

**In the Matter Of:**  
**DEUTSCHE BANK**  
  
vs.  
**MICHAEL MARCOINE**

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**PROCEEDINGS**

*June 10, 2013*

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1 IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
2 IN AND FOR SARASOTA COUNTY, FLORIDA

3 DEUTSCHE BANK, ET AL,  
4 Plaintiffs,

5 vs. Case No.: 2009 CA 020329 NC

6 MICHAEL MARCOINE, ET AL,  
7 Defendants.

8 \_\_\_\_\_/

9 TRANSCRIPT OF PROCEEDINGS

10 DATE: Monday, June 10, 2013  
11 TIME: 10:13 a.m. to 10:49 a.m.  
12 PLACE: Criminal Justice Center  
13 2071 Ringling Boulevard  
14 Courtroom 2, 6th Floor  
15 Sarasota, Florida  
16 BEFORE: Honorable Harry Rapkin  
17 REPORTED BY: Linda C. Mead, CSR, CCR  
18 Notary Public, State of Florida  
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A P P E A R A N C E S

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APPEARING ON BEHALF OF PLAINTIFF

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APPEARING ON BEHALF OF DEFENDANT

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1 P R O C E E D I N G S

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4 THE COURT: Deutsche Bank versus Michael  
5 Marcoine.

6 MR. STOPA: It's not on the docket.

7 MR. SPANOLIOS: I believe it was Number 118.  
8 My name is James Spanolios for the Plaintiff.

9 THE COURT: Okay. I have a checkmark by it.  
10 I don't have 83A.

11 MR. STOPA: That's what we were told, that it  
12 was going to be added. It wasn't on the docket.

13 THE CLERK: It's 118. I had added it at the  
14 very bottom of the docket.

15 THE COURT: Okay. It's 118.

16 Who is Mr. Stopa?

17 MR. STOPA: That's me, Judge.

18 THE COURT: How many files do you have here?

19 MR. STOPA: This is the only case.

20 THE COURT: Okay. So is it going to be long?

21 MR. STOPA: I guess it depends how you rule  
22 on a couple of my preliminary objections.

23 THE COURT: Okay. Let's go. I'm only doing  
24 it because you requested -- You probably would  
25 have been done by 12 anyway. Okay. I got your

1 letter. I read it. I understand your position.

2 MR. STOPA: I'm just trying to help, Judge.

3 THE COURT: I know. But you see what I'm  
4 faced with.

5 MR. STOPA: I understand.

6 THE COURT: If I start --

7 MR. STOPA: I appreciated the effort that you  
8 made, I think everybody else did, this morning.

9 THE COURT: I try to get you all out of here  
10 by noon. I try to, but the ones that hang over  
11 are the trials. I can't do everything.

12 Just so you know, I found that if I schedule  
13 a 9 o'clock, 10 o'clock, 11 o'clock, I'll come out  
14 at 9 o'clock and the 10 o'clocks have gone away,  
15 so I'll sit on my butt out there with nothing to  
16 do and then I'll come back at 11 o'clock. So it  
17 doesn't work that way.

18 Okay.

19 MR. SPANOLIOS: You're the boss, Judge.

20 THE COURT: I got a message from him and I'm  
21 trying to accommodate. We're all pressed for  
22 time. Nobody likes sitting around here while  
23 other people are working, but --

24 MR. STOPA: Couple of issues.

25 THE COURT: Go ahead.

1 MR. STOPA: The first is this gentleman's  
2 name is Eric Scheinfeldt. He was not named on the  
3 exhibit witness list at all.

4 THE COURT: He's here as a records custodian  
5 only. Is that correct?

6 MR. STOPA: That's my position.

7 THE COURT: Is that correct?

8 MR. SPANOLIOS: That's correct, your Honor.

9 THE COURT: Okay. He's only here as a  
10 records custodian, so don't be asking him  
11 questions about policies and things like that. He  
12 can answer whatever he has for the records.

13 MR. SPANOLIOS: From the business records,  
14 including the payment history.

15 THE COURT: He's here to say I'm the records  
16 custodian and I am here delivering the records and  
17 that's basically it. Okay. I mean, he's not able  
18 to tell us how the bank -- He'll object and I'm  
19 just letting you know in advance. When we do it  
20 on uncontested cases, there's a little bit of  
21 leeway.

22 MR. STOPA: For instance, Judge, they have  
23 not disclosed any documents that show that the  
24 Paragraph 22 letter was sent, and so I'm going to  
25 object to anything on that.

1 THE COURT: Why are you going to tell me  
2 you're going to object? Why don't you just  
3 object.

4 MR. STOPA: My point is I don't know what  
5 exhibits they're intending to use so I'm trying to  
6 make that clear.

7 THE COURT: Why don't you wait and find out.

8 MR. STOPA: Okay. That's fine.

9 THE COURT: Okay. Do you want me to swear  
10 the witness?

11 MR. SPANOLIOS: Yes, your Honor.

12 THE COURT: Raise your right hand.

13 (Witness was sworn.)

14 THE COURT: What is your name?

15 MR. SCHEINFELDT: Eric Scheinfeldt.

16 THE COURT: Okay. Go ahead, Counsel.

17 MR. SPANOLIOS: Thank you, your Honor.

18 THEREUPON,

19 ERIC SCHEINFELDT,

20 a Witness herein, having been first duly sworn to tell  
21 the truth, the whole truth, and nothing but the truth,  
22 testified and said as follows:

23 DIRECT EXAMINATION

24 BY MR. SPANOLIOS:

25 Q Sir, will you please state your name for the



1     **record.**

2           A     Eric Scheinfeldt.

3           **Q     Would you spell that for the court reporter.**

4           A     The last name is S-c-h-e-i-n-f-e-l-d-t.

5           **Q     And who are you employed by?**

6           A     OneWest Bank FSB.

7           **Q     What is your position there?**

8           A     Assistant vice president, regional outreach  
9     manager.

10          **Q     Have you had an opportunity to review the**  
11     **documents regarding the loans in which we are here for**  
12     **today?**

13          A     I have.

14          **Q     I'll hand you the first document and ask you**  
15     **if you can identify this for us, please.**

16          A     It's a copy of the recorded mortgage.

17          **Q     And that's been recorded here in Sarasota**  
18     **County?**

19          A     That is correct.

20          **Q     And who signed it?**

21                 THE COURT:   The record speaks for itself.

22                 MR. SPANOLIOS:  Thank you, your Honor.

23                 Your Honor, we wish the Court to take  
24     judicial notice that the original note and  
25     mortgage have been filed with the Court.

1 THE COURT: I will.

2 MR. SPANOLIOS: Thank you, your Honor.

3 MR. STOPA: Well, Judge, we're objecting  
4 because --

5 THE COURT: It's not admitted in evidence.

6 MR. STOPA: Okay.

7 THE COURT: I'm taking judicial notice that  
8 it's been filed across the street with the clerk.

9 MR. STOPA: Okay.

10 BY MR. SPANOLIOS:

11 Q I'll hand you the next document and ask you  
12 if can identify this for us, please.

13 A It's a copy of the note.

14 Q And has that been signed and by whom?

15 THE COURT: Sir, I mean, he's the records  
16 custodian. You've got the note and it's in --  
17 Do you have an objection to the note, sir?

18 MR. STOPA: I do, Judge.

19 THE COURT: What's your objection?

20 MR. STOPA: The objection -- It's a couple  
21 objections. The first is that the copy that was  
22 handed to this witness has an allonge attached to  
23 it and that is not what was attached to their  
24 complaint at all. There's no allonge on the note  
25 attached to the complaint.

1 THE COURT: Could you please call it up.

2 MR. STOPA: I have an extra copy of the  
3 complaint.

4 THE COURT: No, she can do it. Go ahead.

5 MR. STOPA: My objection isn't the original  
6 note. My objection is the note that was attached  
7 to the complaint does not have an allonge attached  
8 to it. The issue --

9 THE COURT: Well, the original note is  
10 required to be filed with the Court and it was  
11 available for you to review.

12 MR. STOPA: And I agree, but the issue is  
13 that the cases are tried by the pleadings and the  
14 Second District in Feltus has held that they have  
15 to get leave to amend and file an amended  
16 complaint that has the allonge attached to the  
17 note. They didn't do that. So they're  
18 traveling --

19 THE COURT: The original note was always  
20 available. It was filed with the Court. It was  
21 available to you. I'm going to allow the original  
22 note. Let's see what's on it, the note.

23 MR. STOPA: Judge, can I present you with a  
24 case?

25 THE COURT: There's an allonge on the note

1 that's filed. It's on the signature page.

2 MR. STOPA: Can I present you with the case  
3 law, Judge?

4 THE COURT: Look at the one -- You're telling  
5 me you didn't get one with an allonge on it.

6 MR. SPOTA: No. That's not what I'm saying.  
7 I agree that the original note was filed with an  
8 allonge, but the objection is that that has to be  
9 attached to their operative complaint in order for  
10 that to come into evidence because the issues are  
11 tried by the pleadings. There's a Second District  
12 case called Feltus --

13 THE COURT: Do you have the original  
14 complaint?

15 MR. SPANOLIOS: The original complaint, your  
16 Honor, was filed with a lost note count. We have  
17 dropped the lost note count and are proceeding.

18 THE COURT: Oh, you didn't tell me that.

19 So you pled a lost note and you dropped the  
20 lost note count?

21 MR. SPANOLIOS: That's correct, your Honor.

22 THE COURT: Did you advise him?

23 MR. SPANOLIOS: Yes, your Honor. These are  
24 all in the pleadings. I mean, this was done --

25 THE COURT: And then you found the note?

1 MR. SPANOLIOS: Well, the note was filed,  
2 according to the docket, your Honor, in  
3 January 2010.

4 THE COURT: Okay. Did you send him a copy of  
5 the note that you found?

6 MR. SPANOLIOS: He was not counsel of record  
7 at that time, but counsel of record would have  
8 been provided a copy of the note.

9 THE COURT: Who was counsel of record?

10 MR. SPANOLIOS: At that time, Timothy Grogan.

11 THE COURT: Okay.

12 MR. SPOTA: He was predecessor counsel,  
13 Judge. They didn't drop Count II, the lost note  
14 count, until December 2012.

15 THE COURT: But when you filed that note, you  
16 say you sent a copy of the found note to Timothy  
17 Grogan?

18 MR. SPANOLIOS: Yes, your Honor.

19 THE COURT: Who was attorney of record?

20 MR. SPANOLIOS: The notice of filing and the  
21 copies would have been provided to him.

22 THE COURT: Not would have been, were they?  
23 What does it say?

24 MR. SPANOLIOS: How could I confirm that they  
25 were, your Honor, besides reading the docket and

1 reading the certificate of service?

2 THE COURT: On such a such a date it was --

3 MR. SPANOLIOS: Yes.

4 THE COURT: -- sent to him.

5 MR. SPANOLIOS: It does, your Honor.

6 THE COURT: Okay.

7 MR. SPOTA: But, Judge, the docket doesn't  
8 say that. That's what he's reading from.

9 MR. SPANOLIOS: Well, the docket. The  
10 certificate of service.

11 THE COURT: Yeah.

12 MR. SPANOLIOS: Yes, your Honor.

13 THE COURT: Was that filed, the certificate  
14 of service?

15 MR. SPANOLIOS: The notice of serving was  
16 filed, yes.

17 THE COURT: Does it have the name of the  
18 predecessor counsel?

19 MR. SPANOLIOS: Yes, it does.

20 THE COURT: Okay. Well --

21 MR. SPOTA: The issue here isn't the  
22 disclosure. The issue is it has to be attached to  
23 the pleadings. I have a Second District --

24 THE COURT: Okay. But the pleadings were  
25 done and they dropped it and they found the note.

1 MR. SPOTA: Right. But you have to amend.  
2 If you're relying on a note at trial that's  
3 different from the note that's attached to your  
4 pleadings, you have to amend to attach the copy  
5 that you're relying upon because the issues are --

6 THE COURT: Okay. The note has been in here  
7 all along. I have ruled.

8 MR. SPOTA: I understand.

9 THE COURT: Got it. The note is in.

10 MR. SPANOLIOS: Thank you, your Honor.

11 BY MR. SPANOLIOS:

12 Q Who do you work for?

13 A OneWest Bank, FSB.

14 Q What is OneWest Bank's relationship to this  
15 loan?

16 A We are the servicer.

17 MR. SPOTA: Objection. Predicate. And if  
18 he's only testifying as a records custodian --

19 THE COURT: Overruled.

20 MR. SPOTA: -- there has to be a document  
21 that shows that.

22 THE COURT: Overruled.

23 MR. SPANOLIOS: Thank you, your Honor.

24 BY MR. SPANOLIOS:

25 Q I'm going to hand you a document and ask you

1     **if you can identify this for us, please.**

2                   MR. SPOTA: May I have a copy.

3                   MR. SPANOLIOS: I only have one.

4                   THE COURT: He's just identifying the  
5     document.

6                   MR. SPOTA: I'm just trying to see what he  
7     was handing the witness.

8                   THE COURT: Well, he can hand the witness  
9     anything and then you can look at it.

10                  THE WITNESS: The pooling and servicing  
11     agreement, otherwise known as the PSA.

12     BY MR. SPANOLIOS:

13                  **Q     Does the pooling and servicing agreement**  
14     **identify who the servicer is?**

15                  A     It does, yes.

16                  **Q     Okay.**

17                  THE COURT: Do you want to see it?

18                  MR. SPOTA: This is some 200 pages.

19                  THE COURT: This is his servicing agreement.  
20     You were objecting to his status.

21                  MR. SPOTA: Okay.

22                  THE COURT: Okay.

23                  MR. SPANOLIOS: Thank you, your Honor.

24                  THE WITNESS: It identifies IndyMac Bank FSB  
25     as the servicer.



1 BY MR. SPANOLIOS:

2 Q And what is OneWest's relationship to IndyMac  
3 Bank?

4 MR. SPOTA: Objection. Predicate and  
5 records. He's only a records custodian. He can't  
6 be talking about that.

7 MR. SPANOLIOS: I'll go back if I may, your  
8 Honor, and rephrase.

9 BY MR. SPANOLIOS:

10 Q I'm going to hand you this document and ask  
11 you if you can identify this for us, please.

12 A This is a bulletin from --

13 MR. SPOTA: Objection. This wasn't timely  
14 disclosed.

15 THE COURT: I can't hear him. You know,  
16 there's no jury so you don't have to jump up.  
17 I'll hear you. Take it down a little bit.

18 Go ahead.

19 THE WITNESS: It's a bulletin from the FDIC  
20 indicating that they have taken over IndyMac Bank  
21 FSB.

22 MR. SPOTA: Hearsay and not timely disclosed.  
23 That wasn't on the exhibit list.

24 THE COURT: Okay. I won't admit that.

25 Go ahead.

1 MR. SPANOLIOS: All right, your Honor.

2 BY MR. SPANOLIOS:

3 Q And you previously identified this document  
4 as the pooling and servicing agreement?

5 A Uh-huh.

6 Q And does the pooling and servicing agreement  
7 identify the closing date of the trust?

8 MR. SPOTA: Objection. Relevance.

9 THE COURT: I don't really know the relevance  
10 of that. He indicated that he was the servicing  
11 agent for this mortgage, right?

12 MR. SPOTA: No, Judge.

13 MR. SPANOLIOS: He indicated what the -- the  
14 loan went into the trust, your Honor.

15 MR. SPOTA: This gentleman says he works for  
16 OneWest. This pooling and servicing agreement  
17 says IndyMac INDS mortgage loan --

18 THE COURT: I'll sustain the objection.

19 MR. SPANOLIOS: All right.

20 THE COURT: Is that a business record of  
21 OneWest?

22 MR. SPANOLIOS: I can ask those questions of  
23 the witness.

24 THE COURT: That's what you have to  
25 establish. You can't be giving interpretations of

1 documents. If he's the business custodian and  
2 that's one of their business records, even if they  
3 got it from a predecessor, if that's what they  
4 keep in the normal course of business, then that's  
5 what you have to do.

6 MR. SPANOLIOS: Yes, your Honor.

7 BY MR. SPANOLIOS:

8 Q Sir, the pooling and servicing agreement, is  
9 that part of your business records for OneWest Bank  
10 regarding this mortgage?

11 A Yes, it is.

12 MR. SPOTA: Objection. Predicate. Hearsay.

13 THE COURT: Go ahead. Overruled.

14 BY MR. SPANOLIOS:

15 Q Is this kept in the normal course of  
16 business?

17 A Yes, it is.

18 Q The information contained herein was created  
19 at the time of the trust being formed?

20 A That is correct.

21 Q And the information --

22 MR. SPOTA: Objection. Predicate. I have a  
23 case.

24 THE COURT: Okay. He doesn't have to testify  
25 about anything that's included in it. It's a

1 record. It's a business record.

2 MR. SPANOLIOS: Is the Court establishing it  
3 as a business record?

4 THE COURT: Yes.

5 MR. SPANOLIOS: Thank you, your Honor.

6 THE COURT: Overruled.

7 Go ahead.

8 MR. SPANOLIOS: Thank you, your Honor.

9 BY MR. SPANOLIOS:

10 Q This is a business record indicating what  
11 date the trust closed; is that correct?

12 MR. SPOTA: Relevance.

13 THE COURT: Whatever it indicates, it  
14 indicates.

15 BY MR. SPANOLIOS:

16 Q All right. And so as of April 27th, 2007,  
17 the note for the subject loan was in this trust; is  
18 that correct?

19 MR. SPOTA: Leading. Objection. Hearsay.

20 THE COURT: Okay. I'll sustain the  
21 objection. He's a records custodian. He brought  
22 the record. That's it. You can move it into  
23 evidence.

24 MR. SPANOLIOS: We'll move it into evidence,  
25 your Honor.

1 MR. SPOTA: Irrelevant. 403. Hearsay.

2 Predicate.

3 THE COURT: Overruled.

4 Next.

5 MR. SPANOLIOS: Thank you, your Honor.

6 BY MR. SPANOLIOS:

7 Q Did there come a time when the note went into  
8 default?

9 A Yes.

10 MR. SPOTA: Objection. Hearsay. There are  
11 no documents in evidence establishing that.

12 THE COURT: Overruled.

13 BY MR. SPANOLIOS:

14 Q I'll hand you another document and ask you if  
15 you can identify that for us, please.

16 A This is the acceleration or breach letter  
17 that was sent.

18 MR. SPOTA: Objection to the testimony.

19 MR. SPANOLIOS: Your Honor, my client cannot  
20 even finish an answer without an objection.

21 THE COURT: Stop jumping up and down.  
22 There's no jury. You're not impressing me.

23 MR. SPOTA: Judge, I'm not jumping up and  
24 down. I'm just preserving the record.

25 THE COURT: Okay. Do you have a court

1 reporter here?

2 MR. SPOTA: I do, your Honor.

3 THE COURT: She'll take down your objections.

4 MR. SPOTA: Okay.

5 MR. SPANOLIOS: Thank you, your Honor.

6 BY MR. SPANOLIOS:

7 **Q Sir, what date was the letter sent?**

8 MR. SPOTA: Objection. Hearsay.

9 THE COURT: The letter speaks for itself.

10 MR. SPOTA: Hearsay. There's no documents  
11 showing the letter was sent. The existence of the  
12 letter doesn't show that a letter was sent and  
13 certainly this witness doesn't have a predicate to  
14 establish it.

15 THE COURT: Overruled.

16 MR. SPANOLIOS: Thank you.

17 BY MR. SPANOLIOS:

18 **Q To what address was it sent?**

19 A 111 South Warbler Lane, Sarasota, Florida  
20 34236.

21 MR. SPOTA: Same objection.

22 THE COURT: He's a records custodian. Did  
23 you get this in discovery?

24 MR. SPOTA: Judge, I received a copy of this  
25 letter, but there's nothing -- no document that

1 shows this letter was sent. This witness didn't  
2 send this. So unless this witness --

3 THE COURT: It's one of their business  
4 records. Did you get it in discovery?

5 MR. SPOTA: Judge, and I'm answering your  
6 question, yes. I have a copy of this letter, but  
7 the issue before the Court is that the existence  
8 of this letter in a file doesn't prove that the  
9 letter was sent. There has to be a business  
10 record that says that the letter was sent.

11 THE COURT: I will determine that.

12 MR. SPANOLIOS: Thank you, your Honor. We'd  
13 move to introduce the demand letter.

14 MR. SPOTA: Hearsay. Predicate.

15 THE COURT: May I see it.

16 Okay. It's admitted.

17 MR. SPANOLIOS: Thank you, your Honor.

18 BY MR. SPANOLIOS:

19 Q I'd like to hand you the next document and  
20 ask you if you can identify this for us, please.

21 MR. SPOTA: Objection. This has not been  
22 provided.

23 THE COURT: What is it?

24 MR. SPOTA: It looks to be some type of chart  
25 with a loan history.

1 THE WITNESS: The first stapled document  
2 is -- This is a copy of the payment history for  
3 the loan in question.

4 BY MR. SPANOLIOS:

5 Q Is that kept in the normal course of  
6 business?

7 A Yes, it is.

8 Q And it's created at or near the time of the  
9 events?

10 A Yes.

11 Q And do you maintain this document --

12 MR. SPOTA: Judge, I can't tell what document  
13 he's testifying on. The first one that was handed  
14 to me was not disclosed at all.

15 MR. SPANOLIOS: Judge, the payment history  
16 has been provided.

17 MR. SPOTA: And the second one has --

18 THE COURT: Okay. The payment history has  
19 been provided?

20 MR. SPANOLIOS: Yes, your Honor.

21 THE COURT: When was that? With the pretrial  
22 order?

23 MR. SPANOLIOS: In response to request for  
24 production.

25 THE COURT: With the pretrial order?



1 MR. SPANOLIOS: There was a response to  
2 request for production provided.

3 THE COURT: Okay. You got it.

4 MR. SPOTA: Judge, I don't know which  
5 document he's referring to because I was handed  
6 two.

7 MR. SPANOLIOS: I provided you a copy of this  
8 document.

9 MR. SPOTA: Okay. This we've seen before.

10 MR. SPANOLIOS: Your Honor, I move to  
11 introduce it.

12 MR. SPOTA: Objection. This contains summary  
13 information. And there's a Florida statute if  
14 they want to rely on summaries of business  
15 records, then they have to disclose it before  
16 trial.

17 THE COURT: Okay. Was this the one that was  
18 provided to him?

19 MR. SPANOLIOS: Yes, your Honor.

20 THE COURT: It will be received.

21 MR. SPOTA: Judge, I have a copy of a case  
22 and the statute on that.

23 THE COURT: I'm familiar with it.

24 MR. SPOTA: I'm sorry?

25 THE COURT: I'm familiar with it.

1 MR. SPOTA: Okay. This statute says, A party  
2 must give timely written notice of his or her  
3 intention to use the summary. No notice was given  
4 about it at all.

5 THE COURT: That's not a summary. It's a  
6 business record. I've ruled.

7 Go ahead.

8 MR. SPANOLIOS: Thank you, your Honor.

9 THE COURT: Move it along a little bit.

10 MR. SPANOLIOS: Yes, your Honor.

11 BY MR. SPANOLIOS:

12 Q Sir, I'll hand you this document and ask you  
13 if you can identify those for us, please.

14 MR. SPOTA: Objection. This was not  
15 provided.

16 THE COURT: What is it?

17 THE WITNESS: This is the information that  
18 would be used to --

19 THE COURT: No, no, I'm asking you.

20 MR. SPANOLIOS: Judgment figures, your Honor.

21 THE COURT: Oh, that's the final judgment.

22 MR. SPOTA: This isn't a final judgment,  
23 Judge.

24 MR. SPANOLIOS: It's the judgment figures,  
25 the amounts due and owing based on the business

1 records. It's a business record.

2 MR. SPOTA: I've never seen this before.

3 This was not on the exhibit list either.

4 THE COURT: I'll sustain the objection.

5 MR. SPANOLIOS: All right, your Honor.

6 BY MR. SPANOLIOS:

7 Q Have you had an opportunity to review the  
8 proposed final judgment?

9 A I have.

10 Q And is the --

11 MR. SPOTA: Objection. Hearsay.

12 BY MR. SPANOLIOS:

13 Q Is the information contained in the proposed  
14 final judgment --

15 THE COURT: Overruled.

16 BY MR. SPANOLIOS:

17 Q -- accurate and correct according to your  
18 business records?

19 MR. SPOTA: Hearsay. That's prepared for  
20 anticipation of litigation. That's clearly  
21 hearsay.

22 BY MR. SPANOLIOS:

23 Q And what is the total amount?

24 THE COURT: Okay. What are you objecting to  
25 besides -- You object to the attorney fees?

1 MR. SPOTA: Judge, we object to attorney fees  
2 and to this witness testifying based on a document  
3 that was prepared in anticipation of litigation.  
4 You can't hand a witness a document that the  
5 lawyer prepared for purposes of trial and ask him  
6 to verify that those are the numbers. That's pure  
7 hearsay.

8 THE COURT: Okay. How did you get the  
9 numbers?

10 MR. SPANOLIOS: Based on the payment history  
11 which we submitted as evidence.

12 MR. SPOTA: And the payment history doesn't  
13 contain any of the information that that purports  
14 to.

15 THE COURT: Does it or doesn't it?

16 MR. SPANOLIOS: It does, your Honor. It  
17 contains the unpaid principal balance, it contains  
18 the interest, it contains advances which have been  
19 paid and we have a total of one million dollars  
20 that's owed on this loan.

21 THE COURT: Okay.

22 MR. SPOTA: Judge, I looked at the loan  
23 history in detail. It does not contain the  
24 information that is on their proposed judgment.  
25 It doesn't.

1 THE COURT: Did you take any depositions?

2 MR. SPOTA: That's why I'm objecting.

3 THE COURT: Did you take any depositions?

4 MR. SPOTA: Well, a deposition has -- No, I  
5 didn't, but a deposition has nothing to do with  
6 the admissibility of evidence.

7 THE COURT: Did you do discovery? Was that  
8 information in the discovery?

9 MR. SPOTA: Judge, no, this was not provided  
10 in discovery.

11 THE COURT: Did you ask for it?

12 MR. SPOTA: Of course. That's the point.

13 They have not disclosed or given any information  
14 that purports to contain the figures on that final  
15 judgment. The loan payment doesn't say that.

16 THE COURT: You better help me out, sir.  
17 Where did those figures come from? As the records  
18 custodian, what records --

19 BY MR. SPANOLIOS:

20 Q What records did you review to determine the  
21 figures that are in the proposed final judgment are  
22 accurate?

23 MR. SPOTA: Leading and hearsay. He's again  
24 asking about a document that's in litigation  
25 that's not in evidence.

1 MR. SPANOLIOS: I'm asking what documents he  
2 reviewed. How is that --

3 THE COURT: Sir, do you push a button on a  
4 computer to get those numbers up?

5 THE WITNESS: Yes.

6 THE COURT: And does the computer contain the  
7 business records of your company?

8 MR. SPOTA: Objection, Judge. I need to ask  
9 you not try the case for the Plaintiff.

10 THE COURT: Okay. Your objection is -- I'll  
11 sustain your objection.

12 Do it.

13 MR. SPANOLIOS: Your Honor, you have the  
14 right to question the witness without him  
15 objecting.

16 MR. SPOTA: But you can't --

17 MR. SPANOLIOS: You have --

18 THE COURT: You know --

19 MR. SPANOLIOS: -- the right if you want to  
20 question the witness. I cannot believe that  
21 counsel objected to the Judge questioning the  
22 witness.

23 THE COURT: Well, I'm used to it. Go ahead.

24 MR. SPANOLIOS: I understand, your Honor.

25 BY MR. SPANOLIOS:

1           **Q     Do you press that button?**

2           MR. SPOTA:  Objection.  Predicate.

3           THE COURT:  Okay.  Your objections are noted.  
4           You have an objection to everything.  Okay.  It's  
5           noted.

6           MR. SPOTA:  I need to request a ruling on the  
7           objection for preservation purposes.

8           THE COURT:  You don't have to.  You can argue  
9           it all new in front of the Second District when  
10          you get there.

11          MR. SPOTA:  Saying he presses a button  
12          doesn't lay a predicate when you're talking about  
13          documents that are hearsay?

14          THE COURT:  Would you do your job.

15          MR. SPANOLIOS:  I'm trying, your Honor.

16          THE COURT:  Go ahead.

17          MR. SPANOLIOS:  Thank you, sir.

18   BY MR. SPANOLIOS:

19          **Q     What is the unpaid principal balance of this**  
20          **loan based on the business records that you reviewed?**

21          MR. SPOTA:  Judge --

22          THE COURT:  Overruled.

23          MR. SPOTA:  -- he's looking at the final  
24          judgment in order to testify.  Predicate.  
25          Hearsay.

1 THE WITNESS: Based on the payment history  
2 the principal balance is \$728,000.

3 BY MR. SPANOLIOS:

4 Q And has interest been accrued on this loan,  
5 and if so, how much?

6 MR. SPOTA: Judge, predicate, hearsay. He's  
7 looking at the final judgment that's not in  
8 evidence.

9 THE WITNESS: This loan --

10 THE COURT: Overruled.

11 THE WITNESS: -- was due for August of 2009.  
12 Interest is due from that point forward. The  
13 total interest is \$170,722.28.

14 BY MR. SPANOLIOS:

15 Q And have you made advances for taxes, and if  
16 so, how much?

17 MR. SPOTA: Leading. Predicate. Hearsay.  
18 Again, he's reading from the final judgment.

19 THE COURT: Overruled.

20 THE WITNESS: Taxes have been advanced in the  
21 amount of \$62,048.99.

22 BY MR. SPANOLIOS:

23 Q Have you made advances for hazard insurance,  
24 and if so, how much?

25 MR. SPOTA: Objection. Predicate. Hearsay.



1 THE COURT: Overruled.

2 THE WITNESS: \$42,705.76. Those figures are  
3 also in the payment history.

4 BY MR. SPANOLIOS:

5 Q And have you had to retain an attorney to  
6 represent you in this action?

7 A Yes, we have.

8 Q And are you obligated to pay reasonable fees  
9 for that representation?

10 A Yes.

11 Q And have you incurred fees and costs as a  
12 result of bringing this action?

13 A Yes.

14 Q And what is the total amount for which you're  
15 seeking a judgment for?

16 MR. SPOTA: Objection. Predicate. Hearsay.

17 THE COURT: Overruled.

18 THE WITNESS: \$1,012,806.12.

19 MR. SPANOLIOS: Thank you. I have no other  
20 questions of the witness.

21 THE COURT: Cross-exam.

22 CROSS-EXAMINATION

23 BY MR. SPOTA:

24 Q What's the name of the Plaintiff without  
25 looking at those documents?

1 MR. SPANOLIOS: Objection, your Honor.

2 THE COURT: What's the objection?

3 MR. SPOTA: Without looking at the document.

4 THE COURT: Why does he have to do it without  
5 looking at the document?

6 MR. SPOTA: I'm asking if he knows the name  
7 of the Plaintiff without looking at the documents.

8 MR. SPANOLIOS: Irrelevant.

9 THE COURT: Sustained.

10 MR. SPOTA: Not relevant if he knows the name  
11 of the Plaintiff?

12 THE COURT: Whether he knows it or not, he  
13 can look at his record and tell you.

14 MR. SPOTA: Okay. Then that would be the  
15 second question. But my first is --

16 THE COURT: You know --

17 MR. SPOTA: I suppose if -- I'll move on.

18 BY MR. SPOTA:

19 Q Have you ever worked for IndyMac Bank FSB?

20 A Yes, I have.

21 Q When?

22 A I started at IndyMac Bank FSB in 2002.

23 Worked there until the FDIC took it over in -- off the  
24 top of my head I don't remember the exact date.

25 Q Did you personally send the letter dated

1     **October 3rd, 2009?**

2           A     No, I did not.

3           **Q     Have you ever --**

4           THE COURT:  Is it your position they always  
5           have to bring the person who personally sent the  
6           letter of default?

7           MR. SPOTA:  No, Judge.  The law is that they  
8           have to bring a business record that shows that  
9           the letter was sent.  For instance --

10          THE COURT:  Have you not seen -- Never mind.  
11          I'm not going to get into it.  Go ahead.

12         BY MR. SPOTA:

13          **Q     Have you ever seen the original note?**

14          A     It's in the court file, so, no, I have not  
15          personally seen the original note.

16          **Q     Have you ever looked at the court file to see**  
17          **if the original -- what you say is the original note is**  
18          **actually the original?**

19          A     I have confirmed the copy that's been filed  
20          in the court file.

21          **Q     My question was did you ever look in the**  
22          **court file to see if that was the original note?**

23          A     I have not looked at the court file to see if  
24          that was the original note.

25          **Q     Do you have documents with you today showing**

1       **that this Paragraph 22 letter was sent?**

2           A       No.

3           **Q       Have you ever read the loan history?**

4           A       Yes.

5           **Q       This document?**

6           A       Yes.

7           **Q       How many times?**

8                   MR. SPANOLIOS: Judge, relevance.

9                   THE COURT: I'm sorry. I didn't hear the  
10                   question.

11                   MR. SPANOLIOS: How many times have you read  
12                   the loan history?

13                   THE COURT: I don't know the relevance.  
14                   Go ahead, you can answer.

15                   THE WITNESS: Four, five, six.

16       BY MR. SPOTA:

17           **Q       When's the last time you read it?**

18           A       This morning.

19           **Q       When's the first time you read it?**

20           A       Three or four weeks ago.

21                   THE COURT: Do you have another question?

22                   MR. SPOTA: I'm looking at my notes, Judge.  
23                   I have no more questions on cross.

24                   THE COURT: Okay. Do you have any other  
25                   witnesses?

1 MR. SPANOLIOS: No other witnesses, your  
2 Honor.

3 THE COURT: Do you have any witnesses?

4 MR. SPOTA: Well, Judge, they need to close  
5 their case first.

6 THE COURT: I thought he did.

7 MR. SPANOLIOS: We have no further witnesses,  
8 your Honor.

9 THE COURT: You rest?

10 MR. SPANOLIOS: We rest.

11 THE COURT: Okay. Do you have any witnesses?

12 MR. SPOTA: I'm moving for a directed  
13 verdict, Judge, involuntary dismissal, on a few  
14 grounds.

15 First, the evidence before the Court today.  
16 There is no admissible evidence before the Court  
17 today establishing that a Paragraph 22 letter was  
18 sent. This witness showed up solely as a records  
19 custodian and attempted to testify that this  
20 letter dated October 3rd, 2009 was sent. However,  
21 he acknowledged on my cross that there are no  
22 business records before the Court today  
23 establishing that the letter was sent.

24 That's what you have to have in order to have  
25 admissible evidence that this letter was sent.

1 Some type of note. Some type of business record  
2 showing that the letter was sent. That doesn't  
3 exist. That's the first ground.

4 The second ground is that even if you were to  
5 consider the content of the letter, the letter on  
6 its face doesn't comply with Paragraph 22,  
7 because -- in several respects. The first is it  
8 doesn't --

9 I should give you -- Do you have a copy of  
10 the letter?

11 THE COURT: I've looked at it.

12 MR. SPOTA: I have a highlighted copy. I  
13 think it would be easier for you. Can I approach?

14 MR. SPANOLIOS: I object to having you use  
15 the highlighted copy, your Honor. The Court has a  
16 copy.

17 THE COURT: It doesn't matter. Bring it up.

18 MR. SPOTA: You'll note first the letter  
19 says -- Paragraph 22 requires that the letter  
20 specify the default. All this letter says is,  
21 Your loan is in serious default because you have  
22 not made your required payments.

23 The Judy case out of the Second District  
24 decided in November 2012 is very clear. The  
25 letter has to specify the default. Saying you did

1 not make your required payments is not at all  
2 specific. That is totally general. It should  
3 have said what payments were not made. It doesn't  
4 say that at all.

5 The next problem is Paragraph 22 requires  
6 that the letter specify the actions required to  
7 cure the default. This letter says to cure the  
8 default you must on or before November 3rd, 2009,  
9 pay IndyMac Mortgage Services, Division of  
10 OneWest, in the amount of 24,000 and change, plus  
11 any additional monthly payments, late charges and  
12 fees which become due.

13 It's supposed to be specific. When it says  
14 plus any additional monthly payments, late charges  
15 and fees, that's not specific. They're not saying  
16 what payments, what charges and what fees. It's  
17 totally general.

18 The next problem is that Paragraph -- the  
19 Paragraph 22 requires that the letter specify that  
20 the failure to cure the default may result in  
21 foreclosure by judicial proceeding.

22 This letter doesn't say that. Instead it  
23 says you may have the right to bring a court  
24 action. That's plainly not the same thing as a  
25 letter -- Telling a Defendant you can go, too, is

1 not the same thing as the Plaintiff saying we will  
2 bring a court action, we will bring a foreclosure  
3 by judicial proceeding. So the letter is plainly  
4 defective. Even if you thought that the  
5 evidence -- there was evidence that was sent.

6 In addition to that, the -- there was no  
7 evidence at all to overcome our denial of  
8 condition precedent on Florida Statute 559.715.  
9 Florida Statute 559.715 sets forth the condition  
10 precedent as well.

11 If I can approach, Judge.

12 The statute plainly provides if you're not  
13 the original creditor, you must give the debtor  
14 written notice of an assignment as soon as  
15 practical after the assignment is made but at  
16 least 30 days before any action to collect a debt.

17 There was nothing at all establishing that  
18 the Plaintiff complied with this condition  
19 precedent even though we specifically denied it in  
20 our answer in this file.

21 What I provided you is not only a copy of the  
22 statute, but a copy of numerous Circuit Court  
23 decisions. And I provided Circuit Court because  
24 there are no Florida District Court decisions on  
25 this one way or the other. But numerous positions



1 from your colleagues which have ruled that this is  
2 a condition precedent in a mortgage foreclosure  
3 case such as this. And they gave you nothing in  
4 order to establish that they complied with this  
5 condition precedent. So dismissal is required on  
6 that basis as well.

7 We also move for an involuntary dismissal  
8 based on -- based on the absence of any evidence  
9 establishing standing at the inception of the  
10 case. There was nothing establishing standing at  
11 the inception of the case at all. No testimony  
12 about that whatsoever.

13 So, Judge, those are three -- four, if you  
14 consider Paragraph 22 to be two different issues,  
15 numerous reasons why the case should be dismissed  
16 without prejudice.

17 THE COURT: Okay. Do you want to be heard?

18 MR. SPANOLIOS: Thank you, your Honor.

19 Your Honor, we introduced into evidence the  
20 note, the mortgage, the demand letter, the payment  
21 history and the trust documents which create this  
22 trust, which is the Plaintiff. The trust  
23 documents indicate when the closing of the trust  
24 was. We have the original note and the mortgage  
25 in the file.

1           The -- Just to touch on some of the issues  
2 he's raising, 559.715 applies to the ownership of  
3 the right to service a collection of it. So it's  
4 totally irrelevant in this matter. The demand  
5 letter --

6           THE COURT: I don't really know that that  
7 deals with mortgages.

8           MR. SPOTA: I have 11 Circuit cases that say  
9 it applies to mortgage foreclosure cases. That's  
10 the controlling Federal jurisdiction for the  
11 entire State of Florida. I have those cases here,  
12 Judge.

13          THE COURT: Go ahead.

14          MR. SPANOLIOS: All right. As to the demand  
15 letter, the letter does indicate -- it does comply  
16 with all the requirements in the mortgage. It  
17 states why he's in default. Because he hasn't  
18 made his payments. It states what he needs to do  
19 to cure it, which is to pay the sums that are set  
20 forth. And, of course, they cannot specify the  
21 exact amount in the letter that says out in the  
22 future, because when the payments accrue, there's  
23 going to be -- you know, depending on the time  
24 that that payment arrives what is going to be the  
25 final amount that's due.

1           The letter clearly sets out how to cure the  
2           default. It sets out the reasons for the default  
3           and it sets out the right that they have to raise  
4           defenses to any foreclosure action. The letter  
5           complies with the terms of Paragraph 22.

6           Your Honor, to review the standing of the  
7           pleadings, Mr. Stopa was second counsel to appear.  
8           He filed a motion to amend the answer and defense.  
9           That motion was never heard or granted.

10           MR. SPOTA: That's not true.

11           MR. SPANOLIOS: So we're really running on  
12           the original answer that was filed. The original  
13           answer that was filed only raised two -- three  
14           affirmative defenses. Mr. Stopa's amended or  
15           proposed amended affirmative defenses ran about  
16           14. So those 14 proposed amended affirmative  
17           defenses aren't before the Court. That order was  
18           never granted amending the answer.

19           They're running on the original answer and  
20           affirmative defenses filed by the original  
21           attorney who basically was arguing unclean hands  
22           and standing. We've proved standing. We're the  
23           holder. We've got the original note.

24           THE COURT: Okay. The motion is denied. Do  
25           you have --

1                   MR. SPOTA: Judge, can I have a brief  
2                   rebuttal?

3                   THE COURT: No. Do you have any witnesses?

4                   MR. SPOTA: Yes, I'll call this gentleman.

5                   THE COURT: Okay. Sir, you're still under  
6                   oath.

7                   THEREUPON,

8                                   ERIC SCHEINFELDT,  
9                   a Witness herein, having been first duly sworn to tell  
10                  the truth, the whole truth, and nothing but the truth,  
11                  testified and said as follows:

12                                   DIRECT EXAMINATION

13                  BY MR. SPOTA:

14                  **Q     Do you have any documents before you today**  
15                  **establishing that Deutsche --**

16                  THE COURT: He's the records custodian. What  
17                  the records establish --

18                  BY MR. SPOTA:

19                  **Q     And my question is do you have any documents**  
20                  **before you today establishing that Deutsche Bank**  
21                  **National Trust Company had possession of an original**  
22                  **endorsed note with an allonge at the time this lawsuit**  
23                  **was filed?**

24                  THE WITNESS: In my possession, no.

25                  MR. SPOTA: No more questions.

1 THE COURT: Okay. Do you have any witnesses?

2 MR. SPOTA: No more witnesses.

3 THE COURT: Okay. I'll grant the  
4 foreclosure.

5 MR. SPOTA: Judge, I renew my motion for an  
6 involuntary dismissal.

7 THE COURT: Okay.

8 MR. SPOTA: The evidence -- For purposes of  
9 my record. The law -- The evidence was clear that  
10 the Plaintiff had no basis in which to have  
11 standing at the inception of the case. The  
12 allonge was filed after the suit was filed. And  
13 there was no testimony at all establishing that  
14 the Plaintiff was the owner or holder prior to  
15 the --

16 Judge, are you signing the final judgment  
17 before my argument is finished?

18 THE COURT: I told you I'm signing the final  
19 judgment. You can argue all you want for the  
20 record and you get a chance to change the law and  
21 then you'll have a District Court decision on that  
22 point.

23 MR. SPOTA: Judge, I know -- I know that you  
24 know the law about standing at inception. When  
25 this witness testified that he had no documents

1 establishing that --

2 THE COURT: Sir, I signed the judgment. The  
3 judgment speaks for itself.

4 MR. SPOTA: Judge, we said nothing about a  
5 sale date. I also ask for a stay pending appeal.  
6 I think that the -- we have numerous issues on  
7 which our -- respectfully there are issues for an  
8 appeal. The absence of evidence on standing at  
9 inception, the Paragraph 22 issue, the absence of  
10 anything on 559.715, the evidentiary ruling.

11 THE COURT: You like to hear yourself?

12 MR. SPOTA: Judge, I'm making my record.

13 THE COURT: Your record is clear. You made  
14 your record.

15 MR. SPOTA: And now I'm asking for a stay  
16 pending appeal, Judge.

17 THE COURT: Okay.

18 THE CLERK: Our standard sale date will be  
19 July 16th at 9:00 a.m.

20 THE COURT: Okay.

21 MR. SPOTA: Judge, my client is trying to get  
22 a full payoff. The house is worth more than what  
23 their judgment amount is.

24 THE COURT: Then just pay it.

25 MR. SPOTA: We have to have a closing in

1 order to do that. Is there a reason we can't have  
2 a 120-day sale date?

3 MR. SPANOLIOS: Your Honor, we offered --

4 THE COURT: I'm not authorized to do that  
5 unless they agree.

6 Do you agree?

7 MR. SPANOLIOS: No, your Honor, we don't  
8 agree.

9 MR. SPOTA: Then I'm asking for your ruling  
10 on the stay pending appeal. I have numerous  
11 meritorious issues to bring.

12 THE COURT: No. You come back in with a  
13 motion.

14 MR. SPOTA: Then I'll have to file an  
15 emergency motion and we have to come back.

16 THE COURT: That's what you have to do.

17 MR. SPOTA: Well, I think -- for judicial  
18 economy, I thought it made sense to address the  
19 issue now.

20 THE COURT: Okay. Well, you file the motion  
21 and you get somebody in the civil division that --

22 MR. SPOTA: Well, you're the Judge who has to  
23 hear any sort of rehearing under --

24 THE COURT: Well, I'm not going to hear a  
25 rehearing. You have to file a motion that you

1 have a supersedeas --

2 MR. SPOTA: You don't have a supersedeas when  
3 there's a final judgment. That's --

4 THE COURT: Sure you do.

5 MR. SPOTA: There's case law on that, Judge.

6 THE COURT: Okay. You can look at the case  
7 law when you bring the motion.

8 MR. SPOTA: Okay.

9 MR. SPANOLIOS: Thank you, your Honor. Are  
10 we concluded?

11 THE COURT: Yes.

12 MR. SPANOLIOS: Thank you, your Honor.

13 (Proceedings concluded at 10:49 a.m.)

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REPORTER'S CERTIFICATE

STATE OF FLORIDA     )  
COUNTY OF SARASOTA    )

I, LINDA C. MEAD, Certified Court Reporter,  
certify that I was authorized to and did stenographically  
record the foregoing transcript of proceedings and that  
the transcript is a true record to the best of my  
ability.

Dated the 13th day of June, 2013.

Linda C. Mead

LINDA C. MEAD, CSR, CCR

<b>\$</b>	<b>5</b>	<b>agent</b> 17:11	<b>August</b> 31:11	<b>certificate</b> 13:1,10, 13
<b>\$1,012,806.12</b> 32:18	<b>559.715</b> 39:8,9 41:2	<b>agree</b> 10:12 11:7	<b>B</b>	<b>change</b> 38:10
<b>\$170,722.28</b> 31:13	<b>8</b>	<b>agreement</b> 15:11, 13,19 17:4,6,16 18:8	<b>back</b> 5:16 16:7 33:22	<b>charges</b> 38:11,14,16
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<b>\$728,000</b> 31:2	<b>9</b> 5:13,14	<b>amend</b> 10:15 14:1,4 42:8	<b>Bank's</b> 14:14	<b>Circuit</b> 39:22,23 41:8
<b>1</b>	<b>A</b>	<b>amended</b> 10:15 42:14,15,16	<b>based</b> 25:25 27:2,10 30:20 31:1 40:8	<b>clear</b> 7:6 37:24
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