conditional.

(2) A promise or order is not made conditional:

(a) By a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration. . . ." *Id.* at *1-2.

57. The Uniformed Note Provision in *Nunez* is identical to that found in the Defendant's Promissory Note herein which provides:

> **In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note.** That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows: . . . *Id.* at *1 (emphasis added).

58. This Court does not address the provision described in the Nunez opinion, instead grounding this decision on a myriad of other provisions of the Mortgage establishing the Note is subject to and governed by the Mortgage, rendering the note a non-negotiable instrument.

59. Among other things, the additional protections routinely change the "fixed amount of money" due under the promissory note and require additional undertakings and instructions for the borrower beyond the mere repayment of money.

60. First, at page 2 of the mortgage, sub-section (G) expressly provides that "'Loan' means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the note, *and all sums due under this Security Instrument, plus interest.*" (emphasis added).

61. Paragraph 3 of the Mortgage provides for the payment of taxes and interest on the property. These payments are not described in the Note, which requires payment only of principal, interest, late fees and costs and expenses of enforcement.

62. The Court finds the amounts due under the Mortgage are "other charges" that are not "described in" the Note, as required by §673.1041(1), Florida Statutes. That alone destroys negotiability.

63. Furthermore, Plaintiff's complaint seeks damages for all sums due under the Note and "such other expenses as may be permitted by the mortgage." Standard mortgage servicing industry practice treats all sums due under the note and mortgage as the "loan" payoff amount or the total amount needed to liquidate in full all monetary obligations arising under both the Note and the Mortgage—the Loan, as defined in the Mortgage—not just the Note.

64. Not only does that payoff amount include charges not described in the Note, it is much more than a mere "reference" to the Mortgage "for a statement of rights with respect to collateral, prepayment or acceleration"—it means that the Note is effectively "subject to or governed by" the Mortgage, which in turn means that it is not unconditional. See Fla. Stat. §673.1061. That also destroys negotiability of the Note.

65. This Court finds that the Note is non-negotiable as the amounts payable under the Complaint include amounts not described in the Note and as the Note does not contain an unconditional promise to pay.

66. The promise is not unconditional because the Note is subject to and/or governed by another writing, namely the Mortgage. Moreover, rights or obligations with respect to the Note itself—as opposed to the collateral, prepayment or acceleration—are stated in another writing, namely the Mortgage.

67. Moreover, the UCC definition of "holder" would necessarily include a thief that takes by forcible transfer. However, a thief would never be entitled to the equitable relief of

foreclosure. Defendant correctly cites to ¶1 of the promissory note that expressly provides a different definition of "Note holder" from the definition of holder under Fla. Stat. §673.3011.

68. The promissory note defines the term "Note Holder" at ¶1 as "anyone who takes this Note by [lawful] transfer and who is entitled to receive payments under this Note."

69. By its terms, ¶1 requires that any subsequent party attempting to enforce the note prove they came into possession of the note by lawful transfer and have the right to receive payments under the Note. This provision establishes the parties' intention to contract out of the UCC definition of holder, so as to limit the right to enforce only to those who proved ownership.

70. The Court finds the amounts due under the mortgage are "additional protections" from possible losses that protect the Note Holder pursuant to the Uniform Secured Note provision. The protections necessarily affect the fixed amount of money due under the note.

71. The Court further notes Plaintiff's complaint seeks all sums due under the note and mortgage. Standard mortgage servicing industry practice treats all sums due under the note and mortgage as the "loan" payoff amount or the total amount needed to liquidate in full all monetary obligations arising under both the Note and the Mortgage.

72. At page 4 of the mortgage, Uniform Covenant 2 entitled "Application of Payments or Proceeds" provides that "payments be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; and (c) **amounts due under Section 3 [of this Security Instrument].** Any remaining amounts shall be applied first to late charges, **second to any other amounts due under this security Instrument,** and then to reduce the principal balance of the Note." (emphasis added).

73. As payments are applied to amounts due under both the note and mortgage, this Court finds the Uniform Covenant 2 in the mortgage must be read as an integrated agreement with the promissory note that will necessarily change the fixed amount of money due thereunder.

74. At the first paragraph of page 7, the mortgage provides: "Any amounts disbursed by lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment."

75. Therefore, pursuant to the Uniform Secured Note Provision of the note and Section 5 of the mortgage, forced placed insurance premiums become additional debt secured by the mortgage bearing interest at the note rate which changes the "fixed amount of money" due.

76. At page 8 of the mortgage are two provisions which involve rights or obligations with respect to the promise or order stated in another writing and constitute instructions and undertakings of the borrower to do acts in addition to the payment of money.

77. At ¶6 of the mortgage the borrower is obligated to occupy the property as a principal residence within 60 days after signing the mortgage and must continue to occupy the property as Borrower's principal residence for a least one year.

78. At ¶7, Borrower is obligated to maintain the property and permit lender to conduct inspections, including interior inspections, upon notice stating cause for the inspection.

79. At ¶8 of the mortgage, "Borrower shall be in default if" borrower gave materially false or misleading information during the loan application process or concerning Borrowers occupancy of the property as Borrower's principal residence.

80. At ¶9 of the mortgage entitled, "Protection of Lender's Interest in the Property and Rights Under this Security Instrument" the mortgage states "any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment."

81. At ¶14 of the mortgage entitled "Loan Charges" provides for refunds of such charges and states: "the Lender may choose to make this refund by reducing the principal owed

under the Note or by making a direct payment to Borrower." Again these additional protections for the Note Holder provided in the Uniform Secured Note provision in the note necessarily affect the "fixed amount of money" due under the note.

82. **The Court grants Defendants' Motion for Involuntary Dismissal and enters judgment in favor of the Defendants who shall go forth without day.**

83. **The Court reserves jurisdiction to award prevailing party attorney's fees and to impose sanctions against Plaintiff under the inherent contempt powers of the court for fraud on the court, and such other orders necessary to fully adjudicate these issues.**

84. **Plaintiff is ordered to produce a corporate representative with most knowledge regarding its efforts to comply with the discovery order dated April 27, 2015, for deposition at the offices of Defendant's counsel within 15 days from the entry of this order.**

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 04/26/16.

B. Butchko

BEATRICE BUTCHKO
CIRCUIT COURT JUDGE

No Further Judicial Action Required on THIS MOTION
CLERK TO RECLOSE CASE IF POST JUDGMENT

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed original order sent electronically to the Clerk of Courts for filing in the Court file.

Copies furnished to:
Defendant's counsel: Jacobs Keeley, PLLC., 169 E. Flagler Street, Ste. 1620, Miami, FL 33131, efile@jakelegal.com

Plaintiff's counsel: Brock and Scott, 1501 NW 49th Street, Ft. Lauderdale, FL 33309, flcourtdocs@brockandscott.com

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2012-38811-CA-01

HSBC BANK,

Plaintiff,

-vs-

JOSEPH BUSET,

Defendant.
_____/

VOLUME III

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE BEATRICE BUTCHKO

Dade County Courthouse

73 Flagler Street

Miami, Florida 33130

March 18th, 2016

APPEARANCES:

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INDEX

EXHIBIT INDEX

THEREUPON:

MR. JACOBS: Your Honor, at this point now, I believe it's our case.

THE COURT: Yes.

MR. JACOBS: I would call Kathleen Cully.

THE COURT: Ms. Cully, please come forward.

(Thereupon, Kathleen Cully was duly sworn in accordance with the law.)

DIRECT EXAMINATION

BY MR. JACOBS:

Q. Good morning, Ms. Cully.

A. Good morning.

Q. Could you please introduce yourself to the Honorable Judge Butchko?

A. My name is Kathleen Cully.

Q. And tell us about your educational background.

A. Well, I graduated from Reed College with a degree in history in 1971 and from Yale Law School in 1982 where I was an article editor of the Yale Law Journal.

Q. Okay. And was it -- were you also at --

A. Lolanic University. It's a river in Oregon. I transferred from there at the end of my first year to Yale.

Q. At the time you transferred, what number or

what were you ranked in school?

A. Second in the year, first for the term.

Q. Have any children?

A. Five.

Q. And what did you do --

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

BY MR. JACOBS:

Q. What did you do after you graduated from Yale?

A. I went to work for Sullivan and Cromwell in the corporate group.

Q. Okay. And how many years did you work for Sullivan and Cromwell?

A. A little over three.

Q. And how does Sullivan Cromwell rank in respect to securities law?

A. Well, we thought we were number one. If you pressed us, we thought we were one of the top three.

Q. Okay. And what kind of things were you doing for Sullivan and Cromwell?

A. Mostly IPOs. I also worked on what were then the very new thing of interest rate swaps, including working on the team that developed the first instant documentation.

Q. Did you make partner there?

A. No, no. Women didn't make partner in those days unless you were in trusts.

Q. So what did you do after your three years there?

A. I went to work for CitiCorp.

Q. Tell us about what you did at CitiCorp.

A. I enjoined the securities and funding unit of the general counsel's office, which was responsible for all securities, external securities, issuances, and also preparation of their securities exchange act, filing proxy statements 10ks, 10qs, and so forth.

Q. And how does CitiCorp rank in terms of banks in the world that were doing this?

A. At the time, we were fighting with Bank of America for who was the possessor of the most assets.

Q. And while you were at CitiCorp, did you get to trailblaze anything to do with mortgage securitization?

A. Yeah, we --

MS. STEMER: Objection, leading.

THE COURT: Overruled.

THE WITNESS: Yes. I was the leading of the CitiGroup legal team that developed the first multi-Tranche residential mortgage securitization under the then very new REMIC legislation. We filed the registration statement early in the

morning of January 1st or 2nd, depending on SEC was open on the first. I don't remember.

THE COURT: What year is this?

THE WITNESS: 1985.

BY MR. JACOBS:

Q. And when you say multi-Tranche, can you explain what is the -- what were they doing? Why would you want multi-Tranches of securitization? What is that all about?

MS. STEMER: Objection, foundation. She's not qualified as an expert yet.

THE COURT: Overruled. You don't have to tender, just qualify them.

THE WITNESS: Okay. Well, if you do a simple pass-through of a pool of mortgages, what happens is that the investors get payments on the mortgages as they come in from the investors.

Since investors tend to prepay their mortgages when interest rates are going down so that they can refinance at lower rates, and on the contrary, hold onto them while interest rates are going up, the investors in the mortgage-backed certificates are subject to what's called prepayment risk.

They get their money back at exactly the wrong time. If you issue a multi-Tranche series of

certificates, then there are certificates that pay it first, pay it second, pay the third, and so forth down to the end.

That means the first Tranche is going to get paid in a relatively short time and is suitable for investors with short investment horizons, where as the longest dated Tranches get paid whenever the last bit of the mortgages get paid and is suitable for investors with longer term horizons, in return for which they somehow get a higher interest rate.

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: So what happens is that you have made the pricing much more efficient. The issuer no longer has to hedge its mortgages to guard against changes in price due to the interest rate fluctuations, it's effectively hedged by the investors.

And they also profit because they are now getting investments that are highly rated, and therefore, presumably safe that match their investment requirements.

In addition, the consumers benefit because there was a fairly fierce complication for crime borrowers in those days, so a lot of the savings in

cost were actually passed onto consumers.

I used to give speeches in which I pointed out that the United States was the only country in the world that offered 30 rate fixed rate mortgages, and this was due to securitization.

MS. STEMER: Your Honor, just for clarification purposes, is it your ruling that this is an expert, and --

THE COURT: I don't have -- you don't have to tender, and I don't have to declare. So under the law, since either the late 80s or early 90s, all you have to do is lay the foundation for a witness's education, experience, and foundation for the opinion, and they can give an opinion. You don't have to say at this time, I offer the witness as an expert.

MS. STEMER: If she's not qualified as an expert, then, her assisting counsel --

THE COURT: I believe she's an expert based on her education, her years of working in the securities field. I'm the trier of fact. I am the one that determines how much weight to give her testimony.

MS. STEMER: Your Honor, I was simply looking for that answer, because if that weren't the

answer, then her assisting counsel at trial would be --

THE COURT: The jury never has to say we consider this person an expert, and I'm sitting as the jury, so I don't have to make a declaration.

At the end of the day, I can choose to accept her testimony in total, I can disregard all of her testimony, or I can give it, you know, whatever weight I want. It's my choice.

She's going to be allowed to give an opinion. I have not excluded her as an expert. And in terms of your Daubert motion, I haven't even heard her opinion yet.

So if -- I know you have this Daubert issue pending. After -- I've heard her background, I've heard her education, I've heard some of her experience, which is quite impressive, and she's talking at the end of -- when they rest, if you want to move to exclude all the testimony based on Daubert, I'll entertain that.

But at this juncture, she's going to continue to testify. Go.

MR. JACOBS: Thank you, Your Honor.

BY MR. JACOBS:

Q. So at the time, you were working for

CitiGroup, correct?

A. Correct.

Q. And you had -- what law firm were you working with to help document all this?

A. That deal was underwritten by Goldman Sachs. Their counsel was Cadwalader, Wickersham, and Taft.

Q. How many women worked on that project?

A. As far as I remember, just me.

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

BY MR. JACOBS:

Q. So is it fair to say you helped draft the first pooling and servicing agreement ever for a structured securitization for a mortgage-backed security?

A. Absolutely.

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Has anyone ever called you the mother of securitization?

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: I don't like it. I'm the mother of my children.

BY MR. JACOBS:

Q. Okay. And is the PSA that you worked on back with Cadwalader, Wickersham, and Taft the same basic form we see in the industry today?

MS. STEMER: Objection, relevance.

THE WITNESS: Yes.

BY MR. JACOBS:

Q. So what happened after you worked on that initial PSA project?

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: I worked on a number of other securitizations. I continued to work on mortgage deals, of course, because Citi was a major originator of mortgages, but we also did an auto loan securitization, equipment lease securitization, Hong Kong mortgages were securitized.

We looked into securitizing Australian mortgages. We definitely securitized United Kingdom mortgages. We were interested in converting on balance sheet assets to off balance sheet assets, and there was a major effort to securitize anything that would work.

BY MR. JACOBS:

Q. Now, go on further in your career. Where else did you go after that?

A. Well, within Citi, I transferred to the office of the chief financial officer where I was in charge of overseeing all of the Citi's securitizations worldwide, which is where some of those that I mentioned came from, and after that, I moved to the investment bank side which had a master mortgage servicing operation, and also underwrote, just like Goldman Sachs in their opinion, offerings of mortgage-backed and other asset-backed securities.

Q. And what happened after you left -- or did you leave CitiGroup at some point?

A. Yes. And I went to Fitch, which was then a fairly small rating agency that was focused on securitization in an effort to become one of the top three, which I believe it has achieved.

THE COURT: What year did you go there, more or less?

THE WITNESS: 1999, I think.

BY MR. JACOBS:

Q. So when you worked at Fitch, what were the other rating agencies that they were competing with?

A. S&P and Moodies.

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

BY MR. JACOBS:

Q. And what was going on at the time between these rating agencies? How -- what were they doing?

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: S&P and Moodies had it very comfortable to do lawfully that two ratings were required by the vast number of investors, so you had to get S&P and you had to get Moodies.

So they were in a very comfortable life. Neither one of them, having this comfortable life, was very interested in expanding into structured finance or securitization.

Fitch was trying to make -- I guess the current term is disrupt this comfortable industry by adding securitization, and therefore, bringing itself in as an alternative.

BY MR. JACOBS:

Q. So while you were working with Fitch, was there a movement under way by the Uniform Law Commission to make any changes to Article 9 of the UCC?

MS. STEMER: Objection, relevance. Objection, leading.

THE COURT: Overruled.

THE WITNESS: In 1998, a fairly lengthy process ended up revising Article 9 of the UCC for a number of -- to achieve a number of goals, one of which was to revise that article, which is called securitized assets, to include sales, not nearly pledges, among other things, promissory notes, and payment intangibles.

BY MR. JACOBS:

Q. Can you define for the Court what payment intangibles are?

A. Well, that's kind of -- it's --

Q. Related to mortgages?

MS. STEMER: Objection, relevance. Objection, leading.

THE COURT: Overruled.

THE WITNESS: It's an intangible right to payments and associated rights. That's like a mortgage loan, which is not just a note, not just a mortgage, but the whole package, note, mortgage, servicing rights, legal rights, legal obligation, everything.

BY MR. JACOBS:

Q. Okay. And were you involved at all in that process of Uniform Law Commission trying to come up with what the amendments were going to say and what they were

going to be?

MS. STEMER: Objection, leading. Objection, relevance.

THE COURT: Overruled.

THE WITNESS: Because Fitch was known to focus on structured finance, of course we received drafts of the legislation. Of course I read them.

If I had felt the need to comment on them, we would have. If I commented, we would have been heard, because we were the leading rating agency for securitization.

In fact, I didn't feel the need to comment because essentially, the changes to Article 9 merely codified the preexisting common law in the vast majority of states.

BY MR. JACOBS:

Q. Now, this process by which they amended the UCC, who is involved in that?

A. Well, the Uniform Law Commission is composed by lawyers, professors, and people from government, observers who are interested in a particular topic. It's generally a fairly selective group.

Q. And how would -- would you consider the changes that were made in 2001 to Article 9 of the UCC significant or insignificant?

A. Well, the changes -- a very small correction, the changes were made in 1998 when the final form of the amendments -- when the amendments were finalized.

The amendments were effective on July 1st, 2001, so they are often called the 2001 amendments, but actually, they were adopted by various states between 1998 and 2001 in order to become effective simultaneously.

MS. STEMER: I have a relevance objection to that and also it's a compound -- I'm sorry -- leading. I didn't want to interrupt.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Now, would it be fair to say that one of the main points of the amendments to the -- to Article 9 was to codify the common law rule?

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: Yes. I --

THE COURT: She already testified to this.

BY MR. JACOBS:

Q. Okay. And how did that simplify the process for people involved in securitizing mortgages?

A. Well, this is going to be a long compound answer, but --

MS. STEMER: Objection then.

THE COURT: Overruled.

THE WITNESS: In order to have a successful securitization, particularly of assets being originated by fairly weak entities such as, for instance, Freemont Investment and Loan, which wasn't rated --

BY MR. JACOBS:

Q. Before you go on, let me just make sure -- explain to the Court why you describe Freemont as a fairly weak entity. What does that mean?

A. Well, it wasn't rated, at least to my knowledge, and if it had been rated, it wouldn't have been highly rated.

Q. Okay. What were some of the factors that you suggest would lead to that?

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: Well, I don't want to go into the rating process, but let's just say as a matter of history, Citi itself had a rating of, if I remember right, A. The securities that were issued by Citi were rated AAA.

To get from A to AAA, you have to have a true sale from Citi. You certainly need to have a true

sale from Freemont. The reason is if you need to be sure that the assets will not be clawed back into the bankruptcy estate of a seller that goes into bankruptcy or becomes insolvent under regulatory laws.

Because if they get clawed back, you are subject to the jurisdiction of the bankruptcy court or the regulator. From an investor point of view, this is bad. This is not a AAA risk. That is a very big headache.

So in order to have a successful securitization, in fact, in order to close the deal at all, you have to get a true sale opinion from the issuer's counsel, which essentially says that, in the event that this seller fails, the assets will not be clawed back into its estate and bankruptcy or insolvency.

That's an absolute requirement for closing the deal. Before 2001, those opinions were what are called reasoned opinions. They often went on for several pages.

After 2001, it was very simple. You just looked at whether they complied with Article 9, Section 9203 B and 9203 G.

BY MR. JACOBS:

Q. So is it fair to say that the industry was focusing on securing ownership of the loans through that whole process?

A. I would call it obsessed.

MS. STEMER: Objection, relevance, leading.

THE COURT: Overruled.

BY MR. JACOBS:

Q. And if they were able to make the sale invulnerable and show that there was pure ownership that could not be touched, that was the grounds for why they would ultimately get the AAA rating?

MS. STEMER: Same objection.

THE COURT: Overruled.

THE WITNESS: Yes. Although again, the technical comment is that we never thought it would be absolutely invulnerable. The process was referred to as bankruptcy remote. There was also the chance of a strike of lightning.

BY MR. JACOBS:

Q. Okay. Now, in this case -- so can you explain what -- is securitization model only for negotiable instruments?

A. It has nothing to do with negotiable instruments.

MS. STEMER: Objection, relevance and leading.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Why do you say that?

A. Because you can sell negotiable instruments the same exact way you sell nonnegotiable instruments. Nowadays, the vast bulk of securitization is composed of nonnegotiable things.

Credit card receivables aren't even instruments. They are not even tangible. They are securitized. Auto loans are generally not negotiable. They are probably not even instruments. They are securitized.

You securitize leases, you securitize floor financing, you securitize intellectual property, like David Bowie's intellectual property rights in his portfolio. I actually worked on that deal.

Q. David Bowie the artist?

A. Yes.

Q. So when they are selling these notes and mortgages, they are selling pools of thousands, correct?

A. Yes.

Q. Was the intention ever to have them be sold -- have that be sold by negotiating each one individually?

A. Absolutely not.

MS. STEMER: Objection.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Can you explain what the -- how does that -- what does securitization do for the efficiency of selling thousands of mortgages at a time?

MS. STEMER: Objection, leading and relevance.

THE COURT: Overruled.

THE WITNESS: It's simple. You do it by contract and you do it by huge pools. Selling notes and mortgages by contract is nothing new.

It was done for -- I can't remember when. It was something that could easily be done for several decades, if not more.

BY MR. JACOBS:

Q. Let's talk about the capitalization of Freemont and all these entities, Countrywide, whatever, any ones that were there. What's the business model? How do they fund their deals? What is that? Can you explain that?

MS. STEMER: Relevance.

THE COURT: Overruled.

THE WITNESS: They are fairly weakly capitalized as a rule -- I should back up. I don't wish to insult strongly capitalized securitized. I used to do it for financial reasons.

But the majority of specialized nonbank securitizers were in fact weakly capitalized and unrated entities. The business model was quite simple. You originate mortgages with a loan from a warehouse lender, who then takes ownership of the mortgage the instant it closes.

After it's accumulated enough mortgages for securitization, then they are sold into the securitization. The money from the securitization then funds the next set of mortgage loans. It's a cycle. That's all.

The whole business of the originator depends on securitization. That's essentially the source of funding for its business. If securitization stops, they stop. They fail.

BY MR. JACOBS:

Q. And what happens when they fail?

A. Well, so far so good. The securitizations continue on just as if they hadn't failed. That's what we wanted to achieve, and it appears we've succeeded.

Q. Okay. Now, in this case, you have been sitting here through the testimony the whole time, correct?

A. I'm sorry?

THE COURT: She has been here, yes.

BY MR. JACOBS:

Q. You have been here the whole time listening to all the testimony?

A. Yes.

Q. And would it be fair to say that you heard throughout the course of the testimony that the evidence the plaintiff has brought to the Court is an endorsement on the original note, which is a specific endorsement from Freemont, the originator, directly to HSBC, the plaintiff? Is that fair?

A. Yes.

Q. And there's also an assignment of mortgage dated 2011, which says that the originator, Freemont Investment, assigned the mortgage to HSBC as trustee of the plaintiff, correct?

A. That's correct.

Q. And you've seen the PSA in this case?

MS. STEMER: Objection, assuming facts not in evidence, relevance.

THE COURT: Overruled.

THE WITNESS: I have.

BY MR. JACOBS:

Q. Okay.

A. But it would be nice to have a copy, because I think I'll need it again.

Q. I'll give you a copy right now. Actually, we have one that has been marked for identification.

MR. JACOBS: Just so the record is clear, Your Honor, yesterday, after the Court finally convinced counsel to give me the full copy, you asked me to provide a return copy to counsel.

I did that this morning. I do have the excerpts, which I have one for the Court and one for -- you should have the copy I gave you that has the pages in there, as well.

BY MR. JACOBS:

Q. So just so we're clear, according to the PSA, what would be the -- what are the parties to the -- that would be in the chain of title of this loan?

MS. STEMER: Objection, facts not in evidence. The PSA has not been admitted into evidence.

THE COURT: Overruled.

MR. JACOBS: The witness testified to the yesterday, as well.

MS. STEMER: It's still not admitted into evidence.

THE COURT: Okay. Don't argue back and forth. Is the PSA admitted into evidence?

THE COURT CLERK: It's marked as Defense A2 for ID only.

MR. JACOBS: And Your Honor, one of the points that I think we -- Your Honor yesterday, when we were discussing it, was saying I shouldn't be allowed to get the document in if I had gotten the other ones in, but I actually wanted to make a -- I thought of this afterwards.

The power of attorney, which is another contract that was in the business records of the plaintiff, the Court, without getting into any issues about boarding or any of the other things, said I find that to be a reliable, trustworthy document, and I didn't make the argument yesterday because I didn't think about it until after I left, which is usually when my best arguments come up, but I would resubmit that the PSA, which we've heard testimony is the same exact type of document that was in the business records of the plaintiff as the power of attorney, which the Court did allow into evidence, so I ask the Court for consistency purposes to admit the PSA, although I think the witness can still testify as an expert based on documents that are not in evidence.

But I think just for the record's clarity, the fact that we're dealing with the PSA signed, which the plaintiff produced in trial -- I understand why

they don't want it in, because they didn't want me to make these points --

THE COURT: It involves the HSBC Bank National Association as trustee, right?

MR. JACOBS: Yes. The plaintiff's pooling and servicing agreement is what was produced to me in discovery pursuant to the Court's order.

THE COURT: Okay. I'll allow it into evidence.

MS. STEMER: Your Honor, there has been no foundation laid for the admission of this document. Just because I laid -- I laid a significant -- we talked about the POA for an hour and we kept going over it and I kept eliciting testimony from my witness.

Just because counsel wants to go back and say all these things are true for this one, too, that's not testimony.

THE COURT: Okay. Your objection is noted. What's the exhibit number?

THE COURT CLERK: Defendant's A.

(Thereupon, the document was admitted into evidence as Defendant's Exhibit A.)

BY MR. JACOBS:

Q. So now referring to the pooling and servicing

agreement which is now in evidence as Defendant's A, what is the chain of title according to who is the originator and where would the loan had to have gone from the originator in order to get to the plaintiff in this case?

MS. STEMER: May I briefly interject? Also, how is this -- is this admitted as a business record of plaintiff and the expert is testifying regarding the business records of plaintiff? How is this -- just for clarification purposes for the record and for me to make my objections --

THE COURT: What's your response?

MR. JACOBS: Your Honor, this was -- plaintiff's counsel produced the power of attorney and got the witness to elicit that these are documents kept in the regular course of business by Ocwen and went through a whole analysis about how Ocwen -- you know, she doesn't know how it got there or how it was created, but because it's a document that they rely on, that they need, that they have, Your Honor accepted that document. That was her argument.

THE COURT: I remember how the POA got in.

MR. JACOBS: So I made the same, I asked the witness the same questions. Is this a document

that's relied on by Ocwen, yes.

THE COURT: So to answer your question, it's a business record document. Let's go.

BY MR. JACOBS:

Q. So again, the pooling and servicing agreement that's in evidence now is Defendant's A. What is the chain of title that that document reflects would have to have in order for there to be a -- in order for this trust to own my client's loan?

A. Okay. I'm going to answer -- again, it's going to be fairly detailed. As I said earlier, the structure has to be bankruptcy remote. For a direct sale from the originator, Freemont Investment and Loan to HSBC, the trustee, we could not achieve a true sale opinion.

The reason is there are just too many ways for assets that are sold directly to be clawed back into a bankruptcy estate. For a true sale to be achieved, it is essential for the originator like Freemont to engage in a two step transaction. That's what is reflected here.

This is industry standard. The originator sells to the depositor. The depositor is what's called a special purpose vehicle. It has no employees, it has real assets, it does not engage in business, therefore,

it is extremely unlikely that it will be forced to file for bankruptcy.

That is what insulates the assets from the bankruptcy of the originator. That step is absolutely essential. The depositor, having insulated the assets, then sells them to the trustee for the benefit of the certificate holders of that particular series. So the chain involves three steps not two.

MS. STEMER: I'm objecting to relevance. Also, there's no -- this is lack of foundation. There's no testimony elicited that this is in fact a business record of plaintiff, and so it's hearsay.

THE COURT: Overruled.

MR. JACOBS: May I approach the witness, Your Honor?

THE COURT: Yes.

MR. JACOBS: Showing counsel what is marked in evidence as Plaintiff's 3.

BY MR. JACOBS:

Q. Ms. Cully, do you see what is in evidence as Plaintiff's 3, this assignment of mortgage?

A. Yes.

Q. In your opinion, does that reflect a true transaction that occurred from my client's loan?

A. As I just explained, it is more or less inconceivable that you would have a simple transfer from the originator to the trust in the context of a securitization. It just wasn't done.

Furthermore, this assignment of mortgage is not in the form that's contemplated by this pooling and servicing agreement or any other standard pooling and servicing agreement.

I have done probably several hundred mortgage transactions, mortgage-backed securities issuances either directly working on them, supervising them, reviewing them, whatever. I've seen a lot of these.

The provisions in this pooling and servicing agreement that I did review are substantially identical to those in all the other pooling and servicing agreements. What changes from deal to deal is payment arrangements, not legal documentation.

Q. Okay. Can I ask you --

A. Let me just finish. Under this document --

Q. Which document are you referring to?

A. The pooling and servicing agreement, Section 2.01. Again, in this document and in all other pooling and servicing agreements, standard pooling and servicing agreements for residential mortgage-backed securities, under Section 2.01 --

Q. What page are you on? Because the Judge has a copy.

A. Page 55. The depositor sells, transfers, assigns, sets over, and otherwise conveys to the trustee for the benefit of certificate holders all of the assets of the mortgage loans. Okay?

In connection with that sale, there are delivery requirements. In Section A, Subparagraph 3, you have to deliver with respect to each mortgage loan the original mortgage with evidence of recording. On -- continuing with that, Subsection 6 on Page 56 -- I think I've got the wrong page.

Q. Page 57?

A. Yes, I was just about to say, Page 57.

Q. You see Page 57, the second paragraph from the top?

A. You're right. If it's -- for a MERS loan, you don't have an assignment of mortgage that will be required to be prepared or delivered.

Instead, the servicer shall -- not may, but shall take all reasonable actions as are necessary at the expense of the depositor to cause the trustee to be shown as the owner of the related mortgage loan on the records of MERS.

So what happens is they don't have to deliver

a recorded assignment of mortgage. Instead, the servicer has to make sure that MERS shows the trust as the owner of the mortgage on its records.

MERS can do this because the trust will show -- through the servicer will show that it has been assigned the note under the pooling and servicing agreement.

Q. And just to be clear, does MERS ever take any kind of ownership interest in any of the notes that get registered with it?

A. No. It's not even a nominee for the note. It's a nominee only for the owner of the mortgage.

Q. So all those cases we see where the assignment says together with the note, is that -- does MERS have the power to assign the note to anybody?

A. No.

MS. STEMER: Objection, relevance. It has nothing to do with our case.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Okay. So now, in your opinion, does the assignment of mortgage provide any credible evidence that this plaintiff owns and holds the note and mortgage?

A. No.

MS. STEMER: Objection, Your Honor.

THE COURT: Overruled. But under the pooling and servicing agreement, doesn't it say that the servicer, which is -- it was either Ocwen or --

THE WITNESS: The servicer at the time of the closing in 2005 -- the servicer in this case looks like it was Wells Fargo Bank as master servicer.

THE COURT: Well, the servicer shall take all action to show the trustee, which is HSBC, as the owner.

So you're saying that in this type of transaction, an assignment of mortgage doesn't have to be drafted?

THE WITNESS: That's correct.

THE COURT: So they didn't even need the assignment.

THE WITNESS: That's correct.

THE COURT: So what's the point?

MR. JACOBS: And then seven years later, when they are not supposed to have an assignment, someone from Ocwen decides to prepare an assignment and put in other records to reflect a transaction that would not allow for bankruptcy remote. It's just clearly not what the PSA calls for.

So it's just to show the Court this is simp ly

a document that is being prepared right before the complaint gets filed and used as evidence on the crucial issue of the case of standing and it's --

MS. STEMER: Not needed is different than not supposed to or not allowed.

THE COURT: It's actually -- if I understand the testimony, not only is it not needed, but it's factually inaccurate, because it removes the depositor, the documentation of the depositor, which is necessary for the securitization. Is that right?

MS. STEMER: It would be like me --

MR. JACOBS: Under the new Florida statute, it makes it illegal to record anything in the public records that's materially misleading.

MS. STEMER: That would be like me and Sherry, two years ago, we decided that if the Dolphins won the Super Bowl this year, she's going to give me $100.

And then we're not that good of friends anymore, so let's write it down just in case I don't really trust you any more. So we're memorializing our contract later. That still happened.

THE WITNESS: May I make a comment?

THE COURT: Yes.

THE WITNESS: This assignment of mortgage is not written that way. It is fairly easy to write something that says this memorializes the fact that this mortgage was assigned to the trust on May 1st, 2005. This is not what that says.

MS. STEMER: Because they didn't say they didn't mean --

THE COURT: Stop arguing.

THE WITNESS: This says as of whatever the date is, June 25th, 2012, this assignment of mortgage is from. Okay?

You can write something that memorializes a past transaction. That's not what this does.

BY MR. JACOBS:

Q. Okay. Now, let's move on to the note. And I'll give you a copy. I'll give you the note and mortgage. Did you review the original note and mortgage for this case? I have copies for the Court and I have copies for plaintiff's counsel.

Now, let's start off with just the idea -- just the basic premise, did you review this note and mortgage?

A. Yes.

Q. Do you believe the note is a negotiable

instrument?

A. I don't.

Q. Can you explain to the Court why you believe -- first off, is there any difference for Article 9's purposes for whether you can enforce a nonnegotiable note versus a negotiable note?

A. You can enforce a nonnegotiable note, you can enforce a negotiable note. You can sell a negotiable note, you can sell a nonnegotiable note. It doesn't make any difference for Article 9.

Q. So now let's go through -- what are the reasons why you believe that the note that's in evidence as Plaintiff's 1 is not a negotiable instrument?

A. Obviously, a negotiability is governed by Article 3 of the UCC. I'm not an expert on Florida law. I'm not going to talk about Florida law.

What I am going to refer to is the -- let's call it the standard or model UCC that's maintained by Cornell University and Law School, and --

MS. STEMER: For the record, can we note that the witness is on her computer referring to -- I'm not sure what it is.

THE WITNESS: The website is www.law.Cornell.edu/UCC/3. It's a free website.

BY MR. JACOBS:

Q. And can you explain to the Court?

A. What Cornell says that it does is maintain a version of the UCC that contains all of the provisions that have been in the form most commonly adopted by the states since not all states have adopted all versions of the UCC.

MS. STEMER: Objection, hearsay.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Okay. And what is the -- can you explain how the process of transferring residential mortgage loans and securitization, how it relates to Article 3 and Article 9?

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

THE WITNESS: It doesn't relate to Article 3, because as I said, you can sell negotiable instruments the same exact way you can sell nonnegotiable instruments.

It does relate to Article 9, because as we discussed earlier, Article 9 was revised effective 2001 in order to establish that it covered sales of promissory notes and I think payment intangibles as well as security interest in them.

Now, the relevant provisions are 9203B and

9203G. I don't know how Florida numbers them, but since they adopted Article 9, I assume they have corresponding provisions.

MS. STEMER: Let the record reflect that the witness is currently looking at her -- reading from her laptop.

THE COURT: She's reading from the Cornell website, which is the holder, I guess, or the keeper of the UCC for everybody to look at. So I'm going to allow her to look at the UCC when she testifies.

MS. STEMER: Okay.

THE WITNESS: If you look at 9203B, first there's a transaction exercise. Unfortunately, the people who draft the UCC are professionals. They speak to each other. They don't necessarily understand the people who read -- the legislation will read words in different ways.

So security interest in the UCC doesn't mean what you think it means. Security interest in the UCC covers sales of certain things, like promissory notes and payment intangibles. It does not cover mortgages except in certain instances specified by Article 9.

What it means in the context of 9203B is you

have to translate. Security interest means sale agreement. Debtor means buyer. Secured party -- you know, debtor means seller. Even I get confused sometimes. Secured party means buyer. Security agreement means sale agreement.

Once you do that, you can see that 9203B does in fact just codify the common law. A sale is enforceable against the seller and third parties with respect to the collateral, meaning the thing being sold, only if value has been given. Consideration, only if the debtor has the right -- the seller has the right to sell the collateral, basic chain of title that has been in effect for a very long time, and one of the following conditions is met.

What we're talking about in securitization is the first, Paragraph A. The seller has essentially signed a sale agreement that provides a description of what's being sold. That, again, is nothing new. That's fairly simple.

If you comply with article -- with Paragraph B, then under Paragraph G, the mortgage follows the note. This is again written in very convoluted language, but basically, the sale of a right to payment or performance secured by a mortgage is

also a sale of the mortgage.

BY MR. JACOBS:

Q. Now, in this case, what documents would you have expected to see to show that there had been compliance with 203B?

MS. STEMER: Objection.

THE WITNESS: Standard list, one or more documents, contracts transferring the pool of mortgages from the originator to the depositor to HSBC.

This particular PSA, which I looked at, contemplates a mortgage loan purchase agreement between Freemont Investment and Loan, the originator, and the depositor, Freemont Mortgage Securities Corporation, referred to in the document, which is, again, a standard way of doing it.

BY MR. JACOBS:

Q. Okay. So one would be a mortgage loan purchase agreement?

A. Right.

Q. And we haven't seen that in this case?

A. No. The second is the pooling and servicing agreement, which we have under which the depositor completes the second transfer into the actual trust.

In connection with both of those, you have to obviously describe what's being sold. That's the mortgage loan schedule. The third step in this process is that, again, as is standard in the industry and referred to in this pooling and servicing agreement, under Section 20.2, acceptance by the trustee of the mortgage loan, you have a review process to be performed to make sure that the loan being transferred actually means certain specified requirements.

After that review has been completed, the trustee is to deliver a final certification as to the loans that are still in the pool. Nonconforming loans will be removed. Conforming loans will be substituted for the ones that were removed.

For this loan to be in that pool, you have to have some evidence that it survived the review under Section 2.02, and that will be the final certificate.

Q. So would it be fair to say that there was a system set up by you and all the people that were working in this area back when they were creating Article 9 that was intending for there to be mortgage loan purchase agreements showing sales from the originator to depositor?

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Is that correct?

A. Yes.

Q. There would then be pooling and servicing agreements showing the transfer from the depositor into the trust?

A. Or you can have a pooling and servicing agreement that shows all the steps. The point is there has to be a contract.

Q. And then there would also be a mortgage loan schedule that would get generated?

A. Yes. And delivered to the trustee and all the other parties at closing.

MS. STEMER: Objection, relevance.

THE COURT: Overruled.

BY MR. JACOBS:

Q. And within a 90 day period, there would be a process by which they would verify that all the delivery requirements were met, correct?

A. Correct.

MS. STEMER: Objection, leading, relevance. 90 days was not mentioned.

THE COURT: Overruled.

BY MR. JACOBS:

Q. And if there was -- and what would happen if,

during the course of that process of certification, they realized there were certain loans that didn't meet the delivery requirements?

MS. STEMER: Objection, relevance.

THE WITNESS: Then they get removed and the conforming loans are substituted.

BY MR. JACOBS:

Q. Okay. And then there would be a -- is it possible --

THE COURT: Hold that thought.

(Off the record.)

THE COURT: Okay. Let's continue please.

BY MR. JACOBS:

Q. So now we talked about -- we were talking about when the certification process is completed, and there has been certain loans that have been kicked out and certain loans that have been put back in.

How is that reflected in the final certification? What would you normally see if you were looking at a final certification and the mortgage loan schedule and whatever other documentation reflect which of the final, final loans made it into this trust?

A. You can do it a number of ways. You can either list the loans that have been -- that were included in the original mortgage loan schedule that

have been removed and the new ones that have been substituted, or you can just regenerate the whole mortgage schedule. But one way or another, you have to provide a method for determining the final mortgage loan pool.

Q. Now, I know in this case, it's not -- well, the PSA is not in evidence, but the mortgage loan schedule was not in evidence, but did you have an opportunity to review what was presented by the plaintiff is what purports to be the mortgage loan schedule?

MS. STEMER: Objection.

THE WITNESS: I did.

THE COURT: Overruled.

BY MR. JACOBS:

Q. And what was your opinion of that document?

A. I didn't know what it was. It was clearly a list of data. It seemed to be applicable to this loan. There was absolutely no link between it and the pooling and servicing agreement.

For all I know, it was an extractive data for a loan that was still on Freemont's books when it went under. It could be for a different deal. I don't know.

Q. And would the final certification make it clear?

A. Well, if you could -- since the mortgage, more or less physical, either a PDF or spreadsheet, the mortgage loan schedule is delivered to the trustee, it seems to me eminently feasible for the trustee to deliver to this Court a certified copy of that mortgage loan schedule along with the final certification. I don't see why that can't be done.

And alternatively, the mortgage loan schedule itself could, although they often don't, say this is the mortgage loan schedule for deal such and such.

Q. And let me just ask, is it possible that one of the reasons why we're not seeing the certified copy from the trustee would be because there's a cost related to that?

A. Speculatively, sure.

THE COURT: So I don't understand why you can't link the mortgage loan schedule that the plaintiff provided in this case to the final certification. Is it supposed to have a title on it, or is it supposed to --

THE WITNESS: They can, but if it doesn't, I don't see why the trustee couldn't certify it.

THE COURT: So they didn't, but that doesn't mean it's not valid.

THE WITNESS: It's a valid set of data,

whether it relates to this deal, some other deal, portfolio loans or anything else, I don't know.

BY MR. JACOBS:

Q. And there was no final certification from the trustee at all presented in this case?

A. No. It could also be just the initial schedule if it's for this deal, and this particular loan could have been kicked out, indeed, if this --

THE COURT: Well, that's something that -- let me go back to my notes. One second.

So we don't have a final certification?

MR. JACOBS: It has never been produced.

THE COURT: Do you typically have a final certification with a pooling and servicing agreement?

THE WITNESS: There should be one according to the pooling and servicing agreement.

THE COURT: Is it referenced in our pooling and servicing agreement?

THE WITNESS: Yes. We're missing Page 60, Bruce.

MR. JACOBS: I have -- the original PSA that I marked in evidence --

THE COURT CLERK: She still has it.

MR. JACOBS: No, the big one. The one that I

introduced yesterday as an exhibit, the PSA.

THE COURT CLERK: A2?

MR. JACOBS: Right. Do we have that?

THE COURT CLERK: It was moved in as A.

MR. JACOBS: Is it in evidence, the PSA?

THE COURT CLERK: She should still have it, the witness.

THE COURT: The one from yesterday is the big fat one.

MR. JACOBS: Here's an original.

THE WITNESS: The trustee is required to deliver document certification and exception report in the form Exhibit F within 90 days after the closing date. The servicer, on Page 61, 2.03C, has to amend the mortgage loan schedule accordingly.

BY MR. JACOBS:

Q. Now, let me ask you. Would it be fair to say that if you were at Fitch and you were being asked to give a AAA rating to the -- to this trust, and the evidence they presented was the PSA and that document which purports to be a mortgage loan schedule that was produced in discovery but not introduced into evidence, would you give that -- would you recommend an AAA rating for that pool of loans?

A. We rely on the true sale opinion.

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: We had the analyst who looked at the mortgage loan schedule and legal people who look like me who looked at the true sale opinion. Both things were considered.

BY MR. JACOBS:

Q. But without the final certification, without the mortgage loan --

A. You don't get the final certification at closing, you get it afterwards, so --

MS. STEMER: Objection.

THE COURT: Overruled.

BY MR. JACOBS:

Q. But I'm saying is part of the idea of this trust being an AAA --

THE COURT: What's the relevance of the rating for us here today?

MR. JACOBS: I'm just trying to suggest would there be a -- would you transfer millions and millions of dollars in loans on just the two documents that they gave us where they require --

THE COURT: Just move on.

MR. JACOBS: That's fine.

BY MR. JACOBS:

Q. So let's look at the note, itself. So explain to the Court why it is you think this note is a nonnegotiable instrument.

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: Well, for this, we go back obviously to Article 3 of the UCC. Negotiable instrument is defined in 3-104. The first thing that I want to say is that you can amend the UCC more or less any way you want, including disclaiming negotiability.

What this adjustable rate note does is say in its very first paragraph the lender or anyone who takes this note by transfer and who is entitled to receive payments under this note is called the noteholder.

That excludes someone who takes it merely by endorsement. It has to be a transfer. So that basically means that it's not a negotiable instrument because you can negotiate a negotiable instrument essentially by force rather than -- and the transfer under the UCC, just like common law, is a voluntary transfer.

So it's already limited the applicability of Article 3.

BY MR. JACOBS:

Q. Just to clarify that point, can you explain what exactly -- in your opinion, what is a negotiable instrument?

MS. STEMER: Objection.

THE WITNESS: What do you mean what is it?

BY MR. JACOBS:

Q. Is a dollar bill a negotiable instrument? Is a promissory note --

A. Well, the classic -- long ago -- well, not that long, but about a century ago, there was no formal currency, even in this country. Instead, banks issued bank notes. Those were taken as currency. Those are negotiable instruments.

You take them to another bank, you give them to a teller, the teller accepts them as money, no questions asked. The point of a negotiable instrument is you don't have to have a chain of title. You can be a thief.

A dollar bill would be negotiable, except it has been specifically excluded because it's government-issued currency.

Q. Okay. And the idea of being someone in possession of a negotiable instrument, does ownership matter to Article 3?

A. No.

Q. So whether I stole it, whether I, you know, borrowed it without giving it back, if you're in possession of the note and you -- a negotiable instrument, you're allowed to use it whether you own it or not. Is that fair?

A. That's correct.

Q. And does Article 3 of the UCC talk at all about mortgages?

A. No.

Q. Does it have anything to do with mortgages?

A. No. Mortgage is not a negotiable instrument under anybody's definition.

Q. But does Article 3 in any way, shape, or form address what you can do with a mortgage that is securing a promissory note?

A. No. The enforcement of a mortgage is governed by the law in each state. First, Article 3 doesn't govern enforcement of security of anything. It's negotiable instruments only.

Article 9 governs enforceability of security, including in certain instances, a mortgage. That's all the UCC has to say about it.

Q. So what factors does the UCC look for when it looks at a promissory note and says this is or is not a

negotiable instrument?

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: Well, the definition of negotiable instrument --

THE COURT: I know this is very academic for you, but what's the relevance of this for this case?

MR. JACOBS: Well, I think it shows again the endorsement issue that --

THE COURT: Let's get to that. I'm going to let you go for ten minutes, and then I need to be at Fowler White.

MR. JACOBS: Okay. Does Your Honor not want me to go through the reasons why this is not negotiable and just get to the endorsement?

THE COURT: Yes.

MR. JACOBS: Okay. Let's do that.

BY MR. JACOBS:

Q. So let's look at the endorsement on the back of the note.

A. Okay.

Q. I'm going to ask you, is there -- first off, would you agree that that endorsement again reflects that the chain of title for this loan was from the

originator Freemont Investment and Loan to the plaintiff directly?

MS. STEMER: Objection.

THE WITNESS: That's what it says.

THE COURT: Overruled.

BY MR. JACOBS:

Q. And that would again be in violation of the pooling and servicing agreement?

A. That's correct. If you look at Page 55, again, it's Section 2.01A1, the original mortgage note bearing all intervening endorsements showing a complete chain of endorsements from the originator to the last endorsee.

Q. Okay. And what about the fact that it's on the back of the PSA? Is that -- or on the note?

A. You're only permitted to put it on the --

THE COURT: You said PSA.

MR. JACOBS: Let me clarify the question.

BY MR. JACOBS:

Q. Is there anything that you see in the PSA that would suggest that the fact that this endorsement appears on the back of the promissory note is a violation of the PSA, itself?

A. Yes. The last sentence in that paragraph says to the extent there's no room of the face, endorsement

may be contained on an allonge if the state law so allows and the trustee is so advised by the depositor. This is on the back. There's plenty of room on the front.

THE COURT: But the copy doesn't have that.

MR. JACOBS: The copy of what?

THE COURT: Of the note.

MR. JACOBS: The copy of the note has a page that was a copy of the back.

THE COURT: I see. I see.

MR. JACOBS: They just photocopied the front and back of it.

THE COURT: Got it.

THE WITNESS: In fact, it doesn't actually technically permit it to be on the back at all. It only permits it to be on an allonge, which is something that's attached to the note.

MS. STEMER: What page is that?

THE WITNESS: 55.

BY MR. JACOBS:

Q. Do you believe that the plaintiff has, either in the evidence in trial or even what was produced in discovery, shown compliance with Article 9 Section 203B regarding secured transactions?

A. No.

Q. And do you believe that the evidence that they've presented is -- presents the truthful evidence of the transaction that occurred where this plaintiff, if it acquired my client's loan at all, acquired my client's loan?

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: No. There's a major gap. There is no evidence at all of the transfer from Freemont Investment and Loan to Freemont Mortgage Securities Corporation.

And, as I said before, the mortgage loan schedule is just not identified. It looks like it's merely at set of data points and there's no final certification, which I -- I have forgotten the term that this particular PSA uses from the trustee.

BY MR. JACOBS:

Q. Anything else you think the Court should be aware of in your opinion about things to consider with this mortgage and loan?

A. Well, if this endorsement is to be taken as factual, then this loan should have been excluded from the pool, and then HSBC is not a proper plaintiff. It should have been kicked out because it doesn't comply

with the standards of the pooling and servicing agreement, which is subject to review under 2.02.

THE COURT: If it ended up in the PSA even though it's missing a step in the endorsement process, don't I still have to accept it as being part of the PSA? Do I have the legal authority to exclude a mortgage that has otherwise been accepted in a PSA?

THE WITNESS: I'm not going to speak as to Florida law. You are the expert on Florida law. What I would say is this would not meet industry standards of being included in the pool.

We had a list of things that had to be done, and as far as I can tell from what I've seen, they were not done. It wouldn't work.

THE COURT: Okay. So I definitely understand your opinion on that. Let's reference the assignment of mortgage again.

Where is the assignment of mortgage? I think the assignment of mortgage is more relevant to the Court.

MR. JACOBS: Certainly. I think it's -- I think the assignment of mortgage shows --

THE COURT: You're out of order.

MR. JACOBS: Sorry.

THE COURT: So just to understand your testimony as to the assignment of mortgage, so the assignment of mortgage you believe is not valid because the transfer is from MERS as nominee for Freemont Investment and Loan to the trustee, HSBC.

It's missing the depositor, and you said something about MERS -- hold on one second. Could you remind me what you said about MERS being excluded?

MR. JACOBS: The PSA, Page 57.

THE COURT: For a MERS loan, no assignment is necessary, correct.

THE WITNESS: Right. But the servicer is supposed to make sure that not Freemont, but the trustee is recorded as the owner under MERS books. That means this is just plain wrong, because it -- well, the date is wrong, and it -- the transfer took place in 2005, and yet it's written as if it took place in 2012.

In 2012, no transfer from Freemont could occur in the first place because the loan had already been sold if it was included in the pool, and secondly, because Freemont had bailed.

MS. STEMER: Can you say again -- or I guess the court reporter should read it back -- the

beginning of --

THE COURT: He can't read it back. You can't read back, can you?

THE COURT REPORTER: I can play the audio, if you would like.

(Off the record.)

BY MR. JACOBS:

Q. And is it fair to say that that document -- you heard the testimony of the witness about when that document was prepared, correct?

A. Yes.

Q. And it was prepared in anticipation of litigation preparing to file the foreclosure, correct?

A. The point to me is that it was prepared in 2012. If you're going to do it at all, which you don't have to, it should have been done in 2005.

MS. STEMER: Objection.

THE COURT: Overruled.

BY MR. JACOBS:

Q. If you're going to do it in 2012, in your opinion, does it appear as though the information contained within the assignment of mortgage was referenced against the pooling and servicing agreement?

A. No.

Q. Is there any other document --

A. For the reasons I stated. It's the wrong owner, the date is wrong.

Q. Anything else?

A. In 2012, the owner was already the trust. This is just not appropriate. If you wanted to do one in 2005, it should have said the -- that MERS was acting as nominee not for Freemont Investment and Loan, but for Freemont Mortgage Securities Corporation as assignee of Freemont Investment and Loan.

Q. So if this was really an intention just to document the transaction by which the plaintiff obtained the loan back in 2005, it would have much different information on the face?

A. Yes.

THE COURT: As assignee is also the depositor?

THE WITNESS: Yes. The depositor is the assignee of Freemont Investment and Loan.

MR. JACOBS: Okay. I have nothing further at this time.

THE COURT: Okay. Let's start cross-examination.

MS. STEMER: Okay. Just one moment.

THE COURT: Actually, let's take a break here and then --

MR. JACOBS: Your Honor, so just to peek over

here at the demonstratives we're both going to be using in our arguments, and from what I see, counsel is intending to talk about the holder status of the note, which is what the negotiability information I was going to have the witness testify about, but since I know that's going to be part of her argument, I would like the Court to consider whether I should have her run through the negotiability -- run through the testimony she was going to give just about the negotiability of the note and maybe -- I don't think it will take that long, but I think if she's going to be arguing that this is a negotiable instrument, we're the holder and we're entitled to enforce it, I would like that testimony to be in the record.

THE COURT: Okay. We'll come back at 2:00.

(Thereupon, a lunch recess was held.)

THE COURT: So you wanted to put something on about the note?

MR. JACOBS: Yes, Your Honor.

THE COURT: Okay. Five minutes.

MR. JACOBS: It might be a little longer than that, but I'm going to try to get through it as quickly as possible.

THE COURT: You know, Mr. Jacobs --

BY MR. JACOBS:

Q. Do you have the note before you, Ms. Cully?

A. Yes.

Q. Okay. Just to be clear, we've already discussed the basic rules about -- let's see if you can clarify what renders a note a nonnegotiable instrument. Would it be fair to say it would have to be an -- a negotiable instrument is an unconditional promise to pay a fixed amount of money?

A. It would have to comply with the provisions of Article 3 of the UCC. Two primary ones you're talking about are Section 3-104 and 3-106.

MS. STEMER: Objection.

THE COURT: Overruled.

BY MR. JACOBS:

Q. Keep going.

A. Under 3-104, it is indeed an unconditional promise or order to pay a fixed amount of money with or without interest or other charges described in the promise or order. That's the first thing I would like to talk about.

This note describes payment of principal, interest, late charges, and attorney's fees. It's a limited universe. What the plaintiff is suing for is payment on the entire loan, including amounts that are

due on the mortgage.

Those charges that are due on the mortgage are not described in the note except for those that I mentioned. Primary charges in the mortgage that are not described in the note are in Paragraph 3 of the mortgage on Page 5, the escrow.

But there are several others. Given the time constraints, I won't go through them, but anyone walking through the mortgage will see that there are plenty of other provisions for payment that are not, in fact, described in the note.

What the plaintiff again is suing on is the total amount due under the note and the mortgage.

Q. Does the mortgage have a definition of the term loan?

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: That's -- I haven't finished with 104, if you can wait just a second.

BY MR. JACOBS:

Q. Sure.

A. Under 104-3, what's relevant is that the note -- the instrument can't state any other undertaking or instruction by the person promising or ordering to pay -- ord ering payment to do any -- in addition to the

payment of money with certain exceptions.

The exceptions relate to giving, maintaining, or protecting collateral, confessing judgment, or waiver of benefit, if any intended for the advantage of protectional obligor.

Okay. That may -- the next provision that is, I think, relevant here, is Article 3-106, which defines what an unconditional promise or order is.

A promise or order is unconditional unless it states, in relevant part, that the promisor is subject to or governed by another record or that rights or obligations with respect to the promise or order I stated in another record.

A reference to another record does not, of itself, make the promise or order conditional. Okay. That's fine. B says it's not made conditional by a --

THE COURT: And the other record, can that be the mortgage?

THE WITNESS: We're getting there. Yes, it could. A reference to another record or statement of rights with respect to collateral prepayment or acceleration does not make the note conditional. So we can do all those things.

However, the note cannot be governed by another record, meaning in this case, yes, you're

absolutely right, Your Honor, the mortgage. The mortgage defines -- has a defined term on Page 2 of the loan, which means the debt evidenced by the note plus interest, fine, plus prepayment charges, fine, and late charges due under the note, fine, and all sums due under this security instrument plus interest.

THE COURT: And that adds the enumerated items, charges that are not contained within the note?

THE WITNESS: That's correct. In Paragraph 2 of the mortgage, which is on Page 4, it specifies in what order you apply payments.

First, interest due under the note. Second, principal due under the note. Third, amounts due under Section 3 of the mortgage.

These payments are to be applied to each periodic payment in the order in which it became due.

So that means if you miss two payments and you suddenly come up with money to pay one payment, they are going to apply it first to the first payment, which will include all of the amounts under the mortgage before they pay a penny on the second payment.

That is further elaborated in the following and the paragraph that follows that, but I don't want to go into more detail than I have to.

THE COURT: So let me just back up for a second. Under the UCC, you're talking about Sections 3-104 and 3-106?

THE WITNESS: Right. And Bruce can tell you what they are in Florida.

MR. JACOBS: It's the 673.1041 and 1061.

THE COURT: Can you say that again?

MR. JACOBS: 673.1041 and 1061 are the Florida equivalents.

THE COURT: And what are they entitled?

MR. JACOBS: I have --

MS. STEMER: I think I have a copy. Negotiability of instruments.

THE WITNESS: And this is the caption. They may be the same, for all I know.

MR. JACOBS: This is the One West Bank versus Nunez case, which actually just came out about two weeks ago, and it lays out the -- if you go to Page 3, you'll see 1061 and 1041 are laid out.

THE COURT: Okay. Keep going.

THE WITNESS: If we go back to 3104, which is the negotiable instrument, you cannot seek any

other undertaking or instruction by the promisor to do any act in addition to the payment of money except for the enumerated items, however, the mortgage has all sorts of acts not related to the payment of money. You have to -- again, we're short of time.

Going through the mortgage, which is several pages long, you can see that there are many things that the borrower is required to do on paying of acceleration that are not necessarily the payment of money.

BY MR. JACOBS:

Q. Can you just give one or two examples quickly?

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: Well, one simple one, which is familiar to virtually everyone, the borrower has to maintain insurance on the property. That's not a payment to -- under the note, it's just a payment because it's required for the protection of the collateral.

Arguably, that would work. But the borrower is also in default if they had any misstatements under the loan application. That's not a payment, not for the protection of the collateral. It's

just they said something wrong, so now you can accelerate.

The borrower shall not destroy, damage, or impair the property, allow the property to deteriorate. This is not a payment of money, these are acts. You have to go out there and fix your door if it gets a hole in it and so on.

THE COURT: Okay.

BY MR. JACOBS:

Q. So in your opinion, is this a negotiable instrument?

MS. STEMER: Objection.

THE COURT: Overruled.

THE WITNESS: No, I don't think it is. I'm aware there are a lot of cases out there. I'm not aware that any case has brought up the points I have brought up here today, including the definition of noteholder that's on the base of it note, itself.

I would also add that even if it were a negotiable instrument, under Article 3-301, the person who is entitled to enforce the instrument is not entitled to enforce the security, that is the mortgage.

BY MR. JACOBS:

Q. And is that because Article 3 does not mention enforcement of mortgages?

A. It has nothing to do with enforcement of mortgages.

MR. JACOBS: Your Honor, I have nothing further at this time.

THE COURT: Cross-examination.

MS. STEMER: Your Honor, I'm not sure if your clerk discussed with you the time constraints with the witness.

THE COURT: Please continue.

CROSS-EXAMINATION

BY MS. STEMER:

Q. You testified that you have extensive experience in structured finance. Is that right?

A. Extensive, not excessive.

THE COURT: I think she said extensive.

THE WITNESS: Okay.

MS. STEMER: Excessive would be good, too.

BY MS. STEMER:

Q. Do you have experience in the UCC?

A. What do you mean experience in the UCC?

Q. I mean, are there contracts that you drafted other than PSAs? Are there --

A. Yes, of course. I did commercial paper for

various asset-backed commercial paper facilities.

Q. Can you tell me what sort of things qualify you to be an expert on the UCC?

A. You mean other than drafting commercial paper?

Q. Yes.

MR. JACOBS: Your Honor, I'm going to object. I think her qualifications have already been determined by the Court.

THE COURT: So I'm going to sustain the objection, but not on those grounds. I think the question calls for a narrative, what qualifies you to testify on behalf of the UCC.

This woman has been practicing as an attorney in commercial paper since -- what year did you graduate?

THE WITNESS: '82, but I got into this area in '85.

THE COURT: Okay. So just streamline your questions, please.

BY MS. STEMER:

Q. Do you have any specialized training on the UCC other than on-the-job? Education courses --

A. No, you don't -- this is the sort of thing that's on-the-job training, and I do think that 20 years is enough.

Q. Is that your expert opinion?

A. On my own training?

THE COURT: Okay. Is that -- I'm going to sustain -- look. That question is not a proper question, is that your expert opinion. You asked her if she had any specialized training.

She said she had on-the-job training 20 years, and you said is that your expert opinion. What? Is that her expert opinion? She's not here to offer an expert opinion on her expertise. That question makes no sense.

BY MS. STEMER:

Q. Do you have any -- did you take any special courses at law school in this?

A. I went to Yale. No special courses.

Q. Are you an attorney in Florida?

A. No.

Q. Where are you licensed to practice?

A. New York. I'm not advising on Florida law. I'm very careful not to advise on Florida law.

Q. On this case, did you file an expert report?

A. I sent you answers to your interrogatories.

Q. Do you have any special training on bankruptcy law?

A. Yes.

Q. Can you go through that, please?

A. Well, I'm a consumer bankruptcy lawyer at this point, and if you consider on-the-job training, I had a good deal of it in working on structured finance, which as I said -- in which I said it's key to make sure that the assets stay out of bankruptcy. Did I take specific courses in that? No. We were writing the law. Or at least the agreements.

Q. So then is your answer no?

A. Let me put it this way. When I started doing this, there were no courses in how to do securitization because there hadn't been securitization. Therefore, there were no courses in how to avoid --

THE COURT: I think she asked you if you have specialized training in bankruptcy law. I think that's what the question is. She has on-the-job training. Next question, please. Let's go.

BY MS. STEMER:

Q. What did you review in preparation for -- well, let's focus on this actual case. What did you review in preparation that pertains to this case?

A. I answered that in the interrogatories. Broadly speaking, the discovery materials that you provided to defendant's counsel and that he passed on to me. Also, I did a little independent research and found

the prospective supplement for this deal, but I'm not relying on it.

Q. What scientific methodology did you utilize --

THE COURT: There is no scientific methodology. She's testifying as an other specialized -- as a witness with other specialized knowledge.

THE WITNESS: I have extensive industry experience. It's not a science, as the Judge said.

THE COURT: Do you have any substantive questions? Because I deemed the witness to be -- I deem Kathleen Cully to be an expert in the area of securities law and securitized transactions.

MS. STEMER: And also the Uniform Commercial Code?

THE COURT: No, I'm not deeming her an expert on the Uniform Commercial Code, but I'm deeming her qualified as a Yale graduate and a practitioner for over 20 years to read the UCC and to provide competent testimony regarding it.

MS. STEMER: Okay.

BY MS. STEMER:

Q. How does what you reviewed -- when you were reviewing the documents for this case, how does it effect standing in this case?

A. I believe I've already answered that. According to my review of what has been -- what's in evidence in this case, you have not shown standing under what I understand to be Florida law as explained to me by Mr. Jacobs. You have not shown that you own the note and mortgage.

Q. What is it that -- is there anything specifically --

A. I believe I've answered that already.

Q. Now you stated in your direct testimony that you -- that there was a reason why this loan didn't comply with the pooling and servicing agreement. I believe you referred to 55.

A. I'm waiting for the question.

Q. I already asked the question.

THE COURT: I didn't hear the question. I'm sorry, I missed it.

BY MS. STEMER:

Q. What did you see in this loan that made it not comply with the PSA? I believe you specifically referenced something on Page 55.

A. First, the loan is a broader concept than the documents. Are you talking about the note or the mortgage?

Q. You tell me.

THE COURT: No. You've got to rephrase the question, because the question is not an appropriate question. A loan is a term of art. We're talking about key documents here. We're talking about the note, the evidence is the debt, and we're talking about a mortgage, which is a contract. Okay?

BY MS. STEMER:

Q. Your testimony earlier, you said that if the note -- and correct me if I'm wrong, if the mortgage -- is this not a securitized bundle of loans?

THE COURT: Is what not a securitized bundle of loans?

MS. STEMER: The trust.

THE COURT: The trust or the --

BY MS. STEMER:

Q. Is this trust a securitized bundle of loans?

A. Freemont Home Loan Trust 2005-B is a securitized bundle of loans.

Q. Okay.

A. Otherwise known as a pool.

Q. Okay. So now I'm going to use the term loan for the next few questions.

A. Well, if you would, you will need to look at the definition in the pooling and servicing agreement,

because that's what was securitized. I didn't testify as to the loan. I testified as to the key documents that are presented here, mainly the note and the mortgage. The loan is a much broader concept.

Q. Your testimony was that if the loan got to the trust and then somehow they found out it wasn't complying, that it would get kicked out, correct?

A. Yes, but the documents being reviewed under Section 2.01 are specific documents that are part of the loan.

Q. And I'm getting there. So now do you have reason to believe that this loan specifically was kicked out?

A. I have no reason to believe it wasn't, and looking at this note, which doesn't actually meet the standards in 2.01Ai, it seems to me very likely that it might have been.

Q. What is i?

A. One i. It's what contract lawyers mean by a little -- a Roman numeral I.

Q. I understand. I went to law school, too?

MR. JACOBS: Objection. That's argumentative.

THE COURT: Overruled.

THE WITNESS: It specifies what the mortgage note is supposed to have in terms of endorsements.

It says the original mortgage note bearing all intervening endorsements showing a complete chain of endorsement from the originator to the last endorsee, a complete chain of endorsements.

To the extent that there's no room on the face and only to the extent that there's no room on the face, the endorsement may be contained on the allonge.

The endorsement in this case isn't even on an allonge, it's on the back, and it does not have the complete chain of endorsements. I thought I went through that.

BY MS. STEMER:

Q. So your testimony is the true reason this note -- and that because on the face of this note, for these two reasons, this loan may have been kicked out of the trust?

A. It should have been if this was -- if this is the way the actual note looked in 2005 when it went through the review process.

Q. You referred a lot to nonperforming loans in your direct examination. Do you have any reason to believe this was a nonperforming loan?

A. I don't remember referring to them, but I have no opinion as to its status in 2005 one way or the

other, no evidence.

Q. Now, referring to the assignment of mortgage and in conjunction with the pooling and servicing agreement, can you please tell me where it says that -- I think you refer to in your direct that the pooling and servicing agreement requires that the trustee is supposed to be reflected in MERS books as the owner? Can you explain that again?

MR. JACOBS: It's on Page 57.

THE WITNESS: Right. But what do you want by way of explanation other than what I already said? What points do you want illuminated.

MS. STEMER: Where does it say that?

MR. JACOBS: It says it on --

THE WITNESS: Page 57, second full paragraph.

MS. STEMER: I don't really have anything else.

THE COURT: Any redirect?

MR. JACOBS: Nothing further for this witness.

THE COURT: I'm sorry?

MR. JACOBS: I have nothing further for this witness.

THE COURT: Okay. Ms. Cully, you may step down. Please watch your step.

MR. JACOBS: May the witness be excused now?

She needs to make sure flight.

THE COURT: Sure.

MR. JACOBS: At this time, the defense would rest.

MS. STEMER: As for the pooling and servicing agreement being admitted as plaintiff's business record --

THE COURT: It was admitted under -- oh, yes. Correct.

MS. STEMER: Yes. I would like to call my witness to voir dire her on the admissibility of it because I don't believe that the foundation was established.

THE COURT: Okay.

MS. KEELEY: Can we take a quick break before we do that? Can I run to the bathroom?

THE COURT: No. I just resumed. It's 2:25. Have a seat. We just took a break from 11:30 to 2:00, and it's 2:25. You may proceed.

MS. STEMER: I'm handing the -- it's marked as Defendant's A2, but I guess it should be marked as Plaintiff's --

THE COURT CLERK: It's A. Defense A.

MS. STEMER: So this is marked as Defense A2 --

THE COURT: No. It's A. It's in evidence.

MS. STEMER: I apologize.

DIRECT EXAMINATION

BY MS. STEMER:

Q. What is that?

A. This is the pooling and servicing agreement.

Q. Who created it?

A. The investor.

Q. Who is the investor?

A. The investor is Freemont -- I'm sorry. HSBC Bank.

Q. Is this something that's in Ocwen's system?

A. Yes. We keep all PSAs in our system.

Q. When -- do you have any idea when you would have gotten that document?

A. When Ocwen acquired -- when Ocwen became servicer for this loan.

Q. Okay. When was that?

A. That was in 2011, I believe.

Q. Is there any indication when this document was created?

A. It would have been back in 2005 when the PSA was in existence.

Q. Okay. Now, when you guys -- have you seen these before?

A. Yes.

Q. When you get them, what happens? Do they go through any type of boarding process?

A. It will be reviewed to make sure that this is the trust for the appropriate loans that it's affiliated with.

Q. Is there anything else?

A. Well, it will be reviewed, and also the MLS for this particular PSA.

Q. Are there any numbers that you crunch or any cross checks?

A. No. They just review it to make sure that whatever loan is affiliated with these -- with the particular PSA, that it's matched properly, because we deal with several loans and several PSAs, so we make sure it's with the proper loan.

Q. And that's it?

A. Yes.

Q. Okay. Is the information saved as an image, like a PDF?

A. Yes, it is.

Q. Okay. Is this created with Ocwen?

A. No. It's just with the trustee. Ocwen became servicer years after the trust was created, so Ocwen is not -- does not assist with the creating of a PSA

because it was done years before Ocwen became a servicer to this loan.

Q. Okay. Now, if there were any -- are there any checks done on this document if they are burning red flags?

A. Well, they will review it. In regards to number crunching, I'm not sure, but they will review it to make sure that it is assigned to the proper loans.

Q. Okay. That will be the MLS, not the actual PSA?

A. Right.

Q. Okay. So then is the information in the document --

THE COURT: MLS is what again? I forgot.

MS. STEMER: Mortgage loan schedule, which is currently not in evidence, and defendant's counsel can correct me if I'm wrong.

MR. JACOBS: It's not in evidence.

THE COURT: The problem with the mortgage loan schedule in terms of its admissibility is that there's no -- there's nothing to link the MLS schedule that we have in court --

MR. JACOBS: We don't even have it.

THE COURT: I saw it.

MS. STEMER: Yes.

THE COURT: It's not marked, but it --

MR. JACOBS: It's not part of the record, it was not put into --

THE COURT: I saw it with my eyes at somebody's podium. So the problem with the MLS is it doesn't reference that particular PSA.

MS. STEMER: I understand. I'm actually trying to have the PSA excluded as evidence.

THE WITNESS: She's answering all the questions that only confirm that it's a record of Ocwen's.

MS. STEMER: It didn't go through the boarding process. It didn't go through any more of a boarding process than the breach letter --

THE COURT: This boarding process is a legal fiction, and it means something different to every entity. Ms. Keeley just said that it went through a check for accuracy, so that's part of her boarding process. She just said it.

MS. STEMER: So does the payment history and the breach letters.

THE COURT: We're not going through that. We're definitely not going back through all of that. That testimony was excluded for the reasons that I stated. This is different than a payment

history.

MS. STEMER: The POA was created with the assistance of Ocwen. This is completely different.

THE COURT: The POA is --

MS. STEMER: Power of attorney.

MR. JACOBS: POA was the document that was put into --

THE COURT: I'm sorry. I just don't know the acronyms like you guys.

MR. JACOBS: Sorry, Your Honor. But the power of attorney that Your Honor put into evidence, that was the argument I made to get the PSA in.

THE COURT: Look. I'm not going backwards, nor am I debating my rulings with you people. I was just talking about the MLS, which is what you all are talking about now, why it's not in evidence.

MS. STEMER: Okay. Well, if that's Your Honor's ruling, I don't have any further questions.

THE COURT: Well, what were you trying to do? I'm sorry, I --

MS. STEMER: I'm trying to exclude the pooling and servicing agreement. It was admitted through counsel --

THE COURT: Yeah, but I'm not limiting your

questions. Did you want to question Ms. Keeley? I don't know how we got off track. People are walking around -- what was -- what's the question pending with Ms. Keeley?

Ocwen has -- I wrote down here HSBC created the PSA. Ocwen keeps the document in their system. The document was created in 2005. Ocwen has seen these before, reviews them to see it's in the trust, I guess the loan is in the trust.

MS. STEMER: I'm trying to elicit testimony from her that shows that this is not part of the business records exception, this is not a business record of Ocwen.

THE COURT: Okay. Do you have any more questions for this witness?

MS. STEMER: No. That would be all of my questions, because I don't think she satisfied the standard.

THE COURT: You didn't finish asking the business records questions, but I'm not -- I'm not your lawyer. I'm just sitting here trying to make sense of this whole case the way it's being present ed.

MS. STEMER: Okay. So I'll go through the business records questions, and we can see which

ones aren't going to match up.

BY MS. STEMER:

Q. Is the information contained in this pooling and servicing agreement -- do you know if it's made by a person with knowledge?

A. I believe so. I -- this was created by --

THE COURT: Let me stop you for a second. She can't possibly answer questions in the way that I think you want because it's going to ruin HSBC and Ocwen's ability to introduce the PSA in every case in perpetuity. Do you understand?

That's why she can't possibly answer the questions the way you want her to answer them. You're going to create a major ripple effect for your clients.

But you do whatever you want. You want her to say that this PSA is not a business record of Ocwen as servicer to the plaintiff?

MS. STEMER: I'm trying to elicit testimony that shows she cannot testify that this document was made by a person with knowledge at or near the time of events it reflects.

MR. JACOBS: At this point now, I think it's irrelevant because the witness has testified to all the contents, the expert has testified. She can

testify to documents not in evidence.

So I don't even know if it makes -- if we're going to create a new rule -- I mean, frankly, I have been trying to say this forever. It's not a business record of the bank.

MS. STEMER: It is. It's --

MR. JACOBS: The power of attorney and the PSA are not records made in the regular course of business.

MS. STEMER: If defense counsel can't make the legal argument that satisfied prior servicer business records on Calloway and Berdecia, that's something else.

But when I asked to get the PSA admitted, I did not have my witness testify that it is made by a person with knowledge at or near the time that Ocwen came into its possession no matter what, because that's not true.

THE COURT: This document is a PSA. It's relied upon by Ocwen. Ocwen cannot even begin to act as a servicer in this case without a PSA, and so it's reliable.

They checked it. She says they checked it to see if the loan was in that schedule. I haven't even seen the schedule.

MS. STEMER: Okay. So then it's admitted and that's fine.

MR. JACOBS: I have nothing further for this witness.

THE WITNESS: Am I excused?

THE COURT: You can step down. I don't know what your wants you to do.

Okay. Are you resting?

MS. STEMER: Yes.

MR. JACOBS: Both parties rest. Are you ready?

THE COURT: Yes. Are you making any motions?

MR. JACOBS: I can do them together. My intention was to just make one argument, which would include my motion for involuntary dismissal as well as closing, just to make it easier.

So first off, I just wanted to take a moment and just acknowledge that this has been I think one of the most impressive trials I've done as a foreclosure lawyer in terms of what we saw today and the way the case went and the way the evidence was allowed to come out.

You know, when we started here, I was most shocked when counsel was like, you know, he's talking about the Old Testament, and that has

nothing to do with Florida law. And I submit it absolutely has everything to do with Florida law.

And specifically what I was talking about was just the idea that right after -- right after Passover, right after the Jews come down from the mountain, Moses comes with the Ten Commandments, it says you shall set up judges and law enforcement officials in your cities, and they shall judge people with righteous judgment, and you should not pervert justice, you should not show favoritism. Justice, justice you shall pursue.

They may live and possess the land the Lord your God is giving you. And I take that to heart. I think that absolutely applies to Florida law and this Court.

Because what we have here is a situation that has a Rashi, who is a very famous scholar commentary on the Old Testament says judges are supposed to be expert and righteous so they will judge justly and will not pervert justice, and we must seek out a good court because the appointment of fitting judges is sufficient merit to keep Israel alive and settled in our lands.

What are we talking about? We're talking about the importance of having expert righteous

just judges that will do exactly what happened and let the evidence come out as ever it will. And when you look at what we're dealing with here, Your Honor, it kind of speaks right to the canons.

Canon 1 talks about establishing and maintaining and enforcing high standards of conduct in a courtroom so that the integrity and the independence of the judiciary may be preserved. That has been my argument since day one.

I don't care if you've paid your mortgage or not. I care about if the integrity of the process is followed correctly and if due process is followed and if all -- if the plaintiffs are entitled to their relief and they prove that, wonderful. And if they don't, they shouldn't get any relief.

Now, what I think is important to recognize here is I gave the Court a whole bunch of litany of arguments that laid out a motion for sanctions. I know we're not going to argue the motion for sanctions today, but I think it's important to point out a couple of points.

One is the Florida Supreme Court that says one who comes into equity must come with clean hands because all relief will be denied them regardless

of the merit of his claim.

So even if they -- even if the truth was that there was actually a transfer of this mortgage into the trust appropriately, if they have a perfectly meritorious claim, if what they did was act with unclean hands at any point in the process, then they are denied their equitable relief.

And the 3rd DCA in this case EI Dupont and Nemours and Co. Inc. versus Sidran, which is 140 So. 3d 620 at 650, 3rd DCA 2014 talks about generally speaking, only the most egregious misconduct such as the fabrication of evidence by a party in which an attorney is implicated will constitute a fraud on the Court, and in the --

THE COURT: What's the parties in 140 So. 3d 350? What are the parties?

MR. JACOBS: EI Dupont Nemours, N-E-M-O-U-R-S and Co. Inc. versus Sidran, S-I-D-R-A-N. And what they say is that a fraud on the Court exists when there's clear and convincing evidence establishing an outright lie on a critical issue that goes to the very core issue at trial.

And respectfully, Your Honor, we've seen a few of them here. And what I'll say is that -- and this has been -- you know, to me, it's one of the

most startling discoveries I've seen come out in a foreclosure trial that should shake some of the foundations of what we've seen has been the law in foreclosures. For one --

THE COURT: So you said we've seen a few of them here. Which ones? The assignment of mortgage?

MR. JACOBS: Well, I was going to start with how about the fact that Ocwen, one of the largest servicers that does this work, does not verify any of the prior servicer's records to ensure they are accurate? They just accept the records as true.

Meanwhile, we have Calloway and now a body of law that the appellate courts have been handing down to the trial judges saying you can let in all these prior servicer records because of course they have been verified based on the testimony we've heard, and Your Honor has heard it from lots of people, and I submit to Your Honor the point I have been trying to make for a long time is the other qualified witness standard is not -- you don't become qualified because you went to -- someone told you from the department how this works.

The case law that they talk about, you worked in the department, you were trained in the

department, you know how the department actually works. And I submit that if Your Honor was to actually push back on some of those witnesses that come from other servicers, you might find that this is really the industry standard, that this is just a nice idea that came up, which is now fostering a theory of law that is flawed.

THE COURT: I think some bankers are better prepared than others in terms of the boarding process, because they take more time to train them and to show them the systems.

MR. JACOBS: It may be, but I think that -- it may be, but the reality is that what I've heard more and more is it's a tour. They stop in and say hi.

But in terms of actually knowing how the boarding process works and being able to testify with any veracity that there's a checks and balance verification --

THE COURT: Let's just talk about this case, because we don't have 24 hours.

MR. JACOBS: So ultimately, Your Honor, I think that what the Court should also take notice of is the fight we just had -- you just saw plaintiff's counsel trying veraciously to stop the

PSA from coming into evidence, their own document, and to -- and the reason why, Your Honor, is because it shows that this whole strategy of how they were going to prove their case, Your Honor -- when you look at the strategy they use, they have two pieces of evidence.

That's all they produced, an endorsement and an assignment of mortgage that both reflect a transaction directly from Freemont to the plaintiff. That's factually untrue, both of them.

And we also know that Freemont went into bankruptcy in 2008. And we know that the assignment of mortgage was clearly done after that fact. And we don't know when the endorsement was, and the only reason why we don't know when the endorsement was added is because they ignored your order to produce the evidence that would show when that endorsement got added.

You know, and what Ms. Cully described was there's a perfectly good system that was created many years ago with the intention of making sure we don't have all these fights about standing and when was the note endorsed and where was the assignment of mortgage to assign the mortgage or the note.

All of that is not part of the system that was

intended that was codified by Florida law. You know, she said -- the witness -- you know, the trustee has the pooling and servicing agreement, the mortgage loan schedule, the final certification. They are in possession of the trustee.

Why are they not here? There's no good reason for it other than maybe it's cheaper. Maybe it's easier. Maybe once again, they figured if I can just give an assignment of mortgage and an endorsement that reflects the transfer from the originator straight to the trust, there would not be an expert and true judge who will look at that and say you can't do that, that's not true.

Not in an equitable proceeding. But what happened now is this is -- you know, we're here. This is the date they came to the dance with.

THE COURT: Is the terminology that the endorsement and the assignment of mortgage do not reflect the correct title -- chain of title, or --

MR. JACOBS: Chain of title would be -- the ownership. The chain of ownership, because you have -- there were three parties to the transaction.

THE COURT: Yeah.

MR. JACOBS: You know, according do the PSA, which is now in evidence because I had to put it into evidence.

Your Honor, I submit -- you know, this is the date they came to the dance with, and what we're finding out is he's not really all he's made out to be.

And I submit that what you see here is they prepared these two documents, the assignment and the endorsement, in total disregard of the PSA. Never considered it.

I think what the witness said was look to see who was the originator, look to see who we want the plaintiff to be, and we prepared an assignment of mortgage to reflect that.

THE COURT: The other name for depositor is assignee, right?

MR. JACOBS: Well, depositor would necessary be an assignee of the originator because the originator would sell, assign and transfer the note to the depositor, and the depositor would do the same to the trust and then you have bankruptcy remoteness.

THE COURT: Yes. So the depositor is necessary for these securitized transactions to

insulate the assets from the clawback?

MR. JACOBS: Exactly, Your Honor. And what I think is clear now is what the assignment of mortgage does, what the endorsement does is it denigrates the integrity of these proceedings.

It was prepared specifically so that they could present it and did, even after I filed my motion for sanctions for fraud on the Court, which laid out all of this law and all of this evidence to say that's a bad document, and there has already been judges who have said it's a bad document. They still put it forth.

And I think that, you know, what it does go to is the heart of standing, which is a critical issue in all of those foreclosure cases. We've had more cases come out about standing than anything else besides maybe business records.

And what I submit, Your Honor, is the assignment of mortgage does not document a transaction that has already occurred. Counsel has -- whatever that argument was about how, you know, she went to the Dolphins game and wanted to come back and make sure we all knew because we weren't friends anymore, A, that's just nonsense in my opinion, and B, the transaction that's

documented never actually happened.

THE COURT: Well, no. The witness distinguished the hypothetical that was offered by plaintiff's counsel, which was if there was a promise to exchange football tickets verbally but later the receiving party wanted to document it just in case the person changed their mind or there was, you know, rift in the friendship, the witness, Ms. Cully, testified that that was different than the assignment of mortgage.

MR. JACOBS: Exactly.

THE COURT: Because they could have documented the prior alleged assignment by a sworn document saying this document will verify the assignment. Instead, it's creating a transfer that is not appropriate under -- according to her, under securitized law.

MR. JACOBS: It documents a transfer that never occurred.

THE COURT: And it's the wrong date.

MR. JACOBS: And it's the wrong date, and it's not between the right parties, and all of that.

And remember, Your Honor, the witness testified Ocwen's plan is I got to file a foreclosure, let me prepare this document. And

that document is not true. And it goes to the heart of the critical issue in the case.

And I think Your Honor -- the last points that I think I need to get into is when you look at the idea here of owner versus holder, you know, they are talking about how Freemont Loan was the owner and then the plaintiff became the owner in 2005.

Well, first off, that's exactly -- I think what Ms. Cully said very clearly was how do you prove ownership? You prove ownership by complying with 9-203B. Show you boarded it from the right party, that you're not a thief in the night. You know, give us the mortgage loan purchase agreement.

Give us the mortgage loan schedule. Give us the final certification which says this is the final mortgage loan schedule that has all the loans that actually made it into the trust, which was all in the possession of the trustee, which, for whatever reason, they have from day one said we don't need it.

You know, since 2008, I have been fighting these cases, and this is what I asked the Court specifically by the order that you entered in April make them give it to me, and they chose not to give it.

They chose to put it in the file and ignore the order, and that has consequences, because now they can't establish that they are the owner. And if they can't establish that they are the owner in 203 Subsection B, then they don't have 203 Subsection G, which is, in Florida foreclosure, 90-2031 Subsection 7, the mortgage follows the note.

So the whole theory of what counsel is going to talk to you about is this holder idea. And I submit, Your Honor, the idea that you are the holder of a negotiable instrument has nothing to do with ownership, and it is common law. It has been common law.

There has never been a statute ever changing it that says you have to own and hold the note and mortgage, which is what they pled in their complaint.

And because they can't prove the ownership, they don't prove standing. But for sure, the idea of being a holder, Your Honor requires that the Court do that analysis about whether or not we're talking about a negotiable instrument.

And I submit to Your Honor I gave Your Honor the case of the Nunez case, which --

THE COURT: Give me a second, please.

MR. JACOBS: Certainly.

THE COURT: On your concept that the plaintiff cannot be the holder or cannot establish standing by being a mere holder is your nonnegotiability argument?

MR. JACOBS: That's part of it. I mean, the idea of being the owner -- being the holder of a negotiable instrument -- for starters, we heard several times, allows you to file a money judgment, ask for a money judgment on the note.

But Article 3 has nothing to do with enforcement of the mortgage.

THE COURT: I understand the testimony.

MR. JACOBS: So what I'm suggesting is if you look at the note, it's clearly not negotiable, and if it's not a negotiable instrument, then they can't come in and say look, I've got a specific endorsement that proves my -- that I have a right to foreclose the mortgage.

And I would just point to Your Honor the One West Bank versus Nunez case, this just came out March 2nd, I just entered an appearance in the case to file a motion for rehearing.

The 4th DCA -- it says in this case that -- if

you look at the Uniform Secured Note Provision, which is the one we pointed out, you'll see it talks about, according to the 4th DCA, rights of collateral and acceleration, which are two of the exceptions that Ms. Cully pointed out to Your Honor.

THE COURT: In the mortgage?

MR. JACOBS: That you can reference in the mortgage or any other document without there being a problem.

What this case doesn't address at all and what I'm going to submit to the Court as well as to the 4th DCA is that they are leaving out all those parts about whether or not can the mortgage change the amount due under the note.

And that is an obvious yes. Their complaint asks for all the money due under the note and mortgage. They service the loan. It's defined term, all the money due under the note and mortgage, which is from the mortgage.

The payments are effected by the mortgage. When you -- you know, where you prioritize the payment money to go. You know, the first two are principal and interest. The third one is any monies due under the mortgage.

The idea that you have to live in the property or you have to, you know, not tell the truth or keep the property safe, whatever it is, all those things you have to do are all additional conditions and rights that could ultimately cause acceleration, but the --

THE COURT: What is the language of 1043 or 673104, the note cannot state other acts with certain exceptions?

MR. JACOBS: In Florida, it says a promise or order is unconditional unless it states, C, that the rights or obligations with respect to the promise or order are stated in another writing, a reference to another writing does not, itself, make the promise or order --

THE COURT: That's enough. I just needed to get the language the note cannot contain other rights or obligations not enumerated in the statute.

MR. JACOBS: With respect to -- right. The only thing is that it would not be -- a reference to another writing does not, itself, make the promise or unconditional, so you can just reference an existence of the mortgage.

That would not have anything to do with

negotiability. You can also reference another writing for a statement of rights with respect to collateral prepayment or acceleration, which is what the 4th DCA was focusing on, the language in the secured note.

THE COURT: But 6731061, does that exclude certain things?

MR. JACOBS: It excludes -- a promise or order is unconditional unless it states that the rights or obligations with respect to the promise or order are stating in another writing, and that's the provision in -- what I submit is that the --

THE COURT: So the note and the mortgage don't match, in other words?

MR. JACOBS: The note and the mortgage are one integrated document.

THE COURT: Yeah, but the note -- the mortgage which references the note is requiring other rights or obligations that are not enumerated in the --

MR. JACOBS: I'm going to say it to you like this, Your Honor. The note specifically says there are additional protection s in the mortgage which protect the loan holder in the event I don't make my payments.

Some of those conditions are, and then it lays

out the ones related to acceleration and prepayment, which are not what we're fighting about. However, other conditions are all the ones that Ms. Cully described --

THE COURT: Escrow payments --

MR. JACOBS: Escrow, all the things that change the fixed amount of money due under the note.

Because the whole idea of if I have a ten dollar bill, it's worth ten dollars. I don't have to look to any other document to see if there's -- if it could be worth 12 dollars or six dollars.

But if the mortgage has all these provisions that say the total amount due is going to -- there will be additional debt that will incur interest at the rate of interest, that's where you go.

So Your Honor, respectfully, what I submit is that there's no evidence of damages, there's no evidence of conditions precedent, and there's no evidence of standing.

And I think that Your Honor has done a meritorious job of expertly and rightly and justly reviewing the evidence here, and I think ultimately, you should find that there was -- plaintiff failed to meet their burden.

And I would also ask the Court to consider issuing a show of cause as to why they shouldn't be sanctioned for the assignment of mortgage and the endorsement which clearly reflect a transaction that never occurred.

THE COURT: Plaintiff? You can respond to the motion for involuntary dismissal and also make your closing together, if you would like.

MS. STEMER: Okay. I'll do it together at the same time. I guess for preservation purposes, I still object to the witness testimony. I think that overall -- well, first to address what defense counsel was saying, I believe that the note is a negotiable instrument, and that would render all notes negotiable instruments, and therefore, we wouldn't be able to do any of these things.

That's like saying a check is not a negotiable instrument. That doesn't really make any sense. The two main issues here is the exclusion of the prior servicer business records, which we went through in detail, citing Calloway and Nationstar versus Berdecia.

My witness was qualified as a records custodian for the servicer records, current servicer business records, and she testified

regarding her training and the boarding process, which Your Honor did not find satisfactory, and it is plaintiff's position that that did satisfy the requirements under those two cases and any cases that those cite to.

The issue is veracity, and she has proven that -- she showed this Court that there were cross-checks. It is the record testimony.

The second big issue is the issue of standing, and I'm going to try to keep it brief, but this was going on for a day and a half, testimony regarding the pooling and servicing agreement.

I will open with bringing attention to Castillo versus Deutsche Bank, and I quote from it, because an appellant -- obviously, in this case, it's defendant -- was neither a party nor a third party of the trust, we find that the appellant lacks standing to raise issues regarding it. That's not a quote anymore.

And they ended up reversing the judgment in favor of I think the defendants. Either way, it stands for the proposition that if they are not a party to the pooling and servicing agreement, they cannot raise issues regarding its structure or I guess as to its terms.

So in that case, even if it were the case that this loan came into this trust and then got kicked out, which we didn't really hear testimony about, it's still not relevant.

Further to that, this is not an expert on Florida law, but Florida case law regarding standing, I will direct this Court to Murray versus HSBC Bank USA. I don't have the full cite.

If Your Honor would like a copy? This is annexed to the case. Murray goes through and --

THE COURT: What are you handing me?

MS. STEMER: This is Murray versus HSBC Bank. In Florida, there's three ways to show standing. It's holder, owner, or nonholder in possession. If you're not a holder and you're not an owner, you can be a nonholder in possession.

That means somebody holding the note that's not endorsed at all, and then they have to jump through those hurdles to prove standing. Those hurdles are --

THE COURT: That's if you assume it's a negotiable instrument.

MS. STEMER: That's if you assume that the note, you're just holding it -- it's nonnegotiable. No. You're not a holder and you're not an owner,

so you're not the named -- so say the note was endorsed to Freemont.

In this case, say the note was endorsed to Freemont and we didn't have an assignment of mortgage. I would have to prove that, the transfer into the trust, in order to show that I have standing and that's through nonholder in possession with the rights of the holder, which is a huge hurdle.

That's what this is going through. That's raising the requirement of plaintiff to somebody who is just holding the note that's endorsed to somebody else and didn't have an AOM.

In this case, we have the AOM, and we have the note endorsed to plaintiff specifically. It's not even a blank endorsement. And in addition to that, it was actually attached to the copy of the note that's on the complaint.

So by even going through this, requiring plaintiff to prove this, requiring plaintiff to prove something so far beyond the requirement to show standing, just to quote a few cases, Stone versus Bank United, that's 115 So. 3d 411, 2013 case, that goes through the ways, and it quotes heavily to McClain, and I quote -- it goes through

the three ways you can prove standing.

I quote plaintiff may demonstrate standing by submitting the note bearing a special endorsement in favor of the plaintiff or a blank endorsement. That's one way. Evidence of an assignment from the payee to the plaintiff. That's another way.

The third way is evidence of an equitable transfer or other evidence of ownership. So even if it's shown that we aren't the owner, we're still the holder and we still satisfy Florida law. If Your Honor would like a copy of this?

THE COURT: Thank you.

MS. STEMER: Of course all these cases agree that we have to show standing prior to the filing of the lawsuit, which was done here. I'm going to cite to Clay County Land Trust, 152 So. 3d 83. It's from the 1st DCA.

And that stands for the proposition that an endorsed note being attached to the copy of the complaint that's filed is evidence, prima facie evidence of holdership, the rights to enforce standing prior to the filing of the lawsuit unless there's evidence showed that that's just ridiculous and couldn't possibly be.

Here's a copy.

THE COURT: Thank you.

MS. STEMER: Which a brand new case that came out March 9th, which I understand is not final, is from the 4th DCA, Ricardo Ortiz versus PNC Bank, affirms it.

And they cite, and I quote, we recognize the fact that a copy of the note as attached to the complaint does not conclusively and necessarily prove that the bank had actual possession of the note at the time the complaint was filed.

However, when considering the issue of the sufficiency of the evidence absent any testimony or evidence to the contrary, the reasonable inference of possession is appropriate and a rebuttable presumption is established.

Here, I understand there was an expert to testify. She didn't testify regarding anything specific enough to rebut this presumption, and furthermore, we do have an assignment of mortgage.

And to address that specifically, just because Ms. Cully's testimony was saying that an assignment of mortgage could have the date on it, and my hypothetical agreement with my client here could have been I guess reduced and memorialized to something that had a date on it doesn't mean that

that's the requirement.

And Ms. Cully is understood to not be an expert on Florida law. So I'm not -- she can't really tell us what is required in an assignment of mortgage.

So the major -- substantive issues aside, the exclusion of the prior servicer business records and the standing of my client to sue, there has been no -- this is a mortgage contract -- I'm sorry, just a contract between the borrowers and the original lender.

There has been nobody coming forth trying to enforce this note from somewhere else. They are not trying to come in -- this has been going on since they took out the loan in 2005. They went into default in 2008. They live in Arizona. They are renting this property out.

They have not made any payments, and they breached twice, because there was a loan modification, although I guess that's not really in record evidence.

So in direct procedural response to the motion for involuntary dismissal, it should be viewed in the light most favorable to the nonmoving party, and that's it.

MR. JACOBS: Your Honor, may I briefly respond?

THE COURT: Yes.

MR. JACOBS: So, Your Honor, remember I said we were going to be challenging some of the preconceived notions in foreclosures and I was going to try to use the Florida Supreme Court precedent to do that.

And I just want to point the Court to the Tillius versus AS MeHeig, LLC (phonetic) case which is at 2015 West Law 1545223, and it also cites the Wells Fargo Bank versus Morkran case. It's a 1st DCA case.

And both of them say that -- I have a quote that says the Florida Supreme Court has held since the late 1800s that a plaintiff must hold and own the note and mortgage to satisfy the standing requirement for a foreclosure action.

And I can only find stuff going back to the late 1920s, but it's -- that's the common law.

MS. STEMER: We are the owner and holder of the note. There's no evidence that the --

THE COURT: Okay. Please don't interrupt.

MR. JACOBS: So Your Honor, when you look at Johns versus Gillian, which is the case that came

out that created the whole idea of the mortgage follows the note, it was a case where the bank -- the lender, the assignee, proved that they purchased the debt.

And how did they do it? They show they paid value to the right party, had the right to enforce it, and gave their documents, which is what Article 9 codified.

And one of the things I think is important here, Your Honor, is that there's a case called Carlyle versus Game and Fresh Water Fish Commission, which is a Florida Supreme Court case from 1977, 354 So. 2d 362, which says statutes in derogation of the common law are to be construed strictly, however, they will not be interpreted to displace the common law further than is clearly necessary.

Rather, the courts will infer that such a statute was not intended to make any alteration other than what was specified and plain ly pronounced.

A statute therefore designed to change the common law rule must speak in clear, unequivocal terms because the presumption is that no change in the common law is intended unless the statute is

explicit in this regard.

And what I'll ask the Court to note, if you were to look at the Morkran and the Tillius case, what they say is they gave that cite about how there has been the law since the late 1800s that you must own and hold the note and mortgage, and then they say the cases appellee cites are not persuasive because the Supreme Court decided the cases prior to the adoptive of the now instructive and binding Florida UCC.

It goes on to talk about how 673 says you don't need to be the owner of the instrument. A person may be entitled to enforce the instrument even though a person is not the owner of the instrument or is in wrongful possession of the instrument.

And what I submit, Your Honor, is if you look at 673, you heard it from the witness, it doesn't reference at all the idea of a common law rule that you must own and hold the note and mortgage in order to have standing to foreclose.

All it says is it doesn't matter if you stole it or not, if you want to enforce the note, you have to be in possession of it and it has to be a negotiable instrument.

And Your Honor, what I think ultimately, what we're hearing is, you know, it has been -- if you look back to 1992, when the Florida Supreme Court first created the sample complaint in foreclosures, it says allegation three, plaintiff owns and holds the note and mortgage, which is exactly what was pled in this complaint.

And in -- that was certainly long after the 1967 codification of Article 3. And there's nothing that says that you don't -- in Article 3 that says we're changing the common law rule that you have to own and hold the note and mortgage, which means the common law rule still stands.

And in 2000, they did some minor changes to the rule, but they left in that the plaintiff owns and holds the note and mortgage. The first time they changed the complaint, the sample complaint in Florida, the Florida Supreme Court did it was 2014 which was right after the Florida Fair Foreclosure Act came in.

And that's another act which does not in any way, shape, or form try to change the common law rule that you must own and hold the note and mortgage in order to establish your standing to foreclose.

And what I'll submit, Your Honor, is there's a whole additional argument about why that doesn't change anything here, but we're not even under that statute for this case, so I'll save that for another day.

But ultimately, Your Honor, what I think is abundantly clear, is that this -- my client's loan never went from Freemont Investment and Loan directly to HSBC as trustee. That is an outright lie on a critical issue in the case.

And everything else that Your Honor has heard in this case, everything else Your Honor has excluded in this case Your Honor is giving good reasons for, and they failed to prove their case.

And for counsel to cite the Murray case, I think it's only fair if she's going to cite the Murray case that she really properly explains what the Murray case was talking about, because the Murray case was a case where they didn't have the note endorsed before the case got filed.

There was no examination, no court has ever examined the idea of whether it's negotiable because of the things Ms. Cully testified to, but what Murray said is because you don't have the note endorsed at the time you filed but you're in

possession of it, well, maybe you can meet the nonholder in possession if you can show the chain of title.

And what the Murray case was talking about was you missed the depositor. So the Murray case actually supports my position that because they don't have any evidence of the sale from Freemont as the originator to the depositor, they can't act as a nonholder in possession assuming that the note was actually a negotiable instrument, which it was not.

So Your Honor, at the end of all this, I think that -- to me, it's impressive we have had to go this far, that despite everything the Court has heard, despite everything the witnesses have testified to -- and I think Ms. Keeley was incredibly honest, and I commend her for saying what she said. You know, she came out and said this is what they told me, and this is what I think. And Your Honor was able to figure out what that means.

But everything we've heard today should shock the Court that this is the type of evidence that this plaintiff, who has been part of the settlement, who has been called to task for not

having competent evidence before, is still doing.

And that's why we think they have certainly failed to meet their burden to establish any of their rights under substantial competent evidence, and we ask the Court to issue an order to show cause why they shouldn't get sanctioned, because at this point, striking the note and mortgage is kind of -- I don't think that does anything.

We're talking about a 25 billion dollar penalty that, you know, hasn't obviously done very much to -- I think the Court should take some time and think about what is a just sanction for this.

THE COURT: Okay. Anything else?

MR. JACOBS: That's all.

THE COURT: Okay. The motion for sanctions, I'm going to retain jurisdiction to have a hearing on that, on the motion for order to show cause and sanctions, because I want to have maybe even potentially more discovery. I want to have a full evidentiary hearing on that order to show cause.

MR. JACOBS: As far as I'm concerned, because they haven't produced any new discovery -- Your Honor already ordered them to produce everything.

THE COURT: Please, don't -- there's no response necessary.

MR. JACOBS: Okay.

THE COURT: You can schedule that with my office.

I'm granting the motion for involuntary dismissal for many reasons.

Just principally, under equity, I do believe that the principals as laid out by the Florida Supreme Court in Bush v Baker, 83 So. 2d 704 from the 1920s indicate that when you're in a court of equity, which these foreclosure cases are, the complaining party can't prevail if they have unclean hands, and I think there's several bits of evidence of unclean hands that have been fleshed out in this case.

So that's my grounds. One of the instances of unclean hands is the back-dated assignment of mortgage created for the purposes of litigation, as stated by Ms. Keeley in court and in deposition.

It was created in 2012, allegedly evidencing a 2005 assignment of mortgage, which I don't believe legally occurred, because the assignment of mortgage evidenced in that document is missing a key party in the chain of ownership, which is the depositor, Freemont Mortgage Securities Corporation.

Another instance of unclean hands is the failure to comply with court orders requiring a disclosure of all records evidencing the chain of ownership, which this court is curious and wonders if that's an intentional act, and that's why I want to have a hearing on the order to show cause, because it seems to me curious or coincidental that the documents that were not produced pursuant to court order are the documents that appear to be at question, or that would evidence this missing link in the chain of ownership in the endorsement and in the assignment of mortgage.

So moving from the unclean hands issue, I'm also granting involuntary dismissal for failure to prove conditions precedent and for failing to establish damages.

So the financial history was excluded in this case. I'm aware of Calloway, and I follow Calloway every day in my foreclosure cases, and I'm aware of the strained evidentiary usage of the business record exception, vis a vis the boarding process of many banking institutions, but I have admitted such evidence in other cases, and each case needs to be viewed on a case by case basis.

In this particular case, there was

insufficient evidence of trustworthiness proven of the prior financial history of the Litton documents as acquired by Ocwen. Ms. Keeley, on behalf of Ocwen, was offered not as a custodian of Ocwen, but as an otherwise qualified witness for the Litton documents.

There was absolutely no evidence offered that the Litton financial records were checked for reliability or correctness during the boarding process.

Repeatedly, the witness testified it was a mere transfer of figures from one institution, Litton, to Ocwen, with a change in the names of the columns to make sure that the Ocwen columns titles of the category of financial data match or correspond to the Litton columns or names for the financial categories.

There was no evidence that there was any math done to check the accuracy or any checking of the numbers for accuracy. The only time when that would come into play is if someone allegedly questioned the accuracy of the documents.

So the bottom figure of Litton became the top figure of Ocwen, and they moved forward. Similarly, there was a failure to properly lay a

business record foundation for over an inch worth of breach or default letters, which in the five years I have been in foreclosure practice as a judge, I have never seen anybody introduce more than one breach letter, much less an inch worth thick of letters.

There was no checks and balance testimony provided during the boarding process to check the accuracy of the breach letters. The first two breach letters issued or mailed out allegedly in the stack dating to 2012, I believe, have about a $1,900 difference between one week and another unexplained.

Moreover, there was a third party vendor who sent out the letters. So we have a double hearsay problem with absolutely no evidence of a boarding process of that third party vendor's mailing practices and procedures.

Moreover, the entire voracity of the witness was questioned because in deposition, she stated that she wasn't aware of whether or not a third party vendor was used to mail out the breach letters.

However, at trial, she said that her training of the boarding process revealed that a third party

vendor was used. So in deposition in December of 2015, just a couple months ago, she said she didn't know, but that she would find out, and all of a sudden, yesterday, she said she was fully trained on the boarding process and already knew that a third party vendor was used, which is testimony that I cannot reconcile.

There's no standing that was proven. The plaintiff, which is HSBC Bank USA National Association as trustee for Freemont Home Loan Trust 2005-B mortgage-backed certificates, Series 2005-B has not been proven to be the proper owner or holder by way of the endorsement on the note or the assignment.

The endorsement on the note procedurally is -- doesn't meet the standards of the UCC, either the Federal code or the Florida code in the placement of the endorsement.

Moreover, the endorsement evidences an endorsement from the originator, Freemont Investment and Loan, to the previously stated HSBC plaintiff as trustee omitting the depositor, Freemont Mortgage Securities Corporation.

The assignment also omits the depositor or assignee, as well. That is a fail break in the

chain of ownership, because I do accept the testimony of the expert witness, Catherine Cully, and her description of securitized transactions such as these requiring the protection of the assets from future bankruptcy claw-backs, and therefore requiring this middle entity, the depositor, to secure the assets in the trust.

And by virtue of the endorsement and the assignment of mortgage created for purposes of litigation evidencing an assignment that is defective because it misses a key line of title ownership, for those reasons, I also find that -- for that reason, I find there's no standing.

The issue of the PSA, the PSA was admitted into evidence for the reasons stated during the trial. The PSA was missing the schedule of mortgage. It's curious.

The expert testified that the way the financial records look in this case in terms of the endorsement and the assignment would be a reason why this particular loan would be kicked out of the pooling and servicing agreement.

It's interesting that the schedule that was not admitted into evidence -- I didn't see it, but there is no schedule that was admitted into

evidence that corresponds with the PSA. The expert testified that the schedule that she saw doesn't have any link to this -- evidentiary link to the PSA for her to say it's part of this document.

Then, the issue of the note being a negotiable instrument is an interesting one in this particular case, and I think it's academic to a certain extent in that I don't have to make a legal finding as to the negotiability of notes, but I do find it interesting and evident by the evidence that the -- that this particular financial transaction appears to make the note -- hold on one second -- appears to make the note nonnegotiable.

According to 3104 and the UCC and 673.1041 of the Florida Statutes, in order for a note to be a negotiable instrument -- also 673.1061 and the UCC 3106 defines the fact that the terms have to be unconditional, otherwise, certain conditions that change the note prevent it from being unconditional and therefore, a negotiable instrument.

So in this case, according to the UCC and Florida Statutes, you need to have an unconditional offer to pay, the note should have principal, interest, late charges, attorney's fees, things that are enumerated, which is fine.

In our case, we have -- and in most mortgage foreclosure cases, you have the mortgage, which references the note, and then adds other rights and obligations that are not due under the note, and therefore, changing the amount due and owing. I think that that effects the -- is it the term negotiability?

MR. JACOBS: Renders the note nonnegotiable.

THE COURT: Exactly. Renders the note nonnegotiable. That's my impression. And I do want that stated in a proposed order, although I'm not ruling in favor of -- I'm not finding for involuntary dismissal based on that ground. So for the following reasons, I'm going to involuntarily dismiss the case.

MR. JACOBS: Now, Your Honor, I'll prepare an order. I'll have this printed up and submit an order.

THE COURT: Yeah. I need you to prepare a proposed order in Word format and circulate it to the other side before you send it to me. And then if you guys want to red line it and send me red lines back and forth, that's fine.

MR. JACOBS: Okay. And now, one of the issues I would raise is this is the first time I've had a

judge make a finding on the record that there is unclean hands in the presentation of the case.

My analysis is that that would render the mortgage no longer -- I don't think they should be allowed to refile the case next week and retry again and cloud the title or anything else like that.

I ask that the order strike the mortgage from the public records. It should no longer be enforceable because of the --

THE COURT: So I'm not going to go that far. I'm just going to rule as to what I did in this particular case, but -- so that's without prejudice, and it's without prejudice to the bank, and it's without prejudice to the defense to file a motion to dismiss any future litigation based upon, you know, equitable principals, if you want.

But today, I'm not prepared to extend my findings with prejudice.

MR. JACOBS: We'll get to that when we deal with the motion for sanctions. Maybe that's the right way to do it.

THE COURT: Perhaps.

MR. JACOBS: Okay. We'll do that.

THE COURT: Okay. Is there anything else? So

you're going to order the entire transcript?

MR. JACOBS: I'll order the transcript, yes.

THE COURT: Okay. Very good. What do you want to do with the evidence? Do you want my clerk to keep it?

MR. JACOBS: I think it should stay in the court file, absolutely.

THE COURT: So all the matters that were not admitted into evidence, they are going to be a court exhibit for purposes of appeal.

So they are marked for identification, but they were not admitted into evidence, but I don't want them lost. So my clerk will put them in an envelope and make them a court exhibit for purposes of appeal, but Danny, keep the same ID numbers.

THE COURT CLERK: Yeah, that's fine.

MS. STEMER: I would request that the note and mortgage be returned to plaintiff.

MR. JACOBS: Again, Your Honor, that's exactly my point why I'm asking that the Court consider because there's unclean hands, what the Court found as a matter of law in this case. What counsel is asking --

THE COURT: No. So the note and mortgage -- the originals need to stay with the clerk.

THE COURT CLERK: Yeah. What happens is after everything gets scanned, the note and mortgage goes to a separate box. It's placed right here in a separate room.

THE COURT: I don't know. I don't know what --

THE COURT CLERK: Until there's an order signed by the Court releasing that note and mortgage.

MS. STEMER: Okay. Then we will just do a motion.

THE COURT: Do you have a problem with that?

MR. JACOBS: My concern is this. I would hate to see that get back out into the stream of commerce and result in a second action.

MS. STEMER: She just dismissed without prejudice.

THE COURT: No. What he's saying is it's going to be -- potentially, once it's out there, it can be assigned anew, is what you're saying, with another servicer --

MR. JACOBS: Who can get stuck again in the same position, and god forbid, you know, we don't connect this case to that thing, but that's because of the issues that they had, and I think that --

THE COURT: So I'm going to ask the clerk to retain all the originals until we have a hearing on the other issue. So make sure in e-courtesy, I don't get an order to return.

THE COURT CLERK: Okay.

(Thereupon, the proceeding was concluded.)

CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA :

:

COUNTY OF MIAMI-DADE :

I, ALEX LAPORTA, a Court Reporter in and for the State of Florida at Large, do hereby certify that I was authorized to and did report the proceedings in the above-styled cause before the Honorable BEATRICE BUTCHKO, at the time and place set forth; that the foregoing pages, numbered from 273 through 403, inclusive, constitute a true and complete record of my notes.

I further certify that I am not an attorney or counsel of any of the parties, not related to any of the parties, nor financially interested in the actions.

Dated this 4th day of April, 2016.

ALEX LAPORTA
COURT REPORTER

40054496 Smith Hratt + Diaz 1110-99362

ADJUSTABLE RATE NOTE

(6-Month LIBOR Index - Rate Caps)
(Assumable during Life of Loan) (First Business Day of Preceding Month Lookback)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

February 16, 2005 [Date] BREA, CA 92821 [City] [State]

2973 BIRD AVENUE #5, MIAMI, FL 33133

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 192,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is FREMONT INVESTMENT & LOAN

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.150 %. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the first day of each month beginning on April 1, 2005 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on March 1, 2035 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 2727 EAST IMPERIAL HIGHWAY, BREA CA 92821

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ 1,428.96 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of March 1, 2008, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and Ninety-Nine Hundredths percentage points (6.9900 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.150 % or less than 8.1500 %. Thereafter, my interest rate will never be increased or decreased on any subsequent Change Date by more than 1.5000 from the rate of interest I have been paying for the preceding period. My interest rate will never be greater than 15.1500 % or less than 8.1500 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

SEE PREPAYMENT RIDER ATTACHED HERETO AND MADE A PART HEREOF

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a Prepayment. When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 6.0 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

SEE PREPAYMENT RIDER ATTACHED HERETO AND MADE A PART HEREOF

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Margaret Buset (Seal)
MARGARET BUSET -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

[Sign Original Only]

Pay to the order of *
without recourse.

Fremont Investment & Loan
Steven K. Patton
Sr. Vice President

* HSBC Bank USA, National Association, as Trustee for Fremont Home Loan Trust 2005-B, Mortgage-Backed Certificates, Series 2005-B

PREPAYMENT RIDER TO NOTE

This Prepayment Rider is made this 16th day of February, 2005, and is incorporated into and shall be deemed to amend and supplement the Adjustable Rate Note ("Note") made by the undersigned (the "Borrower") to

FREMONT INVESTMENT & LOAN

(the "Lender") of the same date and covering the property located at:

2973 BIRD AVENUE #5, MIAMI, FL 33133

(Property Address)

BORROWER'S RIGHT TO PREPAY

This Prepayment Rider Supersedes Section 5 of the Note

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in a letter that I am doing so. A prepayment of all of the unpaid principal is known as a "full prepayment." A prepayment of only part of the unpaid principal is known as a "partial prepayment."

I may make a full or partial prepayment; however, the Note Holder may charge me for the privilege of prepayment. If more than 20% of the original principal amount of this note is prepaid in any 12-month period within 3 years after the date of this loan, I agree to pay a prepayment charge equal to six months interest on the amount prepaid which is in excess of 20% of the original principal amount of this Note. If I make prepayment, there will be no delays in the due dates or changes in the amounts of my monthly payments unless the Note Holder agrees in writing to those delays or changes. I may make full prepayment at any time.

Margaret Buset 2/16/05

MARGARET BUSET Date

Date

Date

Date

MSPPY1 XTG 10/28/04

4005449L

Return To:
FREMONT INVESTMENT & LOAN
P.O. BOX 34078
FULLERTON, CA 92834-34078

This document was prepared by:
BARBARA LICON

5000136449

[Space Above This Line For Recording Data]

MORTGAGE

MIN 1001944-5000136449-7

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated February 16, 2005 together with all Riders to this document.
(B) "Borrower" is MARGARET BUSET a single woman and Joseph T Buset

Borrower is the mortgagor under this Security Instrument.
(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(D) "Lender" is FREMONT INVESTMENT & LOAN

Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA
Lender's address is
2727 EAST IMPERIAL HIGHWAY, BREA CA 92821
(E) "Note" means the promissory note signed by Borrower and dated February 16, 2005
The Note states that Borrower owes Lender One Hundred Ninety-Two Thousand and No/100
---------- Dollars
(U.S. $ 192,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than March 1, 2035
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[X] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(L) "Escrow Items" means those items that are described in Section 3.
(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County [Type of Recording Jurisdiction]
of MIAMI-DADE [Name of Recording Jurisdiction]:
SEE ATTACHED LEGAL DESCRIPTION

Unit No. 5, of Tiger's Ten Condominium, a Condominium according to the Declaration of Condominium thereof, as recorded in the Official Records Book 10051, at Page 1576, and First Amendment thereto, recorded in appurtenances thereto, including an undivided interest in the common elements of said condominium as set forth in the Declaration, and together with the parking space assigned to said unit.

Parcel ID Number: 01-41-16-052-0050 which currently has the address of
2973 BIRD AVE #5 [Street]
MIAMI [City], Florida 33133 [Zip Code]
("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

Initials: MB

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in

full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard

or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise

agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of

disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender

to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument

shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument,

and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental

Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Lesa M. Nord

Heather Price

MARGARET BUSET (Seal) -Borrower

(Address)

Joseph T. Buset (Seal) -Borrower

Joseph T. Buset

(Address)

_____ (Seal) -Borrower

(Address)

_____ (Seal) -Borrower

(Address)

_____ (Seal) -Borrower

(Address)

_____ (Seal) -Borrower

(Address)

_____ (Seal) -Borrower

(Address)

_____ (Seal) -Borrower

(Address)

STATE OF FLORIDA,
County ss: Dade
The foregoing instrument was acknowledged before me this 16 Feb. 2005 by
Margaret Pouset and Joseph Pouset

who is personally known to me or who has produced [illegible] as identification.

Notary Public

LENA M. MORA
COMMISSION # DD072258
EXPIRES JUL 09 2005
BONDED THROUGH
ADVANTAGE NOTARY

ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER is made this 16th day of February 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to
FREMONT INVESTMENT & LOAN

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
2973 BIRD AVENUE #5, MIAMI, FL 33133

[Property Address]

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.150 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of March 2008, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is: the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the WALL STREET JOURNAL.

The most recent Index figure available as of the date: ☒ 45 days ☐ _____ before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new Index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and Ninety-Nine Hundredths percentage points (6.9900 %) to the Current Index. The Note Holder will then round the result of this addition to the ☒ Nearest ☐ Next Highest ☐ Next Lowest One-Eighth (0.125 %). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal I am expected to owe at the Change Date in full on the maturity date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

☐ Interest-Only Period

The "Interest-only Period" is the period from the date of this Note through N/A . For the interest-only period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to pay the interest which accrues on the unpaid principal of my loan. The result of this calculation will be the new amount of my monthly payment.

The "Amortization Period" is the period after the interest-only period. For the amortization period, after calculating my new interest rate as provided above, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes
(Please check appropriate boxes; if no box is checked, there will be no maximum limit on changes.)

☐ (1) There will be no maximum limit on interest rate changes.
☒ (2) The interest rate I am required to pay at the first Change Date will not be greater than 11.150 % or less than 8.1500 subsequent %.
☒ (3) My interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage points (1.5000 %) from the rate of interest I have been paying for the preceding period.
☒ (4) My interest rate will never be greater than 15.1500 %, which is called the "Maximum Rate."
☒ (5) My interest rate will never be less than 8.1500 %, which is called the "Minimum Rate."
☒ (6) My interest rate will never be less than the initial interest rate.
☒ (7) The interest rate I am required to pay at the first Change Date will not be greater than 11.150 % or less than 8.1500 subsequent %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage points (1.5000 %) from the rate of interest I have been paying for the preceding period.

(E) Effective Date of Changes
My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes
The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if a Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

MARGARET BUSET (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 16th day of February 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to FREMONT INVESTMENT & LOAN

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
2973 BIRD AVENUE #5, MIAMI, FL 33133

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:
TIGERS TEN CONDO

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the

provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

Margaret Buset (Seal)
MARGARET BUSET -Borrower

Joseph L. Buset (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower