In the District Court of Appeal
Fourth District of Florida

CASE NO. [redacted]

(Circuit Court Case No. [redacted])

[redacted]

Appellant,

v.

FANNIE MAE ("FEDERAL NATIONAL MORTGAGE ASSOCIATION"), et al.,

Appellees.

ON APPEAL FROM THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

TABLE OF AUTHORITIES
(continued)

TABLE OF AUTHORITIES
(continued)

Statutes

TABLE OF AUTHORITIES
(continued)

Other Authorities

STATEMENT OF THE CASE AND FACTS

I. Introduction

[redacted] ("the Homeowner") appeals the final judgment of foreclosure rendered in favor of the Federal National Mortgage Association ("Fannie Mae") after a non-jury trial. The Homeowner presents two issues for this Court's review:

- Whether hearsay may be used to establish a hearsay exception.
- Whether the trial court erred when it denied the Homeowner's motion for involuntary dismissal.

II. Appellant's Statement of the Facts

A. The Pleadings and Motions

The original party-plaintiff CitiMortgage, Inc. ("CitiMortgage") initiated this action when it filed its one-count mortgage foreclosure complaint.[1] According to the complaint, CitiMortgage was the "present designated holder" of the subject promissory note authorized to pursue the action as "servicer" for an unnamed "owner" of the loan.[2] However, the note attached to the complaint was made

[1] Complaint, December 22, 2008 (R. 1-37).

[2] Complaint, December 22, 2008, ¶ 5 (R. 1).

payable to PMC Mortgage, Inc., Incorporated ("PMC Mortgage, Inc.").[3] And while the note was stamped with a notice saying that there was an "Allonge Attached,"[4] no allonge was actually included.

Six months later, CitiMortgage filed an amended complaint which also alleged that it was the "present designated holder" of the promissory note authorized to initiate the action on behalf of the unnamed owner.[5] However, the note attached to the amended complaint was also made payable to PMC Mortgage, Inc. and also did not contain the alleged allonge supposedly attached to the instrument.[6]

After the court granted the Homeowner's motion to dismiss the amended complaint,[7] CitiMortgage filed a second amended complaint.[8] For the first time, this pleading identified Fannie Mae as the alleged owner of the loan, although CitiMortgage continued to plead that it was the note's "present designated

[3] Page 1 of Note attached to Complaint, December 22, 2008 (R. 22).

[4] Page 3 of Note attached to Complaint, December 22, 2008 (R. 24).

[5] Amended Complaint, June 1, 2009, ¶ 5 (R. 113).

[6] Note attached to Amended Complaint, June 1, 2009 (R. 116-118).

[7] Agreed Order on Defendant's Motion to Dismiss Amended Complaint, February 24, 2010 (R. 256-257).

[8] Second Amended Complaint, February 25, 2010 (R. 258-282).

holder."[9] And while the note attached to the second amended complaint finally attached the long-awaited "allonge," this document showed an endorsement to CitiMortgage from PMC Mortgage Corp, not PMC Mortgage, Inc.[10] It also was stamped with another endorsement, this one from CitiMortgage in blank.

CitiMortgage then moved to "substitute" Fannie Mae as the party-plaintiff,[11] which was granted by the trial court.[12] And after the second amended complaint was dismissed, Fannie Mae was granted *ore tenus* relief to file a third amended complaint.[13] This pleading asserted that Fannie Mae was "a person entitled to enforce" the note as the term is used in "Chapter 673, Florida Statutes,"[14] but attached the note with the allonge from PMC Mortgage Corp. rather than PMC Mortgage, Inc.[15]

According to Paragraph 22 of the mortgage attached to the third amended complaint, the lender was required to send the Homeowner written notice of default with a thirty-day opportunity to cure prior to acceleration and foreclosure:

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[9] Second Amended Complaint, February 25, 2010, ¶5 (R. 258).

[10] Allonge attached to Second Amended Complaint, February 25, 2010 (R. 264).

[11] Motion for Substitution of Party Plaintiff, July 15, 2011 (R. 342-343).

[12] Order Substituting Party Plaintiff, June 27, 2013 (R. 449).

[13] Order on Case Management Conference, August 9, 2013 (R. 510-511).

[14] Third Amended Complaint, August 22, 2013, ¶ 4 (R. 512)

[15] Note attached to Third Amended Complaint, August 22, 2013 (R. 519-522).

> 22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument … The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property….[16]

The Homeowner answered Fannie Mae's third amended complaint and alleged that he was without knowledge and therefore denied its allegation that it was entitled to enforce the note.[17] He also alleged that he was without knowledge and therefore denied that Fannie Mae had performed all conditions precedent to foreclosure.[18] And as affirmative defenses, the Homeowner pled that Fannie Mae failed to comply with the notice provisions contained in Paragraph 22 of the mortgage[19] and that it lacked standing.[20]

On these pleadings, the matter was set for trial.[21]

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[16] Mortgage attached to the Complaint, August 22, 2013, ¶ 22 (R. 537).

[17] Answer, September 20, 2013, ¶ 3 (R. 565).

[18] Answer, September 20, 2013, ¶ 9 (R. 565).

[19] Affirmative Defenses, September 20, 2013, ¶ 2 (R. 566-567).

[20] Affirmative Defenses, September 20, 2013, ¶ 3 (R. 568-569).

[21] Order Setting Non-Jury Trial, August 19, 2014 (R. 595-601).

B. The Trial

After the court dispensed with a preliminary matter, Fannie Mae called Heriberto Romero, its first and only witness, to the stand.[22] Romero testified that he was employed by Seterus, Inc. ("the Servicer") as a "foreclosure litigation corporate officer."[23] He explained that his job was to "review" the Servicer's documents "in preparation for trials and depositions."[24] He had been employed by the Servicer for less than twelve months prior to trial[25] and later admitted that he only worked in the "contested foreclosure department."[26] He knew nothing about the Homeowner's loan until two-and-half weeks before trial, at which time it "became a responsibility" solely so he could testify at trial—which was something that he admitted that he did every day.[27]

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[22] T. 15. Romero's qualifications as a trial witness are also the subject of another appeal before this Court. *See Barnsdale Holdings, LLC v. Federal National Mortgage Association,* Case No. 4D14-4000.

[23] *Id*.

[24] T. 16.

[25] *Id*.

[26] T. 68.

[27] T. 77.

Through Romero and over the Homeowner's hearsay objections, Fannie Mae introduced the following documents which comprised the majority of its case:

- The purported original note (Exhibit 1);[28]
- A "loan acquisition" screenshot created by Fannie Mae (Exhibit 2);[29]
- The original mortgage (Exhibit 3);[30]
- A notice of acceleration (Exhibit 4);[31]
- A comment log which included comments from CitiMortgage employees (Exhibit 5);[32]
- A loan payment history (Exhibit 6);[33] and
- An assignment of mortgage dated June 30, 2010, purporting to document a transfer over a year and half earlier (Exhibit 8).[34]

For the documents which were created by the previous servicer, CitiMortgage, Romero relied upon an instruction "checklist" that the Servicer

[28] T. 24.
[29] T. 27.
[30] T. 30.
[31] T. 41.
[32] T. 49.
[33] T. 55.
[34] T. 109.

allegedly sent to CitiMortgage which he considered the "be-all-tell all."[35] For instance, he admitted on cross examination that he never worked for CitiMortgage (and therefore had no knowledge of their policies and procedures) and thus he was relying on CitiMortgage having "signed off" on the "instruction":

> Q: But what information do you have regarding CitiMortgage's documents and business records.
>
> A: Again, as I previously testified, and I'll continue to testify, I did not work for CitiMortgage. I do not have their policies or procedures, nor have I ever asked for them, nor have they ever brought it in to me.
>
> Q: So you're relying on general business practices of banks, that they would follow generally accepted procedures?
>
> A: We're relying on our boarding process, and we're relying on the trustworthiness of the documents provided from the prior servicer. We're relying on the validation of which they signed off on that instruction to ensure what they provided us is the most true and accurate updated information based on the servicing guidelines of a servicing agent.[36]

But Romero would also admit that he did not have the "instruction" checklist with him in court.[37] And when pressed, he would admit that he had not even seen the checklist for the Homeowner's loan.[38] Rather, it turned out he was relying on purported e-mails and phone calls he had with someone named "John"

[35] T. 32.

[36] T. 80-81.

[37] T. 40, T. 47.

[38] T. 92.

to determine the accuracy of the documents he sought to introduce.[39] John assured him that "the loan was boarded with no issues" and that the previous servicer was in compliance with Fannie Mae's guidelines, although John never explained to him what the previous servicer's actual policies and procedures were.[40] He described the boarding process as an "intuitive" one that "has measures and safeguards in place to ensure the most accurate and updated information is provided to [the Servicer] from the prior servicer."[41] In the end, Romero simply took John at his word that the records were accurate because it was not his job to confirm the accuracy of the records:

> So with that being said, I took his word. I took his faith that what we have is true and accurate. It's not my job to question the integrity of our boarding department, and to question what they're doing.[42]

Romero also admitted that he did not know whether PMC Mortgage Inc. (the original lender) and PMC Mortgage Corp. (the entity which executed the endorsement on the allonge) were related[43] or what, if any, relationship existed between those entities.[44] Nor did he know when the allonge was created.[45] And

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[39] T. 83.

[40] T. 83-84.

[41] T. 83.

[42]T. 83.

[43] T. 27.

[44] T. 69.

while he testified that the acquisition screenshot (Exhibit 2) indicated that Fannie Mae "acquired" the Homeowner's loan on February 1, 2005,[46] he admitted on cross examination that Exhibit 2 indicated that Fannie Mae "purchased" the loan from CitiMortgage—who he testified had never purchased the loan from anyone because they were merely the servicer of the loan:

> Q. And who did CitiMortgage purchase it from?
>
> A. I don't believe they purchased the loan. I believe they were the servicing agent for the loan in question.
>
> Q. So how could they sell something that they never owned?
>
> A. Again, I don't have the specifics as to when Citi acquired the rights to it.[47]

And he also admitted that he never saw any sort of purchase agreement between PMC Mortgage Inc. and CitiMortgage or between PMC Mortgage Inc. and Fannie Mae.[48] And while Fannie Mae used redirect to introduce a purported assignment of mortgage (Exhibit 8) between PMC Mortgage, Inc. and CitiMortgage, Romero could not explain why the assignment—which he admitted was executed after the lawsuit was filed[49]—purported to assign the note and

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[45] T. 96.

[46] T. 28.

[47] T. 70-71.

[48] T. 98.

[49] *Id*.

mortgage back in November 13, 2008 (about five weeks before the complaint was filed).[50] Nor did he ever explain how CitiMortgage could have been an assignee of the note from Mortgage Electronic Registration Systems, Inc. (acting on behalf of PMC Mortgage Inc.) in late 2008, when he testified that Fannie Mae acquired the loan in February of 2005—almost four years earlier.

With respect to the notice of acceleration, Romero admitted that he did not know whether CitiMortgage sent the letter out in-house or whether it used a third-party vendor.[51] And if CitiMortgage had sent the letter out in-house, Romero did not know the name of the department that was responsible for mailing default notices or what that department's practices were.[52]

After the close of testimony and evidence, the Homeowner moved for an involuntary dismissal arguing that Fannie Mae had not proven its standing or compliance with conditions precedent.[53] The court denied the Homeowner's motion[54] and asserted that it would take the matter under advisement after listening

[50] T. 110.

[51] T. 73.

[52] T. 74.

[53] T. 111-119.

[54] T. 121.

to closing arguments.[55] It then proceeded to render judgment in Fannie Mae's favor a few hours later.[56]

[55] T. 134.

[56] Final Judgment of Foreclosure, May 7, 2014 (R. 649-653).

SUMMARY OF THE ARGUMENT

Initially, the trial court erred when it applied the business records exception to the hearsay rule in this case. Fannie Mae's witness was a professional document reader wholly incompetent to lay the predicate. Therefore, Fannie Mae's exhibits should have been excluded from evidence.

Additionally, the trial court should have granted the Homeowner's motion for involuntary dismissal because Fannie Mae failed to prove standing at inception. Specifically, Fannie Mae failed to prove that it owned the Homeowner's loan on the day the lawsuit was filed and also failed to prove that CitiMortgage held the note on the day the lawsuit was filed.

Consequently, this Court should reverse the judgment with instructions that the trial court enter an order of involuntary dismissal on remand.

STANDARD OF REVIEW

The *de novo* standard applies when the issue is whether the trial court erred in applying a provision of the Florida Evidence Code (here, § 90.803(6), Fla. Stat.). *See Shands Teaching Hosp. and Clinics, Inc. v. Dunn*, 977 So. 2d 594, 598 (Fla. 2d DCA 2007); *Lucas v. State*, 67 So. 3d 332, 335 (Fla. 4th DCA 2011); *see also Burkey v. State*, 922 So. 2d 1033, 1035 (Fla. 4th DCA 2006) (question of whether evidence falls within the statutory definition of hearsay is a matter of law subject to *de novo* review).

Likewise, a trial court's ruling of a motion for involuntary dismissal is reviewed *de novo*. *Deutsche Bank Nat'l Trust Co. v. Clarke*, 87 So. 3d 58, 60 (Fla. 4th DCA 2012). And a party's standing to bring a foreclosure action is also reviewed *de novo*. *LaFrance v. U.S. Bank Nat. Ass'n*, 141 So. 3d 754, 755 (Fla. 4th DCA 2014).

ARGUMENT

I. Fannie Mae's witness was not qualified to lay the foundation for a business records exception for the exhibits he introduced because hearsay cannot be used to establish a hearsay exception.

Personal knowledge of how, when and why the records were created and kept is an essential requirement of due process.

The question at the core of this issue is what may constitute the "personal knowledge" required for a witness to authenticate documents and to lay the foundation for a business records exception to hearsay for those documents. Specifically, it presents the question whether the party offering those documents as evidence may convey information to its otherwise unknowledgeable witness to create a veneer of "personal knowledge" with two simple preparatory steps:

- having its witness read the documents before trial; and
- telling its witness what to say in court about its record-keeping practices (or the record-keeping practices of other companies).

The personal knowledge required to introduce a company's records is not familiarity with what the records say, but with the facts of how, when, and why the records were created and kept. To hold that the personal knowledge requirement for authenticity and the business records hearsay exception can be satisfied by reading the records themselves, is to make all records admissible and the hearsay rule superfluous. And to hold that a witness may be trained what magic words to

say about the company's alleged recordkeeping practices so as to appear to meet the business records exception—even if the witness has no personal knowledge whether such practices actually exist—is to admit hearsay based on hearsay.

To properly authenticate the documents before admitting them into evidence, Romero would have had to be sufficiently familiar with them to testify that they are what Fannie Mae claims them to be. § 90.901, Fla. Stat. Moreover, to overcome the hearsay objections made to each and every exhibit, Fannie Mae would have had to first lay the predicate for the "business records" exception. There are five requirements for such an exception:

1) The hearsay document was made at or near the time of the event;
2) The hearsay document was made by or from information transmitted by a person with knowledge;
3) The hearsay document was kept in the ordinary course of a regularly conducted business activity;
4) It was a regular practice of that business to make such a hearsay document; and
5) The circumstances do not show a lack of trustworthiness.

§ 90.803(6), Fla. Stat.; *Yisrael v. State*, 993 So. 2d 952, 956 (Fla. 2008).

But to even be permitted to testify to these threshold facts, the witness must be a records custodian or an otherwise "qualified" witness—that is, one who is in charge of the activity constituting the usual business practice or sufficiently

experienced with the activity to give the testimony. *Hunter v. Aurora Loan Servs., LLC*, 137 So. 3d 570, 573 (Fla. 1st DCA 2014) (finding witness unqualified where the witness "lacked particular knowledge of a prior servicer's record-keeping procedures and "[a]bsent such personal knowledge, he was unable to substantiate when the records were made, whether the information they contain derived from a person with knowledge, whether [the previous servicer] regularly made such records, or, indeed, whether the records belonged to [the previous servicer] in the first place."); *Burdeshaw v. Bank of New York Mellon*, 148 So. 3d 819 (Fla. 1st DCA 2014) (reversing and remanding for dismissal because bank failed to establish any foundation qualifying the exhibit as a business record or its witness "as a records custodian or person with knowledge of the four elements required for the business records exception"); *Lacombe v. Deutsche Bank Nat. Trust Co.*, 149 So. 3d 152 (Fla. 1st DCA 2014) (reversing and remanding for dismissal because bank's witness was not a records custodian for the current servicer or any of the previous servicers); *Holt v. Calchas, LLC*, 155 So. 3d 499, 506 (Fla. 4th DCA 2015) (witness was not qualified to introduce bank's payment records over hearsay objection).

See also Yang v. Sebastian Lakes Condo.Ass'n, 123 So. 3d 617, 621 (Fla. 4th DCA 2013) (despite witness's use of "magic words"—the elements of a

business records exception to hearsay—records were inadmissible because the witness did not have the personal knowledge required to lay a foundation for business records of an entity for whom she had never worked and about whose record-keeping practices she had no personal knowledge); *Mazine v. M & I Bank*, 67 So.3d 1129, 1131 (Fla. 1st DCA 2011) (a witness was not qualified because the witness "had no knowledge as to who prepared the documents submitted at trial by the bank as he is not involved in the preparation of documents such as the ones proffered by the bank, that he does not keep records as a records custodian, that he has no personal knowledge as to how the information…was determined…"); *Lassonde v. State*, 112 So. 3d 660, 662 (Fla. 4th DCA 2013) ("The customer service clerk's testimony does not meet the requirements of *Yisrael*. While the clerk was able to testify as to how the store re-rings merchandise stolen from the store, this was not his duty nor within his responsibilities."); *Snelling & Snelling, Inc. v. Kaplan*, 614 So. 2d 665, 666 (Fla. 2d DCA 1993) (a witness who relied on ledger sheets prepared by someone else was not sufficiently familiar with the underlying transactions to testify about them or to qualify the ledger as a business record); *Alexander v. Allstate Ins. Co.*, 388 So. 2d 592, 593 (Fla. 5th DCA 1980) (an adjuster was not qualified to testify about the usual business practices of sales agents at other offices).

See also Specialty Linings, Inc. v. B.F. Goodrich Co., 532 So. 2d 1121, 1122 (Fla. 2d DCA 1988) (testimony was insufficient under the business records exception to hearsay because the witness was not the custodian, and was not in charge of the activity constituting the usual business practice); *Thomasson v. Money Store/Florida, Inc.*, 464 So. 2d 1309, 1310 (Fla. 4th DCA 1985) (statement that demonstrates no more than that the documents in question appear in the company's files and records is insufficient to meet the requirements of the business record hearsay exception); *Holt v. Grimes*, 261 So. 2d 528, 528 (Fla. 3d DCA 1972) (records properly excluded where there was "no testimony as to the mode of preparation of these records nor was the witness testifying in regard to the records in the relationship of 'custodian or other qualified witness'"); *Kelsey v. SunTrust Mortg., Inc.*, 131 So. 3d 825 (Fla. 3d DCA 2014) (holding that without the proper foundation, the documents relied upon by the professional witness were indisputably hearsay.)

In this case, Romero testified that he was employed with the Servicer for less than twelve months prior to trial[57] and that the only department he ever worked in was the contested foreclosure department.[58] The Homeowner's loan

[57] T. 16 (indicating that he had been employed with the Servicer since September 16, 2013); T. 67 (same).

[58] T. 68.

only became his responsibility two-and-a-half weeks before the trial and only so he could prepare for the trial.[59] In fact, Romero testified in trials every day and had to work remotely from a hotel on his laptop (which allowed him to "review" the documents he would attempt to admit at trial).[60]

And for nearly every document he sought to introduce, he had absolutely no experiential familiarity with the department responsible for creating them. For instance, when cross-examined regarding a portion of the payment history that was created by CitiMortgage, he admitted that he did not know what department created the particular entries.[61] And while he testified that he was "trained" to "interpret" the document,[62] when asked what a particular entry meant, he admitted that he did not know.[63]

But most troubling was Romero's testimony regarding the loan acquisition screenshot (Exhibit 2) and the notice of acceleration (Exhibit 4) with its accompanying communication log (Exhibit 5). He explicitly admitted that the loan

[59] T. 77.

[60] T. 77-78.

[61] T. 90.

[62] T. 90-91.

[63] T. 91.

acquisition screenshot was a document created by Fannie Mae,[64] a company for which he had never been employed. Nor had he even been trained to report on Fannie Mae's policies and procedures for creating documents.[65] And he repeatedly testified that he had absolutely no knowledge of CitiMortgage's policies and procedures—including their procedures for preparing and sending demand letters.[66] In fact, he did not know whether it was CitiMortgage or a third party vendor that allegedly mailed the notice of acceleration.[67]

In short, Romero was a "robo witness"—one of the hearsay-toting automatons, the use of which this Court explicitly forbade in *Bank of New York v. Calloway*, 157 So. 3d 1064 (Fla. 4th DCA 2015). While certainly well trained in the art of giving hearsay testimony, he was not a records custodian or other qualified witness since he was neither in charge of, nor (other than through hearsay) acquainted with, any of the activity constituting usual business practices for creating and maintaining the Servicer's documents. His only connection to the documents was that he had read them (in preparation for trial) and that his "training" taught him how to parrot the business records exception.

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[64] T. 26.

[65] T. 27.

[66] T. 35.

[67] T. 73.

"Training" to testify is another word for "hearsay" or worse, "witness coaching."

Fannie Mae will argue that Romero was "familiar" with the records—citing to his witness "training" as though it were something laudable. First, "training" which consists of feeding the witness information for purposes of regurgitating it to the factfinder is nothing more than a synonym for "hearsay." In essence, the witness is saying, "My employer told me to testify that the recordkeeping policy of our company—or some other company—was that it met all the criteria required for a business record hearsay exception." The self-serving statement which the Servicer thereby smuggles to the factfinder is not only rank hearsay, but hearsay designed to coax the court to admit other hearsay (the purported records). And it is hearsay of the worst kind because it is deliberately communicated to the witness for the specific purpose of testifying in court. It is witness coaching to create a façade of "familiarity" with recordkeeping procedures.

But the law has always required that the familiarity of the otherwise qualified witness be by way of firsthand business-related experience—i.e. an actual job responsibility tied to the business activity of the company. *See e.g.*, *Lassonde v. State*, 112 So. 3d at 662. Acceptable training would be instruction on how to perform a business-related job, not a litigation-related job. To hold otherwise

would have the business record exception swallow the rule because there is no record that a witness cannot be told (or "trained") to say meets the exception.

The myth that bank records are inherently trustworthy.

A typical bank argument is that bank records are commonly viewed as particularly trustworthy, and therefore, the hearsay rules should be loosened as to them.

There can be no doubt that the business records hearsay exception is conditioned upon the records being considered "trustworthy." The Florida rule itself provides that records of regularly conducted business activity are admissible "unless the sources of information or other circumstances show lack of trustworthiness." § 90.803(6)(a), Fla. Stat. Trustworthiness, therefore, is an additional requirement for admissibility, not a shortcut that bypasses the other criteria.

Moreover, the era when banking records were considered trustworthy, at least in the context of foreclosure litigation, is long gone. Now, the banking industry's flagrant abuse of the judicial system with perjured affidavits in which the affiants falsely claimed personal knowledge (robo-signing) has become common knowledge—so much so that a definite absence of trustworthiness may well be judicially noticed. *See Pino v. Bank of New York Mellon*, 57 So. 3d 950,

954 (Fla. 4th DCA 2011) ("…many, many mortgage foreclosures appear tainted with suspect documents."); Memorandum No. 2012-AT-1803 of the Office of the Inspector General of the Department of Housing and Urban Development, September 28, 2012 (concluding that the five largest servicers had "flawed control environments" which permitted robo-signing, the filing of improper legal documents, and, in some cases, mathematical inaccuracies in the amounts of the borrowers' indebtedness);[68] Press Release of the Department of Justice Financial Fraud Enforcement Task Force, March 12, 2012 and related court filings.[69]

Arguably, this well-known lack of trustworthiness is enough to hold that banks can never qualify for the business records hearsay exception in a foreclosure case. But at a minimum, the banks cannot be told that they may skip bringing a qualified witness to establish authenticity or to lay the foundation for the business-record hearsay exception because banks are somehow more worthy of the court's trust than the average litigant.

The question remains why experience has proven the unreliability, rather than the reliability, of bank foreclosure records—a finding that runs counter to the experience with business records from other industries, as well as traditional

[68] Available at: http://www.hudoig.gov/sites/default/files/Audit_Reports/2012-CH-1803.pdf

[69] Available at: http://www.nationalmortgagesettlement.com/.

dogma. As this Court noted in *Calloway*, "[t]he rationale behind the business records exception is that such documents have a high degree of reliability because businesses have incentives to keep accurate records." But that incentive is driven by a profit motive—the desire to keep customers. *See generally US v. McIntyre*, 997 F.2d 687, 689 (10th Cir. 1993) (providing that the underlying theory of the business records exception is "a practice and environment encouraging the making of accurate records.") (Citations omitted). For example, a dry cleaner is motivated to keep careful records of the clothes he receives for cleaning, because a pattern of losing the clothes will result in a loss of customers.

A servicer, on the other hand, has no motivation to keep accurate records for its "customers"—the borrowers—because these customers have no option to go to a different servicer if they find its recordkeeping unreliable. Servicers are motivated only to serve their principals, the owners of the loan[70] and themselves (to the extent that they profit from the generation of additional fees, such as late

[70] Paul Fitzgerald Bone, *Toward a Model of Consumer Empowerment and Welfare in Financial Markets with an Application to Mortgage Servicers*, Journal of Consumer Affairs, Vol. 42, Issue. 2, pg. 165 (2008) ("Mortgage servicers act on behalf of the investors holding the mortgage-backed security. Keeping customers satisfied generally means keeping investors, rather than homeowners, satisfied.") *Id.* at 178.

fees or inflated insurance payments[71]). And their principals are motivated only to maximize their return on their investment in the note which means that a servicer's unreliability is acceptable so long as it is in their favor. When a note is not performing, the only check against absolute fabrication is the courts themselves.

Stated plainly, the appellate record is devoid of any suggestion that the servicer proffering this evidence suffers any financial penalty if the records it inherits or creates are inaccurate. And court rulings that give banks an evidentiary pass only increase the likelihood that their records will be even more untrustworthy in the future.

The loan acquisition screenshot was merely another company's document incorporated into the Servicer's records.

In addition to admitting that the loan acquisition screenshot was a document created by Fannie Mae,[72] Romero asserted that Fannie Mae's "legal counsel" told the Servicer that the loan acquisition screenshot (Exhibit 2) was "the document that's been approved on Fannie Mae's behalf for [the Servicer] to provide as a business record."[73] Therefore, the loan acquisition was merely a document

[71] *See for example*, *JPMorgan $300M Settlement Over Force-Placed Insurance Approved*, Insurance Journal, March 3, 2014, available at, http://www.insurancejournal.com/news/national/2014/03/03/321966.htm.

[72] T. 26; T. 71.

[73] T. 71.

"incorporated" into the Servicer's records—and therefore inadmissible hearsay. *Landmark American Insurance Company v. Pin-Pon Corp.*, 155 So. 3d 432, 442 (Fla. 4th DCA 2015).[74]

Romero's testimony regarding the "boarding" process was itself based upon hearsay.

Fannie Mae also attempted to establish the "trustworthiness" of CitiMortgage's documents through Romero's testimony about "boarding." In fact, the trial court overruled the Homeowner's hearsay objection to the payment history based on this testimony:

> THE COURT: Objection overruled. The Court is, basically, giving this ruling on the basis of his previous testimony, that the agreement between CitiMortgage and all the documents that they are accurate, that they had followed the procedures, that these things were entered according to the standards that are required…[75]

But when it made this ruling, the trial court overlooked the fact that Romero's testimony was based upon a purported checklist "instruction" which Romero admitted he did not have with him in court[76]—and which he later admitted

[74] Notably, *Pin-Pon* and *Calloway* were decided on the very same day.

[75] T. 58.

[76] T. 40, T. 47.

that he had not even seen.[77] And since the document which made the basis of Romero's testimony was not admitted into evidence, his testimony regarding the contents of that document (which he had not even seen), was inadmissible hearsay. *Sas v. Federal National Mortgage Association*, 112 So. 3d 778 (Fla. 2d DCA 2013).[78]

The Court need not reach that point because all of the boarding cases, such as *Calloway*, are based upon testimony that the servicer receiving the records from a previous servicer has performed some sort of review to verify the accuracy of those records. None of the cases suggest that it is sufficient for the subsequent servicer to simply take the previous servicer's word that its records are accurate. Once again, such reliance on an out-of-court statement of the previous servicer could never be the foundation for a hearsay exception.

Moreover, at best, the unsworn statements of the mystery witness, "John," admitted through Romero, were simply that the "loan was boarded with no issues" and that the boarding process "has measures and safeguards in place to ensure the

[77] T. 92.

[78] In fact, when Fannie Mae attempted to "clarify" the record about the checklist, the Homeowner specifically objected on hearsay grounds because the checklist was not before the trial court. (T. 59).

most accurate and updated information is provided to [the Servicer] from the prior servicer.[79]

First, there is no evidence of what those "measures and safeguards" were, and in context, it appears he was referring to the Servicer's reliance on the previous servicer's representation "that they provided us…the most true and accurate updated information."[80] Second, John's statement that the boarding process "had no issues" simply means the Servicer had no problems copying the information—warts and all—into their own system. An equivalent statement in the era of paper documents would have been: "the photocopier ran smoothly and made extremely accurate copies of each and every document that the previous servicer had, even if they were false and erroneous."

Thus, the boarding process that Romero described was wholly inadequate to make the records admissible and that insufficiency alone requires reversal. But even Romero's purported "knowledge" of this process was hearsay. His testimony was based entirely a series of phone conversations and e-mails with "John," the alleged supervisor of the boarding department.[81] This was quintessential hearsay because it was an out-of-court statement from John (that the loan was "boarded"

[79] T. 83.

[80] T. 81.

[81] T. 82-83.

without any issues)[82] offered by Romero to prove the truth of the matter asserted (that the loan was correctly "boarded").

The myth that providing admissible evidence from qualified witnesses is "impractical."

Strict compliance with the hearsay exception rules is required. *Johnson v. Dep't of Health & Rehabilitative Services*, 546 So. 2d 741, 743 (Fla. 1st DCA 1989). The foreclosing banks often argue, however, that the court should excuse them from the rules because it would be impractical for the banks to comply with the Florida hearsay exception rule when the paperwork has been prepared by different entities and departments located far from the courthouse. Ignoring for the moment the impropriety of making evidentiary rulings based on the unproven impact it would have on nonparties, Florida law has already provided a practical, efficient means for foreclosing banks to introduce records from far-flung departments or corporate affiliates.

Section §90.902(11), Fla. Stat. provides that the records custodian or qualified person need not be present in court to lay the business record foundation for documentary evidence. Instead, their testimony may be admitted through an affidavit (a "certification or declaration"):

[82] T. 83.

> (11) An original or a duplicate of evidence that would be admissible under s. 90.803(6), which is maintained in a foreign country or domestic location and is accompanied by a certification or declaration from the custodian of the records or another qualified person certifying or declaring that the record:
>
> (a) Was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person having knowledge of those matters;
>
> (b) Was kept in the course of the regularly conducted activity; and
>
> (c) Was made as a regular practice in the course of the regularly conducted activity,
>
> provided that falsely making such a certification or declaration would subject the maker to criminal penalty under the laws of the foreign or domestic location in which the certification or declaration was signed.
>
> § 90.902, Fla. Stat.

See also § 90.803(6)(c), Fla. Stat. (providing the procedure for using such an affidavit, which includes reasonable notice before trial and, if opposed, a pre-trial motion); *Yisrael v. State*, 993 So. 2d at 957. Indeed, Florida courts, including this Court, have already suggested that foreclosing banks can meet the hearsay exception requirements in exactly this manner. *Holt v. Calchas*, 155 So. 3d at 505-06; *Mazine v. M & I Bank*, 67 So. 3d at 1132.

In this case, however, Fannie Mae chose not to avail itself of this rule which seems specifically designed to simplify the procedure by which the records of modern, highly departmentalized and geographically dispersed corporations may

be admitted into evidence. It is telling that Fannie Mae chose to conduct this litigation without any certifications or declarations, despite the relative ease of doing so. Presumably, it would have been as easy—if not easier—to provide these certifications from legitimately qualified witnesses—ones who work in the relevant departments—than to attempt to train one person on all aspects of the business.

For example, according to Romero, "John" was the Servicer's employee who had first-hand knowledge of the boarding process and was the one who Romero purportedly relied on for his testimony:

> Q. So you're relying on the e-mails and phone calls with John from the boarding department as to the accuracy of these records, correct?
>
> A. Most certainly. John is one who helps either manage that department, or has first-hand knowledge because he works there day to day.[83]

So it is undeniable that a knowledgeable witness was readily available to testify about the boarding process, just as he was readily available to answer Romero's questions. Yet Fannie Mae did not bring John to court so he could be cross-examined about the boarding process. Nor did it even bring John's certification.

Thus, even if it were proper for the Court to concern itself with the ramifications of evidentiary rulings on the economic well-being of the litigants or

[83] T. 83.

non-parties, it is unnecessary to ignore binding precedent or to rewrite the rules of evidence to allay that concern.

* * *

In summary, the court erred in admitting Fannie Mae's exhibits because it should never have been satisfied with the predicate for the business records hearsay exception coming from an utterly unqualified witness such as Romero. The most egregious of these were the loan acquisition screenshot, the alleged acceleration notice, and the communication log.

Because the acceleration letter was not admissible through this witness, the case must be remanded for dismissal. *Holt v. Calchas, LLC,* 155 So. 3d at 506 (Fla. 4th DCA 2015) ("[I]nsufficient evidence of compliance with paragraph twenty-two justifies dismissal of the entire case."); *Blum v. Deutsche Bank Trust Co.*, __ So. 3d. __, 2015 WL 895268, at *1 (Fla. 4th DCA March 4, 2015) (holding that failure to comply with notice provisions of mortgage requires dismissal of the case). *See also Kelsey v. SunTrust Mortg., Inc.*, 131 So. 3d 825, 826 (Fla. 3d DCA 2014) ("To establish its entitlement to foreclosure, [the bank] needed to introduce the subject note and mortgage, an acceleration letter, and some evidence regarding the [borrowers'] outstanding debt on the note.")

Just as important is the inadmissibility of the comment log since that was the document Fannie Mae proffered as to how and when the notice was sent. And these facts are critical because it is black letter law that the notice must give the borrower thirty days to cure. *Kurian v. Wells Fargo, Nat. Ass'n*, 114 So. 3d 1052, 1055 (Fla. 4th DCA 2013) (summary judgment reversed where notice stated that acceleration had already occurred and was dated only six days before the complaint was filed); *Konsulian v. Busey Bank, N.A.*, 61 So. 3d 1283, 1285 (Fla. 2d DCA 2011) (reversing summary judgment where suit was filed three days after the bank sent an acceleration letter); *Laurencio v. Deutsche Bank Nat. Trust Co.*, 65 So. 3d 1190, 1191 (Fla. 2d DCA 2011) (summary judgment reversed where suit filed two days after default letter).

In this case, the notice provided a cure deadline exactly thirty days from the date the notice was allegedly written. In order to establish that the notice gave the Homeowner the requisite thirty-day cure period, the factfinder needed to conclude that the Homeowner received the notice on the same day it was written. For this, Fannie Mae relied on the legal fiction created by Paragraph 15 of the mortgage that the notice would be deemed "given" on the same day that it was sent, provided it

was sent by first class mail to the Homeowner's notice address.[84] But without the communication log, Fannie Mae had no evidence that it was sent the same day that the notice was written (i.e. on the day the notice was dated)—and therefore could not establish compliance with Paragraph 22.[85]

And finally, since the loan acquisition screenshot was the only evidence offered to prove Fannie Mae's standing at inception, dismissal is also warranted. *Hunter*, 137 So. 3d at 574. But as shown below, even if this document had been admissible, it still does not close the glaring evidentiary gap in Fannie Mae's allegations of standing.

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[84] Original Mortgage, Composite Exhibit 3, ¶ 15 (Exh.R. 17). Notably, even if the communication log is considered evidence that the notice was mailed, there was no evidence that it was sent by first class mail as was required for Fannie Mae to avail itself of the legal fiction of Paragraph 15. The log states only that it was sent by "REG MAIL," which Romero testified meant "regular" mail (rather than "registered," for example) (T. 38, 44, 73-74):

LOAN	10/2/2008 12:00:00 AM	rockhils	PSVC	Prior Servicer Commentary	100208GENERAL DEMAND REG MAIL - 10/02/08 -

Exhibit 5 (Ex.R. 87).

[85] Even with the communication log, it was only Romero's "interpretation" of the record that the notice was "placed in the mail" that day—i.e. physically delivered to the United States Postal Service rather than simply given to a mail department within CitiMortgage (T. 74). Nor did Romero know if it was placed in the mail during business hours (T. 74).

II. The trial court should have granted the Homeowner's motion for involuntary dismissal.

When confronted with the Homeowner's motion for involuntary dismissal, the trial court was required to determine whether Fannie Mae had made a *prima facie* showing of foreclosure based on competent, substantial evidence. *Crowe v. Crowe*, 763 So. 2d 1183, 1183-84 (Fla. 4th DCA 2000). Because no view of the evidence or testimony presented at trial establishes Fannie Mae's or CitiMortgage's standing at the inception of the lawsuit, the trial court erred in denying the motion.

There was no evidence that CitiMortgage held the note on the day the lawsuit was filed.

It is black letter law that one must acquire standing before filing suit. *Boyd v. Wells Fargo Bank, N.A.*, 143 So. 3d 1128 (Fla. 4th DCA 2014) (reversing summary judgment of foreclosure because foreclosing lender failed to produce documentation establishing that it had standing at the time it filed the foreclosure complaint); *LaFrance*, 141 So. 3d at 755 (Fla. 4th DCA 2014) ("A crucial element in any mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose…Standing to foreclose is determined at the time the lawsuit is filed.) (Citations omitted).

If the foreclosing plaintiff is not the original lender, standing (to enforce the note[86]) may be established by submitting the promissory note with a blank or special endorsement, an assignment of the note, or an affidavit that proves the plaintiff's noteholder status. *Focht v. Wells Fargo Bank, N.A.*, 124 So. 3d 308, 310 (Fla. 2d DCA 2013). Nevertheless, this status must be established as of the day the foreclosure lawsuit was filed. *Id.*; *Wright v Deutsche Bank Nat'l Trust Co.*, 152 So. 3d 1289 (Fla. 4th DCA 2015) (reversing final judgment after trial because note attached to complaint was not endorsed, endorsement was not dated, and bank failed to present testimony or evidence as to date of endorsement); *Joseph v. BAC Home Loans Servicing, LP*, 155 So. 3d 444 (Fla. 4th DCA 2015) (reversing with instructions to vacate the final judgment and enter a dismissal of the complaint after trial because "the plaintiff produced no evidence to show that it owned the note or mortgage on the date of the filing of the complaint."); *Fischer v. U.S. Bank National Association*, 152 So. 3d 1289 (Fla. 4th DCA 2015) (reversing with instructions to enter final judgment in favor of defendant because bank failed to

[86] Many written opinions simply state, without analysis or careful draftsmanship, that establishing oneself as a holder of the note under Article 3 of the Uniform Commercial Code ("UCC") is sufficient to foreclose as if the UCC applies to non-negotiable instruments such as mortgages. In reality, the plaintiff must also prove itself to be the mortgagee to enforce the mortgage lien. Although mortgages are said to "follow the note," equity contemplates that only the owner, not the holder, of the note could be the beneficiary of such automatic transfers.

prove that it had standing at the time the complaint was filed). And a "substituted" plaintiff such as Fannie Mae in this case must prove that the original lender (here CitiMortgage) had standing on the day the lawsuit was filed. *Kiefert v. Nationstar Mortgage, LLC*, 153 So. 3d 351 (Fla. 1st DCA 2014).

In this case, the note attached to CitiMortgage's first and second complaints were both made payable to PMC Mortgage, Inc.[87] Although both notes bore a stamp claiming that an allonge was attached, no such allonge was provided with either pleading.[88] Therefore, because the note was made payable to PMC Mortgage, Inc., that party was the only entity with standing to enforce the instrument.

And while Fannie Mae introduced the purported original note at trial with a specific endorsement to CitiMortgage,[89] neither the endorsement nor the allonge

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[87] Page 1 of Note attached to Complaint, December 22, 2008 (R. 22); Page 1 of Note attached to Amended Complaint, June 1, 2009 (R. 116).

[88] Page 3 of Note attached to Complaint, December 22, 2008 (R. 24); Page 3 of Note attached to Amended Complaint, June 1, 2009 (R. 118). An allonge is a piece of paper annexed to a promissory note on which to write an endorsement when there is no more room to write the endorsement on the note itself; this paper must be so firmly affixed to the note that it becomes a part of the instrument. *Isaac v. Deutsche Bank Nat. Trust Co.*, 74 So 3d 495, 496 n. 1 (Fla. 4th DCA 2011); *Taylor v. Deutsche Bank Nat. Trust Co.*, 44 So. 3d 618, 623 n. 2 (Fla. 5th DCA 2010). This definition, particularly that an allonge must be "affixed" to the note, is the crux of this portion of the Homeowner's argument.

[89] Promissory Note (R. Exh. 1-4).

are dated.[90] Because Fannie Mae needed to provide competent and substantial evidence that CitiMortgage had come into possession of a properly endorsed note prior to filing suit, a necessary element of such proof was that the allonge containing the endorsement was affixed to the note before the lawsuit commenced. But Romero did not even know when the allonge was created,[91] much less that it was affixed to the note at the lawsuit's inception.

This fact is crucial because where, as here, a foreclosing plaintiff's standing hinges on an allonge, it must prove that the allonge "took effect" on or before the day the lawsuit was filed. *Cutler v. U.S. Bank*, 109 So. 3d 224, 226 (Fla. 2d DCA 2012). And in order for an allonge to "take effect," it must be affixed to the note it accompanies.§673.2041(1) Fla. Stat ("[f]or the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument"); *Isaac*, 74 So. 3d at 496 n. 1.

Apparently, no Florida court has articulated what is considered a legally sufficient manner of annexing or affixing an allonge to an instrument, although a body of case law has developed on this issue in other states. *Wells Fargo Bank, N.A. v. Bohatka*, 112 So. 3d 596, 604 n. 4 (Fla. 1st DCA 2013). This body of case

[90] Allonge, (R. Exh. 4).

[91] T. 96.

law is clear that, despite the exact mode of affixation, the allonge must somehow be physically made part of the note. *See e.g. Adams v. Madison Realty & Dev., Inc.*, 853 F.2d 163 (3d Cir. 1988) (mere folding of the alleged allonge around the note insufficient); *HSBC Bank USA v. Thompson*, 2010 Ohio 4158 (Ohio App. 2010) (unattached pages cannot be an allonge); *In re Weisband*, 427 B.R. 13 (Bkrtcy. D. Ariz. 2010) (same).

The common law actually required gluing. ALI, Comments & Notes to Tentative Draft No. 1 – Article III 114 (1946), reprinted in 2 Elizabeth Slusser Kelly, Uniform Commercial Code Drafts 311, 424 (1984) ("[t]he indorsement must be written on the instrument itself or an allonge, which, as defined in Section _____, is a strip of paper so firmly pasted, stapled or otherwise affixed to the instrument as to become part of it.") Modern courts have equated stapling with gluing. *Lamson v. Commercial Credit Corp.*, 531 P.2d 966, 968 (Co. 1975) ("Stapling is the modern equivalent of gluing or pasting. Certainly as a physical matter it is just as easy to cut by scissors a document pasted or glued to another as it is to detach the two by unstapling"); *accord Southwestern Resolution Corp. v. Watson*, 964 S.W.2d 262, 263 (Tex.1997). In any event, the law appears well-settled on the issue: the allonge must somehow be physically attached to the note

in order for it to be considered "affixed" and it must be "affixed" to have legal effect.

At trial, Fannie Mae failed to prove that the allonge in question had any more legal effect than any other stray piece of paper. First, Romero could not even testify when the allonge was created. But even if he could have testified to a moral certainty that the allonge had been both created and affixed to the note before the lawsuit was filed, Fannie Mae had an even bigger problem—the allonge was specifically endorsed to CitiMortgage by PMC Mortgage Corp. rather than PMC Mortgage, Inc. Romero had no idea whether these companies were related[92] or what, if any, relationship existed between those entities.[93] Since the original holder of the instrument (PMC Mortgage, Inc.) never endorsed the note, the instrument was never negotiated to CitiMortgage—and therefore CitiMortgage could never have been the holder of the note on the day the lawsuit was filed. *See* Fla. Stat. §673.2011, Fla. Stat. .

There was no competent, substantial evidence that Fannie Mae owned the note on the day the lawsuit was filed.

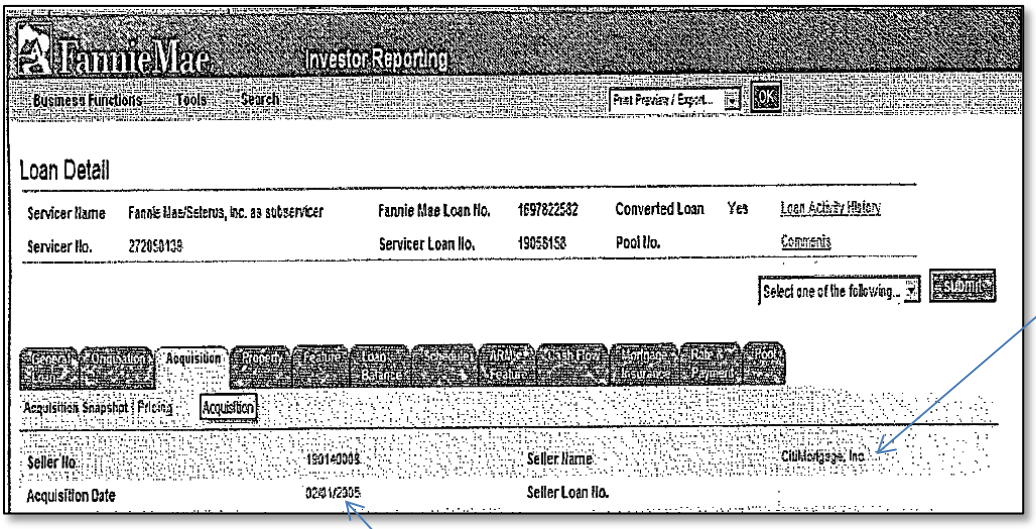
Alternatively, Fannie Mae could have proven its standing by presenting competent, substantial evidence that it was the owner of the note and mortgage on

[92] T. 27.

[93] T. 69.

the day the lawsuit was filed. And it attempted to do this by introducing the loan acquisition screenshot (Exhibit 2) and the assignment of mortgage (Exhibit 8). But both of these exhibits—assuming they were even admissible—failed to prove Fannie Mae's ownership of the loan on the day the lawsuit was filed.

Specifically, Romero asserted that the loan acquisition screenshot showed a purchase between Fannie Mae and CitiMortgage.[94]



Seller Name CitiMortgage, Inc.

Acquisition Date 2/1/05
(almost four years before transfer to CitiMortgage, Inc. according to the assignment)

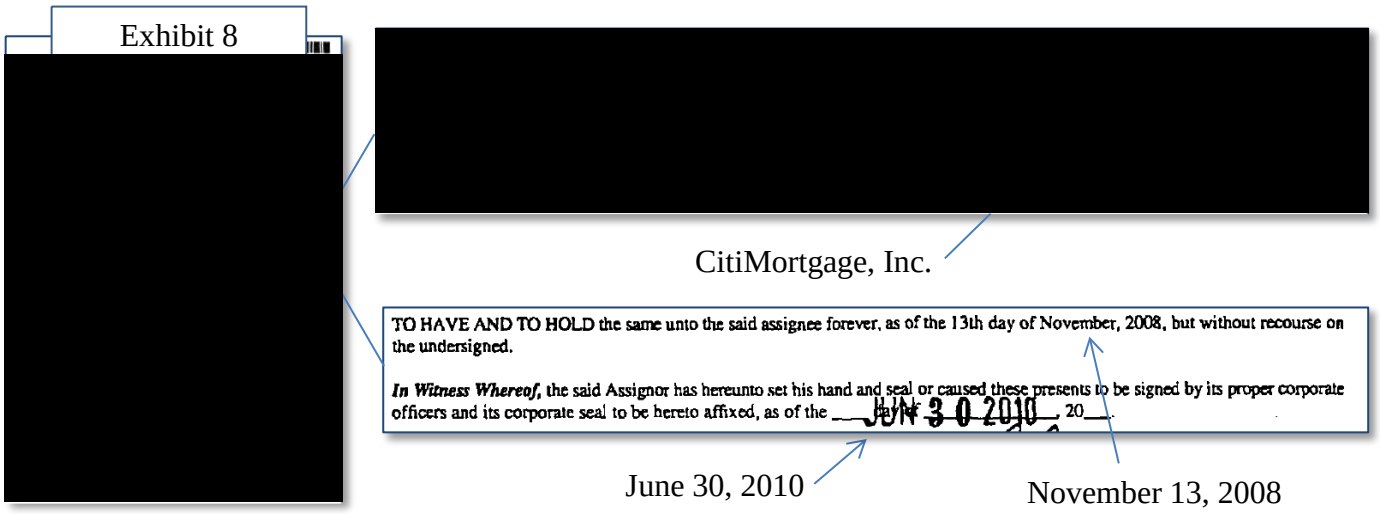
But in the next breath, he testified that he did not think CitiMortgage ever purchased the loan—rather it was simply the "servicing agent."[95] He could not

[94] T. 70.

[95] *Id.*

explain how CitiMortgage could sell something that it did not own.[96] But if CitiMortgage did not own the loan when Fannie Mae "acquired" it, the loan acquisition screenshot did not prove that Fannie Mae owned the loan on February 1, 2005—or at all for that matter.[97]

Nor can Fannie Mae seek recourse under the assignment of mortgage.



Assuming that this assignment does not wholly contradict Romero's testimony that CitiMortgage never actually "acquired" the loan (which it does), the assignment post-dates the filing of the complaint and purports to retroactively "relate back." Such retroactive assignments have been expressly renounced by this Court and therefore cannot be considered competent, substantial evidence of

[96] T. 71.

[97] Importantly, Romero also testified that he never saw a purchase agreement between PMC Mortgage Inc. and CitiMortgage or between PMC Mortgage Inc. and Fannie Mae (T. 98).

standing at inception. *Vidal v. Liquidation Props., Inc.*, 104 So. 3d 1274, 1277 (Fla. 4th DCA 2013); *Matthews v. Fed. Nat. Mortg. Ass'n*, 4D13-4645, 2015 WL 1334310, at *2 (Fla. 4th DCA 2015).

Assuming the assignment was somehow valid, it also contradicts Romero's claim that Fannie Mae acquired the loan on February 1, 2005. Specifically, the assignment has a retroactive date of November 13, 2008. Thus, if Fannie Mae is to be believed, PMC Mortgage, Inc. "assigned" the note and mortgage to CitiMortgage almost four years after Fannie Mac "acquired" the loan from CitiMortgage. If this was the case, Fannie Mae never acquired ownership of the loan.

The proper remedy on remand is involuntary dismissal.

Where a foreclosing plaintiff fails to establish its standing at the inception of the lawsuit, reversal of the final judgment and entry of an involuntary dismissal on remand is appropriate. *See Joseph*, 155 So. 3d at 446; *Fischer v. U.S. Bank National Association*, 152 So. 3d 1289 (Fla. 4th DCA 2015); *Lacombe v. Deutsche Bank Nat. Trust Co.*, 149 So. 3d 152 (Fla. 1st DCA 2014); *Correa v. U.S. Bank, N.A.*, 118 So. 3d 952, 955 (Fla. 2d DCA 2013); *cf.Guerrero v. Chase Home Fin., LLC*, 83 So. 3d 970, 973 (Fla. 3d DCA 2012) (remanding with specific directions to allow the plaintiff to properly reestablish the note upon a proper pleading—but

only because the evidence "confirmed the current owner/holder's entitlement to foreclose the mortgage attached to the complaint").

CONCLUSION

The Court should reverse the judgment with instructions that the trial court enter an order of involuntary dismissal on remand.

Dated: April 27, 2015

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CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

Undersigned counsel hereby certifies that the foregoing Brief complies with Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14 Point.

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CERTIFICATE OF SERVICE AND FILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this April 27, 2015 to all parties on the attached service list. Service was by email to all parties not exempt from Rule 2.516 Fla. R. Jud. Admin. at the indicated email address on the service list, and by U.S. Mail to any other parties. I also certify that this brief has been electronically filed this April 27, 2015.

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