

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----X

In re: Chapter 11

THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE

DITECH HOLDING CORPORATION, et al., Case No. 19-10412 (JLG)

Wind Down Estates 1: (Jointly Administered)

-----X

Cherane Pefley, Creditor

AMENDED RESPONSE AND OBJECTION I FILED on 05/12/2021

CLAIMS TRUSTEE'S FORTY-THIRD OMNIBUS OBJECTION TO PROOFS OF CLAIM

(INSUFFICIENT LEGAL BASIS UNSECURED CONSUMER CREDITOR CLAIMS)

COMES NOW, the Consumer Creditor, CHERANE PEFLEY, and files this Amended Objection in response to the Claims Trustee's Forty-Third Omnibus Objection to Proof of Claim and as grounds does state:

To include: EXHIBIT A - **MANDATE Order Per Cori um Affirm**

. EXHIBIT B - **Appellee's Answer Brief**

EXHIBIT C - **Ordered that Appellee's January 24, 2021, Motion for Attorney's Fees**

EXHIBIT D - **Transcript of the three (3) hour trial dated March 27, 2014, and stamped
is
Certificate of Reporter**

On January 24, 2020 Ditech, after my dismissing as ordered by this Bankruptcy Court, filed an Notice of Appeal on my Amended Final Judgment 5/22/2014

On the affirmative defense for Breach of Contract, Fraud and Unclean Hands.

DITECH against Ms. PEFLEY seven (7) years ago.

EXHIBIT A - Order Per Corium Affirm

WHEREFORE, MS. PEFLEY requests that this Court, enter an Order DITECH to cancel my original note and mortgage as (not limited to) PCA Appellate Court has made this note and mortgage unenforceable or void or etc..

And any other relief this BANKRUPTCH Court that I should receive for their actions of FRAD, MALICIOUS PROSECUTIONS WITH UNCLEAR HANDS, that this Bankruptcy Court deems as my damages.

I, Cherane Pefley Reserves her Rights and Remedies

Cherane Pefley, Pro se August 15, 2021
Cherane Pefley, Pro Se

Cherane Pefley August 16, 2021

14877 Snail Trail
Loxahatchee Groves, FL 33470

info@ditech-settlement.com

ttwomey@ditech-settlement.com

David.Hill@weil.com David.Hill@weil.com
richard.slack@weil.com richard.slack@weil.com>

M A N D A T E

from

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT**

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Burton C. Conner, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE: August 20, 2021
CASE NO.: 20-0243
COUNTY OF ORIGIN: Palm Beach
T.C. CASE NO.: 502010CA012592XXXXMB

STYLE: GREEN TREE SERVICING, LLC. v. CHERANE PEFLEY



Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

Served:

cc: Michael P. De Simone
Steven J Brotman

Robert Moore
Clerk Palm Beach

Samuel Alexander

kr

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

GREEN TREE SERVICING, LLC.,
Appellant,

v.

CHERANE PEFFLEY,
Appellee.

No. 4D20-243

[July 29, 2021]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Susan R. Lubitz, Judge; L.T. Case No. 50-2010-CA-012592-XXXX-MB.

Michael P. De Simone and Steven J. Brotman of Locke Lord LLP, West Palm Beach, for appellant.

Samuel Alexander of Alexander Appellate Law P.A., DeLand, for appellee.

PER CURIAM.

Affirmed.

DAMOORGIAN, KUNTZ, JJ., and FAHNESTOCK, FABIENNE, Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

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Appellant,

v.

CHERANE PEFLEY,
Appellee.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11

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DITECH HOLDING CORPORATION, et al., Case No. 19-10412 (JLG)

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Wind Down Estates1 : (Jointly Administered)

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OBJECTION TO CLAIMS TRUSTEE'S FORTY-THIRD
OMNIBUS OBJECTION TO PROOFS OF CLAIM
(INSUFFICIENT LEGAL BASIS UNSECURED CONSUMER CREDITOR CLAIMS)

COMES NOW, the Consumer Creditor, CHERANE PEFLEY, and files this her Objection in response to the Claims Trustee's Forty- Third Omnibus Objection to Proof of Claim and as grounds does state:

1. That the Creditor, CHERANE PEFLEY, filed a Proof of Claim, Number 22049 in the sum of ninety million dollars (\$90,000,000.00)
2. That on April 16, 2021, the Claims Trustee filed an Objection to the Proof of Claim stating that there was insufficient legal basis for the claim.
3. That Creditor objects that there was an insufficient legal basis for her claim. That Creditor presents sufficient facts which, if taken as true, will indicate that a violation of law occurred and that the Creditor is entitled to a legal remedy.
4. Creditor asserted claims for fraud, malicious prosecution and wrongful publication of foreclosure and herein presents all facts necessary to uphold such claims.
5. A misrepresentation is an untrue or misleading statement of fact made during negotiations by one party to another, the statement then inducing that other party to enter into a contract. Creditor/PEFLEY asserts that Ditech knowingly filed false reports and statements that served to trick or deceive Creditor into signing a contract for a

modification that it knew was not going to honored in 'good faith. Ditech, knowing it was going to foreclose on Creditor, misrepresented its' intentions when it agreed that Creditor make three payments on the trial period plan (TPP) and only reported one payment to Fannie Mae. As the third automatic payment was being taken from Creditor's bank account, Fannie Mae, unaware of the second and third automatic payments and believing that Creditor did not keep her promise to pay, assigned Creditor's Mortgage and Promissory Note to Ditech so Ditech could foreclose against the Creditor. As a direct consequence of Ditech's deliberate and unlawful conduct, PEFLEY'S business no longer produced the revenue to cover her real estate expenses and she lost the real property.

6. When Ditech became holder of the Note and Mortgage, it became a party to the contract with Creditor/PEFLEY. See *Amjad Munim, M.D., P.A. v. Azar*, 648 So. 2d 145 (4th DCA 1994, Rehearing and Rehearing En Banc Denied Feb. 2, 1995) (holding under traditional corporate law rule, liability of predecessor corporation is not automatically imposed upon successor corporation unless successor expressly or impliedly assumes obligations of predecessor, transaction is de facto merger, successor is mere continuation of predecessor, or transaction is a fraudulent effort to avoid liabilities of predecessor.)

Creditor asserts that as a real party in interest, Ditech was a "mere continuation of predecessor" PNC. Therein, Ditech was responsible for complying with all provisions of the contract (which did **not** include foreclosure). Failure to comply with any of the contract's provisions would be a breach.

Ditech and Creditor/PEFLEY had a binding agreement that was to be

honored by each party. Ditech breached the agreement when it foreclosed on Creditor even though the record showed and the Court ruled that Creditor/PEFLEY had made all three payments punctually and in full. As a result of Ditech's breach, Creditor was delivered into poverty.

7. Although Ditech had no legal reason or judicial permission to foreclose on Creditor's/PEFLEY's property. Ditech attempted to foreclose. Ditech's publication **EXHIBIT F** of the foreclosure was wrongful. There should never have been a foreclosure, nor a publication of it. The Court agreed and on December 14, 2010, the Court vacated its decision for foreclosure and sale of Creditor's property. A non-jury trial was held on March 27, 2010 and the resulting decision was against Ditech and in favor of Creditor/PEFLEY. Ditech offered Creditor loss mitigation while still scheming behind the scenes to foreclose. **See Trial transcript expert testified ONE PAYMENT THE TPP**

8. Ditech attempted foreclosure two more times and failed as these attempts were fraudulent. The foreclosure attempts by Ditech were wrongful because Ditech was involved in unethical activity- that being, the failure to admit to and concealed from Fannie Mae that the Creditor had made three payments for the TPP and the failure to take the place of its predecessor in contract. **EXHIBIT C**

Contemporaneously with the second foreclosure, Ditech Improperly treated the loan payments during the transfer period. According to Title 12, 2006 Edition Supplement 5, Chapter 27, RESPA, § 2605(2)(d) entitled "Treatment of loan payments during transfer period": "During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no

such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment”

The initial and continuing attempts by Ditech to foreclosure should never have taken place as Creditor had made all payments due. The initiation of a foreclosure against Creditor/PEFLEY was without probable cause and thereby malicious in nature, causing Creditor to make her claim of Malicious Prosecution to the Trustee against Ditech.

EXHIBIT A

9. Under Bankruptcy 101 (5) Creditor/ PEFLEY has a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. PEFLEY alleges that Ditech breached its agreement with her, fraudulently and maliciously brought forth foreclosure proceedings. As a result of Ditech’s actions, Creditor suffered damages and has a right to collect payment from Ditech as restitution for those damages.

WHEREFORE, Creditor/PEFLEY requests that this Court dismiss its’ objection to her proof of claim.

Cherane Pefley, Pro Se

CHERANE PEFLEY

May 10, 2021

EXHIBIT B

AMENDED FINAL JUGEMENT

Plaintiff comes to court with unclean hands"

"prevented defendant from complying with the terms of the loan"

"unconscionable to rule in favor of the plaintiff"

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

CIRCUIT CIVIL DIVISION AW
CASE NO. 502010CA012592XXXXMB

GREEN TREE SERVICING LLC,
Plaintiff(s)

v.
CHERANE PEFLEY,
Defendant(s).

AMENDED FINAL JUDGMENT

THIS CAUSE came on for Non-Jury Trial on March 27, 2014, and, the Court having taken testimony of witnesses and heard argument of counsel for both the Plaintiff and the Defendant, and being otherwise fully apprised in the premises, makes the following findings of fact and law;

1. In accordance with the Sixth Affirmative Defense filed by the Defendant, the Plaintiff's predecessor in interest agreed to a monthly mortgage payment of \$ 2,506.07 in October 2008, then refused to accept the Defendant's payments.
2. The Plaintiff's predecessor prevented the Defendant from complying with the terms of the loan. Plaintiff's predecessor comes to Court with unclean hands and it would be unconscionable to render a verdict in favor of the Plaintiff.


IT IS, THEREFORE,

ORDERED AND ADJUDGED as follows:

That the Court enters a Judgment in favor of Defendant CHERANE PEFLEY and reserves jurisdiction to award attorney's fees to Defendant upon proper proof and an evidentiary hearing, if necessary.

The original promissory note and mortgage shall be returned to Plaintiff's attorney uncanceled.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida, this 22nd day of May, 2014, nunc pro tunc 8th day of April, 2014.


Circuit Judge Susan R. Lubitz

Copies Furnished to:

Law Offices Of Philippe Symonovicz, 1995 East Oakland Park Boulevard - Suite 210 Fort Lauderdale,
FL 33306
SHD Legal Group, P.A P.O. Box 11438 Fort Lauderdale, Florida 33339-1438

CFN 20140194941, OR BK 26816 PG 92, RECORDED 05/28/2014 09:23:05
Sharon R. Bock, CLERK & COMPTROLLER, Palm Beach County, NUM OF PAGES 1

EXHIBIT A
ORDER BY THE COURT
COUNTERCLAIM COUNTS 1 AND TWO
APPROVED FOR BREACH OF
CONTRACT AND MALICIOUS
PROSECUTION
COUNT THREE FRAUD THIRTY DAYS
TO AMEND THIRD COUNT ON FRAUD
FEBRUARY 8, 2019
DITECH FILED BANKRUPTCY TWO
DAYS LATER that put a stay on my six year
old counterclaim with finally this
court order for me to dismiss with
ruling my case as person of
interest to be in consumer
recovery for damages

Filing # 84609737 E-Filed 02/08/2019 04:20:21 PM

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 10-2010-CA-012592XXXXMB (AF)

GREEN TREE SERVICING, LLC,

Plaintiff/Counter-Defendant,

vs.

CHERANE PEFFLEY, et al.,

Defendants/Counter-Plaintiffs.

ORDER ON COUNTER-DEFENDANT DITECH FINANCIAL LLC'S
MOTION TO DISMISS COUNT III OF COUNTER-PLAINTIFF'S
FOURTH AMENDED COUNTERCLAIM

Motion For Relief/Supplemental Motion to Restyle Case
THIS CAUSE came before the Court on the 8th day of February, 2019, upon Counter-

Defendant, DITECH FINANCIAL LLC (now Green Tree Servicing, LLC) Motion to Dismiss
Count III of Counter-Plaintiff's Fourth Amended Counterclaim (the "Motion"). The Court,
having reviewed the Court's file, heard argument of counsel and being otherwise fully advised in
the premises, it is

ORDERED AND ADJUDGED as follows:

1. Counter-Defendant's Motion is hereby *granted, without prejudice.*
2. *Counter-Plaintiff's Count III for*

fraud is not pleaded with the
necessary particularity.
It is denied, at Counter-Plaintiff's option. The parties are free to
DONE AND ORDERED at West Palm Beach, Palm Beach County, Fla. *6* day of *Feb*

February, 2019. *Attest for Judge to*
Re-style their filings to
avoid confusion as to who
the remaining Plaintiff is in
this case, however, the Clerk shall not make any changes to
the original style in the Court file, and this order will
not affect same. *CEP*

EXHIBIT C

**IN PBC DOCKET TO ANSWER
BY DITECH ATTORNEY**

modify the terms of the loan would be in writing and the Plaintiff states that this party has made reasonable inquiry and without waiving said objection the information known or readily available by the Plaintiff is insufficient to enable the Plaintiff to admit or deny anything beyond the fact that Plaintiff admits that the Defendant made periodic payments for \$1,099.44 for the months of January through March of 2010.

14. As to Request Number 14, Admitted that \$1099.44 was paid and received monthly in January through March, 2010.
15. As to Request Number 15, Admitted that \$3,912.65 was due and owing from the Defendant as an escrow payment in June of 2008.
16. As to Request Number 16, Admitted.
17. As to Request Number 17, the Plaintiff states that this party has made reasonable inquiry and the information regarding information on Form 1098 known or

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

CIRCUIT CIVIL DIVISION A/W
CASE NO. 502010CA012592XXXXMB

GREEN TREE SERVICING LLC,
Plaintiff(s)

v.
UNKNOWN TENANT NO 1,
UNKNOWN TENANT NO 2,
CHERANE PEELEY,
Defendant(s).

COPY

ORDER DIRECTING CLERK TO REASSIGN CASE

THIS CAUSE came before the Court upon information that the foreclosure case has been resolved and that there remains only Defendant's counter-claim for money damages and demand for jury trial. Accordingly, the case should be reassigned in accordance with Administrative Order 3.302-6/13. It is therefore, ORDERED AND ADJUDGED:

The clerk shall randomly reassign this case to a general civil division.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, on this
15th day of August, 2014.


RICHARD L. OFTEDAL RICHARD L. OFTEDAL
Circuit Judge Circuit Judge

EXHBIT E

**DITECH JANUARY 2010
INVOICE WITH MY
OVERAGE OF ESCOW**

**CORPOATION ADVANCE
AND ESCROW**

19-10411 Jlg Doc 3496 Filed 09/03/21 Entered 09/20/21 16:22:02 Main Document Pg 204 of 208

Current Payment:
Past Due Payment:
Escrow Due:
Insurance Due:
Additional Charges:
Billed Late Charges:
Total Amount Due:

1-22-2010

Talhad

170-4804



and held by servicer for the future payment of taxes and insurance.
onies advanced by servicer to pay taxes, insurance, and any other
art of an escrow account.
o pay your loan in full.

TO STOP IN
DECEMBER 14 2010

ANOTHER ORDER
ONE YEAR LATER
BEFORE THEY
STOPPED
ADVERTISING

/ 1



66.7%



2011 APR - / AM 8:23

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 1

PALM BEACH DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
West Palm Beach, Palm Beach County, Florida

STATE OF FLORIDA COUNTY OF PALM BEACH:

Before the undersigned authority personally appeared
N. LYONS, who on oath says that he or she is the
LEGAL CLERK, Legal Notices of the Palm Beach Daily
Business Review t/k/a Palm Beach Review, a newspaper
published at West Palm Beach in Palm Beach
County, Florida; that the attached copy of advertisement,
being a Legal Advertisement of Notice in the matter of

502010CA012592XXXXMB
NOTICE OF SALE PURSUANT TO CHAPTER 45
GREEN TREE SERVICING LLC VS CHERANE PEFLEY, ET AL

in the CIRCUIT Court,
was published in said newspaper in the issues of

03/30/2011 04/06/2011

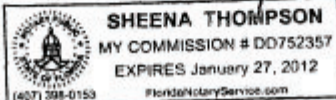
Affiant further says that the said Palm Beach Daily Business
Review is a newspaper published at Palm Beach, in said
Palm Beach County, Florida and that the said newspaper has
heretofore been continuously published in said Palm Beach
County, Florida, and has been entered as second class mail matter
at the post office in West Palm Beach in said Palm Beach County,
Florida, for a period of one year next preceding the first
publication of the attached copy of advertisement; and
affiant further says that he or she has neither paid nor promised
any person, firm or corporation any discount, rebate,
commission or refund for the purpose of securing this
advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

06 day of APRIL A.D. 2011

(SEAL)

N. LYONS personally known to me



**NOTICE OF SALE
PURSUANT TO CHAPTER 45
IN THE CIRCUIT COURT FOR PALM
BEACH COUNTY, FLORIDA,
CIVIL DIVISION
CASE NO. 502010CA012592
XXXXMBAW
GREEN TREE SERVICING LLC,
Plaintiff,**

**vs.
CHERANE PEFLEY, et al.,
Defendants.**

NOTICE IS HEREBY GIVEN pur-
suant to an Order or Summary Final
Judgment of foreclosure dated Aug
20, 2010, and entered in Case No.
502010CA012592XXXXMB, of the
Circuit Court in and for Palm Beach
County, Florida, wherein Green Tree
Servicing LLC is Plaintiff and CHER-
ANE PEFLEY, UNKNOWN TEN-
ANT NO. 1; UNKNOWN TENANT
NO. 2; and ALL UNKNOWN PAR-
TIES CLAIMING INTERESTS BY,
THROUGH, UNDER OR AGAINST
A NAMED DEFENDANT TO THIS
ACTION, OR HAVING OR CLAIM-
ING TO HAVE ANY RIGHT, TITLE
OR INTEREST IN THE PROPERTY
HEREIN DESCRIBED, are Defen-
dants, I will sell to the highest and
best bidder for cash at www.
mypalmbeachclerk.clerkauction.com
at Palm Beach County, Florida, at
10:00 a.m. on the 14 day of APRIL,
2011, the following described prop-
erty as set forth in said Order or Final
Judgment, to-wit:

THE WEST 258 FEET OF THE
EAST 774 FEET OF THE
NORTH 1/2 OF TRACT 9,
BLOCK C OF LOXAHATCHEE
GROVES, ACCORDING TO
THE PLAT THEREOF, RE-
CORDED IN PLAT BOOK 12,
PAGE 29, PUBLIC RECORDS
OF PALM BEACH COUNTY,
FLORIDA, TOGETHER WITH
AN EASEMENT FOR IN-
GRESS AND EGRESS OVER
THE SOUTH 30 FEET OF THE
NORTH 1/2 OF TRACT 9 AND
OVER THE NORTH 30 FEET
OF THE SOUTH 1/2 OF
TRACT 9, BLOCK C OF SAID
LOXAHATCHEE GROVES.
ANY PERSON CLAIMING AN
INTEREST IN THE SURPLUS
FROM THE SALE, IF ANY,
OTHER THAN THE PROP-
ERTY OWNER AS OF THE DATE
OF THE LIS PENDENS MUST
FILE A CLAIM WITHIN 60
DAYS AFTER THE SALE.

If you are a person with a disabili-
ty who needs any accommodation
in order to participate in this pro-
ceeding, you are entitled, at no cost
to you, to the provision of certain as-
sistance. Please contact Krista Gar-
ber, ADA Coordinator, in the Admin-
istrative Office of the Court, Palm
Beach County Courthouse, 205
North Dixie Highway, Room 5.2500,

DATED at West Palm Beach,
Florida, on SEPT 10, 2010.
SHARON R. BOCK
As Clerk, Circuit Court
(Circuit Court Seal)
By: EDWARD WILHELMS
As Deputy Clerk
SMITH, HIATT & DIAZ, P.A.
Attorneys for Plaintiff
PO BOX 11438
Fort Lauderdale, FL 33339-1438
Telephone: (954) 564-0071
Pursuant to Florida Statute
45.031(2), this notice shall be pub-

EXHIBIT G

My client who has bought
from me since january 2028
when my plea was this is near
end

5/12/2021

and correct

0
0

5,000

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11

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DITECH HOLDING CORPORATION, et al., Case No. 19-10412 (JLG)

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Wind Down Estates1 : (Jointly Administered)

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OMNIBUS OBJECTION TO PROOFS OF CLAIM
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2. That on April 16, 2021, the Claims Trustee filed an Objection to the Proof of Claim stating that there was insufficient legal basis for the claim.
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4. Creditor asserted claims for fraud, malicious prosecution and wrongful publication of foreclosure and herein presents all facts necessary to uphold such claims.
5. A misrepresentation is an untrue or misleading statement of fact made during negotiations by one party to another, the statement then inducing that other party to enter into a contract. Creditor/PEFLEY asserts that Ditech knowingly filed false reports and statements that served to trick or deceive Creditor into signing a contract for a

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7. Although Ditech had no legal reason or judicial permission to foreclose on Creditor's/PEFLEY's property. Ditech attempted to foreclose. Ditech's publication **EXHIBIT F** of the foreclosure was wrongful. There should never have been a foreclosure, nor a publication of it. The Court agreed and on December 14, 2010, the Court vacated its decision for foreclosure and sale of Creditor's property. A non-jury trial was held on March 27, 2010 and the resulting decision was against Ditech and in favor of Creditor/PEFLEY. Ditech offered Creditor loss mitigation while still scheming behind the scenes to foreclose. **See Trial transcript expert testified ONE PAYMENT THE TPP**

8. Ditech attempted foreclosure two more times and failed as these attempts were fraudulent. The foreclosure attempts by Ditech were wrongful because Ditech was involved in unethical activity- that being, the failure to admit to and concealed from Fannie Mae that the Creditor had made three payments for the TPP and the failure to take the place of its predecessor in contract. **EXHIBIT C**

Contemporaneously with the second foreclosure, Ditech Improperly treated the loan payments during the transfer period. According to Title 12, 2006 Edition Supplement 5, Chapter 27, RESPA, § 2605(2)(d) entitled "Treatment of loan payments during transfer period": "During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no

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WHEREFORE, Creditor/PEFLEY requests that this Court dismiss its’ objection to her proof of claim.

Cherane Pefley, Pro Se

CHERANE PEFLEY

May 10, 2021

EXHIBIT B

AMENDED FINAL JUGEMENT

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"prevented defendant from complying with the terms of the loan"

"unconscionable to rule in favor of the plaintiff"

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

CIRCUIT CIVIL DIVISION A/W
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Plaintiff(s)

v.
CHERANE PEFLEY,
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IT IS, THEREFORE,

ORDERED AND ADJUDGED as follows:

That the Court enters a Judgment in favor of Defendant CHERANE PEFLEY and reserves jurisdiction to award attorney's fees to Defendant upon proper proof and an evidentiary hearing, if necessary.

The original promissory note and mortgage shall be returned to Plaintiff's attorney uncanceled.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida, this 22nd day of May, 2014, nunc pro tunc 8th day of April, 2014.


Circuit Judge Susan R. Lubitz

Copies Furnished to:

Law Offices Of Philippe Symonovicz, 1995 East Oakland Park Boulevard - Suite 210 Fort Lauderdale,
FL 33306
SHD Legal Group, P.A P.O. Box 11438 Fort Lauderdale, Florida 33339-1438

CFN 20140194941, OR BK 26816 PG 92, RECORDED 05/28/2014 09:23:05
Sharon R. Bock, CLERK & COMPTROLLER, Palm Beach County, NUM OF PAGES 1

EXHIBIT A
ORDER BY THE COURT
COUNTERCLAIM COUNTS 1 AND TWO
APPROVED FOR BREACH OF
CONTRACT AND MALICIOUS
PROSECUTION
COUNT THREE FRAUD THIRTY DAYS
TO AMEND THIRD COUNT ON FRAUD
FEBRUARY 8, 2019
DITECH FILED BANKRUPTCY TWO
DAYS LATER that put a stay on my sex year
old counterclaim with finally this
court order for me to dismiss with
ruling my case as person of
interest to be in consumer
recovery for damages

Filing # 84669737 E-Filed 02/08/2019 04:20:21 PM

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO. 19-2010-CA-012592-XXXXMB (AP)

GREEN TREE SERVICING, LLC,

Plaintiff/Counter-Defendant,

vs.

CHIRANE PEPLAY, et al.,

Defendants/Counter-Plaintiffs.

ORDER ON COUNTER-DEFENDANT DITECH FINANCIAL LLC'S
MOTION TO DISMISS COUNT III OF COUNTER-PLAINTIFF'S
FOURTH AMENDED COUNTERCLAIM and on

Motion for Relief/Supplemental Motion to Reple Case

THIS CAUSE came before the Court on the 8th day of February, 2019, upon Counter-
Defendant, DITECH FINANCIAL LLC (DTECH) Green Tree Servicing, LLC's Motion to Dismiss
Count III of Counter-Plaintiff's Fourth Amended Counterclaim (the "Motion"). The Court,
having reviewed the Court's file, heard argument of counsel and being otherwise fully advised in
the premises, it is

ORDERED AND ADJUDGED as follows:

1. Counter-Defendant's Motion is hereby ~~granted~~ *granted, without prejudice.*

2. ~~Counter-Plaintiff's Count III for~~ *Count III is not pleaded with the*

necessary specificity. 30 days leave to amend.
If desired, at Counter-Plaintiff's option. The parties are free to
DONE AND ORDERED at West Palm Beach, Palm Beach County, Fla. *18* day of *Feb*

February, 2019, at the Motion for Relief to

Reple-style their Rights to

and *Count III* as to who

the remaining Plaintiff is in

this case, however, the Court shall not make any changes to

the *APR* *Not* style in the Court file, and this order will

not affect same. *Let*

FILED PALM BEACH COUNTY, FL, 31 WARDEN R. DOCK, CLERK, 02/08/2019 04:20:21 PM

EXHIBIT C

**IN PBC DOCKET TO ANSWER
BY DITECH ATTORNEY**

modify the terms of the loan would be in writing and the Plaintiff states that this party has made reasonable inquiry and without waiving said objection the information known or readily available by the Plaintiff is insufficient to enable the Plaintiff to admit or deny anything beyond the fact that Plaintiff admits that the Defendant made periodic payments for \$1,099.44 for the months of January through March of 2010.

14. As to Request Number 14, Admitted that \$1099.44 was paid and received monthly in January through March, 2010.
15. As to Request Number 15, Admitted that \$3,912.65 was due and owing from the Defendant as an escrow payment in June of 2008.
16. As to Request Number 16, Admitted.
17. As to Request Number 17, the Plaintiff states that this party has made reasonable inquiry and the information regarding information on Form 1098 known or

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

CIRCUIT CIVIL DIVISION AW
CASE NO. 20210CA012592XXXXMB

GREEN TREE SERVICING LLC,
Plaintiff(s)

v.
UNKNOWN TENANT NO 1,
UNKNOWN TENANT NO 2,
CHERANF PEELEY,
Defendant(s).


COPY

ORDER DIRECTING CLERK TO REASSIGN CASE

THIS CAUSE came before the Court upon information that the forcetout case has been resolved and that there remains only Defendant's counter-claim for money damages and demand for jury trial. Accordingly, the case should be reassigned in accordance with Administrative Order, 3.302-6/13. It is therefore, ORDERED AND ADJUDGED:

The clerk shall randomly reassign this case to a general civil division.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, on this
15th day of August, 2014.


RICHARD L. OFTEDAL RICHARD L. OFTEDAL
Circuit Judge Circuit Judge

EXHBIT E

**DITECH JANUARY 2010
INVOICE WITH MY
OVERAGE OF ESCOW**

**CORPOATION ADVANCE
AND ESCROW**

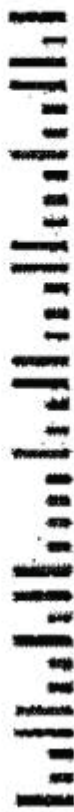
19-10411-101

Current Payment:
Past Due Payment:
Escrow Due:
Insurance Due:
Additional Charges:
Billed Late Charges:
Total Amount Due:

1-22-2010

Talhad

170-4804



and held by servicer for the future payment of taxes and insurance.
onies advanced by servicer to pay taxes, insurance, and any other
art of an escrow account.
o pay your loan in full.

TO STOP IN
DECEMBER 14 2010

ANOTHER ORDER
ONE YEAR LATER
BEFORE THEY
STOPPED
ADVERTISING

1



2011 APR - / AM 8:23

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 1

PALM BEACH DAILY BUSINESS REVIEW

Published Daily except Saturday, Sunday and
Legal Holidays
West Palm Beach, Palm Beach County, Florida

STATE OF FLORIDA COUNTY OF PALM BEACH:

Before the undersigned authority personally appeared
N. LYONS, who on oath says that he or she is the
LEGAL CLERK, Legal Notices of the Palm Beach Daily
Business Review t/a Palm Beach Review, a newspaper
published at West Palm Beach in Palm Beach
County, Florida; that the attached copy of advertisement,
being a Legal Advertisement of Notice in the matter of

502010CA012592XXXXMB
NOTICE OF SALE PURSUANT TO CHAPTER 45
GREEN TREE SERVICING LLC VS CHERANE PEFLEY, ET AL

in the CIRCUIT Court,
was published in said newspaper in the issues of

03/30/2011 04/06/2011

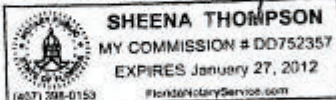
Affiant further says that the said Palm Beach Daily Business
Review is a newspaper published at Palm Beach, in said
Palm Beach County, Florida and that the said newspaper has
heretofore been continuously published in said Palm Beach
County, Florida, and has been entered as second class mail matter
at the post office in West Palm Beach in said Palm Beach County,
Florida, for a period of one year next preceding the first
publication of the attached copy of advertisement; and
affiant further says that he or she has neither paid nor promised
any person, firm or corporation any discount, rebate,
commission or refund for the purpose of securing this
advertisement for publication in the said newspaper.

Sworn to and subscribed before me this

06 day of APRIL A.D. 2011

(SEAL)

N. LYONS personally known to me



**NOTICE OF SALE
PURSUANT TO CHAPTER 45**
IN THE CIRCUIT COURT FOR PALM
BEACH COUNTY, FLORIDA,
CIVIL DIVISION
CASE NO. 502010CA012592
XXXXMBAW
GREEN TREE SERVICING LLC,
Plaintiff,

vs.
CHERANE PEFLEY, et al.,
Defendants.

NOTICE IS HEREBY GIVEN pur-
suant to an Order or Summary Final
Judgment of foreclosure dated Aug
20, 2010, and entered in Case No.
502010CA012592XXXXMB, of the
Circuit Court in and for Palm Beach
County, Florida, wherein Green Tree
Servicing LLC is Plaintiff and CHE-
RANE PEFLEY, UNKNOWN TEN-
ANT NO. 1; UNKNOWN TENANT
NO. 2; and ALL UNKNOWN PAR-
TIES CLAIMING INTERESTS BY,
THROUGH, UNDER OR AGAINST
A NAMED DEFENDANT TO THIS
ACTION, OR HAVING OR CLAIM-
ING TO HAVE ANY RIGHT, TITLE
OR INTEREST IN THE PROPERTY
HEREIN DESCRIBED, are Defen-
dants, I will sell to the highest and
best bidder for cash at www.
mypalmbeachclerk.clerkauction.com
at Palm Beach County, Florida, at
10:00 a.m. on the 14 day of APRIL,
2011, the following described prop-
erty as set forth in said Order or Final
Judgment, to-wit:

THE WEST 258 FEET OF THE
EAST 774 FEET OF THE
NORTH 1/2 OF TRACT 9,
BLOCK C OF LOXAHATCHEE
GROVES, ACCORDING TO
THE PLAT THEREOF, RE-
CORDED IN PLAT BOOK 12,
PAGE 29, PUBLIC RECORDS
OF PALM BEACH COUNTY,
FLORIDA, TOGETHER WITH
AN EASEMENT FOR IN-
GRESS AND EGRESS OVER
THE SOUTH 30 FEET OF THE
NORTH 1/2 OF TRACT 9 AND
OVER THE NORTH 30 FEET
OF THE SOUTH 1/2 OF
TRACT 9, BLOCK C OF SAID
LOXAHATCHEE GROVES.
ANY PERSON CLAIMING AN
INTEREST IN THE SURPLUS
FROM THE SALE, IF ANY,
OTHER THAN THE PROP-
ERTY OWNER AS OF THE DATE
OF THE LIS PENDENS MUST
FILE A CLAIM WITHIN 60
DAYS AFTER THE SALE.

If you are a person with a disabili-
ty who needs any accommodation
in order to participate in this pro-
ceeding, you are entitled, at no cost
to you, to the provision of certain as-
sistance. Please contact Krista Gar-
ber, ADA Coordinator, in the Admin-
istrative Office of the Court, Palm
Beach County Courthouse, 205
North Dixie Highway, Room 5.2500,

DATED at West Palm Beach,
Florida, on SEPT 10, 2010.
SHARON R. BOCK
As Clerk, Circuit Court
(Circuit Court Seal)
By: EDWARD WILHELMS
As Deputy Clerk
SMITH, HIATT & DIAZ, P.A.
Attorneys for Plaintiff
PO BOX 11438
Fort Lauderdale, FL 33339-1438
Telephone: (954) 564-0071
Pursuant to Florida Statute
45.031(2), this notice shall be pub-

EXHIBIT G

My client who has bought
from me since january 2028
when my plea was this is near
end

5/12/2021

and correct

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5,000

EXHIBIT A

ORDER

DISTRICT COURT OF APPEAL OF THE STATE OF
FLORIDA FOURTH DISTRICT

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

GREEN TREE SERVICING, LLC.,
Appellant,

v.

CHERANE PEFLEY,
Appellee.

No. 4D20-243

[July 29, 2021]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Susan R. Lubitz, Judge; L.T. Case No. 50-2010-CA-012592-XXXX-MB.

Michael P. De Simone and Steven J. Brotman of Locke Lord LLP, West Palm Beach, for appellant.

Samuel Alexander of Alexander Appellate Law P.A., DeLand, for appellee.

PER CURIAM.

Affirmed.

DAMOORGIAN, KUNTZ, JJ., and FAHNESTOCK, FABIENNE, Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.

EXHIBIT B

APPELLEE'S ANSWER BRIEF

STATE OF FLORIDA
FOURTH DISTRICT COURT OF APPEAL

Green Tree Servicing, LLC,

Appellant,

Case No. 4D20-243

v.

L.T. Case 502010CA012592XXXXMB

Cherane Pefley,

Appellee.

_____ /

APPELLEE'S ANSWER BRIEF

On Appeal from a Final Order Entered in the Fifteenth Judicial
Circuit in and for Palm Beach County, Florida

Samuel Alexander
Fla. Bar No. 1007757
Alexander Appellate Law P.A.
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DeLand, FL 32720
(386) 490-2705
samuel@alexanderappeals.com
Counsel for Appellant

RECEIVED, 01/15/2021 03:58:27 PM, Clerk, Fourth District Court of Appeal

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INTRODUCTION

In October 2008, Cherane Pefley discovered that her mortgage holder, National City Mortgage, was charging her too much in escrow payments. When she brought this to National City's attention, it immediately apologized and corrected her payment amount.

But after she made two payments, National City began refusing payment. Green Tree Servicing, National City's successor in interest, later sued to foreclose based on National City's rejection of her full payments. The trial court found National City's behavior condemnable and refused to foreclose based on unclean hands and unconscionability.

On appeal, Green Tree argues that National City's correction of the payment amount was not a contract. That is not relevant. The new payment amount reflected what Ms. Pefley actually owed under the note and mortgage. Green Tree also claims the trial court erred in applying the unclean hands doctrine when National City's conduct was not illegal. But the doctrine does not require illegality, only condemnable conduct.

First, Ms. Pefley did not default on her mortgage in 2008. Second, Green Tree was not entitled to foreclosure based on dates that National City prevented Ms. Pefley from paying her mortgage. This Court should affirm.

STATEMENT OF THE CASE AND FACTS

The statement of the case and facts in the initial brief violates the appellate principle that facts should be presented in the light most favorable to the ruling, misrepresents the testimony at trial, and omits critical facts that support the ruling.

In May 2007, senior citizen Cherane Pefley purchased her home in Loxahatchee, Florida. She borrowed \$297,000 from National City Mortgage, secured by a mortgage. Under the note, her principal and interest payment was \$2,051. R 22.

In late 2008, Ms. Pefley discovered that National City was over-escrowing her. T 77. Until early 2008, Ms. Pefley paid \$2,721 a month. R 203. She paid \$2,051 in principal and insurance. R 22. She paid \$200 in mortgage insurance. R 193-94, 203. She paid \$301 in property taxes (\$6,183 annual, prorated to 7/12 of a year). R 2905. And she paid \$169 in hazard insurance (\$3,476 annual premium, prorated to 7/12 of a year).¹

In 2008, her property taxes and hazard insurance premiums dramatically decreased, but everything else remained the same. She owed \$2,051 in principal and interest. R 22. She owed \$200 in mortgage insurance.

¹ The 2007 hazard insurance premium had to be deduced as the only unknown variable in this equation.

R 193-94, 201-03. She owed \$142 in property taxes (\$1,701 annual).² R 2959. And she owed \$110 in hazard insurance (\$1,324 annual premium). R 2601. Adding these all up, her monthly payment should have been \$2,503.

Yet Ms. Pefley's monthly payments increased from \$2,721 in 2007 to \$3,087 in 2008. R 201-03. In October 2008, Ms. Pefley went to her local bank branch and requested that they correct her escrow payments, based on her actual property tax and insurance premium obligations. T 73-80.

The bank apologized for its mistake, corrected the monthly payment amount to \$2,506, effective October 1, 2008, and provided her with a confirmation email. T 79-84; R 2861. The bank manager told Ms. Pefley to bring the email in as proof of her new payment amount until the system registered the change. T 81-82. A few days later, Ms. Pefley received a formal written confirmation from the bank. T 83-84; R 2890.

Ms. Pefley made two payments without incident. T 85-87. Then she received a letter from National City rejecting the second payment. The letter insisted she owed \$3,087. R 2892. In December, National City wrote her a check for the payment it had processed, then refused all subsequent

² In 2008 Ms. Pefley received the homestead exemption and an agricultural tax break, T 75, so her annual property tax decreased from \$6,440 in 2007 to \$1,772 in 2008. R 2904, 2958. The actual amount paid by National City each year was slightly less: \$6,183 in 2007 and \$1,701 in 2008. R 2905, 2959.

payment attempts. T 87; R 1149, 2899-2900.

In 2009, the mortgage was transferred to Green Tree Servicing, who agreed to enter into a modification trial. R 2961, 2966. After Ms. Pefley made all the required payments under the trial agreement, Green Tree denied the modification, explaining that her loan had never met Fannie Mae's guidelines for modification. R 589, 892, 2981.³

In May 2010, Green Tree filed a foreclosure complaint, alleging default dates of November 1, 2008 and all subsequent payments. R 15-17. Ms. Pefley denied default and pleaded the affirmative defense of unclean hands, based on National City's refusal to accept her payments. R 239.

A hearing was held on March 27, 2014. T 1. A Green Tree employee testified that Ms. Pefley had failed to make payments beginning November 1, 2008. T 24, 30. The employee incorrectly testified as to Ms. Pefley's 2008 hazard insurance premium, stating that it was \$5,236. T 57. In fact, that amount represented an overpayment, and Ms. Pefley was refunded \$3,912. R 892, 2609. Ms. Pefley's hazard insurance premium for 2008 was \$1,324, not \$5,236. R 2601.

³ In 2015, Green Tree agreed to pay \$63 million in penalties and compensation to its victims, related in part to its loan modification procedures. See *Thorpe ex rel. Situated v. Walter Inv. Mgmt., Corp.*, 111 F. Supp. 3d 1336, 1365 (S.D. Fla. 2015).

Ms. Pefley testified that her total payments in 2007 were around \$2,700, but they increased dramatically in 2008 even though her hazard insurance premium and property tax burden had both decreased. T 73-78. When she went to the bank, National City corrected the payment to \$2,506, gave her a confirmation email, then mailed her a formal confirmation. T 79-84. She testified that National City accepted this payment twice, in October and November 2008, then began refusing payment. T 85-87.

The trial court ruled in favor of Ms. Pefley on her unclean hands defense, finding that National City had agreed to a monthly payment of \$2,506, then refused that payment amount. T 119. The trial court also found that National City prevented Ms. Pefley from complying with the terms of her loan, and that foreclosure would be unconscionable. T 119-20. The trial court's written ruling conformed to its oral pronouncement. R 352.

Ms. Pefley had counterclaims pending until 2020. R 631. As a creditor in bankruptcy proceedings against Ditch Financial LLC, formerly Green Tree, she dismissed her state court claims. R 2825. Green Tree then appealed the trial court's 2014 denial of foreclosure. R 2850.

SUMMARY OF THE ARGUMENT

Six years after the trial court denied foreclosure based on unclean hands, Green Tree is still trying to foreclose on Ms. Pefley based on dates that National City prevented Ms. Pefley from paying her mortgage.

Ms. Pefley did not default in 2008. Instead, National City agreed to stop overcharging her, then refused to accept full payment. The trial court was well within its discretion in finding this conduct condemnable. As an independent ground for affirmance, Green Tree failed to prove default. This Court should affirm.

ARGUMENT

I. Ms. Pefley Did Not Default in 2008.

A. Standard of Review.

An appellate court will affirm a trial court's ruling if there is any basis in the record that supports the ruling. *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999).

B. National City Rejected Ms. Pefley's Tender of Full Payment.

Ms. Pefley never defaulted in 2008. She made full payments, or tried to, but they were returned then rejected by National City. To foreclose, a mortgagee must prove default. *Kelsey v. SunTrust Mortg., Inc.*, 131 So.3d 825, 826 (Fla. 3d DCA 2014). There is no default when a mortgagee refuses

or thwarts a mortgagor's attempt to make full payments. *Mossi v. Fuenzalida*, 422 So. 2d 971, 971 (Fla. 3d DCA 1982); *Crane v. Barnett Bank of Palm Beach Cnty.*, 698 So. 2d 902, 904 (Fla. 4th DCA 1997).

The record evidence shows that Ms. Pefley's correct monthly payment in 2008 was approximately \$2,506, the amount National City corrected her payment to in October. R 2861. There is no dispute that in 2007 her payment was \$2,721. R 203. In 2008, her property taxes and insurance premium decreased dramatically. R 2904, 2958, 2601; T 78. All other components of her payment remained the same.

The laws of mathematics dictate that, everything else being equal, a reduction in two components of a total results in a reduction of the total.

Under the note, Ms. Pefley owed \$2,051 in principal and interest. R 22. Her monthly mortgage insurance payment remained \$200. R 193-94, 201-03. Her property taxes for 2008 were \$1,772, although National City paid \$1,701. R 2958-59. Dividing that by twelve, her monthly tax obligation was \$142. Her 2008 hazard insurance premium was \$1,324, divided by twelve was \$110. R 2601. This totals \$2,503.

When Ms. Pefley brought this to National City's attention, it corrected her payment amount to \$2,506. Thus, Ms. Pefley, the record, and National City all agreed that, as of November 1, 2008, Ms. Pefley owed about \$2,506

per month.

Notably absent from Green Tree's brief is any record support for the monthly payment obligation of \$3,087. The only evidence in support of the amount is National City's assertion and Green Tree's witness at trial, based on National City's assertion.

Green Tree's witness was not a competent witness as to the amount owed. *E & Y Assets, LLC v. Sahadeo*, 180 So. 3d 1162, 1163 (Fla. 4th DCA 2015) (evidence of amount owed under mortgage must be supported by competent witness who can confirm accuracy of amounts). She incorrectly testified that Ms. Pefley's 2008 hazard insurance premium was \$5,236.95. T 57. But Ms. Pefley changed insurers in 2008, and her actual premium ended up being \$1,324. R 2601. In short, Green Tree's witness was not familiar with the amounts that made up the total monthly obligation.

There is no competent, substantial evidence in support of Green Tree and National City's assertion that Ms. Pefley owed \$3,087. It makes no sense that the components of her monthly obligation would decrease, but the total would increase. Instead, the record supports individual components adding up to around \$2,506—the amount that National City agreed was correct in October 2008.

Green Tree's argument that the correction was not a contract is not to

the point. The corrected payment amount reflected what Ms. Pefley actually owed under the note and mortgage.

Ms. Pefley made her full payments, or tried to, but the payments were returned and refused. Green Tree is not entitled to foreclose based on dates that National City rejected Ms. Pefley's tender of full payment. *Mossi*, 422 So. 2d at 971; *Crane*, 698 So. 2d at 904.

II. National City Had Unclean Hands Because It Thwarted Ms. Pefley's Attempts to Pay Her Mortgage.

A. Standard of Review

A trial court's application of the unclean hands doctrine is reviewed for an abuse of discretion. *Wait v. Wait*, 886 So. 2d 318, 318 (Fla. 4th DCA 2004). Discretion is abused only when no reasonable person would take the view adopted by the trial court. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). An appellate court should defer to a trial court's well-reasoned equitable findings. *McCollem v. Chidnese*, 832 So. 2d 194, 196 (Fla. 4th DCA 2002). A trial court's findings of fact are reviewed for support by competent, substantial evidence. *Mossi*, 422 So. 2d at 971

B. After National City Overcharged Ms. Pefley for Months, It Corrected Her Payment Amount, then Refused to Accept That Payment Amount

Foreclosure is an equitable proceeding, and a trial court has discretion to deny foreclosure based on equitable considerations. *David v. Sun Federal*

Savings Loan, Ass'n, 461 So. 2d 93 (Fla. 1984). Unclean hands, also known as unconscionability, is a valid equitable defense in a foreclosure action. *Knight Energy Servs., Inc. v. Amoco Oil Co.*, 660 So. 2d 786, 789 (Fla. 4th DCA 1995).

The unclean hands doctrine does not require criminal conduct, as Green Tree contends. *Shahar v. Green Tree Servicing LLC*, 125 So. 3d 251, 253 (Fla. 4th DCA 2013). It is enough that the conduct be condemnable by honest and reasonable people. *Id.* It applies to “unrighteous” or “oppressive” conduct. *Dale v. Jennings*, 90 Fla. 234, 246 (1925). As National City’s successor in interest, Green Tree took the note and mortgage subject to the equitable defenses available against National City. *Enstrom v. Dunning*, 136 Fla. 253, 265 (1939).

National City prevented Ms. Pefley from paying her mortgage by telling her she owed \$2,506 then refusing to accept that amount. The trial court reasonably found this conduct condemnable and refused to foreclose based on the dates National City rejected this payment amount. T 119-20.

In *Mossi*, a trial court judge in a foreclosure proceeding credited the mortgagor’s claim that the lender thwarted attempts to make full payment. 422 So. 2d at 971. The court denied foreclosure on equitable grounds. On appeal, the Third District upheld the ruling, finding there was competent,

substantial evidence to support the trial court's findings. *Id.*

Here, like in *Mossi*, the judge credited the mortgagor's claim that the lender thwarted attempts to make full payment: National City told Ms. Pefley to pay a certain amount, then refused to accept that amount. The court therefore denied foreclosure on equitable grounds.

The trial court's findings are supported by competent, substantial evidence. On appeal, this Court should not disturb those findings. *Mossi*, 422 So. 2d at 971. And the trial court's ruling that National City's conduct was condemnable was not unreasonable as a matter of law. *Canakaris*, 382 So. 2d at 1203. In short, the trial court did not abuse its discretion, and the judgment should stand.

CONCLUSION

This Court should affirm.

Respectfully Submitted,

/s/ Samuel Alexander

Samuel Alexander

Fla. Bar No. 1007757

Alexander Appellate Law P.A.

120 S Woodland Blvd Suite 200

DeLand, FL 32720

(386) 490-2705

samuel@alexanderappeals.com

Counsel for Appellant

CERTIFICATE OF SERVICE

I certify that on January 15, 2021, a copy of the foregoing was furnished
via the Florida e-Portal to:

Steven J. Brotman
Fla. Bar No. 85750
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775 South Flagler Drive
Suite 215 East Tower
West Palm Beach, FL 33401
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steven.brotman@lockelord.com
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Michael.desimone@locklord.com
Counsel for Appellant

/s/ Samuel Alexander
Samuel Alexander
Fla. Bar No. 1007757

CERTIFICATE OF COMPLIANCE

I certify that this document is in compliance with the font and word-
count requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Samuel Alexander
Samuel Alexander
Fla. Bar No. 1007757

EXHIBIT C

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellee's January 24, 2021 motion for attorney's fees is granted.

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401**

July 29, 2021

CASE NO.: 4D20-0243

L.T. No.: 502010CA012592XXXXMB

GREEN TREE SERVICING, LLC.

v. CHERANE PEFLEY

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellee's January 24, 2021 motion for attorney's fees is granted. On remand, the trial court shall set the amount of the attorney's fees to be awarded for this appellate case. If a motion for rehearing is filed in this court, then services rendered in connection with the filing of the motion, including, but not limited to, preparation of a responsive pleading, shall be taken into account in computing the amount of the fee.

Served:

cc: Michael P. De Simone
Steven J Brotman

Robert Moore
Clerk Palm Beach

Samuel Alexander

ms



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

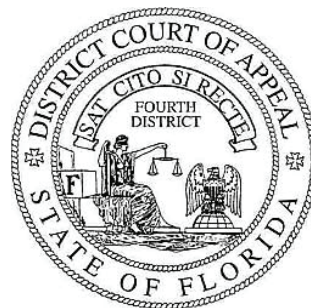


EXHIBIT D

TRANSCRIPT OF THREE HOUR TRIAL
DATED MARCH 27 2014 AND
STAMPED CERTIFICATE OF
REPORTER

RECEIVED, 12/14/2020 01:00:47 PM, Clerk, Fourth District Court of Appeal

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

CASE NO. 50-2010-CA-012592

_____/

GREEN TREE SERVICING,
Plaintiff,

vs.

CHERANE PEFLEY,
Defendant.

_____/

TRANSCRIPT OF HEARING

Volume 1 of 1

Pages 1 - 121

DATE: Thursday, March 27, 2014
TIME: 1:30 o'clock, p.m.
PLACE: Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
BEFORE: Honorable Susan R. Lubitz
Circuit Court Judge

This cause came on to be heard at the time and
place aforesaid. The following proceedings were
reported by:

Roger Watford, RMR, RPR, FPR
U.S. Legal Support, Inc.
444 West Railroad Avenue
West Palm Beach, Florida 33401
(561) 835-0220

APPEARANCES

ON BEHALF OF THE PLAINTIFF:

SHD LEGAL GROUP, P.A.
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BY: NOEL VANDENHOUTEN, ESQ.

ON BEHALF OF THE DEFENDANT:

LAW OFFICES OF PHILIPPE SYMONOVICZ
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BY: PHILIPPE SYMONOVICZ, ESQ.

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1 THE COURT: Good afternoon.

2 This is the case of Green Tree versus
3 Pefley?

4 MR. SYMONOVICZ: That's correct, Your
5 Honor.

6 MS. VANDENHOUTEN: Yes.

7 THE COURT: And I am advised that this
8 case is going to take at least three hours.

9 MR. SYMONOVICZ: It might take less, it
10 might take more, I don't know, Judge.

11 THE COURT: Well, you have a choice. You
12 can try the case today and be done by 5:00 or you
13 can come back tomorrow morning at 9:30 in front of
14 either Judge Gregory Keyser or a Senior Judge.

15 MS. VANDENHOUTEN: Your Honor, if I may
16 speak for the plaintiff, I have two trials tomorrow
17 in Volusia County and my witness has six. Is there
18 another date other --

19 THE COURT: No.

20 MS. VANDENHOUTEN: -- than tomorrow?

21 THE COURT: No. Tomorrow and you are
22 going to have to address that in Volusia County.
23 It's set for trial today.

24 MS. VANDENHOUTEN: We are ready to go
25 forward today. I am just concerned if it goes

1 longer what will happen.

2 MR. SYMONOVICZ: It was scheduled at
3 9:30.

4 THE COURT: I understand that. And the
5 problem is that there are so many cases that the
6 attorneys schedule them with very little time for
7 unforeseen situations such as this. I am giving
8 you your choice, now, it ends at 5:00, or tomorrow
9 at 9:30. You want to spend about five minutes
10 conferring?

11 MS. VANDENHOUTEN: I don't have a choice
12 because we both have prior commitments but we'll
13 talk. We tried to talk settlement, but if there's
14 any possibility I don't know.

15 MR. SYMONOVICZ: I am ready to go now,
16 Judge.

17 THE COURT: Okay, let's go. Just
18 remember 5 o'clock this is going to stop. Do we
19 have a complaint, amended complaint, what's the
20 pleading?

21 MS. VANDENHOUTEN: We have a complaint
22 and I want to make sure we have a court file
23 because the originals were in the court file and we
24 have to have the originals here.

25 THE COURT: Well, I am going to ask the

1 clerk.

2 THE CLERK: We don't have it, Your Honor.

3 MS. VANDENHOUTEN: The originals were
4 filed.

5 THE COURT: The clerk has found it.

6 MS. VANDENHOUTEN: Okay.

7 THE COURT: Do the attorneys want to look
8 at the originals in the court file?

9 MR. SYMONOVICZ: Just to refresh my
10 memory, Judge. I haven't seen them in such a long
11 time.

12 THE COURT: Okay.

13 MS. VANDENHOUTEN: Your Honor, is it
14 possible to either use the court file or remove
15 them so I can have them identified Plaintiff's 1
16 and 2, so forth?

17 MR. SYMONOVICZ: I don't have any
18 objection, if these are the originals, I mean the
19 issue of authenticity, whether the note has been
20 sold to a third party has not been an issue in this
21 case anyway, so I am fine with that.

22 THE COURT: Are you stipulating to
23 admission into evidence of --

24 MR. SYMONOVICZ: We can stipulate to
25 that, Your Honor.

1 THE COURT: All right. Are you marking
2 them as a composite or separately?

3 MS. VANDENHOUTEN: Separately.

4 THE COURT: Okay. Let the record reflect
5 that defense counsel has stipulated to the
6 admission into evidence of the original note as
7 Plaintiff's Exhibit 1 and the mortgage as
8 Plaintiff's Exhibit 2. Are you going to show it to
9 the witness?

10 MS. VANDENHOUTEN: I have a copy. If we
11 can use the copy I think it will make things go a
12 little quicker.

13 THE COURT: All right. Just show Mr.
14 Symonovicz the copies to make sure he agrees that
15 these are exact copies of the originals.

16 MS. VANDENHOUTEN: I have a removal
17 sticky on the back of the copies to put on the
18 originals if we need to remove the exhibit sticker.

19 MR. SYMONOVICZ: That's fine. It appears
20 to be a true copy of what's in the court file.

21 MS. VANDENHOUTEN: Would you like me to
22 remove the exhibit sticker on the back of the copy
23 and place it on the originals?

24 THE COURT: Do you have any objection to
25 substituting the copies for the originals so she

1 can review them?

2 MR. SYMONOVICZ: That's okay.

3 THE COURT: Okay, let the record reflect
4 that defense counsel has agreed that copies of the
5 original note and the original mortgage may be
6 substituted as evidence in the trial of this
7 matter.

8 MS. VANDENHOUTEN: Thank you, Your Honor.
9 (Plaintiff's Exhibit Numbers 1 and 2
10 received in evidence.)

11 THE COURT: Ms. VanDenHouten, do you wish
12 to make an opening statement?

13 MS. VANDENHOUTEN: A very brief opening
14 statement, very brief. This is an action in
15 foreclosure in Palm Beach County. The plaintiff in
16 support of its claim is going to present evidence
17 that the plaintiff has the right to enforce the
18 debt, that the debt is presently due and owing,
19 that all conditions precedent to foreclosure
20 happened and that the amount, exact amount, is
21 presently owed.

22 In addition, plaintiff's witness will
23 confirm that the loan is a first mortgage and that
24 the plaintiff has agreed to pay. We are not asking
25 or seeking attorney's fees because this is a

1 Federal National Mortgage Association investor, so
2 we are not going to seek attorney's fees, but we
3 costs and expenses in the action under the loan
4 documents, those are the only fees, and to enter a
5 final judgment in this case.

6 THE COURT: Ms. VanDenHouten, do you have
7 a copy of the complaint?

8 MS. VANDENHOUTEN: I do have a working
9 copy that I was going to use. But let me see if
10 there's another one available.

11 THE COURT: Is it Mr. Symonovicz?

12 MR. SYMONOVICZ: Yes, Judge.

13 THE COURT: Do you have a copy of the
14 answer or whatever pleading is the subject of this
15 trial?

16 MR. SYMONOVICZ: Yes, I do, Your Honor.
17 There's a counterclaim that goes with it, even
18 though it has been severed by Judge Oftedal,
19 because the exhibits were supposed to be -- we
20 didn't want to delay setting of the trial, so when
21 we amended our affirmative defense Judge Oftedal
22 found, since everybody was on notice of what was
23 being filed in the affirmative defenses through the
24 counterclaim, there was no need to delay and place
25 ourselves in a position where the case was not at

1 issue so we could set it for trial as quickly as
2 possible.

3 THE COURT: Okay.

4 MS. VANDENHOUTEN: I'm looking, Your
5 Honor. I had everything -- I had the complaint.
6 We've moved around some.

7 MR. SYMONOVICZ: I have the complaint.

8 MS. VANDENHOUTEN: Okay, I have it.

9 THE COURT: Okay. Mr. Symonovicz, do you
10 wish to make an opening statement?

11 MR. SYMONOVICZ: Yes, Your Honor, if I
12 may. My client is Cherane Pefley. She's sitting
13 here to my left. Mrs. Pefley purchased this
14 property in 2007 and the mortgage she's being sued
15 on is a purchase money mortgage. The original
16 mortgage is held by National City Mortgage. They
17 were the original lender. Sometime in two -- let
18 me go back.

19 In 2007 when she purchased the property
20 it had no homestead exemption and it had no farm
21 exemption. Mrs. Pefley raises exotic birds, she's
22 governed by federal law, and so she raises these
23 birds and her property is basically what we would
24 consider in the State of Florida a farm piece of
25 property, and so therefore she's entitled to

1 certain exemptions as a result of that. So her
2 taxes went down, she was subject to the existing
3 taxes naturally in 2007, and when she applied for a
4 reduction in her taxes it only applies to the
5 following year, 2008, so in 2007 when she bought
6 the property her taxes were \$6,440 a year, whereas
7 they dropped down to approximately \$1700 the
8 following year.

9 During the course of 2008 Mrs. Pefley was
10 concerned that the bank was over-escrowing her.
11 She was paying a variety of different amounts she
12 will testified to. The amounts might have been
13 \$3700, they might have been \$3,087. She felt that
14 she was being over-escrowed. So she went to the
15 local branch of National City Mortgage and spoke to
16 some officers and presented them with taxes and
17 also with her insurance payments and showed that,
18 in fact, they were over-escrowing her and they
19 agreed.

20 They sent an email to one of the officers
21 of the bank saying her new payment would be \$2,506
22 and that payment was to commence on October 1st,
23 2008. She made that payment. They have already
24 acquiesced to the fact that that payment has been
25 made. There might be a dispute on their part that

1 the payment was made as a result of an escrow
2 shortage. They will never be able to prove that,
3 not in a million years, because we have two
4 letters, one email that I just referred to that was
5 given to Mrs. Pefley, and the second letter
6 confirming the fact that this was now going to be
7 her monthly payment.

8 It had no limitations, it's not, "This is
9 the shortage, you need to come up with this
10 amount," but, "This is your new payment, \$2,506 and
11 some odd cents." She then made her second payment
12 of \$2,506 and some odd cents in November. She then
13 attempted to make her third payment in December at
14 the branch and it was rejected. A couple of weeks
15 later she got a letter in the mail from National
16 City Mortgage saying, "Your payments are incomplete
17 and we are therefore sending you back \$2,506,"
18 which is the November payment.

19 They kept the October payment. And, by
20 the way, they deposited the November payment. They
21 returned their own cashier's or certified check to
22 her in that amount. So they had already deposited
23 her money twice and kept one of them. Some time
24 after that at the end of 2009 they sent her an
25 acceleration letter and said that she was in

1 default despite the fact that she kept attempting
2 to pay the \$2,506, which was her new payment.

3 So our position in this case is very
4 different than it is in a typical foreclosure case.
5 They didn't have a right to accelerate to begin
6 with. They never had a right to accelerate in this
7 case. They had absolutely no right whatsoever.
8 That was her payment, and we can show that the
9 escrows had to be reduced accordingly, and the
10 evidence is going to be unrefuted to that effect.

11 Furthermore, to go back that, assuming
12 that the Court says, well, they were right to
13 accelerate, there's no way that I can understand
14 how that would happen, but assuming that it does,
15 well, she then applied for, she applied for a loan
16 modification in late 2009 and was given a trial
17 period payment. She was actually given three trial
18 period payments. The actual modification
19 agreement, the trial period modification agreement,
20 was entered into by both the bank and Mrs. Pefley
21 on December 14th through the 17th of 2009 and her
22 first payments were supposed to be made on January
23 and then in February and March. She made all three
24 payments.

25 That loan modification trial period

1 agreement clearly says that if none of the
2 conditions, meaning her financial situation, has
3 changed, then she's entitled, after she makes these
4 three payments timely, she's entitled to a
5 permanent loan modification. They didn't give her
6 one there. So they towed her around even further.

7 So our position in this case is quite
8 simple. They didn't have a right to accelerate.
9 This case should be dismissed. It never should
10 have been filed to begin with. That's our primary
11 concern in this case. In the event that the Court
12 finds it shouldn't be dismissed, obviously, my
13 client was entitled to a loan modification at some
14 point in time.

15 And I want to reiterate that my client
16 was ready, willing and able to pay the \$2,506,
17 which the bank had agreed were her new payments,
18 and that the only reason she didn't pay them was
19 because the bank refused them. And that's our case
20 in a nutshell, Judge. Thank you.

21 THE COURT: Call your witness.

22 MS. VANDENHOUTEN: Your Honor, in an
23 effort to shorten this, I want to confirm on the
24 record that Mr. Symonovicz is not presenting the
25 affirmative defense of standing.

1 MR. SYMONOVICZ: That's correct.

2 MS. VANDENHOUTEN: Okay. In this regard
3 we do have a recorded finding. I would like to put
4 it in the record even though it would go towards
5 standing. It's a recorded document. I am going to
6 show it to counsel. And it's a certified copy. I
7 would like to have it marked as Plaintiff's Exhibit
8 3 just to have it on the record, it was pre-suit,
9 just to have the foundation in the record.

10 MR. SYMONOVICZ: That's okay.

11 THE COURT: Let me ask you a question.
12 You are talking about standing. Are you saying,
13 and, Mr. Symonovicx, I want to ask you if you
14 agree, that Green Tree Servicing is the servicer
15 for the lender who had standing to sue at the time
16 that the lawsuit was commenced, is that what you
17 are saying?

18 MR. SYMONOVICZ: It appears so, Your
19 Honor. It appears that Green Tree Servicing was
20 the servicer way prior to the time that the lawsuit
21 was filed. I believe that the lender was PFC
22 Mortgage at that time.

23 THE COURT: And PFC Mortgage held or
24 owned the note at the time of the filing of the
25 lawsuit?

1 MR. SYMONOVICZ: I believe that's
2 correct.

3 MS. VANDENHOUTEN: Just a correction. At
4 the time of the filing of the lawsuit, and that's
5 why I am introducing this, just to keep the record
6 straight, Green Tree had become the servicer.
7 Green Tree is the plaintiff and Green Tree is the
8 servicer and this is the assignment into Green Tree
9 prior to the suit. The suit was filed on May 7th,
10 2010, the assignment was executed in March or
11 recorded in March, and --

12 MR. SYMONOVICZ: It was recorded that
13 same month on March 3rd. It was signed on March
14 1st and recorded two days later.

15 MS. VANDENHOUTEN: Yes, Your Honor. I
16 just want to have a complete record even though
17 there are no objections. This is a certified copy
18 of the assignment to Green Tree. And if I can make
19 it as Exhibit 3, I didn't put a number on it.

20 THE COURT: The clerk will do that. This
21 is, you are agreeing to enter the assignment into
22 evidence, is that correct?

23 MR. SYMONOVICZ: That's right.

24 THE COURT: All right, Plaintiff's
25 Exhibit 3 is admitted into evidence.

1 (Plaintiff's Exhibit Number 3 received in
2 evidence.)

3 MS. VANDENHOUTEN: Thank you, Your Honor.

4 If the Court would, please, if I could
5 retain just the copy of the note and mortgage for
6 questioning.

7 THE COURT: That's fine.

8 MS. VANDENHOUTEN: Thank you, Your Honor.

9 THEREUPON,

10 STEPHANIE CEJAS,
11 called as a witness herein, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. VANDENHOUTEN:

15 **Q For the record, state your full name.**

16 A My name is Stephanie Cejas, C-E-J-A-S.

17 **Q And where are you currently employed?**

18 A I work for Green Tree Servicing, LLC.

19 **Q What is the company's primary purpose or**
20 **function?**

21 A We are the current servicer.

22 **Q Of this subject loan?**

23 A Of this and others, yes.

24 **Q And what does it mean to service loans?**

25 A We do the administrative work for the owner of

1 the note.

2 Q And that kind of work would include what?

3 A Record keeping, customer service, any
4 collections activities, any necessary legal steps that
5 are taken.

6 Q Do you -- does your company also post
7 payments?

8 A We do, yes.

9 Q Also post credit?

10 A Yes, that's us.

11 Q And expenses --

12 A Yes.

13 Q -- of the mortgage.

14 Now, how long have you worked for the loan
15 servicing company?

16 A I have worked for Green Tree about three and a
17 half years.

18 Q And about how much of that time, three years,
19 all right, in your time of working in loan servicing
20 approximately in this time with Green Tree how many
21 files have you reviewed for Green Tree?

22 A Thousands.

23 Q Before coming to court today did you have the
24 opportunity to review the subject loan file, the
25 records?

1 A Yes, sure.

2 Q The pleadings in this case?

3 A I did.

4 Q And what type of system does your company use
5 to maintain the loan record?

6 A We use different systems. Our main system is,
7 the acronym is UCSE, it's Universal Collections System
8 Electronic, and that's a proprietary business system.

9 Q Were you given any training on how to use the
10 computer system?

11 A Sure, absolutely.

12 Q And are there new features from time to time?

13 A Yes, absolutely. There's ongoing training
14 efforts. I have actually worked in servicing for over
15 twenty years. Green Tree actually has a very good
16 training program.

17 Q And what is kept in the computer system as far
18 as records, all records, or are some kept other places?

19 A No, all accounting, all customer service
20 information, all collection information, notes from
21 other departments regarding keeping collaterals, things
22 like that, collection notes.

23 Q And the collateral, the originals are kept in
24 safe keeping?

25 A Yes, they are kept in a vault of the trustee

1 or wherever they are kept until they transfer to us.

2 Q Do you require access to the system to review
3 any loan that you are working on? Is it safeguarded by
4 a password?

5 A Oh, absolutely.

6 Q All right.

7 A Several.

8 Q And you do have access to that system?

9 A I do.

10 Q Does only one person maintain keeping records
11 for these loans or are different departments responsible
12 for keeping it updated?

13 A Each department is responsible for their own
14 records.

15 Q What are some of the different departments
16 that Green Tree has as the servicer in this case?

17 A There's information technology, there is
18 basically customer service, collections, a number of
19 accounting functions that would be in payment posting
20 and processing, there's loss mitigation, there's a
21 number of departments.

22 Q And is there a boarding department per se or
23 does some other department do the boarding?

24 A No, there are a number of departments involved
25 in boarding.

1 Q And what would those be?

2 A The list of them would be --

3 Q Well, just name a few.

4 A Okay. Information technology, auditing,
5 accounting, customer service, collections.

6 Q And do you have training specifically on the
7 boarding process?

8 A I do.

9 Q And is that boarding process, during that
10 boarding process when they take on a loan how would they
11 verify, you know, the business records of a prior
12 servicer, the account balance, those kind of things? Do
13 you know the process for how they verify it?

14 A I do.

15 Q Could you tell the Court?

16 A Sure. It's a very lengthy process. The
17 electronics secured transmission from the prior servicer
18 first would come into the IT department. They translate
19 all the information into a language, they format it on
20 to our computer system, the one I already mentioned,
21 UCSE, the Universal Collections System.

22 Q And so the documents that come into your
23 system, are they imaged? How do they come into the
24 system?

25 A Yes, documents are imaged. That doesn't

1 happen until later.

2 Q And in this particular loan did you find that
3 there were documents also imaged into the system?

4 A Absolutely.

5 Q All right. Now, do you have a breach
6 department for default processes? When somebody
7 actually misses a payment is there a specific department
8 that has everything to do with the breach and the breach
9 letters?

10 A Collections would do that. Processing
11 actually could process the actual letters.

12 Q And besides the data and the documents that
13 are imaged in, is there any other place where records
14 are kept, other than the computer and the imaging
15 system?

16 A Other places... Repeat the question.

17 Q Is there any other place, other than the
18 computer system or the imaging into the computer system,
19 where any records other than the original collateral are
20 kept?

21 A No, no.

22 Q All the records?

23 A Yes.

24 Q And you have access to all records?

25 A I do.

1 Q And as part of coming here to testify have you
2 reviewed the records in the computer system?

3 A Yes.

4 Q Now, is it your testimony that the information
5 that is in the computer system is kept in the ordinary
6 course of the regular conducted business of the
7 servicer?

8 A It is.

9 Q Now, the data that is admitted into your
10 system, other than any prior servicer's information, is
11 that information made by a person at or near the time of
12 the event?

13 A Certainly.

14 Q And the person has knowledge of that event?

15 A Yes.

16 Q Now, are the prior records integrated into
17 your computer system?

18 A Yes.

19 Q So there is not a separate place for those
20 records?

21 A No.

22 Q So all the records concerning this particular
23 loan are in your computer system?

24 A It's consolidated, yes.

25 Q Okay. How frequently during the day is

1 information inputted into the system by people working
2 on different loans?

3 A Constantly.

4 Q And are all the loan activities supposed to be
5 noted in the computer system?

6 A Yes.

7 Q How soon after a loan activity occurs is it
8 supposed to be noted in the system?

9 A Most of them are going to happen at point of
10 contact because you are physically entering things into
11 the system as you are doing whatever process it is.

12 Q Does your computer system, I think I have
13 asked this question before, contain information relating
14 to this loan?

15 A Yes.

16 Q And you reviewed all of the information in the
17 system regarding this loan before coming here today?

18 A Yes.

19 Q How does the computer system request that your
20 company is entitled to service this loan?

21 A Power of attorney from Fannie Mae, the owner
22 of the note.

23 MS. VANDENHOUTEN: At this time, if you
24 would like to stipulate, the power of attorney that
25 is -- do you need to see it?

1 MR. SYMONOVICZ: I haven't seen it.

2 MS. VANDENHOUTEN: Okay. And I have it.
3 I know you have a copy.

4 THE WITNESS: Yes, I do.

5 MS. VANDENHOUTEN: Do you have one here
6 today?

7 THE WITNESS: Yes.

8 MS. VANDENHOUTEN: Is it okay if I get
9 her copy, Mr. Symonovicz?

10 MR. SYMONOVICZ: Go ahead. Let her look
11 at it.

12 MS. VANDENHOUTEN: Is this what you need?

13 THE WITNESS: Yes.

14 MS. VANDENHOUTEN: We were putting
15 exhibit tickers on documents and it's here.

16 THE WITNESS: Here, I've got it.

17 MS. VANDENHOUTEN: I found it just as you
18 did. I will show it to opposing counsel.

19 MR. SYMONOVICZ: That's fine. I have no
20 objection.

21 MS. VANDENHOUTEN: And I believe that
22 would be Plaintiff's Exhibit 4 for identification.
23 Having received no opposition, I will mark it and
24 ask that it be admitted into evidence. Upon the
25 testimony, just for -- you are agreeing to its

1 admission into evidence?

2 MR. SYMONOVICZ: Yes.

3 MS. VANDENHOUTEN: Okay.

4 THE COURT: It will be admitted into
5 evidence as Plaintiff's 4.

6 (Plaintiff's Exhibit Number 4 received in
7 evidence.)

8 MS. VANDENHOUTEN: May I approach, Your
9 Honor?

10 THE COURT: Yes, you may.

11 BY MS. VANDENHOUTEN:

12 Q Now, regarding these records, they are made at
13 or near the time of the event by a person with knowledge
14 or transmitted from a person who has knowledge at or
15 near the event, they are made in the course of regularly
16 conducted business activity, and are they the kind of
17 records that are ordinarily kept by the servicing
18 company that you work for?

19 A Yes.

20 MS. VANDENHOUTEN: I am going to show Mr.
21 Symonovicz Plaintiff's Exhibit 5 for
22 identification.

23 MR. SYMONOVICZ: That's fine. I have no
24 objection to the document itself, although I would
25 like to voir dire the witness.

1 MS. VANDENHOUTEN: Do you want me to ask
2 some direct so you can voir dire?

3 MR. SYMONOVICZ: Yes, okay.

4 MS. VANDENHOUTEN: I will show the Court
5 this document so you will know more about the
6 testimony I am offering.

7 THE COURT: Okay.

8 BY MS. VANDENHOUTEN:

9 Q I show you a document, and I would like you to
10 identify this document for the Court.

11 A Okay. This is a copy of the breach letter we
12 sent to Mrs. Pefley.

13 Q And could you tell us the date on that letter?

14 A March 23rd, 2010.

15 Q And who was it addressed to?

16 A Cherane Pefley.

17 Q And what address was it addressed to?

18 A 14877 Snail's Trail, Loxahatchee.

19 Q According to your records, is that the address
20 given to send notices to?

21 A Yes.

22 Q And what are the contents of that record in so
23 far as the information that is given to the defendant?

24 A It says the amount secured in this default is
25 \$33,676.75 and she has thirty days from the date of this

1 notice. The notice is dated March 23rd, 2010.

2 **Q Do you recognize this document as a record**
3 **that is in your computer system?**

4 A I do.

5 **Q Is this a document that you have seen as**
6 **imaged in your computer system?**

7 A Yes.

8 **Q When and how was that mailed to the defendant?**

9 A It's dated as going out, first class mail, on
10 3/23/2010. It was mailed as part of our required
11 auditing function.

12 THE COURT: Could you repeat that?

13 THE WITNESS: Yes. It would have gone
14 out first class mail to Ms. Pefley on March 23rd,
15 2010, and that's a required auditing function.

16 BY MS. VANDENHOUTEN:

17 **Q And did your employee training include**
18 **learning about the procedures used to create this type**
19 **of document?**

20 A Sure.

21 **Q Please explain those procedures to the Court.**

22 A There are obviously Fannie Mae guidelines that
23 dictate when the letter is sent. There's no employee
24 order for a default letter. It is automatically
25 processed from the system when she becomes a certain

1 amount of days past due, of course, after it's reviewed.

2 **Q How does your system reflect that the demand**
3 **letter was mailed according to the established**
4 **procedures?**

5 A It would have gone out first class mail and it
6 also would have gone out certified mail.

7 **Q And this demand letter is still available in**
8 **your computer system?**

9 A Yes, I just reviewed it.

10 **Q How would it be reflected if it was not mailed**
11 **out or if it was returned?**

12 A It would have been flagged. There's a big red
13 flag.

14 **Q And what does it say if you get returned mail?**

15 A There's a big red flag, "Returned Mail."

16 MS. VANDENHOUTEN: At this time, having
17 established that this May notice was generated and
18 mailed according to established policies and
19 procedures which this witness is personally aware
20 of and has been trained in and that it was placed
21 into the computer system and it was mailed and that
22 it was a reliable business record of the plaintiff,
23 plaintiff requests the Court to admit the breach or
24 demand notice as plaintiff's next exhibit.

25 MR. SYMONOVICZ: I have no objection to

1 it. I will just cross examine her on it. I have
2 no objection to it.

3 THE COURT: So it's admitted without
4 objection as Plaintiff's 5 into evidence.

5 (Plaintiff's Exhibit Number 5 received in
6 evidence.)

7 BY MS. VANDENHOUTEN:

8 **Q This letter says that the default consists of**
9 **failure to submit monthly payments due 11/1/2008 through**
10 **March 1st, 2010. Can you just comment and explain that**
11 **period of time that you did not receive a payment?**

12 A Sure. Very simple. She's still next due for
13 the 11/1 of '08 date. We re-defaulted when we took over
14 as servicer. But the account is still in default for
15 11/1/08.

16 **Q All right. You heard the opening remarks of**
17 **the defendant concerning a modification offer. When was**
18 **that modification offer given?**

19 A In December of 2009 there was an attempt for a
20 HMP. She was approved for HMP for a trial time for
21 three months. She had payments due of \$1,099.44. And
22 it was January 1, February 1 and March 1, 2010.

23 **Q That was the period immediately preceding the**
24 **letter, the letter that, Exhibit 5?**

25 A Correct.

1 **Q What happened to those payments?**

2 A I only -- I heard what opposing counsel said.
3 I only saw that we had deposited one. We got one.

4 **Q And at that time was there ever a permanent**
5 **modification agreement executed by the parties?**

6 A No, there was never a completed modification.

7 **Q And could you tell the Court why, according to**
8 **your business records?**

9 A Yes. When HPM sends the approval for the
10 trial period it's contingent on their continued review.
11 We got notice subsequent to receiving the first payment
12 from Mrs. Pefley that they were withdrawing their offer
13 because they were not able to satisfy themselves with
14 their income verification.

15 **Q So it's your testimony today that the January**
16 **2010 payment was received. And was there correspondence**
17 **during that period of time from January to February that**
18 **they were not going to be able to offer her a permanent**
19 **modification because they didn't receive the**
20 **information?**

21 A Yes, ma'am. We got notified on March 11th,
22 2010. And here's the exact verbiage: "Ineligible due
23 to income verification issues which caused a
24 recalculation." Now, the next move, the next sentence
25 says that they could not satisfy themselves that, with

1 the next present value test, it fails, according to HPM.

2 Q So she was essentially rejected on a permanent
3 modification?

4 A Yes, due to the income verification issues.

5 Q Thank you. And it is also your testimony that
6 when you reviewed your business records in the system
7 that there was no notice that this letter was not --
8 that this letter was returned?

9 A No.

10 Q Now, are you familiar with the default notice
11 provisions under the loan documents, the default notice
12 provisions under the note and mortgage?

13 A Sure, yes.

14 Q Is it true that it is your obligation to send
15 out the notice?

16 A Yes.

17 Q Is it true that there's no obligation that you
18 make sure it's received?

19 A No, no.

20 Q All right. So it's your testimony that the
21 notice was sent out pursuant to the loan documents?

22 A Absolutely, yes.

23 MS. VANDENHOUTEN: I am going to give the
24 Court Exhibit 5 and hold it, because I know Mr.
25 Symonovicz said he did have some questions but he

1 would hold them, and hand you another document.

2 THE COURT: Just place all the exhibits
3 over here, please. All exhibits will be placed on
4 the Court's ledge here for access to either party.

5 MS. VANDENHOUTEN: Thank you, Your Honor.
6 This is Exhibit 5.

7 THE COURT: I understand.

8 MR. SYMONOVICZ: 5 is the accelerated
9 order. So the exhibit you are holding is not 5.

10 MS. VANDENHOUTEN: But I want to mark it
11 right now so we have the correct number on the
12 back. Thank you. I am going to show opposing
13 counsel a composite of information and I am going
14 to be asking the witness to identify it. We would
15 like this to be identified as Plaintiff's Exhibit
16 6. I'm sorry, this isn't part of the composite.

17 MR. SYMONOVICZ: I don't recognize this
18 as being produced pursuant to the request for
19 production. This I do.

20 MS. VANDENHOUTEN: I know there were two
21 pages in the request for production, 77 and 78.

22 MR. SYMONOVICZ: Well, I object to it
23 based on her testimony, but you can ask her to see
24 if she can identify that.

25 MS. VANDENHOUTEN: Okay. I would like to

1 show the Court Plaintiff's Exhibit 6 for
2 identification.

3 THE COURT: It's the payment history?

4 MS. VANDENHOUTEN: Yes. Thank you.

5 BY MS. VANDENHOUTEN:

6 Q For identification, Plaintiff's Exhibit 6, a
7 composite, can you identify that composite and what the
8 information represents?

9 A Yes. I just reviewed it. It is the payment
10 history for Ms. Pefley's account that I reviewed.

11 Q Does it include information on payments and
12 charges from the prior servicer?

13 A It does.

14 Q I would like to ask you is that document and
15 the composite of the different records imaged in your
16 computer system?

17 A It is.

18 Q Before you came here did you have an
19 opportunity to review that document in your computer
20 system?

21 A Yes.

22 Q Now, according to the complaint in this
23 matter, the plaintiff has alleged that the amount is due
24 for November 1st, 2008. Other than the payments that
25 you made mention of pursuant to the attempt for

1 modification, were there any other payments, other than
2 those, made towards principal and interest?

3 A No.

4 Q Where has the payments under that been posted
5 to the account? Have they gone towards the principal or
6 are they in another --

7 A Payments for what?

8 Q The modification attempt.

9 A Oh, this one?

10 Q Yes.

11 A The one we received went to her account, but,
12 as per guidelines, it got put in suspense.

13 Q And does that mean that, because you have it,
14 it will be applied as a credit towards what she owes in
15 any amount?

16 A It's on her account, but it's posted as a
17 suspense item, because that was a trial three month
18 modification effort. Once we get all three, and then
19 there's official documents from the government that she
20 signs and sends back, then we post them the day we
21 receive them, of course.

22 Q You have had a chance to review the contents
23 of that document, the payment history?

24 A Yes.

25 Q And have you seen a copy of the trial

1 modification in your business records?

2 A Yes.

3 Q And so your understanding is the payment that
4 was made in 2010 was a payment under that trial
5 modification?

6 A Yes.

7 Q And that has been placed into suspense?

8 A Yes. Well, it was when we received it.

9 Q According to our complaint, you are saying
10 that the plaintiff as a servicer is owed \$296,138.52.
11 Would you like to review the record and make sure that
12 is the outstanding amount, unpaid principal balance,
13 according to your records?

14 A Principal, yes.

15 Q All right. Does the loan history in your
16 hand, a composite, include both payments received and
17 charges applied to the loan?

18 A It does.

19 Q And this is the document, the pieces that have
20 been marked as Plaintiff's Exhibit 6, that's imaged and
21 maintained in your computer system?

22 A Yes.

23 Q Is there employee training including learning
24 how -- about the procedures used to create the
25 information in this type of composite and loan history

1 in your company?

2 A Yes.

3 Q Please explain how the payments become part of
4 the loan history.

5 A They are entered in as they happen. They are
6 physically entered in by a payment processing clerk as
7 they happen. It could be an escrow entry, which would
8 be done by a clerk in the escrow department. It could
9 be done by a loan processing clerk, in which case it
10 would be done at the time they enter the -- receive the
11 item in.

12 Q And how were the payments matched to the
13 correct account?

14 A Account number and name.

15 Q When are the payments posted to the account?

16 A The date they are received.

17 Q Is the payment history always maintained by
18 your servicer while the loan is being serviced?

19 A Yes.

20 Q Please explain how the loan charges became
21 part of the loan history. I know you explained about
22 the escrow a little bit.

23 A Yes. Anything else that we pay for on behalf
24 of Mrs. Pefley is, of course, a record of it is made on
25 the account history when we pay the item, regardless of

1 what it is, PMI or whatever.

2 **Q When would the escrow charges be applied to**
3 **the loan?**

4 A As we had to pay the item, taxes, insurance,
5 whatever it was.

6 **Q When would property inspection or fees be paid**
7 **and applied to the loan?**

8 A When we do them. Fannie Mae requires monthly
9 property checks, so there is one a month, depends on the
10 item, at the time it's remitted.

11 **Q When would the fees be added to the loan**
12 **history?**

13 A The date they are processed.

14 **Q Would that be the day you receive the invoice?**

15 A Yes, sure.

16 **Q Does this loan history that I have handed to**
17 **you, Exhibit 6, indicate all the payments received and**
18 **applied to this subject loan?**

19 A It does.

20 **Q Does the loan history indicate all fees and**
21 **charges applied for the subject loan?**

22 A Yes.

23 **Q Does the loan history reflect the total amount**
24 **due under the loan from its inception?**

25 A Yes.

1 Q Does the loan history tell you if the loan is
2 in default?

3 A Yes.

4 Q Does this loan history reflect a defaulted
5 loan?

6 A Yes.

7 MS. VANDENHOUTEN: Your Honor, having the
8 plaintiff identify the document, we would like to
9 ask the clerk to admit it into evidence.

10 MR. SYMONOVICZ: Again subject to -- I
11 would like to voir dire her on that.

12 THE COURT: All right.

13 MS. VANDENHOUTEN: May I be seated?

14 THE COURT: Yes.

15 MS. VANDENHOUTEN: Thank you.

16 VOIR DIRE EXAMINATION

17 BY MR. SYMONOVICZ:

18 Q You testified earlier that you only, as far as
19 you knew, there was only one payment made under the
20 trial period payment?

21 A Correct. I only see one.

22 Q And you are looking at the loan history now
23 and you only see one?

24 A I only saw one from... yes, one.

25 Q When you say you only saw one, you are talking

1 about the loan history that was just handed to you by
2 your counsel?

3 A I am talking about the period before this
4 modification attempt.

5 Q Okay. I am talking about the trial period
6 payments. How many do you know were paid?

7 A One.

8 Q And you got that from what?

9 A Our business records.

10 Q What about the records that were just handed
11 to you, they don't reflect three payments were made?

12 A There's only one.

13 Q Would it surprise you if I told you that we
14 handed your counsel a request for admissions a few
15 months ago and they admitted that all three were made?

16 A No, I don't know that.

17 Q Who would have answered? Do they call you, do
18 they say, "Hey, we got a request for admissions here,
19 let's answer some of these, can you give us some input?"

20 A Our counsel.

21 Q Your counsel does that?

22 A Yes.

23 Q So how would they know to tell me that all
24 three payments were made?

25 A I don't know that's what they told you. I see

1 one.

2 Q This is the request for admissions that I sent
3 out and they are dated February 4th. I just received
4 the answers yesterday, and they were by court order, and
5 the question number 13 was:

6 "Admit that the lender offered the defendant,
7 Cherane Pefley, trial period payments of 1,999 (sic) for
8 the months of January, February and March."

9 And then the next question says:

10 "Admit that the defendant, Cherane Pefley,
11 paid 1,099.44 per month in trial period payments for
12 January, February and March 2010."

13 That's question number 14.

14 And it says:

15 "Admitted. Was paid and received."

16 I can show you the actual question and the
17 actual response. I'm looking at question number 14.
18 And the answer to number 14 says --

19 A All right, I see the list of numbers, but I
20 don't understand what it corresponds to.

21 Q We are looking at number 14. The question is:
22 "Did she make three payments?" This is the answer to
23 your request.

24 A Number 13 is the question you just asked me.

25 Q I asked you 14. I am looking at 14 now. They

1 **are related, but I am really looking at 14.**

2 A 13 is the one you just asked me. I have never
3 seen this before.

4 **Q Go ahead, read number 14.**

5 A You just asked me about 13, but then you --

6 THE COURT: Please don't talk over each
7 other because the court reporter can't take down
8 the questions and the answers so wait until the
9 answer is made by the witness and then you can ask
10 the question.

11 BY MR. SYMONOVICZ:

12 **Q Just read Number 14 out loud for the Court.**

13 A Okay.

14 "Admit that the defendant, Cherane Pefley,
15 paid \$1,099.44 per month in trial period payments for
16 January, February and March 2010."

17 **Q Okay.**

18 A That is the entirety of number 14.

19 **Q And now if you could read the answer to number**
20 **14 that was submitted by your lawyers yesterday. Tell**
21 **us out loud what it says.**

22 A Number 14.

23 **Q What does it say?**

24 A Well, they are different forms.

25 **Q One is an answer. One is a question and**

1 **that's your answer. You have to read your answer.**

2 A I have never seen this. I don't --

3 THE COURT: Let me just say, this doesn't
4 go to admissibility, it goes to the weight that the
5 Court will consider, so again, if the witness is
6 refusing to answer, why don't you just read those
7 admissions at the conclusion of your case and the
8 Court will consider it.

9 MR. SYMONOVICZ: Your Honor, it goes to
10 veracity, the ability to, you know, how much she
11 knows about the record and everything and the loan
12 history, and the answer that I got was, as to
13 request number 14, admitted that 1,099.44 was paid
14 and received monthly from January through March
15 2010, and she says her loan history doesn't reflect
16 that, so I would like to know how they got that
17 answer and how they submitted it.

18 THE COURT: She says she doesn't know.
19 And I would suggest that the admissions, if you
20 want to make the Court aware of the admissions, it
21 goes to the weight of the -- this witness's
22 testimony.

23 MR. SYMONOVICZ: Okay. Let's go on to
24 the next question.
25

1 BY MR. SYMONOVICZ:

2 Q The next question, with respect to the loan
3 history, do you see anything in your loan history that
4 shows a payment was made and received in the month of
5 October 2008 in the amount of 2,506.07?

6 A I got the '08. Would you tell me the month?

7 Q It's October.

8 A October of '08?

9 Q Correct.

10 A I do. Can you tell me the amount there?

11 Q 2506.

12 A Oh, no.

13 Q You don't see that?

14 A Oh, yes, I do. Pardon me. October 14th.

15 Q According to your loan history, what does that
16 reflect?

17 A A payment went to unapplied payments.

18 Q Unapplied payments?

19 A UAS, unapplied payments.

20 Q What does that mean?

21 A It went to the account but it wasn't a whole
22 payment amount, so it's posted, but it didn't advance
23 the due date.

24 Q Have you had an opportunity to read the
25 pleadings, both the answer, and as well as the

1 **complaint?**

2 A I have read the complaint. I reviewed the
3 answer. I have never seen what you just handed me from
4 yesterday.

5 **Q Have you seen the counterclaim filed in this**
6 **lawsuit?**

7 A No.

8 MS. VANDENHOUTEN: Your Honor, just for
9 the record, the counterclaim isn't before the Court
10 today.

11 MR. SYMONOVICZ: I understand. I just
12 wondered if she had seen it, because there's
13 exhibits attached to it as well.

14 MS. VANDENHOUTEN: Okay.

15 BY MR. SYMONOVICZ:

16 **Q I'm going to show you this exhibit here I**
17 **haven't marked yet and ask you if you have seen that**
18 **before?**

19 A I haven't.

20 **Q You have never seen it before?**

21 A No.

22 MS. VANDENHOUTEN: Counsel, if you could
23 show me. Thank you.

24 MR. SYMONOVICZ: It is attached to both
25 the answer and affirmative defense and also to the

1 counterclaim. That's why I mentioned both of them.

2 THE COURT: Do you want to take the
3 exhibit back? She said she's never seen it before.

4 MR. SYMONOVICZ: Yes, ma'am.

5 BY MR. SYMONOVICZ:

6 Q So your position, based on the loan history,
7 is that \$2,506.07 is just an incomplete payment?

8 A Yes, that's how it's posted.

9 Q Was there another payment in that exact same
10 amount made in November 2008?

11 A I see a reversal right above that for
12 \$2,051.31.

13 Q Is that a reversal of the October payment or
14 is that a reversal of the November payment?

15 A October.

16 Q So you are saying that they never, in other
17 words, they never kept any of the money?

18 A Didn't you ask me about November '08?

19 Q I asked you about November.

20 A Let me go to November '08 because that was
21 still October.

22 Q Okay. Let me go back to my question. My
23 question is, you show a \$2,506.07 payment made for the
24 month of October, do you see one for the month of
25 November as well?

1 A Yes.

2 Q Was any of that money kept, according to the
3 loan history?

4 A That went into unapplied payments also.

5 Q Was it returned, any of it returned?

6 A It doesn't appear so during this time period.
7 I don't see this one reversed.

8 Q What about December, if you look at December
9 2008, do you see a reversal of any of these payments?

10 A No.

11 Q There's no return of that money in so far as
12 you are concerned?

13 A Not according to this payment history, no.

14 Q Now, if I were to tell you that there was a
15 payment returned, would you agree with me that the loan
16 history is inaccurate if that were the case?

17 A No. I have no reason to believe this is not
18 accurate and I don't see what you are talking about.

19 Q We'll be able to prove it later, but I'm
20 hypothetically asking you if, in fact, there was a
21 return of the money, of one of the payments, but it's
22 not reflected on the loan history, would you admit that
23 it's inaccurate then if that were the case?

24 A No. That's a hypothetical. No.

25 Q But it is a hypothetical.

1 A Yeah.

2 Q But I am asking you to admit that.

3 MS. VANDENHOUTEN: Objection for the
4 record. I have been quiet, but she's not an
5 expert.

6 THE COURT: Asked and answered.

7 Move on.

8 BY MR. SYMONOVICZ:

9 Q Is there anything in your loan history that
10 indicates that the payment was corrected in October of
11 2008, that there is a correction of how much was due?

12 A I see a reversal. Hold on, let me back up. I
13 saw it earlier.

14 Q When was that?

15 A Right above where we received the money you
16 and I just discussed there was a reversal. But let me
17 get back to that. Okay, thank you. I am looking at it.

18 Q You don't know why there was a reversal?

19 A I don't know why there was a reversal. There
20 was a reversal.

21 THE COURT: Of what payment?

22 THE WITNESS: October.

23 BY MR. SYMONOVICZ:

24 Q So then it's your testimony that, based on the
25 loan history, they didn't keep any of these \$2506

1 **payments, assuming one or two or there were made, they**
2 **didn't keep any of them?**

3 A No, I said above that one there's a reversal,
4 but it's a different amount.

5 **Q What's the amount then?**

6 A There's a reversal on October 15th, '08 for
7 \$2,051.31.

8 **Q What does that reflect, the \$2,051?**

9 A A payment, but I don't know of what.

10 **Q You don't know if it's, if it includes escrow,**
11 **principal and interest, you don't know that?**

12 A No, I don't. It says "Payment."

13 **Q Can you tell me when was the first payment due**
14 **under this loan?**

15 A I would have to look at the note, but I can
16 look at the payments here real quick.

17 MS. VANDENHOUTEN: Your Honor, if I could
18 supply her a copy of the note also.

19 THE WITNESS: If the person made the
20 first payment on time, you can tell from the
21 payment history. If they didn't, then you do have
22 to review the documents.

23 MR. SYMONOVICZ: I am just trying to find
24 out what that payment was.

25 BY MR. SYMONOVICZ:

1 **Q Based on your loan history, that loan history**
2 **started with a different lender; is that correct?**

3 A It did.

4 MS. VANDENHOUTEN: Your Honor, for
5 reference in time, if we could for the convenience
6 of the witness give her a copy of the note, it's
7 imaged in her system, she would have the note
8 imaged to look at also to review the time frame, if
9 that is appropriate.

10 THE COURT: I believe the question was,
11 based on the payment history, when was the first
12 payment due.

13 MR. SYMONOVICZ: Yes. And how much was
14 that first payment.

15 THE WITNESS: I'm there. Thank you for
16 waiting. The first payment, actual regular payment
17 that was posted on this account, was January 10,
18 2008.

19 BY MR. SYMONOVICZ:

20 **Q And how much was that payment for?**

21 A It was for 272191.

22 **Q 272191?**

23 A Yes.

24 **Q Does that include escrows?**

25 A Yes.

1 Q Based on your loan history, can you tell me
2 what the escrows were?

3 A I can tell you how much of that payment was
4 posted to escrow, how they broke it down.

5 Q Can you do that?

6 A Yeah, sure. 23446 principal, 181685 interest,
7 67060 is what they went to for escrow.

8 Q 67050?

9 A No, 67060.

10 Q And can you break down the escrow? Can you
11 tell me how much of that, based on your loan history, is
12 for taxes and how much of it is for --

13 A No, I am not able to, no.

14 Q Can you tell me, for example, what was the
15 monthly payment in, say, April 2008?

16 A I can tell you what is on the payment history.

17 Q That's what I am talking about. Can you tell
18 me just based on that payment history?

19 A Tell me the date again.

20 Q April 2008.

21 A April. All right, there is a payment in
22 April, 346439, that appears to be posted as a normal
23 payment. It's the only one I see posted as a normal
24 payment.

25 Q So when you say it's the only one posted as a

1 **normal payment, what do you mean by that?**

2 A It's not for escrow, it's not for PMI, it's
3 not any of that stuff, it's just posted as a regular
4 payment.

5 **Q What is the difference between the 2700 that**
6 **she was paying three months ago in January 2008, 2700**
7 **approximately, and 3400, why has it gone up by \$700?**

8 A I don't know. Obviously, there was a change
9 to her escrow. I did know the history of force-placed
10 insurance, the insurance policy and then force-placed
11 insurance, but I really can't attest to that. I am not
12 certain during the time frame we're talking about why
13 there is that difference.

14 **Q Can you tell me in -- her first payment you**
15 **say was due in January 2008?**

16 A That was when she made her first payment. I
17 didn't look at that to be sure.

18 **Q Was it delinquent at that time or was it --**

19 A I would have to see the documents to see when
20 the first payment was due.

21 THE COURT: I think we are getting into
22 cross examination now as opposed to voir diring the
23 witness as to admissibility of the business
24 records.

25 MR. SYMONOVICZ: Okay, that's fine,

1 Judge. I would like to object to her admitting
2 these records. I don't think she knows what the
3 payments stand for because they are from a previous
4 servicer. I don't think she knows when the loan
5 was actually in default. I don't think she knows
6 when the payments were made. I don't think she
7 knows what goes to what escrow.

8 I don't think she understands why there
9 was \$2500 paid, \$3700 in another month and \$2700 in
10 another month. I don't think she understands any
11 of that. So I don't think she has enough knowledge
12 of the prior lender to be able to admit those
13 records. I think under the Blarum (ph) decision
14 they are inadmissible through this witness.

15 MS. VANDENHOUTEN: Your Honor, if I may,
16 I don't know if Your Honor is familiar with the
17 case of Weisenberg versus Deutsche Bank where the
18 prior service history is integrated into the
19 records and there is testimony of the boarding
20 process and how the balances are verified. They
21 are a business record and evidence would have to be
22 put on to the contrary and Mr. Symonovicz cannot
23 testify. So at this point I think the business
24 records predicate has been satisfied. And if Your
25 Honor needs a copy of the Weisenberg case, I do

1 have one.

2 THE COURT: So it's admitted as
3 Plaintiff's 6 over objection.

4 Okay, continue.

5 (Plaintiff's Exhibit Number 6 received in
6 evidence.)

7 MS. VANDENHOUTEN: I am going to place
8 Exhibit 6 in front of Your Honor. Thank you. I am
9 going to show counsel what we would like to have
10 marked as Plaintiff's Exhibit 7. And I would like
11 to explain why I am showing the redacted
12 information and the exhibit that we would like to
13 have identified redacted and the unredacted version
14 because it belongs to your client.

15 We have almost entirely redacted the loan
16 number. We left a little bit so you could see the
17 original and compare it. We pulled the redacted
18 copy with the second page of the original. We just
19 want to keep the loan information as a record, Your
20 Honor, if I may approach.

21 THE COURT: Yes, you may.

22 MR. SYMONOVICZ: I have no objection to
23 this.

24 THE COURT: Okay.

25 DIRECT EXAMINATION (RESUMED)

1 BY MS. VANDENHOUTEN:

2 Q I will show you this document, Plaintiff's
3 Exhibit 7. I would like you to identify this document
4 for the Court.

5 A This is a letter from the previous servicer
6 advising Mrs. Pefley that Green Tree is taking over
7 servicing effective November 2, 2009.

8 Q And the date of that letter?

9 A October 15th, 2009.

10 Q Is that document imaged in your computer
11 system?

12 A It is.

13 Q Do you have any reason to believe that -- was
14 that document returned?

15 A No.

16 Q Is there any evidence that that document was
17 returned?

18 A No, there isn't.

19 Q And it is addressed to?

20 A Cherane Pefley, 14877 Snail Trail,
21 Loxahatchee, Florida.

22 Q Is that the address that the servicer had been
23 given previously to send notices to?

24 A Yes.

25 MS. VANDENHOUTEN: At this time we would

1 like to ask the clerk to admit the document.

2 MR. SYMONOVICZ: I have no objection.

3 THE COURT: It's so admitted as
4 Plaintiff's 7 without objection.

5 (Plaintiff's Exhibit Number 7 received in
6 evidence.)

7 MS. VANDENHOUTEN: I have another
8 document that has been redacted. We would like it
9 to be marked Plaintiff's Exhibit 8 for
10 identification. And again it's been redacted. I
11 am showing opposing counsel the original and the
12 redacted. This is the one we would like to
13 identify. We have tried to redact social security
14 and loan numbers.

15 MR. SYMONOVICZ: That's Number 8?

16 MS. VANDENHOUTEN: Yes.

17 MR. SYMONOVICZ: That's fine.

18 MS. VANDENHOUTEN: And, for the Court, if
19 I may approach to show you a copy of Exhibit 8.

20 THE COURT: Okay.

21 MS. VANDENHOUTEN: If I may approach the
22 witness.

23 BY MS. VANDENHOUTEN:

24 Q Please identify this document for the Court
25 and others present.

1 A It's National City's year end tax statement,
2 interest statement, pardon me, to Mrs. Pefley, and it's
3 her notice for her taxes, how much interest she paid and
4 what her escrow was, how much escrow she paid for the
5 year 2008.

6 **Q And what information -- could you just publish**
7 **what is on the face of the exhibit to the Court, the**
8 **amount?**

9 A Oh, certainly. It says in 2008 the principal
10 balance as of the statement \$293,138.52. In the year
11 2008 they paid 523695 for hazard insurance, real estate
12 taxes in the amount of 170150, TMI insurance 239976.

13 **Q And is the document you are looking at a**
14 **document that is imaged in your computer system?**

15 A It is.

16 **Q And who would have made the document or caused**
17 **it to be made, the person who supplied the information?**

18 A National City Mortgage.

19 **Q And that would be the prior servicer?**

20 A Yes, correct.

21 MS. VANDENHOUTEN: Your Honor, at this
22 time, if there's no objection --

23 MR. SYMONOVICZ: No objection.

24 MS. VANDENHOUTEN: -- we would like the
25 Court to admit Plaintiff's Exhibit 8.

1 THE COURT: Admitted into evidence
2 without objection, Plaintiff's 8.

3 (Plaintiff's Exhibit Number 8 received in
4 evidence.)

5 MS. VANDENHOUTEN: I don't think this one
6 has been admitted but it has been redacted. I will
7 mark it as Plaintiff's Exhibit 9. I will show it
8 to counsel. This is the unredacted and this is
9 what we've redacted on that.

10 MR. SYMONOVICZ: I have no objection.

11 MS. VANDENHOUTEN: Your Honor, since
12 there's no objection, and trying to hurry this
13 along, if I can have admitted Plaintiff's Exhibit
14 8.

15 THE COURT: It's 9.

16 MS. VANDENHOUTEN: 9, I'm sorry, you're
17 right, it's 9.

18 THE COURT: What is it?

19 MS. VANDENHOUTEN: It is -- I will show
20 the Court and then we'll mark it. Why don't we
21 have read into the record for identification
22 purposes what it is.

23 BY MS. VANDENHOUTEN:

24 **Q Can you identify this?**

25 **A This is Notice of Assignment Sale or Transfer**

1 of Servicing Rights. This is the standard letter that
2 Green Tree sends to customers. This one was sent to
3 Cherane Pefley, 14877 Snail Trail, Loxahatchee, Florida,
4 on November 13th, 2009, advising her that Green Tree is
5 taking over servicing.

6 THE COURT: Admitted into evidence
7 without objection as Plaintiff's 9.

8 MS. VANDENHOUTEN: Thank you, Your Honor.
9 (Plaintiff's Exhibit Number 9 received in
10 evidence.)

11 BY MS. VANDENHOUTEN:

12 Q Now, you did testify that at some time during
13 the process of the servicing of this loan that you found
14 as a servicer that there was a breach under the loan
15 documents?

16 A Yes.

17 Q And she was, the defendant, was due for what
18 date?

19 A I think it was November 1st. November 1st of
20 '08.

21 Q And we have, if I am correct on the exhibit,
22 we have identified and introduced into evidence a
23 document by National City that had, according to your
24 testimony, a balance of \$293,138.52; is that correct?

25 A Yes.

1 Q Is that the unpaid principal balance that we
2 are asking for as the unpaid principal balance on this
3 loan --

4 A Yes.

5 Q -- in the complaint?

6 MR. SYMONOVICZ: I am confused. Are you
7 asking her about what the balance was in 2008? We
8 are talking about National City.

9 MS. VANDENHOUTEN: Yes. And that's the
10 unpaid principal balance now.

11 MR. SYMONOVICZ: As of 2008?

12 MS. VANDENHOUTEN: Pursuant to her
13 testimony and the records that we have.

14 MR. SYMONOVICZ: Now I am even more
15 confused. I thought you were talking about the
16 2008 one.

17 MS. VANDENHOUTEN: Right. If you look at
18 the complaint and look at that balance, that was
19 sent to the defendant.

20 MR. SYMONOVICZ: That's the balance you
21 are showing in the complaint?

22 MS. VANDENHOUTEN: Yes.

23 MR. SYMONOVICZ: As of 2008?

24 MS. VANDENHOUTEN: Yes.

25 MR. SYMONOVICZ: Okay.

1 BY MS. VANDENHOUTEN:

2 Q Now, we have admitted already into evidence
3 the documents that I am now referring to, and just for
4 the record, the note in this the case and the security
5 instrument, Exhibits 1 and 2. Is this a first mortgage
6 on the property?

7 A It is.

8 Q Is this a purchase money mortgage?

9 A Yes.

10 Q So that our mortgage is superior to all
11 others?

12 A Right. As of '07.

13 MS. VANDENHOUTEN: Now, we have prepared
14 a proposed final judgment with amounts due and
15 owing. What I would like to do is to show the
16 amounts and the proposed final judgment to opposing
17 counsel and I would like to ask the witness
18 questions regarding the balance from the payment
19 history exhibit. I am not sure -- I think it's 5
20 or 6 -- 6.

21 MR. SYMONOVICZ: I would like to expedite
22 this, obviously, because we are getting close to 4
23 o'clock.

24 MS. VANDENHOUTEN: Yes. And I know you
25 have a case to put on.

1 MR. SYMONOVICZ: I have no objection to
2 assignments or anything, I have no objection to
3 standing, any of that stuff, so I don't see why we
4 should have to put all of this in evidence.

5 MS. VANDENHOUTEN: Well, the only thing I
6 am asking to do, because which have to have
7 testimony on each amount we are asking for, and
8 there has been testimony regarding the specific
9 dates but not the total amounts due and owing, if
10 you want to stipulate --

11 THE COURT: I will consider only that
12 testimony that is verified by the payment history.

13 MS. VANDENHOUTEN: Yes.

14 THE COURT: If there are amounts
15 contained on the final judgment that are not
16 included in the payment history, I will not
17 consider those amounts.

18 MS. VANDENHOUTEN: And we will agree to
19 reduce the final judgment by any amount that is not
20 included in the payment history, and for the time
21 period that you are questioning, if you don't see
22 we have adjusted according to the payments that
23 your client claims she's made and has not been
24 returned, we will reduce the amounts we are asking
25 for by those amounts.

1 MR. SYMONOVICZ: I understand. And I
2 have no problem with that. But that's not what our
3 defense is.

4 MS. VANDENHOUTEN: I will just show you
5 the proposed final judgment.

6 MR. SYMONOVICZ: And this principal
7 amount that you are showing me corresponds with
8 that from '98?

9 MS. VANDENHOUTEN: Yes, right here, I
10 have the unredacted copy. The Court can look at
11 the redacted copy.

12 MR. SYMONOVICZ: That's fine. I have no
13 objection to the actual form of the final judgment.
14 I don't really know, obviously, I can't really know
15 if all of these figures off the top of my head are
16 correct since I am just looking at this now, but
17 the form itself I have no problem with.

18 THE COURT: All right, so should judgment
19 be entered in favor of the plaintiff, we can
20 discuss at that time what, if any, amounts are
21 included in the evidence?

22 MR. SYMONOVICZ: Correct, I agree, Your
23 Honor.

24 MS. VANDENHOUTEN: With my case being
25 open right now, can I reopen my case concerning the

1 amounts, you know, for testimony from the --

2 THE COURT: He just agreed, should
3 judgment be entered in favor of the plaintiff, then
4 counsel, both counsel, would consider those amounts
5 that are verified by the payment history.

6 MS. VANDENHOUTEN: But I don't want to
7 close my case. I want to be able to reopen so she
8 can give testimony to show the amounts on the paid
9 history.

10 THE COURT: That's what we are agreeing
11 to do.

12 MR. SYMONOVICZ: That's correct.

13 MS. VANDENHOUTEN: All right, just as
14 long as we stipulate and understand.

15 THE COURT: All right.

16 BY MS. VANDENHOUTEN:

17 Q With respect to the final judgment that is
18 proposed, have you had an opportunity to review the
19 amounts on the final judgment?

20 A I have.

21 Q Are the amounts on the final judgment a
22 reflection of the amounts you see on that payment
23 history?

24 A Absolutely, yes.

25 MS. VANDENHOUTEN: Your Honor, at this

1 time, in summary, the --

2 THE COURT: Have you concluded your
3 direct examination?

4 MS. VANDENHOUTEN: Yes.

5 THE COURT: Okay, cross examination.

6 MR. SYMONOVICZ: Sure, Judge. I will be
7 brief on that.

8 CROSS EXAMINATION

9 BY MR. SYMONOVICZ:

10 Q Is it fair to say, based on what I have
11 already asked you, that you are not aware of any of the
12 correspondences between Mrs. Pefley and National City
13 Mortgage? Did you read any of them?

14 A Yes, I read, yes, I did actually. I read some
15 of them. But I did not read all of them.

16 Q Could you tell me which ones they are?

17 A I read letters back and forth about lack of
18 insurance, force-placed insurance, re-insurance, all of
19 that. I looked at some mod attempts.

20 Q I am just concerned with the period, just to
21 narrow everything down, of the period you say she was,
22 she began to be in default.

23 A Okay. Tell me the period you are asking the
24 question about.

25 Q I am going to show you three letters right

1 here.

2 A Okay.

3 THE COURT: You want to mark them as
4 defendant's exhibits?

5 MR. SYMONOVICZ: Yes.

6 BY MR. SYMONOVICZ:

7 Q I will show you these three exhibits. I am
8 going to ask you if you are familiar with any one of
9 these, if you have seen any of these?

10 A All right. This is the same.

11 Q That I showed you before?

12 A This is the same. Exhibit 1 is the same that
13 you showed me that I said I have never seen. This is
14 like a handwritten thing. I don't --

15 Q Well, there's an email there. That's what
16 that is.

17 A Well, whose all this handwriting?

18 Q It's my client's handwriting. But I am asking
19 you if you have seen that.

20 A I saw it earlier today. I have not seen it
21 prior to today.

22 Q Okay. So you don't know what that stands for
23 or what was going on there?

24 A I don't know who these people are. And it's
25 got handwriting on it. I don't know.

1 **Q How about the next letter, have you seen that**
2 **one before?**

3 A This looks like something I did review. So I
4 am reading this one in its entirety, if you don't mind.
5 That one I haven't seen.

6 **Q How about the one of November 19th?**

7 A I was trying to read that one.

8 **Q Sorry. There you go.**

9 A No, where's the second one? I still had 2 and
10 3. And 2 I want to actually read. This is a form
11 letter that I did review.

12 **Q Okay, the second letter, which is October**
13 **17th, correct?**

14 A October 17th of 2008.

15 **Q What does that letter say?**

16 A Do you want me to read the whole letter?

17 **Q Yes, please.**

18 A "This letter is in response to your recent
19 inquiry concerning your referenced loan. Please be
20 assured that our records have been adjusted accordingly.
21 For your convenience, you can verify that these
22 corrections have been made to your account by viewing
23 your current loan activity on line at www.ncnc.com. We
24 apologize for any inconvenience this may have caused
25 you. We strive to provide superior service in all areas

1 and your satisfaction is very important to us. If you
2 have any further questions, please call one of our
3 knowledgeable customer service representatives at the
4 customer service number."

5 **Q Do you know what they mean by adjusting her**
6 **payments?**

7 A Sure.

8 **Q What do they mean?**

9 A Raising it or lowering it, depending on the
10 information they have.

11 **Q So you can't tell from that letter whether**
12 **they raised it or lowered it?**

13 A No.

14 **Q And even based on looking at the loan history**
15 **you can't tell?**

16 MS. VANDENHOUTEN: Objection. You are
17 duplicating questions before she has a chance to
18 answer.

19 THE COURT: Overruled. Just repeat the
20 question.

21 BY MR. SYMONOVICZ:

22 **Q Can you tell from looking at the loan history**
23 **whether or not it was adjusted up or down?**

24 A I can't tell from this letter, but I did
25 review the notes from the previous servicer. I do

1 have -- I do know. But this doesn't say in this.

2 **Q Do you know if they adjusted it up or down?**

3 A Yes, there were adjustments made.

4 **Q Were they up or down?**

5 A They were both. They did have proof of
6 homeowner's insurance so they raised it. Then they did
7 subsequently pay for force-placed insurance so they
8 raised it.

9 **Q When was this?**

10 A This went from '08 through...

11 **Q I am asking you, as of October 17, 2008, if**
12 **you know, did they adjust it up or down at that point?**

13 A I don't know that on October 17th, 2008 they
14 adjusted it up or down, there were so many adjustments
15 during that time period, and it had to do with force-
16 placed insurance, receiving proof of insurance, not
17 having any.

18 **Q So what's the Exhibit Number 3?**

19 A 2.

20 **Q You still have that? No, this is 2. You are**
21 **at 3.**

22 MS. VANDENHOUTEN: Just for
23 clarification, Number 3 is the letter dated
24 10/17/08?

25 MR. SYMONOVICZ: No, Number 2 is the

1 letter dated October 17th, '08.

2 MS. VANDENHOUTEN: What is the one --

3 MR. SYMONOVICZ: I believe it's a --
4 well, you can tell me the date. You are looking at
5 it. What's the date on that?

6 THE WITNESS: November 19th, 2008.

7 MS. VANDENHOUTEN: Okay, thank you.

8 BY MR. SYMONOVICZ:

9 **Q Have you seen that letter before?**

10 A No, I have never seen this.

11 **Q So you are not familiar with that letter?**

12 A I have never seen this letter and it looks,
13 it's on our letterhead, but the writing on it, part of
14 it, looks like it's handwritten, but it has a mailing
15 coupon at the bottom like a statement, so I am not sure.

16 MR. SYMONOVICZ: Fair enough.

17 I'll show you this. This would be
18 Exhibit Number 4.

19 THE COURT: Is this for identification
20 purposes only?

21 MR. SYMONOVICZ: Yes, that's correct.

22 BY MR. SYMONOVICZ:

23 **Q I'll ask you if you have ever seen this**
24 **before?**

25 A I actually did see this in the system.

1 **Q So you have seen that letter?**

2 A I saw a notice about this same payment with a
3 copy of this same check. But, honestly, I am having to
4 assume it's the same letter. This says "duplicate" on
5 it. This looks like the letter I saw.

6 **Q We're not concerned with the handwritten**
7 **stuff. We are concerned with the typewritten stuff.**

8 A This looks like the letter I reviewed.

9 **Q It would seem that this letter says that her**
10 **monthly payment was \$3,087.52. According to your**
11 **testimony earlier, she had several monthly payments from**
12 **January onward. Looking at your loan history, I think**
13 **you said at one point it was \$2700, at another point it**
14 **was \$3400, now it's 3,087. Is that what they are**
15 **saying?**

16 A Those were the amounts remitted. The actual
17 payment amount did go up and down quite a bit because of
18 the force-placed insurance, proof of insurance, force-
19 placed insurance, that's true.

20 **Q This all happened in 2008, prior to October of**
21 **2008?**

22 A It has been going on the whole life of the
23 loan.

24 **Q I am not talking about the whole life of the**
25 **loan. I am acting about 2008.**

1 A Yes, yes, that has gone on.

2 MR. SYMONOVICZ: I have no further
3 questions at this time. Thank you.

4 THE COURT: Any redirect?

5 MS. VANDENHOUTEN: I believe, but I don't
6 know because I am trying to write information, have
7 any of these exhibits been admitted or only for
8 identification?

9 MR. SYMONOVICZ: They are only
10 identified.

11 THE COURT: They haven't been admitted
12 into evidence yet.

13 MS. VANDENHOUTEN: All right. I don't
14 have any further questions.

15 THE COURT: Thank you, ma'am. You may
16 step down. Call your next witness.

17 MS. VANDENHOUTEN: That's all the
18 witnesses we have, Your Honor.

19 THE COURT: Plaintiff rests?

20 MS. VANDENHOUTEN: Subject to the
21 agreement on the amounts on the final judgment and
22 payment history.

23 THE COURT: Okay.

24 MR. SYMONOVICZ: Mrs. Pefley has a sight
25 problem. She may or may not be able to see too

1 much but she's going to try her best.

2 THE COURT: That's fine.

3 THEREUPON,

4 CHERANE PEFLEY,

5 called as a witness herein, having been first duly

6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SYMONOVICZ:

9 Q Would you state your name and address for the
10 Court please.

11 A Cherane Pefley, 14877 Snail Trace, Loxahatchee
12 Groves, Florida.

13 Q When did you purchase this property?

14 A May 18th, 2007 I had the closing.

15 Q When did you start making monthly payments on
16 this loan?

17 A I think it was 45 days, July of 2007.

18 Q Do you remember what your monthly payments
19 were when you initially started it?

20 A Not exactly. It was 2,700 something cents.

21 Q And you made those payments during the first
22 six months of the loan?

23 A I made the payments right up through October
24 of 2008 each month.

25 Q Did there come a time when you believe that

1 **the bank was overcharging you because of escrows?**

2 A Yes.

3 **Q What did you do about that?**

4 A I called the bank first, the mortgage officer
5 that gave me the mortgage.

6 **Q Where was this?**

7 A In Vero Beach, Florida, National City.

8 **Q What happened when you spoke to them?**

9 A She put me in touch with -- I was not aware
10 that there was a difference between National City
11 Mortgage and National City Bank -- and she put me in
12 touch with National City Mortgage.

13 **Q Did you do some research as to whether or not**
14 **the escrows were proper?**

15 A I did.

16 **Q And what did you find?**

17 A I was paying ungodly amounts that I
18 desperately needed at that time into escrow.

19 **Q And why was that?**

20 A I had fallen and broken my wrist in April of
21 2008 and I was unable to feed the rare birds, baby birds
22 that I have, so I needed to really look at my budget
23 very seriously and correct any errors.

24 **Q What do you do for a living?**

25 A I am an Avianitarian of the Wild Bird

1 Conservation Act.

2 Q Are you licensed by the federal government?

3 A I am, state and local.

4 Q And you use your property for that purpose?

5 A I do.

6 Q During the course of 2007 did you file a
7 homestead exemption for that property?

8 A I did.

9 Q Did you file any other exemptions?

10 A I did. I filed, in January I filed homestead
11 forward I think it's called, as well as I applied for
12 agricultural exemption.

13 Q And was that granted?

14 A Yes, it was.

15 MR. SYMONOVICZ: I will mark this as
16 Exhibits 5 and 6. And I will show them to you.

17 THE COURT: 2, 3 and 4 are emails, even
18 though they're not in evidence yet, is that
19 correct?

20 MR. SYMONOVICZ: One is an email. The
21 others are letters. 2, 3 and 4 are letters. The
22 Number 1 is an email.

23 THE COURT: Okay.

24 MR. SYMONOVICZ: I don't know if you can
25 read this, Cherane, but we are going to attempt to.

1 THE WITNESS: If I can look at the date
2 on the subject.

3 MR. SYMONOVICZ: Okay. I'm going to show
4 you what purports to be the 2007 and 2008 tax bills
5 from the county website.

6 THE WITNESS: Do I have to look at the
7 figures?

8 MR. SYMONOVICZ: I don't know if you have
9 to look at the figures, but I just, if you can tell
10 the Court what the --

11 BY MR. SYMONOVICZ:

12 Q What was the gross real estate tax for 2007
13 before you got the homestead exemptions and the
14 agricultural exemptions?

15 A Can you point it out to me so I go put this
16 (indicating) on it please?

17 Q Sure. I can quote it to you if the Court
18 permits.

19 A Instead of going over all of it.

20 Q It's right here and right here. The very
21 bottom line there.

22 A Okay. \$6,440.93.

23 Q That's for 2007, correct?

24 A That's the gross tax.

25 Q How about 2008, how much was the gross tax

1 then?

2 A \$1,772.40.

3 MS. VANDENHOUTEN: Objection. I am
4 looking at Exhibit 5. Is that the one she's
5 reading off of?

6 MR. SYMONOVICZ: 5 is 2007. 6 is 2008.
7 You have already admitted this in the request for
8 admissions, by the way, these gross taxes for these
9 years.

10 MS. VANDENHOUTEN: I am just trying to
11 follow her testimony. So 2007 is Number 5 and 2008
12 is Number 7?

13 MR. SYMONOVICZ: 6, 5 and 6.

14 MS. VANDENHOUTEN: All right.

15 MR. SYMONOVICZ: Do you have any
16 objection to me admitting them into evidence?

17 MS. VANDENHOUTEN: For what purpose?

18 MR. SYMONOVICZ: To show what the taxes
19 were for those two years.

20 MS. VANDENHOUTEN: Yes, we have no
21 objection.

22 THE COURT: So admitted as Defendant's 5
23 and 6 without objection.

24 (Defendant's Exhibit Numbers 5 and 6
25 received in evidence.)

1 BY MR. SYMONOVICZ:

2 Q Were there any other escrow amounts that
3 changed in 2008 from 2007?

4 A Yes, my insurance.

5 Q How did that change?

6 A I had a policy that National City just paid
7 and I had acquired a different company and my insurance
8 for bird coverage went down from 3,900 something dollars
9 to 1,500 something dollars. I do believe that was with
10 Citizens actually. I had Southerby's or Southerley's or
11 something like that, 3,900 something cents, and I got
12 Citizens coverage for 1,500 something. Or maybe it was
13 even -- oh, no, it was 1,300 and something dollars.

14 Q And previously to that how much was your
15 payment?

16 A 3,990 something dollars.

17 Q All right. Would \$3,912 be about accurate?

18 A Yes. I think I've got a copy there.

19 Q Okay. So you went to City National and asked
20 them to make adjustments; is that correct?

21 A I did.

22 Q And what happened as a result of that?

23 A They asked me to deposit the 3,990 something
24 dollars into escrow and I did.

25 Q Did you get that money back?

1 A I did.

2 Q Because they had another insurance company
3 that was charging less money, is that why? They asked
4 you to pay \$3900 because that was supposed to be in
5 escrow, I guess shortage, correct, for insurance
6 purposes?

7 A They just took it. National City didn't ask
8 me anything. They just took it and sent it to this
9 company. And I had Southerby's.

10 Q But you said they returned the money to you?

11 A Southerby's Insurance returned the money.

12 Q The insurance company returned the money?

13 A Yes. And I deposited it back into escrow.

14 Q You gave it back to City National?

15 A I did, National City, I did.

16 Q Okay, National City Bank. Did there come a
17 time when they agreed to adjust your monthly payments?

18 A Yes.

19 Q Okay. I am going to show you what already has
20 been marked as Exhibit 1, I think you have it, the
21 email.

22 MS. VANDENHOUTEN: I don't know if I
23 handed it back to you. It may be in the
24 collection. All right, thank you.

25 MR. SYMONOVICZ: And I will show Mrs.

1 Pefley this email.

2 THE WITNESS: Yes.

3 BY MR. SYMONOVICZ:

4 Q You are familiar with this email?

5 A I am.

6 Q How did you get it?

7 A I went to the property appraisers and I went
8 to Florida Department of Revenue to see if they gathered
9 up all of my property taxes and certified it and et
10 cetera, et cetera, and they did. The property appraiser
11 said in October they would have it on the website for my
12 use or for any Palm Beach County taxpayer property use.

13 And the day that it was up on the internet,
14 the web, because National City Mortgage evidently needed
15 proof of what I had done in January of 2008 regarding my
16 homestead, my agriculture use, everything, October 14th
17 it went up on the website and I walked into the bank, to
18 the manager, and she spent two hours with National City
19 Mortgage representing me, because I had all of the
20 paperwork, all the data to show, and plus my hand that
21 still was in recovery, that I needed to get this
22 mortgage down to affordable, and National City was not
23 going to work with me. So I had to do it by making
24 corrections to the escrow.

25 Q All right. Well, did they correct the monthly

1 **payment for you?**

2 A Yes.

3 **Q Is that what's reflected in that?**

4 A Yes.

5 **Q Okay.**

6 A I wish I could read it.

7 **Q If it's okay, I will read it back to her,**
8 **because it's a very short paragraph.**

9 It says, "Please accept this email as
10 confirmation that Cherane Pefley's payment, effective
11 October 1st, 2008, will be \$2,506.07. The system will
12 update as of midnight tonight with the correct tax
13 amounts and I will order the homeowner a corrected
14 coupon book tomorrow. That will take approximately two
15 to three weeks."

16 Do you remember that?

17 A I do.

18 **Q What is your understanding of what this meant?**

19 A The manager herself walked me over to the
20 counter, she printed that out and told me to keep it, I
21 handed it to the teller and I made the payment.

22 **Q And they accepted the payment?**

23 A And she suggested, the manager suggested that
24 for a couple of months that I bring the letter with me
25 when I made the payment so I would not be refused in not

1 making the full payment, that that was the new -- until
2 the coupon book came, as told in that letter.

3 THE WITNESS: Am I correct with that, it
4 says there is a coupon book due?

5 MR. SYMONOVICZ: Yes, a new one will be
6 sent within two to three weeks.

7 Do you have any objection to admitting
8 this into evidence?

9 MS. VANDENHOUTEN: The email?

10 MR. SYMONOVICZ: Yes.

11 MS. VANDENHOUTEN: I have an objection
12 because, you know, in general the law says, Florida
13 statutes, that the agreement cannot be amended
14 except in writing, signed by both parties, under
15 the credit agreement section.

16 MR. SYMONOVICZ: Well, it has to be
17 signed by the bank.

18 MS. VANDENHOUTEN: Right. Well, yes, if
19 they are modifying it up, it has to be signed by
20 the borrower also. So if you want to limit the
21 purpose, that she received a copy of an email for
22 that limited purpose, but I cannot agree that this
23 email changed the terms of her loan.

24 MR. SYMONOVICZ: Well, obviously, Judge,
25 that's what we're seeking to show, that it does

1 change the terms of her loan, because it speaks for
2 itself.

3 THE COURT: She's already testified to
4 the entire substance of the email, so I am not sure
5 what --

6 MS. VANDENHOUTEN: I am just objecting,
7 yes, to --

8 THE COURT: You can argue that. This is
9 as to admissibility and she's already read it into
10 the record and already testified to it.

11 MS. VANDENHOUTEN: Yes, I understand
12 that, Your Honor. I am just noting in the record
13 that the objection is the Bankers Statute of Fraud.
14 That's all.

15 THE COURT: So admitted into evidence.

16 (Defendant's Exhibit Number 1 received in
17 evidence.)

18 BY MR. SYMONOVICZ:

19 Q The next exhibit is Defendant's Exhibit 2,
20 which I have shown you, but I will show you again. It's
21 the letter of October 17th, 2008. I'll ask you if
22 you're familiar with this letter?

23 A Oh, yes, I am.

24 Q This letter is addressed to you, isn't it?

25 A Yes, it is.

1 Q I am not going to ask you to read it.

2 A I would have a difficult time reading this.

3 Q But would you say that letter confirms the
4 email?

5 A Oh, yes. I felt that I could manage now.

6 Q So you had already paid, by the time this
7 letter was sent to you, you had already paid the 2,506
8 or you hadn't paid it?

9 A I had paid October and November.

10 Q So you paid the October payment of 2,506?

11 A Yes.

12 MR. SYMONOVICZ: Again, Judge, I would
13 like to admit this into evidence.

14 MS. VANDENHOUTEN: No objection.

15 THE COURT: So admitted into evidence as
16 Defendant's Exhibit 2 without objection.

17 (Defendant's Exhibit Number 2 received in
18 evidence.)

19 BY MR. SYMONOVICZ:

20 Q Did you make a payment for November?

21 A I did.

22 Q Again for 2,506?

23 A Yes, I did.

24 Q You made both these payments at the teller?

25 A I did.

1 Q They sent the payment?

2 A Yes.

3 Q Did there come a time when you tried to make
4 this December payment?

5 A Yes.

6 Q And prior to making the December payment, I am
7 going to show you Exhibit Number 3, this is a letter
8 dated November 19th, 2008, addressed to you from
9 National City Mortgage?

10 A Yes.

11 MR. SYMONOVICZ: Do you have any
12 objection to me admitting this letter into
13 evidence?

14 MS. VANDENHOUTEN: Admitted for, no
15 objection to admission for the purpose that she
16 received the letter addressed to her from National
17 City Mortgage, this is a copy of the letter she
18 received, yes.

19 MR. SYMONOVICZ: Okay, that's fine.

20 MS. VANDENHOUTEN: But, for the record,
21 it is marked up and it is not an exact copy of what
22 she received.

23 MR. SYMONOVICZ: There's some handwritten
24 stuff on it. I was going to white it out but it's
25 just handwritten.

1 MS. VANDENHOUTEN: All right.

2 THE COURT: The letter marked Defendant's
3 Exhibit 3 is admitted. I don't see any writing
4 except some stars. The only thing that is
5 contained in the contents of the letter is typed.

6 MR. SYMONOVICZ: And that's all I care
7 about, Judge.

8 MS. VANDENHOUTEN: Yes, Your Honor, I
9 just want to stipulate for the record that this
10 isn't the letter she received, it has been changed
11 by the markings on it, subject to the markings.

12 THE COURT: But the markings don't
13 indicate anything.

14 MR. SYMONOVICZ: Any changes, correct.

15 THE COURT: Okay.

16 (Defendant's Exhibit Number 3 received in
17 evidence.)

18 MR. SYMONOVICZ: I will show you Exhibit
19 Number 4. Do you have that?

20 MS. VANDENHOUTEN: This is the letter
21 dated December 10th, 2008?

22 MR. SYMONOVICZ: Correct.

23 MS. VANDENHOUTEN: And I am looking for
24 that. Okay, I've got it. And it's a two-page
25 exhibit?

1 MR. SYMONOVICZ: That's correct.

2 MS. VANDENHOUTEN: All right.

3 BY MR. SYMONOVICZ:

4 Q I'll ask you if you can identify this letter?

5 A Yes, I got this December 17th, although it's
6 dated December 10th.

7 Q Did you attempt to make the December 2008
8 payment?

9 A I did.

10 Q What happened?

11 A I was turned away, refused, payment refused
12 unless I brought back payments up to date.

13 Q This was at the teller's window?

14 A Yes, with them apologizing, I might add.

15 MS. VANDENHOUTEN: Excuse me, objection
16 on the characterization.

17 THE COURT: Sustained.

18 BY MR. SYMONOVICZ:

19 Q There's also a check behind that. That's not
20 your check, is it?

21 A No, it's not.

22 Q That check was written to National City
23 Mortgage, is that what it is?

24 A Yes, it is.

25 Q So, as far as your bank account reflected,

1 **they had deposited the November check as well?**

2 A Yes, they did.

3 MR. SYMONOVICZ: Judge, I would like to
4 admit this into evidence.

5 THE WITNESS: The amount of \$2,506.01,
6 dated December 10th, 2008.

7 MR. SYMONOVICZ: Okay. And, Judge, I
8 would like to admit this into evidence.

9 THE COURT: Any objection?

10 MS. VANDENHOUTEN: I just wanted to read
11 part of the letter. "As previously notified, we
12 are unable to accept this payment." And I am
13 asking counsel if, because if there's reference to
14 another letter, do you have the letter where they
15 previously notified her of the \$3,087.52?

16 MR. SYMONOVICZ: I think that's Exhibit
17 3. In fact, I am certain it's Exhibit 3. It says,
18 "I have reviewed your account and found that there
19 is a balance that has not been applied towards your
20 loan and we are unable to apply these funds."

21 MS. VANDENHOUTEN: If I can just
22 review -- all right, yes, I see that now.

23 THE COURT: Any objection to Defendant's
24 4?

25 MS. VANDENHOUTEN: No, Your Honor.

1 THE COURT: So admitted without
2 objection.

3 (Defendant's Exhibit Number 4 received in
4 evidence.)

5 BY MR. SYMONOVICZ:

6 Q During this period of time did you think that
7 they had corrected the amount for 2,506 as opposed to
8 what you were paying before?

9 THE COURT: I'm sorry. Could you please
10 ask the question again? I was looking at this
11 exhibit.

12 MR. SYMONOVICZ: Okay.

13 BY MR. SYMONOVICZ:

14 Q During this period of time did you believe
15 that your monthly payment was \$2,506.07?

16 A I did.

17 Q Is there anything in the first exhibit, the
18 email, that indicates that that was supposed to go
19 towards escrow only?

20 A No. I think I had plenty of money in escrow
21 at that time.

22 Q You heard the bank's representative testify to
23 the fact that there were different amounts paid from
24 January onward, 2700, she mentioned 3400. Can you
25 clarify what that was about?

1 A Each time I went to the bank I think that
2 they, the payments went from 3400, instead of going
3 down, they had me minus and they kept going up, 3400,
4 3700. This isn't true of 2008. That is all I know.

5 **Q Did you keep trying to make payments of**
6 **2,506.07?**

7 A I did.

8 **Q And what happened?**

9 A Oh, well, through that period, no, I went
10 ahead and made the 3400 and 3700.

11 **Q I am talking about, once your payments were**
12 **2,506, did you continue to try to make those after**
13 **December of --**

14 A I was turned away from the teller.

15 **Q How many times were you turned away?**

16 A Twice, exactly twice.

17 **Q Were you able to make those payments?**

18 A I was not. December and January I was not.

19 **Q I mean, were you -- I will rephrase my**
20 **question. Did you have the physical capacity, the**
21 **financial capacity, to make these payments?**

22 A Oh, yes.

23 **Q You could have continued to make these**
24 **payments?**

25 A Yes.

1 **Q Did there come a time when you sought to try**
2 **to get a loan modification?**

3 A Yes.

4 **Q When did that happen?**

5 A I was approached for the HPM by Green Tree and
6 there was discussion pertaining to what had happened,
7 the escrow amount of monies in Green Tree, that Green
8 Tree had, it was brought to my attention that I could do
9 a modification and that would waive away what had
10 happened in 2008. Now, all this was done through a HUD
11 counselor, and it was told to me that if I got the
12 modification that I could do nothing about the 2008.
13 And so I agreed that I would go after the modification
14 and that's what I did.

15 **Q But you had been willing previously to pay the**
16 **2,506.07?**

17 A Yes, the modification, what they had done, I
18 felt very pleased with that, that under water or over
19 shadow, whatever they call it, about the property going
20 down in value surrounding the area, I felt very
21 comfortable in doing the modification with the
22 counselor.

23 **Q Did you enter into a modification agreement?**

24 A I did.

25 MS. VANDENHOUTEN: I object for the

1 record as to her understanding of entering into a
2 modification agreement.

3 MR. SYMONOVICZ: Let me rephrase that.

4 BY MR. SYMONOVICZ:

5 Q Did you ever enter into a trial period payment
6 under HPM?

7 A I entered into a payment plan. It was not
8 explained to me that it was a trial at all. As a matter
9 of fact, Kim Smith got on the phone, she gave me the
10 five year -- she gave me the whole program and said that
11 I --

12 MS. VANDENHOUTEN: Objection, hearsay.

13 THE COURT: Sustained.

14 MR. SYMONOVICZ: This is my next proposed
15 exhibit, which I think would be Exhibit 7.

16 BY MR. SYMONOVICZ:

17 Q I am going to ask you to identify this. First
18 of all, I am going to ask you if this is your signature
19 on this document right here. Can you tell me if that's
20 your signature on this page?

21 A Yes, it is.

22 Q Okay.

23 A Now, did I sign all that writing?

24 Q I will ask you if this is your signature right
25 here?

1 A Yes, it is.

2 Q I am going to ask you what date that signature
3 appeared and also if you can tell me who signed it next
4 to you?

5 A 12/14/2009, Green Tree, I can't make out
6 the -- I think that is a K. I can't make out the
7 signature. 12/22/09.

8 Q And, as far as you are concerned, what does
9 that document represent?

10 A The modification.

11 MS. VANDENHOUTEN: Objection, Your Honor,
12 as to what it represents. Obviously, the document
13 speaks for itself. It doesn't matter what it
14 represents. The document is a contract that speaks
15 for itself.

16 BY MR. SYMONOVICZ:

17 Q What did you understand it to represent?

18 MS. VANDENHOUTEN: Objection. It doesn't
19 matter what she understands it meant. The terms of
20 the trial modification are in writing. So I am
21 just objecting to the characterization because it
22 is a contract and there are terms that are written
23 and the statute of frauds --

24 THE COURT: Sustained. Do you want to
25 admit the --

1 MR. SYMONOVICZ: I do, but I also wanted
2 to read a portion of it to the Court. I would have
3 her read it normally but --

4 THE COURT: Do you want to admit it into
5 evidence first?

6 MR. SYMONOVICZ: Yes, Your Honor.

7 THE COURT: Any objection to the
8 modification agreement?

9 MS. VANDENHOUTEN: As long as we call it
10 a trial modification, just for the record,
11 paragraph 3 on page 3, it says it's a trial, so I
12 just want to make sure that it --

13 THE COURT: I can read it.

14 MS. VANDENHOUTEN: What are you giving
15 the witness? We haven't seen what you are giving
16 her. You already gave her this.

17 MR. SYMONOVICZ: I am giving her this
18 thing. You gave it to me.

19 MS. VANDENHOUTEN: Okay.

20 MR. SYMONOVICZ: We are going to mark it
21 as an exhibit if it hasn't already been marked. I
22 think it has.

23 MS. VANDENHOUTEN: Okay.

24 MR. SYMONOVICZ: It's Exhibit 7.

25 MS. VANDENHOUTEN: Can you tell me the

1 pages it is just to make sure we are looking at the
2 same thing she's looking at.

3 MR. SYMONOVICZ: 1, 2, 3, 4, 5, 6, 7, 8,
4 9, 10, 11, 12, 13, 14.

5 MS. VANDENHOUTEN: Okay.

6 MR. SYMONOVICZ: No objection then?

7 MS. VANDENHOUTEN: It's being admitted
8 for what purpose?

9 MR. SYMONOVICZ: To show that she signed
10 this agreement with your client.

11 MS. VANDENHOUTEN: Correct. But there's
12 a lot attached to this, and it's a package of what
13 was submitted, correct?

14 MR. SYMONOVICZ: It's all part of the
15 same exhibit and actually your office provided it
16 to me. I wouldn't have had it otherwise.

17 MS. VANDENHOUTEN: Correct. But I am
18 saying that the document that is signed, which
19 begins on the third page, is the document that was
20 signed?

21 MR. SYMONOVICZ: Correct.

22 MS. VANDENHOUTEN: So the other
23 information is information that --

24 MR. SYMONOVICZ: It's the whole
25 modification program. That's the entire package.

1 It includes what she had to fill out.

2 MS. VANDENHOUTEN: Correct. As long as
3 we understand that the entire package and the part
4 of it that is the written contract agreement on the
5 trial is three pages, the other information is
6 information that, some of it was provided, there's
7 a handwritten, you know, document, it's not part of
8 the -- we can't stipulate to the truth of the
9 what's in the information that the defendant
10 provided.

11 MR. SYMONOVICZ: And I understand that.
12 It's not being provided for that purpose.

13 MS. VANDENHOUTEN: All right, thank you.

14 MR. SYMONOVICZ: I am going to have her
15 look at the exhibit some more before it is
16 submitted.

17 BY MR. SYMONOVICZ:

18 Q Can you read what this word is right up here?

19 A "Eligible."

20 Q Did you write that on there?

21 A I did not.

22 Q That was the way it was presented to you when
23 you got your document?

24 A I never saw that.

25 MS. VANDENHOUTEN: Just for further

1 clarification, you are talking about page 1?

2 MR. SYMONOVICZ: Page 1. It says
3 "eligible." It's circled. And I didn't do it and
4 she didn't do it, so I don't know, but that's
5 basically it.

6 MS. VANDENHOUTEN: All right.

7 MR. SYMONOVICZ: Your Honor, this is
8 Exhibit 7.

9 THE COURT: You are offering Exhibit 7
10 into evidence?

11 MR. SYMONOVICZ: Yes.

12 MS. VANDENHOUTEN: And for the limited
13 purpose that we can't stipulate to the truth of the
14 information that was provided by her because the
15 only portion that was executed by or appears to
16 have been signed by Green Tree is the third page
17 and there is a three page contract in this --

18 THE COURT: So you are stipulating to the
19 entry of Defendant's Exhibit 7 with respect to the
20 first three pages?

21 MS. VANDENHOUTEN: No. We are
22 stipulating that this is the package, but the part
23 of the trial modification, the written part of the,
24 on page 3, home affordable modification trial
25 period plan, is a three-page document that has the

1 signature of Green Tree, but the information that
2 is attached to it, some of it is handwritten
3 information and some of it has been provided by the
4 borrower as a submission, we are not stipulating to
5 the truth of that information, only that there was
6 a trial modification that is three pages that has
7 the signature. The information on the back, of
8 course, isn't being signed on to, but this is a
9 submission for this program and a three-page
10 document that gives the borrower a trial period
11 plan.

12 THE COURT: So admitted for the limited
13 purposes stated by plaintiff's counsel.

14 MR. SYMONOVICZ: Thank you, Your Honor.

15 (Defendant's Exhibit Number 7 received in
16 evidence.)

17 BY MR. SYMONOVICZ:

18 Q Under this trial period plan, do you remember
19 what the payments were?

20 A 1,099.

21 Q Did you make all three payments?

22 A I did.

23 Q Did you believe under that plan that you were
24 going to get a permanent loan modification if you made
25 the three payments?

1 A Yes, I did.

2 MS. VANDENHOUTEN: Objection. Once again
3 she's referring to a document that she signed and
4 in paragraph 3 of that document it clearly states
5 that it's a trial and that -- if I could read it
6 into the record --

7 THE COURT: No, you can't. I understand
8 your objection. The objection is overruled. You
9 can cross examine her on it.

10 MS. VANDENHOUTEN: All right, yes, Your
11 Honor, I agree.

12 MR. SYMONOVICZ: Well, I am going to read
13 this into the record because it does -- this is
14 paragraph 1 of this agreement, actually it's not
15 numbered, it says:

16 "If I am in compliance with this trial
17 period plan, The Plan, and my representations in
18 Section 1 continue to be true," that's her
19 financial representations, "in all material
20 respects, the lender will provide me with a home
21 affordable modification agreement as set forth in
22 Section 3. That will amend and supplement, one,
23 the mortgage on the property and, two, the note
24 secured by the mortgage. The mortgage and note
25 together, as have been previously amended, are

1 referred to as the loan documents."

2 It speaks for itself.

3 BY MR. SYMONOVICZ:

4 Q Did you receive any correspondence then from
5 Green Tree after this?

6 A Lots.

7 Q Well, I want to show you one letter in
8 particular. I guess this would be Exhibit 8. I will
9 ask you if you can identify that?

10 A Oh, yes.

11 Q What does that letter basically tell you?

12 A I'm ineligible.

13 MR. SYMONOVICZ: More precisely, I am
14 going to read it, it says:

15 "We have reviewed the information you
16 provided regarding a home affordable modification
17 program. We have determined that you are
18 ineligible for the program and have terminated the
19 program due to specific eligibility requirements of
20 the program. Your income verification caused a
21 recalculation which pushes the account into
22 forbearance and the net present value test fails
23 according to HMP."

24 Do you have any objection to me presenting
25 this into evidence?

1 MS. VANDENHOUTEN: No, not at all.

2 THE COURT: So admitted into evidence as
3 Defendant's Exhibit 8.

4 (Defendant's Exhibit Number 8 received in
5 evidence.)

6 BY MR. SYMONOVICZ:

7 Q Were you ready to pay this loan modification
8 beyond the three months?

9 A Yes.

10 Q Were you also ready, willing and able to pay
11 the 2,506 that they had previously changed your loan
12 payments to?

13 A Yes.

14 Q Do you feel that National City has breached
15 their agreement with you?

16 A I do.

17 MS. VANDENHOUTEN: Objection.

18 THE WITNESS: I do.

19 MS. VANDENHOUTEN: Objection.

20 THE COURT: What is the legal basis?

21 MS. VANDENHOUTEN: The legal basis is
22 National City is not the plaintiff here and not the
23 servicer and you are saying National City breached
24 their agreement. I am just objecting to that.

25 THE COURT: Based on that objection, it's

1 overruled. Go ahead.

2 MR. SYMONOVICZ: I have no further
3 questions.

4 THE COURT: Cross.

5 CROSS EXAMINATION

6 BY MS. VANDENHOUTEN:

7 Q Good afternoon.

8 A Good afternoon.

9 Q I will go from the last exhibit forward. Your
10 Exhibit 8, the ineligibility letter notifying you that
11 you are not eligible for the program, when you received
12 this letter and you saw that you were not eligible for
13 the program did you make any communication with Green
14 Tree concerning it?

15 A Yes, I went through HUD, the counselor, three-
16 way party.

17 Q Is that an employee of the lender?

18 A I had the HUD counselor on the phone, with
19 Olag or Oleg, the customer service that was taking care
20 of me.

21 Q But is that -- was that an employee of the
22 servicer?

23 A Of Green Tree.

24 Q Are you sure about that?

25 A Positive.

1 Q All right. Do you have reasons to believe
2 that the income verification, when they verified your
3 income, that there would have been problems with
4 verifying the income that you stated when you submitted
5 the package?

6 A I overnighted that package and the next day I
7 was called and told that I was approved.

8 Q Excuse me. You were told that you were
9 approved?

10 A Approved. I think it was probably maybe three
11 days. I had overnighted the package.

12 Q I am going to have to take the exhibit because
13 I think your understanding of approval is different from
14 what approval actually is. This is the loan
15 modification package, Exhibit 7. I am going to show it
16 to you because I want you to look at the trial
17 modification itself. I am showing to the witness, Mr.
18 Symonovicz, page 1 right now. And, Your Honor, I am
19 showing you before I approach the witness. Okay, page
20 1.

21 A You see, I am not an employee of Green Tree
22 and I am not a government agent. I am the customer.
23 And I made that in good faith. I don't care what it
24 says.

25 MS. VANDENHOUTEN: Move to strike, Your

1 Honor, objection, she's not being responsive. I
2 haven't even shown it to her.

3 THE WITNESS: I can't read it.

4 MS. VANDENHOUTEN: I am not going to ask
5 you to read it verbatim. I am asking you if you
6 can, because you read other portions with your
7 magnifying glass.

8 THE WITNESS: Just point me to what you
9 want me to read and I will.

10 MS. VANDENHOUTEN: I want you to read to
11 the Court the title on this page.

12 THE WITNESS: Okay. Home Affordable
13 Modification Trial Period Plan. Step 1 of 2 Step
14 Documentation Process.

15 BY MS. VANDENHOUTEN:

16 Q You just read that. It was a trial. Do you
17 understand that it was a trial that was signed?

18 A I understand what you want me to say, but I am
19 telling you what I was told is two different things.

20 Q No, your signature appears on the docket. Did
21 you --

22 A I know. I did not have a reader at that time.
23 I was having injections put in my eyeballs. I'm sorry.
24 I was under the impression that I was being taken care
25 of by Green Tree.

1 **Q Well, did you have an attorney represent you**
2 **before you signed the document?**

3 A Of course not.

4 **Q Did anyone prevent you from having an attorney**
5 **look over the agreement before you signed the document?**

6 A No. I was not even advised. I had the HUD
7 counselor that went through all of that with me. The
8 payments rate were 850 and that was with the HUD
9 counselor. I went through the HUD counselor.

10 **Q Was the HUD counselor your attorney?**

11 A No.

12 **Q Did you think the HUD counselor was your**
13 **attorney?**

14 A Well, when the advertising comes up it says,
15 "Call the HUD counselor if you need help," and that's
16 what I did.

17 **Q But the HUD counselor was not hired or engaged**
18 **as your attorney, correct?**

19 A Was I supposed to get an attorney?

20 **Q You are on the witness stand and I am asking**
21 **you questions. Did you?**

22 THE COURT: Just respond, not with a
23 question.

24 THE WITNESS: Okay, what was the
25 question?

1 BY MS. VANDENHOUTEN:

2 Q The question was: Did you hire the HUD
3 counselor as your attorney?

4 A No.

5 Q All right. I am going to direct your
6 attention to page 3 of the title of what you just read,
7 Home Affordable Modification Trial Period Plan, and this
8 may be more difficult for you to read, but it is part of
9 an agreement that you signed. And if you can, paragraph
10 3 on page 3, if you could read that, this is the same --
11 you see your signature on this page?

12 A Point to where you want me to read.

13 Q Okay, this paragraph 3.

14 A Okay.

15 Q And we'll read along with you.

16 A "The modification. I understand that once
17 lender is able to determine the final amount of unpaid
18 interest and any other delinquent amounts except late
19 charges to be added to my loan balance and after
20 deducting from my loan balance any remaining money held
21 at the end of the trial period under Section 2(d) above
22 the lender will determine the new payment amount. If I
23 comply --" well, I lost it.

24 MR. SYMONOVICZ: You can read it to her
25 if you want to. It's a lot easier to do that.

1 MS. VANDENHOUTEN: She said she was under
2 fraud so I want her to try. If she can't, of
3 course, I will read it.

4 THE WITNESS: "If I comply with the
5 requirements in Section 2 and my representatives in
6 Section 1 continue to be true in all material
7 respects, the lender will send me a modification
8 agreement for my signature which will modify my
9 loan."

10 MS. VANDENHOUTEN: Thank you.

11 And you did a good job reading it.

12 BY MS. VANDENHOUTEN:

13 Q Can you tell the Court what type of income you
14 provided to the bank at this time?

15 A I have no idea.

16 Q Let's talk about, did you submit tax returns?

17 A I did.

18 Q What type of income do you have?

19 A I have no idea.

20 MR. SYMONOVICZ: I object to that because
21 you are asking her what income she has today.

22 MS. VANDENHOUTEN: Well, I am qualifying
23 it at that time. I am very sorry.

24 MR. SYMONOVICZ: Again, I am going to
25 object because, Judge, whatever income she had is

1 shown on her application as part of the --

2 MS. VANDENHOUTEN: Where do you see that?

3 MR. SYMONOVICZ: I don't know that this
4 is the entire application.

5 MS. VANDENHOUTEN: That's the problem.
6 It's not the entire application. But where do you
7 see that on that exhibit?

8 MR. SYMONOVICZ: You are right, it
9 doesn't show it. And, again, I am going to object
10 to the relevance because, Judge, the first
11 paragraph contradicts, I mean, we all know that
12 it's black letter law that when two paragraphs kind
13 of contradict each other they are construed against
14 the person that wrote them, and as far as I am
15 concerned, the first paragraph makes it undeniably
16 clear that she's entitled to the loan mod if she
17 makes her payments and her info hasn't changed.

18 THE COURT: That's for closing argument.

19 MR. SYMONOVICZ: I understand, Judge.

20 MS. VANDENHOUTEN: My only point is, Your
21 Honor, that the information that was provided has
22 to be verified. Also, she read the paragraph that
23 said they had not calculated --

24 THE COURT: Well, that's for closing
25 argument too.

1 MS. VANDENHOUTEN: Right. So what I want
2 to know is, with the information she gave the bank
3 about her income, would a reasonable person believe
4 that the payment --

5 THE COURT: It's right here in the
6 attachment to Defendant's 7. Why are you asking if
7 she provided it if you know that she didn't? Why
8 don't you make that argument in closing?

9 MS. VANDENHOUTEN: What page are you on,
10 Your Honor?

11 THE COURT: You are telling me she didn't
12 provide any income.

13 MR. SYMONOVICZ: She did. It's just not
14 part of the exhibit.

15 MS. VANDENHOUTEN: It's not part of the
16 exhibit. So I am asking the type of income she had
17 because I need information from the witness.

18 MR. SYMONOVICZ: You can't get a trial
19 period under HPM unless you provide income
20 information. It's just not part of the exhibit.

21 MS. VANDENHOUTEN: Right. And I am not
22 making the argument, but the two prong basis for
23 whether it would be changed into a mod was they
24 have to calculate the balance and determine --

25 THE COURT: You asked her if she provided

1 any income there. It's not there.

2 MS. VANDENHOUTEN: Right.

3 THE COURT: At the time that you entered
4 into the trial modification program did you provide
5 any income?

6 THE WITNESS: Three years of my income
7 tax returns. And I've filed F, Farm Schedule,
8 since 1991.

9 BY MS. VANDENHOUTEN:

10 Q And did you show any W-2 income, employment
11 income, on those forms?

12 A I am self-employed.

13 Q Do you get any additional income other than
14 your self-employed income?

15 A I do.

16 Q And that is a monthly income?

17 A Yes.

18 Q And how much is that monthly income?

19 THE COURT: Are you talking about --

20 MS. VANDENHOUTEN: I am sorry, Your
21 Honor. Let me just say for the period that she
22 submitted, you know, the returns for.

23 THE WITNESS: I don't know.

24 BY MS. VANDENHOUTEN:

25 Q What type of income is it?

1 A Social security.

2 Q And what during this period of time was a
3 typical, just one of the payments, a month?

4 A I have no idea.

5 Q Did the payments go directly into your
6 checking account?

7 A Yes.

8 Q And you have no idea?

9 A I don't.

10 Q Was it \$300?

11 A I have no idea.

12 Q Was it \$1,000?

13 A Ma'am, I have -- no, it was not a thousand
14 dollars.

15 Q Has the income you are getting changed in
16 social security?

17 A Yes?

18 MR. SYMONOVICZ: Again, that's
19 irrelevant.

20 MS. VANDENHOUTEN: If she knows what it
21 is now, I want to ask her --

22 THE COURT: She didn't know at the time.
23 She didn't know at that time. Please move on.

24 MS. VANDENHOUTEN: All right, I will move
25 on, Your Honor.

1 BY MS. VANDENHOUTEN:

2 Q Under the agreement you signed, you read the
3 paragraph 3 which says that they have got to review the
4 information to get a total balance and new payment and
5 to also verify the income that you stated to see if it
6 has changed or verify with respect to is this the income
7 that you have available. Now, do you understand that
8 the lender has to make sure that you can afford the new
9 payment under any kind of modification agreement?

10 MR. SYMONOVICZ: Again, you know, this is
11 something that is part of the agreement. The
12 agreement speaks for itself. You have read a
13 paragraph, I read a paragraph. None of this is
14 relevant at this point.

15 MS. VANDENHOUTEN: The only relevance
16 that I am attaching to it is she said she didn't
17 have an attorney when she signed a legal docket
18 that has her signature on it, she had information
19 from a HUD counselor, which is a government HUD
20 counselor, she relied on something that is --

21 THE WITNESS: Excuse me. I had one HUD
22 counselor through the whole thing.

23 MS. VANDENHOUTEN: Okay, one HUD
24 counselor through the whole thing. And she read
25 the portion of the agreement which explains that

1 the balance has to be verified, the new pay and the
2 income to make sure that it is what it stated and
3 that it is still, it is what was stated, and it is
4 still the same.

5 What I am asking her, because she said
6 she didn't read the entire agreement, she signed it
7 because she spoke to a HUD counselor, do you, I am
8 asking her, at the time you signed it did you
9 understand that when the bank made a decision about
10 a permanent mod they would have to make sure that
11 the income information you provided was true and
12 that it would be a continuing amount so you could
13 afford the new payment which they had not
14 determined at the time, did you understand that?

15 THE WITNESS: I do and I did. The HUD
16 counselor before it went to --

17 MS. VANDENHOUTEN: Thank you. That's all
18 I am asking. You have answered the question.
19 Thank you. That's all. I have no other questions.

20 THE COURT: Do you have any redirect?

21 MR. SYMONOVICZ: No, Your Honor.

22 THE COURT: Okay, thank you. You can
23 step down. Do you have any other evidence to
24 present?

25 MR. SYMONOVICZ: No, Judge. Thank you.

1 THE COURT: Okay. Do you have any
2 rebuttal evidence?

3 MS. VANDENHOUTEN: The only rebuttal
4 evidence has already been introduced, the amount of
5 the unpaid principal balance and escrow amount, so
6 forth.

7 THE COURT: Let me hear closing argument.

8 MS. VANDENHOUTEN: Your Honor, plaintiff
9 proffers to the Court, and that's what I am
10 actually doing now, the additional amounts due,
11 because we didn't go through this -- are you
12 stipulating to the amounts on this judgment?

13 MR. SYMONOVICZ: I don't know what they
14 are. I can't stipulate to them because I --

15 THE COURT: I asked you, depending on who
16 I enter judgment for, if I enter judgment for the
17 plaintiff you can reopen to verify the amounts, if
18 I enter judgment for defendant then there is no
19 need to verify it.

20 MS. VANDENHOUTEN: And, Your Honor, I
21 just wanted to make sure because I wasn't quite
22 sure. Your Honor, plaintiff has now provided the
23 Court documentation evidence and witness testimony
24 establishing that plaintiff's standing has been
25 admitted, the signature on the note and mortgage

1 has been admitted, the breach letter has been
2 admitted for payment that was due. There has been
3 conflicting testimony concerning when payments were
4 made and returned.

5 The testimony that has been provided by
6 the plaintiff's witness is that the loan was never
7 modified. The correct Bankers Statute of Fraud
8 says if you amend a credit document, which is the
9 note, it must be in writing signed by both parties.
10 The only agreement that was signed was a trial
11 modification plan.

12 That trial modification plan had to be
13 reviewed, number one, the bank had to determine the
14 balance on the loan, then had to determine a
15 monthly payment and then had to review the
16 financial information, verify the financial
17 information, and they did that process and they
18 sent a letter explaining that they could not verify
19 the income, and that would be defendant's own
20 exhibit, the letter sent in November I believe,
21 that she was ineligible.

22 The defendant testified and it was
23 admitted under no objection the National City
24 unpaid principal balance. So we have a proffered
25 amount, a final judgment, that includes the

1 principal balance, the interest that was paid at
2 the interest rate on the note and the per diem,
3 escrow amounts from homeowners, hazard insurance,
4 taxes and other things that would be paid on behalf
5 of the borrower, pre-acceleration late charges and
6 other amounts that were paid for the fees for this
7 foreclosure.

8 We are not asking for attorney's fees.
9 We are asking for amounts due under the loan. And
10 we are asking the Court to find that we have proven
11 that she was in default, the borrower did not cure
12 the default and the amount presently due and owing
13 which will be presented possibly after a verdict
14 from the Court, and we would like the Court to
15 determine and enter final judgment on the basis of
16 the testimony, the exhibits and the loan documents
17 provided.

18 THE COURT: Okay.

19 MR. SYMONOVICZ: Thank you, Your Honor.

20 First of all, there was no default.
21 There is no question whatsoever that they modified
22 her loan payments. They had already modified them
23 several times and she always paid them. Whether
24 they were up or down, she's always paid them.
25 There is no testimony to refuted that.

1 That email is clearly, and then there's a
2 letter confirming it, is clearly a confirmation
3 that her payment was now \$2,506.07 and that she
4 paid it. She tried to pay it three times. She
5 actually paid it twice. They kept the first one of
6 October 2008. The second one, November 2008, they
7 returned to her in December after she tried to make
8 the December payment. And they didn't actually
9 return her check. They returned their own check
10 after they deposited the money.

11 It's quite clear whatsoever that they
12 couldn't accelerate this loan, she was willing to
13 pay whatever amounts they told her to pay whether
14 they were up or down, and it's quite clear the
15 escrow had changed from 2007 to 2008, because all
16 expenses on her property went down from 6400 and
17 change to 1700. That's a huge difference.

18 And it's quite clear they were
19 over-escrowing in this loan and nobody from the
20 bank can testify as to what these different amounts
21 are. She can't even tell what the principal and
22 interest was. The principal and interest of the
23 loan originally, if we look at the note, is \$2,051.

24 The witness says there was, the trial
25 period agreement, assume we even go as far as the

1 trial period agreement, which we shouldn't even
2 have to because, as far as I am concerned, she was
3 given a mortgage and they refused her payments and
4 after accepting them they refused them, but assume
5 that was not the case, she was given a trial period
6 payment, which clearly says in the very first
7 paragraph if she pays everything and her
8 information hasn't changed she's entitled to a loan
9 modification.

10 It doesn't tell you on what basis or how
11 much the monthly payments are going to be, but it
12 says she's entitled to a loan modification.
13 There's no refuting that. Paragraph number 3
14 doesn't contradict that. It simply says they want
15 to have a chance to look at her financials. Well,
16 that's a joke, because they have had a year and a
17 half to. They claim she has been in default since
18 November 2008.

19 And, coincidentally, the month that she
20 makes her last payment they send her a rejection
21 letter on the trial mod and about a week later,
22 remember, on the 16th of March they say you are
23 ineligible, and they did say she was because that's
24 their handwriting, I can prove it's not ours, the
25 eligible handwriting on that trial mod is theirs,

1 so it said she was eligible.

2 Suddenly in March after she made all
3 three payments she's ineligible and then a week
4 later, March 23rd, they send her a default letter
5 that claims she's been in default since November of
6 2008. That is 15 months before that. No bank in
7 the world waits 15 months, back to 2008, to declare
8 somebody was in default. But they did? It's kind
9 of bizarre. But the bottom line is she was never
10 in default. That's why.

11 She was never in default. She agreed to
12 pay whatever they told her to pay, and then they
13 refused to talk her money, and they shouldn't be
14 here in court today with this. Their complaint
15 needs to be dismissed. There should be no
16 foreclosure.

17 Thank you, Your Honor, for your time.

18 THE COURT: Okay. The Court having
19 considered all the evidence that has been
20 introduced, finds that plaintiff's predecessor in
21 interest agreed to a monthly mortgage payment of
22 \$2,506.07 in 2008 and then refused to accept
23 defendant's payment, as alleged in the affirmative
24 defense number 5.

25 The plaintiff prevented defendant from

1 complying with the terms of the loan. Plaintiff
2 comes to court with unclean hands and it would be
3 unconscionable to render a verdict in favor of the
4 plaintiff. The Court finds in favor of the
5 defendant. Please provide the Court with the final
6 judgment finding in favor of the defendant.

7 MR. SYMONOVICZ: Thank you, Your Honor.

8 THE COURT: And, if it's applicable, the
9 Court will reserve jurisdiction to consider an
10 award of attorney's fees regarding entitlement and
11 amount.

12 MR. SYMONOVICZ: Thank you, Your Honor.

13 MS. VAN DEN HOUTEN: Thank you, Your
14 Honor.

15 THE COURT: You're welcome.

16 (Hearing concluded.)
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CERTIFICATE OF REPORTER

I, Roger Watford, RMR, FPR, RPR, certify
that I was authorized to and did stenographically
report the foregoing proceedings, pages 1 through
121, and that the transcript is a true and complete
record of my stenographic notes.

Dated this 3rd day of April, 2015



Roger Watford, RMR, FPR, RPR
Court Reporter



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