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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master in Equity

Case No.: 2016-CP-02-02033

Appellate Case No.: 2017-002060

RECEIVED
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SC Court of Appeals

CitiMortgage, Inc., ... Respondent,

v.

Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson;
Hudson & Keyse LLC; First Manufactured Housing Credit
Corporation who acquired First Carolina Financial Corporation;
And South Carolina Department of Motor Vehicles, Defendants,

Of whom Mary L. Moxley is the Appellant.

RECORD ON APPEAL

VOLUME ONE OF TWO

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STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	
CitiMortgage	)	CASE NO.: 2016-CP-02-02033
	)	
Plaintiff,	)	
	)	
vs	)	ORDER
	)	
	)	
Mary L. Moxley	)	
	)	
Defendant	)	

Hearing Date: March 20, 2017
 Plaintiff's Attorney: Finkel Law Firm
 Magalie A. Creech; Adams and Rees, LLP
 and W. Cliff Moore, III
 Defendant's Attorney: Tom G. Woodruff, JR.
 Court Reporter: Angela D. Zuver

PROCEDURE

1. The plaintiff filed a summons and complaint, lis pendens and notice of foreclosure intervention on February 2, 2014.
2. The defendant, Mary Moxley, filed an answer and counterclaim on March 6, 2014.
3. The plaintiff filed a reply on April 8, 2014.
4. Plaintiff filed a motion for summary judgment on June 30, 2014.
5. The defendant, Mary Moxley, filed a motion to compel responses to discovery on August 4, 2014.
6. In the order issued on September 26, 2014, the court found:
 - a. The plaintiff's motion for summary judgment on the foreclosure claim was denied;
 - b. The plaintiff's motion for summary judgment was granted as to the affirmative defenses of unclean hands and claim of equitable unenforceability, to the extent that

those affirmative defenses were based on the loan not being closed under the supervision of an attorney.

c. The remaining claims were denied so the parties could complete discovery.

7. An order granting plaintiff's motion to compel was filed on December 16, 2014.

8. Plaintiff filed a motion for summary judgment on March 19, 2015.

9. In the order issued on September 1, 2015, the court found:

a. Mary Moxley agreed to withdraw the South Carolina Unfair Trade Practice counterclaim.

b. The plaintiff's motion to correct the plat reference from Book 668 to Book 568 was granted.

c. The plaintiff's motion for summary judgment on the foreclosure cause of action as to Mary L Moxley was denied.

d. The plaintiff's motion for summary judgment to dismiss the defendants counterclaim pursuant to S.C. Code Ann. 37 - 10 - 102, was granted.

10. The trial was held on March 20, 2017.

STATEMENT OF FACTS

PATSY JUDD

Ms. Judd testified that she was a business operation analyst for CitiMortgage for seven years. She had access to the loan servicing records. She was familiar with the account in this matter. Those records were kept in the normal course of business and were made at or near the time of the events reflected in the record. Prior to her testimony, she reviewed the note, mortgage, default letters, payment history, origination file and the origination appraisal.

CitiMortgage began servicing the loan in September 2007. Prior to that, the servicer was ABN AMRO. The two companies merged on August 21, 2007 (plaintiff's number seven). The original note was for \$69,700.00. William Moxley signed the note. The interest rate was 9.5% per annum. The plaintiff currently holds the note. The mortgage reflects that the collateral is property located at 398 Glenwood Dr., Warrenton, SC. There is a mobile home on the property but the witness did not see the addendum for the mobile home to the exhibit.

The appraisal that was introduced does reflect a mobile home on the property. The mortgage legal description was not part of the mortgage that was introduced at trial. Plaintiff made a request to submit a certified original copy. Over the objection of the Defendant Moxley, the court allowed the introduction of the document. The legal description does reflect the mobile home was part of the collateral to secure the loan with the real property.

An authorization form was signed by Mr. Moxley, which gave Mary Moxley authority to speak on his behalf in regards to the loan. Plaintiff also introduced a copy of the HUD1 settlement form. This was part of the origination file from the prior servicer. It reflects the closing date of September 29, 2000. It also provides an address of the property of 398 Glenwood Dr., Warrentonville, SC.

Several exhibits were introduced for identification only. This included a scope of representation form, a seller/borrower affidavit and indemnity agreement and an affidavit and agreement. Plaintiff also introduced as exhibits the right of rescission letter, the authorization to correct form, the truth in lending disclosure statement, copies of two South Carolina drivers' license purported to be those of Mary L Moxley and William Clyde Moxley, Jr. The photograph on Mrs. Moxley's was not legible, but her name and address were identified on the document. Plaintiff introduced the deed regarding this transaction that is recorded with the Aiken County RMC Office.

The witness testified that the default date was July 1, 2013. She further testified that the default has not been cured or modified. A letter was mailed to the estate of William Moxley, Jr., dated September 3, 2013. The records reflect that Mary Moxley notified the plaintiff of her husband's death in March of 2013. On June 6, 2013 a payment was made in the amount of \$3,306.86. William Clyde Moxley, Jr. passed away prior to this payment. This reflects three payments plus \$15.00 for making the payment by telephone. This brought the loan current as of June 1, 2013. The default date is July 1, 2013.

The figures introduced were as follows:

- a. principal amount: \$58,644.97
- b. accrued interest: \$21,554.85 (this figure was accurate through April 14, 2017)
- c. the attorney fee and cost total \$2,311.69
- d. inspection cost of \$491.50
- e. negative escrow: \$7,847.82 (included in that figure is \$4,940.40 for hazard insurance, \$2,211.00 for flood insurance and \$688.42 for property taxes)
- f. Total: \$90,850.83
- g. the per diem is \$15.26380
- h. the recovery of attorney's fees and costs are allowed in paragraph 6E of the note in paragraph 21 of the mortgage.

On cross-examination, the witness testified that there appears to be two witnesses on the mortgage. John Ballentine and Tracy L. Kirkpatrick signed as the witnesses. Ms. Judd was also asked about several entries on the HUD - 1 Form. On redirect, the plaintiff introduced a FEMA loan hazard document and identified both the property location and the owners. Plaintiff also introduced an Aiken County Flood Map with the receipt from Aiken County records.

JOHN KEITH BALLENTINE

In September 2000, Mr. Ballentine was employed with the law firm of Ratchford and May. He was identified as a paralegal/loan closer. He would travel around the state doing real estate refinance closings. The real estate packages were prepared at the law firm. He would take the packages and get the documents signed. In this matter, he signed as a witness and the notary public.

He reviewed plaintiff's exhibit number 19 that is the copy of the South Carolina drivers' licenses. He testified that those are be provided at the closing or that he would have copies. Either way, he would verify the identity of the parties through the drivers' license prior to those parties signing the documents. He does not remember this particular real estate closing, but his practice was that no signatures would be obtained unless he verified the identity of the parties. He testified that he would have seen Mary Moxley's identification before she signed the

documents. Further, he would not have any doubt that Mary Moxley would have signed the mortgage based on his procedure.

Mary Moxley's signature is on the seller/borrower affidavit and indemnity agreement. This is a standard document used in the closing package. He testified that he would identify the parties before those documents were signed. Mr. Ballentine testified that, to his knowledge, he had never conducted a real estate closing when someone other than the person who was to sign the documents appeared at the closing and signed any documents.

On cross-examination, Mr. Ballentine admitted that he is not a certified paralegal. A lawyer did not appear at any real estate closings. All of the transactions were parties refinancing current loans. At this point, plaintiff made an objection when the defense raised the issue of unauthorized practice of law. Defendant believes that issue had been ruled on in prior orders. That objection was noted for the record, and the cross-examination continued.

Normally, Mr. Ballentine would be able to locate a third party to sign as a witness. There were occasions when he would take documents back to the law firm and have Ms. Kirkpatrick sign the documents as a witness even though she was not a witness to the execution of the documents.

He admits that he cannot make out the facial features of Mrs. Moxley by looking at the copy of her driver's license admitted into evidence. He estimated he did 75 to 100 closings in Aiken County. He would not have met any parties at a broker's office in Aiken County. If no other witness was available at the closing, he would be the only witness and the second witness would be the signature from the individual at the law office in Columbia. He further testified that he is making an assumption that this closing was held in Aiken. The loan closing could have been held in Columbia. However, he testified that he felt it was better than a fifty percent chance that the closing took place in Aiken.

MARY MOXLEY

The plaintiff called Mary Moxley as a witness. She testified she could not recognize the facial features on plaintiff's Exhibit 19, which was purported to be a copy of her driver's license. She agreed that it was her name on the driver's license. In her deposition taken in 2016, she admitted that it was a copy of her driver's license. She testified she has no memory of signing the mortgage. She does not remember going to Columbia, South Carolina, in the year 2000 and does not remember meeting Mr. Ballentine. She admitted that while she does not remember making a payment in June 2013, she might have made the payment. When asked if her signature was on the mortgage, she responded, "I don't think so. I really don't think so because I make big loops with my Ls. I don't think it is my signature."

She also testified that she is taking several medications and has been taking those for the past few years. At trial, she testified that the medications include Ambien, Xanax, Seroquel and Prozac. She does have problems with her long and short-term memory. At one point, she stated, "I'm not totally illiterate, but I don't have a good memory." She does feel that her memory was better at the time of the hearing. She did admit to having no recall about financial matters in the year 2000.

She reviewed the Authorization to Obtain Credit Information form and the Financial Services Authorization and Agreement. At trial, she did not believe it was her signature on those documents. She testified that, "my handwriting has changed a lot over the years back and forth. Sometimes I can't even write my hands shake so bad." She testified in her deposition that it looked like her signature on those forms. When asked if she was testifying at the trial that it does not look like her signature, she responded, "I don't know, to be honest with you, my signature has changed so many times." She later testified that her husband would have handled the finances in the year 2000. She had four or five surgeries during that time. In her deposition, she testified some of the initials on the mortgage appeared to be her writing. At trial, she testified that it does not look like her writing. In fact, when her attorney reviewed all of the exhibits with her signature, she testified that she had not signed any of those documents or that it did not look like her signature. However, there appears to be different testimony at her deposition, where she testified that it could be her signature or it looked like her signature.

She also testified that she and her husband always lived in one mobile home on the property. There may have been other mobile homes on the property over the years, but other family members lived in those mobile homes.

CONCLUSIONS OF LAW

This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

MOTION TO AMEND

The defendant, Mary Moxley, move to amend the pleadings to conform to the evidence pursuant to Rule 15 (b), SCRPC. "Issues not raised by the pleadings but tried by consent of the parties shall be treated as if they had been raised in the pleadings." *Beaufort County School Dist. V United Nat. Ins. Co.*, 392 S.C. 506, 709 S. E. 2d 85 (Ct. App. 2011).

In the order filed on September 26, 2014, the court granted the plaintiff summary judgment motion and dismissed Mary Moxley's affirmative defenses of unclean hands and equitable unenforceability. The court relied on *Matrix Financial Services Corp. v Frazer*, 394 S.C. 134, 714 S.E. 2d 532 (2011), *BAC v Kinder*, 398 S.C. 619, 731 S.E. 2d 547 (2012). In the order filed on September 1, 2015, the court granted the plaintiff summary judgment motion to dismiss Mary Moxley's counterclaim pursuant to S. C. Code Ann. 37 – 10 – 102. Mary Moxley agreed to withdraw her counterclaim for South Carolina Unfair Trade Practice Act.

The plaintiff did object to the testimony and the lines of questions about the unauthorized practice of law at trial. However, to the extent that this specific defense was not addressed in the prior orders, the court will rule specifically on the unauthorized practice of law in this situation.

In *Matrix v Fraser*, *Id.* the South Carolina Supreme Court held that a lender who closed a loan without attorney supervision, having committed the unauthorized practice of law, came to

the court with unclean hands and was thus barred from seeking equitable relief. However, in a substitute opinion issued on a rehearing ("Matrix II"), the Court explained that this holding would be prospective only, stating it would "apply this ruling to all filing dates after the issuance of this opinion," which was August 8, 2011, *Id.* At 140, 714 S.E. 2d at 535. Whatever ambiguity may have existed as to what the court meant by "filing date" was resolved in *BAC v Kinder*, 398 S.C. 619, 731 S.E.2d 547 (2012). In that case, the Court stated, "We clarify now that it is the date the document a party seeks to enforce was filed. Here, Systems' mortgage was recorded on April 20, 2007, well before the issuance of Matrix. Thus, regardless of whether an attorney participated in the closing of the mortgage, BAC would not be barred from recovery by the illegality."

Mary Moxley has failed to establish the unauthorized practice of law for which she would be entitled to any relief.

EXECUTION OF MORTGAGE

Mary Moxley also raised the issue about the validity of the mortgage, if there was only one witness to the execution of the document. Mr. Ballentine could not be sure where the real estate closing took place since it was approximately 17 years prior to his testimony. He was clear that the other witness that signed the mortgage would not have traveled with him to Aiken for a real estate closing. Therefore, if the real estate closing was held in Aiken County, Mr. Ballentine would have witnessed the execution of the mortgage and the second witness, would have signed the mortgage when he returned to the law offices. While he could not be sure, Mr. Ballentine felt that it was more likely that the real estate closing occurred in Aiken County.

Mary Moxley relies on *Leasing Enterprise, Inc. v. Livingston*, 294 S.C. 204, 363 S.E. 2d 410 (1987). That case involved a judgment creditor arguing that a deed between the debtor and a family member did not have priority. The Court noted that S.C. Code Ann. 27-7-10, (1976) requires two witnesses in the probate of a document to be recorded. This matter does not involve a recording or a priority issue. The real issue is if the mortgage is valid between the parties if there was only one witness to the execution of the mortgage. In *Smith v. Hawkins*, 254 S.C. 423, 175 S.E. 2d 824 (1970), the Court found that a deed or mortgage without sufficient witnesses

was valid between the parties. (Also see *Stelts v. Martin*, 90 S.C. 14, 72 S.E. 550 (1911)) Based on the testimony and the exhibits, the mortgage is valid between the parties.

WILLIAM C. MOXLEY, JR.

Based on the testimony and exhibits, it is undisputed that the William C Moxley, Jr. signed the Note and Mortgage. The probate clause on the mortgage does indicate it was signed in Richland County. Mr. Ballentine was not sure where the real estate closing was held. However, he testified it was more likely that the documents were signed in Aiken County. There's also no dispute that the funds were delivered from the lender and the payments were made as required by the terms of the Note. Mary Moxley has argued that if the documents were signed in Aiken County, Mr. Ballentine was the only witness. As discussed above, the mortgage would still be valid between the parties if Mr. Ballentine was the only witness.

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on the debt." *US Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009), *Bank of America v. Draper*, 405 S.C. 214, 746 S.E. 2d 478 (2013). The court finds, even if there was only one witness, the mortgage is enforceable, between the plaintiff and William C Moxley, Jr. There is no dispute that William C Moxley, Jr. executed the Note. The plaintiff has established the existence of the debt and the default by Mr. Moxley on that debt. It is entitled to the requested relief against William C Moxley, Jr. There is also no dispute that Mr. Moxley signed the mortgage.

MARY MOXLEY

Based on her testimony, the tragic death of Mary Moxley's husband has had a profound effect on her. She testified that she is now under a doctor's care and is taking various medications. She testified that she feels she is doing better at the time of trial as opposed to the time her deposition was taken by the plaintiff. At her deposition in May of 2016, she testified that she was still having problems with her memory. The medications affect her short-term long-term memory.

She also testified that her signature has changed, "back-and-forth" over the years. Her testimony at the hearing differs in several instances from her deposition testimony. In her deposition, she testified the initials on the mortgage and signatures on the other documents appeared to be her writing. Her testimony at the hearing was that none of the initials or signatures are in her writing or that she does not remember signing those documents. In addition, at her deposition, she admitted that the driver's license exhibit was a copy of her driver's license. At trial, all parties agreed that you could not identify her by the photograph on the exhibit. However, it is her name on the license. She admitted that while she does not remember making a payment in June 2013, she might have made the payment. This would have been after her husband passed away.

Mr. Ballentine admitted that he does not remember Mary Moxley or this particular real estate transaction. His testimony does reflect a standard procedure to identify the parties before any documents were signed. This did include the identification of the parties by their driver's license.

"In an action to foreclose a mortgage on real property, the mortgagee has the burden of proving a disputed mortgage by the preponderance of the evidence." *Paramount Fund, Inc. v. Cusaac*, 282 S.C. 497, 499, 319 S.E.2d 354, 355 (Ct. App. 1984). Based on the payments made after Mr. Moxley's death, the procedure Mr. Ballentine described, Mary Moxley's testimony about her memory, the changes in her signature and the difference in her deposition and trial testimony, the court finds that the plaintiff has established by a preponderance of the evidence that Mary Moxley did sign the mortgage and other documents. While Mary Moxley has no obligation under the note, the court finds that she and Mr. Moxley signed the mortgage. Therefore, the plaintiff is entitled to obtain the relief requested in the foreclosure matter.

CONCLUSION

1. This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this

court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

2. Mary Moxley has failed to establish the unauthorized practice of law for which she would be entitled to any relief.

3. Based on the testimony and the exhibits, the mortgage is valid between the parties.

4. The plaintiff has established the existence of the debt and the default by Mr. Moxley on that debt. It is entitled to the requested relief against William C Moxley, Jr.

5. Based on the payments made after Mr. Moxley death, the procedure Mr.

Ballentine described, Mary Moxley's testimony about her memory, the changes in her signature and the difference in her deposition and trial testimony, the court finds that the plaintiff has established by a preponderance of the evidence that Mary Moxley did

sign the mortgage and other documents. While Mary Moxley has no obligation under the note, the court finds that she and Mr. Moxley signed the mortgage. Therefore, the plaintiff is entitled to obtain the relief requested in the foreclosure matter.

6. The plaintiff will submit a proposed foreclosure order and will use the figures established at this hearing:

- a. principal amount: \$58,644.97
- b. accrued interest: \$21,554.85 (this figure was accurate through April 14, 2017)
- c. the attorney fee and cost total: \$2,311.69
- d. inspection cost: \$491.50
- e. negative escrow: \$7,847.82 (included in that figure is \$4,940.40 for hazard insurance, \$2,211.00 for flood insurance and \$688.42 for property taxes)
- f. Total: \$90,850.83

IT IS SO ORDERED.

2017

Aiken, South Carolina

M. Anderson Griffith
Master-in-Equity



Aiken Common Pleas

Case Caption: CitiMortgage Inc VS Mary L Moxley , defendant, et al

Case Number: 2016CP0202033

Type: Master/Order On Sale Of Real Estate

AND IT IS SO ORDERED

s/M Anderson Griffith-3076

Electronically signed on 2017-06-30 15:16:31 page 13 of 13

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CitiMortgage, Inc.

CASE NO.: 2014-CP-02-00236

Plaintiff,

ORDER

vs

Mary L. Moxley a/k/a Mary Moxley n/k/a
Mary Richardson; Hudson & Keyse LLC;
First Manufactured Housing Credit
Corporation who acquired First Carolina
Financial Corporation; and South Carolina
Department of Motor Vehicles

Defendant.

Hearing Date: August 5, 2014
Judge: M. Anderson Griffith
Attorney for Plaintiff: Magalie A. Arcure
Attorney for Defendant: Tom G. Woodruff
Court Reporter: Christina L. Essi

PROCEDURE

1. The Plaintiff filed summons sand complaint, lis pendens and notice of foreclosure intervention on February 2, 2014.
2. The Defendant, Mary Moxley, filed an answer and counterclaim on March 6, 2014.
3. The Plaintiff filed a reply on April 8, 2014.
4. The Plaintiff filed a Motion for Summary Judgment on June 30, 2014.
5. The Defendant, Mary Moxley, filed a Motion to Compel Responses to Discovery on August 4, 2014.
6. A hearing was held on August 5, 2014 on the Motion for Summary Judgment.

FILED 21 September 4
Hej. Hadard
CCCP AGS
C. J. Bracco
11:30am

FINDINGS OF FACT

1. The summons and complaint is a mortgage foreclosure and reformation action.
 2. William C. Moxley, Jr., now deceased, signed a promissory note with ABN AMRO Mortgage Group, Inc. on September 29, 2000.
 3. The Plaintiff alleges that William C. Moxley, Jr. and Mary L. Moxley executed a mortgage on September 29, 2000.
 4. ABN AMRO Mortgage Group, Inc. merged into CitiMortgage, Inc.
 5. Plaintiff also moved for the Court to correct Misc. Book number from 668 to 568 in the legal description.
 6. The Defendant, Mary L. Moxley, filed an answer and counterclaim and denied that she signed the mortgage. She also filed counterclaims for unlawful trade practices act, unclean hands and violation of the attorney preference statute.
 7. The mortgage has a signature of Mary L. Moxley but the witnesses in the probate section indicate they only saw William Moxley sign the mortgage.
 8. The parties have exchanged written discovery documents. In the Plaintiff's requests for admission, the Defendant, Mary Moxley, admits to owning the property and responds by stating she did not sign the note and does not have sufficient information to admit or deny that she signed the mortgage. She also denied that the mobile home was secured by the mortgage.
- In her affidavit, Mary Moxley states she has "no recollection of ever signing a mortgage, or of ever going to any attorney's office in Columbia, South Carolina, in the year 2000, to sign any documents relating to the land."
9. Thomas Woodruff, as attorney for Mary Moxley filed an affidavit. In the affidavit, he raises the issue of Mary Moxley having a possible cause of action for a matter that has not been raised in the Answer & Counterclaim and the pending Motion to Compel related to the defendant's discovery request.

STANDARD

Under Rule 56, SCRCP, summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc. 363 S.C. 531, 536 611 S.E. 2d 922, 925 (2005); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622 S.E. 2d 733 (Ct. App. 2005). Material

facts are those that "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452 S.E. 2d 868, 874 (2001). When plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E. 2d 817 (Ct. App. 2004).

In cases applying to preponderance of evidence standard, the non-moving party only has to submit a mere scintilla of evidence to withstand a motion for summary judgment. Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 673 S.E. 2d 801 (2009).

FORECLOSURE

Mary L. Moxley has denied signing the mortgage. The witnesses to the mortgage did not indicate they saw May L. Moxley sign the Mortgage. Mary L. Moxley did not sign the Note. She has also denied that the mobile home was part of the collateral described in the mortgage.

The Court finds that there is a genuine issue of fact in regards to the Plaintiff's claim that it is entitled to foreclosure of the interest of Mary L. Moxley. The Plaintiff's Motion for Summary Judgment on its foreclosure cause of action is denied.

EQUITABLE DEFENSE OF UNCLEAN HANDS

In Matrix v. Frazer, the South Carolina Supreme Court held that a lender who closed a loan without attorney supervision, having committed the unauthorized practice of law, came to the court with unclean hands and was thus barred from seeking equitable relief. See Matrix Financial Services Corp. v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011). However, in a substitute opinion issued on rehearing on August 8, 2011 ("Matrix II"), the Court explained that this holding would be prospective only, stating it would "apply this ruling to all filing dates after the issuance of this opinion," which was August 8, 2011, Id. at 140, 714 S.E.2d at 535.

Whatever ambiguity may have existed as to what the Court meant by "filing date," was then resolved in BAC v. Kinder, 398 S.C. 619, 731 S.E.2d 547 (2012)). There the Court stated:

We clarify now that it is the date the document a party seeks to enforce was filed. Here, Systems' mortgage was recorded on April 20, 2007, well before the issuance of Matrix.

Thus, regardless of whether an attorney participated in the closing of Mortgage 2, BAC would not be barred from recovery by the illegality.

Kinder, 398 S.C. at 642, 731 S.E.2d at 550.

The Plaintiff's Motion is granted to the extent that Defendant's affirmative defense of unclean hands and claim of equitable unenforceability are based on the loan not being closed under the supervision of an attorney.

REMAINING CLAIMS FOR SUMMARY JUDGMENT

The Defendant filed a Motion to Compel for discovery. The Defendant believes she is entitled to further discovery in this matter. The Plaintiff believes it has complied with the discovery request submitted by the Defendant. Since the Motion to Compel has not been heard at the time of this hearing, summary judgment will not be granted on the remaining issues at this time. Summary judgment should not be granted until the non-moving party has an opportunity to complete discovery. Baughman v. American Telephone and Telegraph Company, 306 S.C. 101, 410 S.E. 2d 537 (S.C. 1991).

Aiken, South Carolina

September 26, 2014


M. Anderson Griffith

Master in Equity for Aiken County

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

CitiMortgage, Inc.,

PLAINTIFF,

vs.

Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson; Billy Jack Moxley, Applicant/Petitioner for Personal Representative of the Estate of William C. Moxley, Jr. a/k/a William Clyde Moxley, Jr., Amy Lott; Hudson & Keyse LLC; First Manufactured Housing Credit Corporation who acquired First Carolina Financial Corporation; and South Carolina Department of Motor Vehicles,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2014-CP-02- 00236

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE
AND REFORMATION)

The Plaintiff alleges as follows:

1. The Plaintiff, a corporation or other legal entity, brings this foreclosure action to collect a debt and/or enforce a mortgage, security interest, or other rights in property securing the debt.
2. The Plaintiff is the servicer and/or mortgagee of the note and mortgage covering real property located in Aiken County, which is the subject of the within captioned action, and is entitled to enforce same.
3. The defendant(s) named herein may have an interest in the property that is the subject of this action.
4. Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15-35-840 of the South Carolina Code of Laws (1976 as amended).
5. Upon information and belief, the defendants, Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson, Billy Jack Moxley and Amy Lott are not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act (2003).
6. On or about September 29, 2000, for value received, William C. Moxley, Jr. executed and delivered to ABN AMRO Mortgage Group, Inc. a certain promissory note in the sum of \$69,700.00, together with interest thereon at a yearly rate of 9.500% pursuant to the terms of the note.

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FEB 04 2014 11:00am

AIKEN COUNTY
CLERK OF COURT

7. To secure the payment of the said note and debt, secured thereby, and in accordance with the terms and conditions thereof, on September 29, 2000, William C. Moxley, Jr. and Mary L. Moxley executed and delivered to ABN AMRO Mortgage Group, Inc., its successors and assigns, a mortgage covering the following described property:

All that certain piece, parcel or tract of land situate, lying and being in the County of Aiken, State of South Carolina, approximately 5 miles Southwest and adjoining Glenwood Drive (County Road #263), approximately 1.40 miles Southeast of Pine Log Road containing 4.97 acres as shown and designated upon plat as prepared by Charles M. Jones, RLS, dated February 16, 1990 and recorded in the Office of the RMC for Aiken County in Misc. Book 668 at Page 143, and according to the aforesaid plat to bound and measures as follows: on the North by land of Biddle Realty, Inc. 558.0 feet; on the East by Glenwood Drive, (County Road #263) 388.0 feet on the South by lands of Bruce R. Fillinger, 558.7 feet; and on the West by lands of West Virginia Pulp and Paper Co., 388.0 feet. Being the same parcel designated in Contract of Sale dated 3/5/90 recorded in Title Book 1158 at Page 70.

Including a _____
Serial Number: _____

It is the Borrowers intent to have the mobile home for this transaction to be considered real property and not personal property. Borrower further states that she/he will not remove the mobile home from the property and that the mobile home is considered permanent and affixed to the real property.

MS #: 071-16-01-008

Property Address: 398 Glenwood Drive, Warrenville, SC

8. Thereafter the mortgage was recorded in the Office of the Register of Deeds for Aiken County in book 2463 at page 105 on October 6, 2000.

9. The mortgage constitutes a first mortgage lien on the subject property.

10. Effective September 1, 2007, ABN AMRO Mortgage Group, Inc. merged into CitiMortgage, Inc., the present lienholder and Plaintiff herein.

11. Only through inadvertence and mutual mistake, the legal description attached to Plaintiff's mortgage incorrectly referenced for the plat prepared by Charles M. Jones, RLS as being recorded in Misc. Book 668, instead of the correct Misc. Book 568; the legal was also left blank for the year, make and serial number for the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property.

12. It was the intent of the parties to reference a correct Misc. Book 568 for the plat and also reference the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property to comport with Aiken County and South Carolina Department of Motor Vehicles public records.

13. Plaintiff is informed and believes, it is entitled to reform the legal attached to the mortgage to correctly reference Misc. Book 568 for the plat to comport with Aiken County public records; and incorporate the information for mobile home included in the legal to reflect a 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property, to comport with Aiken County Tax Assessors and South Carolina Department of Motor Vehicles public records.

14. By deed dated November 5, 1998, and recorded December 11, 1998, in the office of the Register of Deeds for Aiken County, Biddle Realty, Inc. conveyed the property to William C. & Mary L. Moxley, Jr. for and during the joint term of their natural lives and upon the death of either, the remainder thereof in fee simple to the survivor. William C. Moxley, Jr. died February 21, 2013 and his Death Certification was recorded in office of the Register of Deeds for Aiken County on September 27, 2013 in Book 4479 at Page 2172, thereby making Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson the titleholder of the real property.

15. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action is held by a participant in the Home Affordable Modification Program (HMP), however the loan is not subject to modification under the HMP because the property is not the borrower's primary residence.

16. The parties intended that 1990 Crimson mobile home, serial number CALS0599A&B, located on the real property, as well as the land described in the mortgage secure Plaintiff's loan as evidence by reference to the mobile home in the mortgage.

17. From information obtained from the Aiken County Tax Assessor's records and South Carolina Department of Motor Vehicles, the mortgagors William C. Moxley, Jr. a/k/a William Clyde Moxley, Jr. and Mary Moxley, are the owners of the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property.

18. The defendants Billy Jack Moxley, Applicant/Petitioner for Personal Representative of the Estate of William C. Moxley, Jr. and Amy Lott may claim a lien upon or interest in the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property as heirs and devisees.

Any interest of these defendants is junior and subordinate to Plaintiff's first mortgage lien on the mobile home.

19. The 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property, as well as the land described in the mortgage, secure the plaintiff's loan.

20. Pursuant to the terms of the mortgage, any sums paid by the plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the mortgage.

21. The monthly payments due on said note and mortgage are in default since July 1, 2013, although demand for payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after providing all required notices, elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of July 1, 2013, the sum of ~~\$ 58,644.97~~, together with interest at the rate of 9.500% per annum, from June 1, 2013, and also for the costs and disbursements of this action, including attorney's fees.

22. Pursuant to Sections 37-5-110 and 37-5-111, South Carolina Code of Laws (1976 as amended), any notice of right to cure has been given as required.

23. Plaintiff reserves all rights and benefits to which it may be entitled, including but not limited to the right to a deficiency judgment against any obligor and/or guarantor of the Note described herein, pursuant to S.C. Code Ann. § 29-3-660 (1976, as amended), following a judicial sale of the mortgaged premises. Plaintiff may waive its right to a deficiency judgment at any time prior to the sale herein.

24. The South Carolina Department of Motor Vehicles is made a party hereto since it is a governmental agency responsible for issuing certificates of title for mobile homes and/or de-titling or retiring certificates of title for mobile homes in South Carolina.

The Plaintiff seeks an order requiring this defendant either to issue a certificate of title for the 1990 Crimson mobile home, serial number CALS0599A&B, free and clear of any liens to the successful purchaser at foreclosure sale or to de-title or retire the current title to the mobile home.

25. The defendant, First Manufactured Housing Credit Corporation who acquired First Carolina Financial Corporation claims, or may claim a lien upon or interest in the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property by virtue of the Current Title issued August 28, 1990 as Title Number 000000021298994A, as the Lien Holder.

The defendant no longer has any interest in the mobile home.

26. The defendant, Hudson & Keyse LLC claims, or may claim a lien upon or interest in the subject property by virtue of a judgment against William C. Moxley, Jr., filed July 30, 2010, Case No. 09-CP-02-2910, in the amount of ~~\$20,276.92~~.

The interest or lien of the above Defendant, if any, is junior and subordinate to the plaintiff's first mortgage lien.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

3. The court grant reformation of the legal description attached to Plaintiff's Mortgage correct reference to Misc. Book 568 for the plat prepared by Charles M. Jones, RLS, to comport with Aiken County public records; and to incorporate the year, make and serial number for the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property, to comport with Aiken County Tax Assessors and South Carolina Department of Motor Vehicles public records.

4. The court declare that the any interest of the defendants Billy Jack Moxley and Amy Lott is junior and subordinate to Plaintiff's first mortgage; and that the defendant Mary L. Moxley a/k/a Mary Moxley n/k/a Mary Richardson is the owner of the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property.

5. The Court declare that the defendant First Manufactured Housing Credit Corporation who acquired First Carolina Financial Corporation does not have any interest in the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property.

6. The Court declare that the 1990 Crimson mobile home, serial number CALS0599A&B, located on the subject property, as well as the land described in the mortgage secure Plaintiff's loan.

7. The Court order that the Defendant, South Carolina Department of Motor Vehicles either to issue a certificate of title for the 1990 Crimson mobile home, serial number CALS0599A&B free and clear of any liens to the successful purchaser at foreclosure sale or de-title or retire the title to the mobile home.

8. The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with the attorney's fees as aforesaid, and

Third, the surplus, if any be distributed according to law.

9. An Order be entered directing and empowering the Sheriff of Aiken County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

10. An Order be entered for the ejectment of the defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the plaintiff's mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the plaintiff or its agents from the subject property by placing said property on the public street or highway or by any other means.

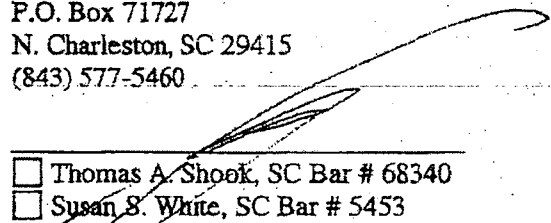
11. An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

12. An Order be entered for reimbursement of all costs for inspecting and securing the property incurred by the plaintiff as a result of the delinquency.

13. An Order be entered for such other and further relief as may be just and proper.

FINKEL LAW FIRM LLC
P.O. Box 71727
N. Charleston, SC 29415
(843) 577-5460

By:


☐ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☒ Andrew M. Wilson, SC Bar # 72553
☐ Elizabeth S. Moore, SC Bar # 69236
☐ Teresa D. Van Vlake, SC Bar # 11118
Attorneys for Plaintiff

January 31, 2014

**NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT, (THE 'ACT')
15 U.S.C. SECTION 1601, AS AMENDED**

1. As of February 28, 2014, you owe \$ 65,605.45. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph 6 of this Notice.
2. Cit/Mortgage, Inc. is the Creditor to whom the debt is owed.
3. The debt described in this Notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing, within thirty (30) days from receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will cease all collection activities until it obtains and provides to you a verification of the debt, and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the Creditor named in the attached letter is not the original Creditor, and if you make a written request to the Creditor's law firm within thirty (30) days, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Finkel Law Firm LLC, Post Office Box 71727, N. Charleston, SC 29415, or call (843) 577-5460.
7. Please be advised that the time period in which you have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.
8. If the Debtor has received a discharge of the debt described in paragraph one pursuant to the United States Bankruptcy Code, then neither Creditor nor its law firm is seeking to collect any portion of the debt and all information contained herein is supplied for informational purposes only. Any pending or ensuing legal action by Creditor's law firm will undertake to foreclose a valid security interest only and neither is intended nor will operate as any effort to collect upon any debt that has been so discharged.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED
WILL BE USED FOR THAT PURPOSE**

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
C/A NO. 2014-CP-02-00236

CitiMortgage, Inc.,)
)
vs.)

**ANSWER AND COUNTERCLAIM
OF DEFENDANT MARY L. MOXLEY**

Mary L. Moxley a/k/a Mary Moxley n/k/a)
Mary Richardson; Billy Jack Moxley,)
Applicant/Petitioner for Personal)
Representative of the Estate of William C.)
Moxley, Jr. a/k/a William Clyde Moxley, Jr.)
Amy Lott; Hudson & Keyes LLC; First)
Manufactured Housing Credit Corporation)
Who acquired First Carolina Financial)
Corporation; and South Carolina)
Department of Motor Vehicles,)

Defendant(s).)

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MAR 06 2014 *Yab*

**AIKEN COUNTY
CLERK OF COURT**

The Defendant Mary L. Moxley, answering the Complaint of the Plaintiff and counterclaiming against the Plaintiff, would respectfully show unto this Court, as follows:

1. Each and every allegation not herein admitted or explained, is denied, and strict proof thereof is demanded.
2. The Defendant Mary L. Moxley, acknowledges service of the Lis Pendens, Summons and Complaint, in the within action, on February 4, 2014.
3. As to the allegations contained in paragraph one (1) of the Complaint, the Defendant Mary L. Moxley, does not have sufficient information to admit or deny such allegations, and therefore denies the same.
4. As to the allegations contained in paragraph two (2) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.

5. The Defendant Mary L. Moxley admits so much of the allegations contained in paragraph three (3) of the Complaint, as to the Defendant Mary L. Moxley having an interest in the real property which is the subject of this action.
6. As to the allegations contained in paragraph four (4) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.
7. The Defendant Mary L. Moxley admits so much of the allegations contained in paragraph five (5) of the Complaint, in that she is not in the Military Service of the United States of America pursuant to the provisions of the Servicemember's Civil Relief Act (2003); as to the remaining allegations contained in paragraph five (5) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.
8. As to the allegations contained in paragraph six (6) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.
9. As to the allegations contained in paragraph seven (7) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.
10. As to the allegations contained in paragraph eight (8) of the Complaint, the Defendant Mary L. Moxley does acknowledge a mortgage is recorded in the Office of the R.M.C. for Aiken County, South Carolina, in Mortgage Book 2463, at page 105; however, the Defendant Mary L. Moxley specifically denies the stated mortgage is any type of valid lien on real property located in Aiken County, South Carolina.

11. As to the allegations contained in paragraph nine (9) of the Complaint, the Defendant Mary L. Moxley denies such allegation.
12. As to the allegations contained in paragraph ten (10) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.
13. As to the allegations contained in paragraph eleven (11) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.
14. As to the allegations contained in paragraph twelve (12) of the Complaint, the Defendant Mary L. Moxley denies such allegation.
15. As to the allegations contained in paragraph thirteen (13) of the Complaint, the Defendant Mary L. Moxley denies the same.
16. As to the allegations contained in paragraph fourteen (14) of the Complaint, the Defendant Mary L. Moxley admits said paragraph, and would further show she is the sole owner of the real property which is the subject of this action.
17. As to the allegations contained in paragraph fifteen (15) of the Complaint, the Defendant Mary L. Moxley denies so much of said allegation, which infers the real property which is the subject of this lawsuit is not her primary residence; the Defendant Mary L. Moxley does not have sufficient information to admit or deny the remaining allegations of said paragraph fifteen (15) of the Complaint, but denies any valid mortgage exists of the real property which is the subject of this action.
18. As to the allegations contained in paragraph sixteen (16) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same; further answering the allegations contained

in paragraph sixteen (16) of the Complaint, the Defendant Mary L. Moxley again denies any valid mortgage exists of the real property which is the subject of this action.

19. As to the allegations contained in paragraphs seventeen (17), eighteen (18) and nineteen (19) of the Complaint, the Defendant Mary L. Moxley only admits the allegations to the extent she is the sole owner of the mobile home described in said paragraphs; as to any allegation inconsistent with her sole ownership of the mobile home, or any allegation any valid lien or morigage exists on the mobile home, such allegations are denied.

20. As to the allegations contained in paragraph twenty (20) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same; further, the Defendant Mary L. Moxley again denies any valid mortgage exists of the real property which is the subject of this action.

21. As to the allegations contained in paragraph twenty-one (21) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same; further, the Defendant Mary L. Moxley again denies any valid mortgage exists of the real property which is the subject of this action.

22. As to the allegations contained in paragraph twenty-two (22) of the Complaint, the Defendant Mary L. Moxley does not have sufficient information to admit or deny such allegations, and therefore denies the same.

23. As to the allegations contained in paragraph twenty-three (23) of the Complaint, such allegation does not require any response; however, to the extent any response is required, the Defendant Mary L. Moxley denies the allegation(s).

24. As to the allegations contained in paragraph twenty-four (24) of the Complaint, the Defendant Mary L. Moxley denies any allegations which are inconsistent with the Defendant Mary L. Moxley having full and sole ownership of the mobile home and real property, and there are no valid liens and/or mortgages on the mobile home and/or real property.
25. As to the allegations contained in paragraphs twenty-five (25) and twenty-six (26) of the Complaint, the Defendant Mary L. Moxley only admits the allegations to the extent she is the sole owner of the mobile home described in said paragraphs; as to any allegation inconsistent with her sole ownership of the mobile home, or any allegation any valid lien or mortgage exists on the mobile home, such allegations are denied.

FOR A SECOND DEFENSE AND A FIRST CAUSE OF ACTION
(Unlawful Trade Practices Act)

26. The Defendant Mary L. Moxley hereby re-alleges each and every allegation herein set forth, as fully as if repeated verbatim.
27. The Plaintiff is apparently seeking foreclosure on a mortgage, allegedly signed by William C. Moxley, Jr. and Mary L. Moxley; the mortgage is alleged to be secured by a Promissory Note, allegedly signed only by William C. Moxley, Jr.; on information and belief, the Defendant Mary L. Moxley never signed the required HUD-1 form; the Plaintiff has been further informed and believes the required "Attorney / Insurance Preference Form," was never signed by the Defendant Mary L. Moxley; further, on information and belief, the alleged loan closing documents were not prepared nor reviewed by a licensed South Carolina attorney, were not recorded by a licensed South Carolina attorney, not witnessed by a licensed South Carolina attorney, and the alleged closing was not conducted by a licensed South Carolina attorney.

28. The real property and improvement which is the underlying subject of this action, was owned by William C. Moxley, Jr. and the Defendant Mary L. Moxley, more than one year prior to the date of the alleged Promissory Note and Mortgage.
29. On information and belief, the Plaintiff and Plaintiff's predecessors in interest, did engage in violations of the statutory and case law, as well as administrative regulations, in their transactions with the Defendant Mary L. Moxley, and have engaged in unfair methods of competition and unfair and/or deceptive acts or practices in the conduct of trade and commerce, resulting in the ascertainable loss of money and/or property, as set forth in the above paragraphs.
30. The Plaintiff knew, or should have known, that such actions were unfair trade practices.
31. The actions complained of, do affect and do have an impact on the public interest.
32. The actions of the Plaintiff were the proximate cause of the loss to the Defendant Mary L. Moxley.
33. The Defendant Mary L. Moxley has been, and currently is, damaged by the actions of Plaintiff, both in actual damages and consequential damages, and the Defendant Mary L. Moxley has been informed and believes that she is entitled to judgment including an award of actual damages and to include the invalidation of any mortgage which may have been given by the Defendant Mary L. Moxley to the Plaintiff, as well as treble damages, and attorneys' fees and costs in this action.

FOR A THIRD DEFENSE AND A SECOND CAUSE OF ACTION
(Defense in Equity)

34. The Defendant Mary L. Moxley does hereby re-allege each and every allegation herein set forth, as fully as if repeated verbatim.

35. On information and belief, the Plaintiff is seeking foreclosure on a mortgage; further, on information and belief, the Plaintiff is prohibited from seeking equitable relief (foreclosure) in a court of equity, due to the doctrine of unclean hands, for the Plaintiff's illegal actions or the illegal actions of the Plaintiff's predecessor in interest, in obtaining a mortgage from the Defendant Rachael L. Rich, the Plaintiff's unauthorized practice of law and violations of the provisions of S.C. Code Section 37-10-102, 1976, *as amended*.
36. On information and belief, this Court should refuse to grant discretionary, equitable remedies to a Plaintiff who has refused to follow the laws of this state.¹

FOR A FOURTH DEFENSE AND A THIRD CAUSE OF ACTION
(Violation of the Attorney/Insurance Preference Statute)

37. The Defendant Mary L. Moxley does hereby re-alleges each and every allegation herein set forth, as fully as if repeated verbatim.
38. The actions of the Plaintiff, acting as the "creditor," are actions as contemplated under the provisions of S.C. Code Ann. Section 37-10-102, 1976, *as amended*.
39. The Plaintiff, or Plaintiff's predecessor in interest, did intentionally failed to inform the Defendant Mary L. Moxley, of her right to chose an attorney to represent her at all aspects relating to the giving of a mortgage to the Plaintiff, and this constitutes a *per se* violation of S.C. Code Ann. Section 37-10-102, 1976, *as amended*.
40. The actions of the Plaintiff, under the fact situation in this matter, are unconscionable.
41. The Defendant Mary L. Moxley has been informed and believe she is entitled to judgment against Plaintiff, including invalidation of any mortgage which may have been given by William C. Moxley, Jr., and/or the Defendant Mary L. Moxley, to the

¹ See: Ingram v. Kasey's Assocs., 340 S.C. 98, 531 S.E.2d 287 (2000).

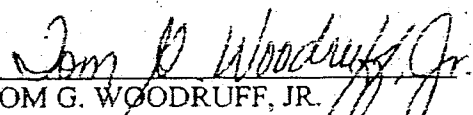
Plaintiff or Plaintiff's predecessor in interest; further, the statutory mandated damages for violation of S.C. Code Ann. §37-10-102, 1976, *as amended*, is set out in S.C. Code Ann. §37-10-105(c), 1976, *as amended*; further, the Defendant Mary L. Moxley has been informed and believe each violation is a separate offenses, for each of the Defendant Mary L. Moxley, and for both the attorney selection and the insurance agent selection, resulting in a total of two (2) separate violations.

WHEREFORE, the Defendant Mary L. Moxley prays for judgment against the Plaintiff, for actual damages, for such actual damages to be trebled pursuant to the provisions of Chapter 5, Title 39, of the South Carolina Code of Laws, 1976, *as amended*, for invalidation of the mortgage which is the original subject matter of this action, for attorney's fees, for the costs of this action, for pre-judgment and post-judgment interest, and for such other and further relief as this Court might deem just and proper.

ADDITIONALLY, the Defendant Mary L. Moxley does pray for judgment against the Plaintiff, for damages as set forth in S.C. Code Section 37-10-105 (c), 1976, *as amended*, for attorney's fees, for the costs of this action, for pre-judgment and post-judgment interest, and for such other and further relief as this Court might deem just and proper

Respectfully submitted,

WOODRUFF LAW OFFICES, LLC


TOM G. WOODRUFF, JR.
Attorney for the Defendant Mary L. Moxley
220 Richland Avenue, West
Post Office Box 2783
Aiken, South Carolina 29801
Phone: (803) 649-1910

Aiken, South Carolina
March 6, 2014

In the Matter Of:

CitiMortgage, Inc. v
Moxley, Mary L. et al

Hearing

March 20, 2017



A. William Roberts, Jr. & Associates

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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF AIKEN
4 CITIMORTGAGE, INC.,
5 Plaintiff,
6 vs. CASE NO. 2014-CP-02-0236
7 MARY L. MOXLEY A/K/A MARY RICHARDSON
8 N/K/A MARY RICHARDSON; HUDSON & KEYSE
9 LLC; FIRST MANUFACTURED HOUSING CREDIT
10 CORPORATION WHO ACQUIRED FIRST CAROLINA
11 FINANCIAL CORPORATION; AND SOUTH CAROLINA
12 DEPARTMENT OF MOTOR VEHICLES,
13 Defendants.

14 BEFORE THE HONORABLE M. ANDERSON GRIFFITH

15 DATE: March 20, 2017
16 TIME: 11:00 a.m.
17 LOCATION: Aiken County Courthouse
18 Master-In-Equity
19 109 Park Avenue SW
20 Aiken, South Carolina
21 REPORTED BY: ANGELA D. ZUVER,
22 Court Reporter

23 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919



1 APPEARANCES OF COUNSEL: 2

2 ATTORNEYS FOR THE PLAINTIFF
3 CITIMORTGAGE, INC.:

4 FINKEL LAW FIRM, LLC
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10 and

11 ADAMS AND REESE, LLP
12 BY: W. CLIFF MOORE, III
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15 (803) 254-4190
16 cmoore@arlaw.com

17 ATTORNEYS FOR THE DEFENDANT
18 MARY L. MOXLEY A/K/A MARY RICHARDSON
19 N/K/A MARY RICHARDSON:

20 TOM G. WOODRUFF, JR.
21 BY: TOM G. WOODRUFF
22 220 Richland Avenue West
23 Aiken, SC 29801
24 (803) 649-1910
25 tomgwoodruff@gmail.com

(INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: We're here this morning on
2 CitiMortgage, Inc., Plaintiff, versus Mary L.
3 Moxley, and others, Defendants, Case Number
4 2014-CP-02-0236.

5 We're here for a final hearing this
6 morning. So I'll ask that if the plaintiff could
7 put the names of the attorneys on the record that
8 are here this morning and name any witnesses you
9 intend to call.

10 MS. CREECH: I'm Magalie Creech for
11 CitiMortgage.

12 MR. MOORE: Cliff Moore, also here for
13 CitiMortgage.

14 MS. CREECH: And our plaintiff -- our
15 first plaintiff's witness is Patsy Judd.

16 MR. MOORE: And the plaintiff will also
17 call John Valentine.

18 THE COURT: All right. From the
19 defense?

20 MR. WOODRUFF: Your Honor, I'm Tom
21 Woodruff on behalf of the defendant, Mary Moxley,
22 and my only witness will be Mrs. Mary Moxley.

23 THE COURT: Okay. Anybody else here
24 present for any other defendants named?

25 No? Okay.

1 All right. We had a brief conference
2 in reference to a motion in limine that was filed.
3 Do we have any other preliminary matters before we
4 get started from Plaintiffs?

5 MS. CREECH: I just wanted to note that
6 the parties were able to stipulate to the proffer
7 of Plaintiffs 1 and 2, which are the original note
8 and the original mortgage.

9 MR. WOODRUFF: And 3.

10 MS. CREECH: And 3 -- I'm sorry -- the
11 ~~default letters.~~

12 THE COURT: 2 and 3 stipulated to.
13 Okay.

14 (PLF. EXH. 1, Note, was marked for
15 identification.)

16 (PLF. EXH. 2, Mortgage, was marked for
17 identification.)

18 (PLF. EXH. 3, Default letters, was
19 marked for identification.)

20 THE COURT: All right. Anything from
21 the defense before we get started?

22 MR. WOODRUFF: No, sir, Your Honor.

23 THE COURT: All right. Each party
24 obviously has an opportunity to make an opening if
25 you choose to do so. We don't have a jury present.

PATSY JUDD - EX. BY MS. CREECH
1 I'm certainly fine with simply calling witnesses.

2 Does the plaintiff wish to make an
3 opening statement?

4 MS. CREECH: No, Your Honor.

5 THE COURT: Defense?

6 MR. WOODRUFF: We'll waive.

7 THE COURT: All right. Plaintiff, call
8 your witness.

9 MS. CREECH: We'd like to call
10 Ms. Patsy Judd.

11 THE COURT: Come forward, ma'am. Raise
12 your right hand for me.

13 PATSY JUDD
14 being first duly sworn, testified as follows:

15 THE COURT: Have a seat, ma'am.

16 EXAMINATION

17 BY MS. CREECH:

18 Q. Please state your full name for the
19 record.

20 A. Patsy Judd.

21 Q. Where are you currently employed?

22 A. CitiMortgage.

23 Q. What is your position at CitiMortgage?

24 A. Business operation analyst.

25 Q. And how long have you held that title?

1 PATSY JUDD - EX. BY MS. CREECH
2 A. For seven years.

3 Q. And how long have you been with
4 CitiMortgage?

5 A. A little over eight.

6 Q. Before your current position what
7 position did you hold with Citi?

8 A. I was a foreclosure escalation
9 specialist and a foreclosure analyst.

10 Q. What type of business does -- if I say
11 Citi can we agree that I'm referring to

12 CitiMortgage?

13 A. Say CitiMortgage.

14 Q. Okay. CitiMortgage. Okay.

15 A. Citi is a big company.

16 Q. What type of business does CitiMortgage
17 engage in?

18 A. CitiMortgage provides lending for
19 mortgages, also servicing on mortgages. Just basic
20 lending.

21 Q. In your capacity as a -- you said a
22 business analyst?

23 A. Yes.

24 Q. Do you have access to CitiMortgage's
25 loan servicing records?

26 A. Yes, I do.

1 PATSY JUDD - EX. BY MS. CREECH
2 Q. And do you review those in the course
3 of your position at Citi?

4 A. Yes, I do.

5 Q. Are you familiar with the loan account
6 that is the subject of this action?

7 A. Yes, I am.

8 Q. And can you tell me -- are Citi's
9 servicing records for the mortgage loan that is the
10 issue of the case normally kept by Citi in the
11 ordinary course of business?

12 A. Yes.

13 Q. And is it Citi's regular practice to
14 make those records at or near the time of the
15 events that are reflected in those records?

16 A. Yes.

17 Q. I know we've looked at quite a number
18 of things in the matter, but to the best of your
19 recollection, can you tell me what documents --
20 which business records you specifically reviewed
21 for your testimony today?

22 A. The note, the mortgage, the default
23 letters, payment history, the Citi link notes,
24 which are the collection notes, the origination
25 file, the origination appraisal. I think that's --
 there could be more.

1 PATSY JUDD - EX. BY MS. CREECH
2 Q. And have you familiarized yourself with
3 those records?

4 A. Yes, I have.

5 Q. Please tell us -- when did CitiMortgage
6 begin servicing the loan account?

7 A. In September 2007.

8 Q. Before that do you know who was the
9 loan servicer?

10 A. ABN AMRO.

11 Q. What relationship is there between
12 CitiMortgage and ABN AMRO?

13 A. CitiMortgage and ABN merged in August
14 2007.

15 MS. CREECH: I'd like to offer what's
16 been labeled as Plaintiff's 8.

17 MR. WOODRUFF: Just give me one second,
18 Your Honor.

19 MS. CREECH: I'm skipping around, Your
20 Honor.

21 THE COURT: Okay.

22 MR. WOODRUFF: 8 or 7?

23 MS. CREECH: Excuse me. 7. You're
24 right.

25 THE COURT: Are we ready?

MR. WOODRUFF: That's fine. That's

PATSY JUDD - EX. BY MS. CREECH
without objection, Judge.

THE COURT: All right. Thank you.

BY MS. CREECH:

Q. Ms. Judd, can you please tell us what
this set of documents is.

A. It's the record of the merger between
ABN AMRO and CitiMortgage.

Q. And what was the date of that merger,
again, for the record?

A. The 21st day of August 2007.

MS. CREECH: We'd like to offer that as
Plaintiff's Exhibit 8. [sic].

THE COURT: Without objection; is that
right?

MR. WOODRUFF: Correct.

THE COURT: Admitted as Plaintiff's
Exhibit --

MS. CREECH: 7.

THE COURT: -- 7. Okay.

(PLF. EXH. 7, Record of merger, was
marked for identification.)

MS. CREECH: Our next exhibit is
Plaintiff's 1, which is a copy of the -- excuse
me -- the original note.

MR. WOODRUFF: That is without

PATSY JUDD - EX. BY MS. CREECH
objection also, Your Honor.

THE COURT: All right. Thank you.

BY MS. CREECH:

Q. Can you please identify this document.

A. This is the promise to pay the note,
the original note that Mr. -- for Mr. Moxley that
was done by ABN AMRO for the amount of 69,700.

Q. What is the interest rate as reflected
on that note?

A. 9.5 percent.

Q. What is the date of that note?

A. September 29, 2000.

Q. And you previously testified that it
appears to be executed by Mr. Moxley --

A. Yes.

Q. -- William Moxley?

Is CitiMortgage the holder of this
note?

A. Yes, they are:

Q. Is there a corresponding security
instrument for this note?

A. Yes, there is.

MS. CREECH: So we'd like to offer
Plaintiff's 1 into evidence.

MR. WOODRUFF: Without objection.

PATSY JUDD - EX. BY MS. CREECH
THE COURT: Without objection

Plaintiff's 1 is admitted.

MS. CREECH: Plaintiff's 2.

BY MS. CREECH:

Q. Just a moment ago you stated that there was a corresponding security instrument with the note marked as Plaintiff's 1. Can you please identify this document.

A. This is the mortgage which is the security instrument for the debt on the note.

MS. CREECH: We'd like to offer that as Plaintiff's 2.

MR. WOODRUFF: That is without objection also, Your Honor.

THE COURT: Plaintiff's Exhibit 2, I believe it was. So admitted.

BY MS. CREECH:

Q. Can you identify the property that is the collateral for this loan based on the mortgage?

A. It's 398 Glenwood Drive, Warrenville, South Carolina.

Q. Is there any other corresponding collateral for the loan?

A. There is a -- I believe it's the mobile home. I believe this includes a mobile home. I'm

1 PATSY JUDD - EX. BY MS. CREECH
2 sorry. I'm not seeing the addendum.

3 Q. What information have you reviewed
4 other than the mortgage instrument to determine
5 that a mobile home is also security for the loan?

6 A. There was an appraisal done that showed
7 the mobile home as part of the property.

8 MS. CREECH: If I may, I'd like to
9 offer Plaintiff's 8, which is the origination
10 appraisal.

11 MR. WOODRUFF: Object.

12 THE COURT: All right. Hold on one
13 second. Number 8, and that was the -- how do you
14 identify that document?

15 MS. CREECH: The origination appraisal.

16 THE COURT: All right, Mr. Woodruff.
17 We're glad to hear your objection.

18 MR. WOODRUFF: Your Honor, I would like
19 to see the original. If they purport that they own
20 this loan then surely they should have the original
21 appraisal. Obviously this witness has testified
22 that her company, the company that she's with, did
23 not own it prior to the merger. And we're entitled
24 to have an original document to be introduced and
25 I'm just asking that she comply with the rules and
present an original.

1 PATSY JUDD - EX. BY MS. CREECH
2 THE COURT: I'm glad to hear a
3 response.

4 MS. CREECH: Your Honor, Ms. Judd can
5 testify that this is a copy of a business record
6 that is regularly maintained in the scope of
7 CitiMortgage's practice as a loan servicer. I
8 don't believe that a copy -- an original would be
9 required when a copy is thoroughly sufficient.

10 THE COURT: All right, Mr. Woodruff.

11 MR. WOODRUFF: Your Honor, Ms. Judd
12 testified that at the time in two thousand and --
13 the year 2000, when this was originated, she wasn't
14 an employee. Well, she said she had worked for
15 CitiMortgage for the last -- I believe she said
16 eight years.

17 THE COURT: Correct.

18 MR. WOODRUFF: And I think she further
19 testified that there was a merger that occurred in
20 2007 I guess prior to her even joining
21 CitiMortgage. So as to business records that
22 CitiMortgage maintains, I don't see how she can
23 testify as to what another prior company would have
24 had, nor can she testify that it's a true and
25 accurate document of the original. I'm just simply
asking that the original be introduced.

PATSY JUDD - EX. BY MS. CREECH
THE COURT: All right. You got a

response?

MS. CREECH: Ms. Judd has already testified that CitiMortgage is the surviving entity by virtue of the merger with ABN AMRO and this document, among others, is part of the servicing record which they maintain in the regular course of business. Simply put, this is a business record under Rule 803.6, which Ms. Moxley's attorney can ask questions about, but as to its proper -- as to being admissible and being a copy of that record, we would say it's proper to be introduced under 803.6.

THE COURT: All right. I'm going to allow the copy to be introduced under the business records exception based on her testimony. I will allow cross-examination by Mr. Woodruff about that and whatever he wants to put in the record in regards to that during that cross-examination.

All right. Proceed with the questions.

MS. CREECH: Thank you, Your Honor.

(PLF. EXH. 8, Origination Appraisal, was marked for identification.)

BY MS. CREECH:

Q. Ms. Judd, can you tell us what this

PATSY JUDD - EX. BY MS. CREECH
document is.

A. This is a copy of the appraisal that
was part of the origination package when the loan
originated.

Q. And what are the salient features of
that document?

A. This document was to establish that the
property that we were securing with the mortgage
was what the property is, basically, the
dimensions, the actual description of the property
and how much it was worth.

Q. So that document reflects 398 Glenwood
Avenue and also describes a mobile home; is that
correct?

A. It is for that address. Yes, it
describes a mobile home -- manufactured home.

Q. And, additionally, when we were looking
at the mortgage offered as Plaintiff's 2, the
property description on the last page, does it make
any reference to a mobile home?

A. The description on -- I'm sorry --
which exhibit?

Q. The property description attached to
the mortgage which is Plaintiff's 2, does it
describe a mobile home in any fashion?

1 PATSY JUDD - EX. BY MS. CREECH
2 A. Is it attached?

3 Q. It should be after the last page of the
4 mortgage but before all the riders.

5 THE COURT: Counsel, to save time, if
6 you want to point out where the legal description
7 is, that's fine. You can come forward and do that.

8 BY MS. CREECH:

9 Q. The Bates number at the bottom is
10 00008. You know what. Her copy doesn't have the
11 Bates numbers. It should be --

12 A. I don't have that.

13 MS. CREECH: It appears that the
14 original mortgage does not include the -- if I
15 could just have a brief moment.

16 MR. WOODRUFF: Your Honor, may I
17 examine the original mortgage?

18 THE COURT: Yes, sir.

19 MR. WOODRUFF: Thank you.

20 MS. CREECH: Your Honor, if we may,
21 we'd like leave to offer a copy -- a certified
22 original copy of the mortgage from the RMC office.

23 THE COURT: Does it have additional
24 attachments other than what that --

25 MS. CREECH: It does.

THE COURT: Make sure that Mr. Woodruff

1 PATSY JUDD - EX. BY MS. CREECH
has seen a copy of that.

2 MS. CREECH: It does, Your Honor.

3 THE COURT: I'll give you a minute to
4 look at that, Mr. Woodruff, if you need to.

5 MR. WOODRUFF: I wanted to see the --
6 I'm familiar with the recorded copy, but I'd like
7 to see the original copy, if I may. Did you hand
8 it back to your witness?

9 MS. CREECH: I did.

10 MR. WOODRUFF: May I examine that from
11 the witness, Your Honor?

12 THE COURT: You may.

13 MR. WOODRUFF: Thank you.

14 Your Honor, at this point I have to
15 object to a copy coming in. You're aware that we
16 spent a pretty significant amount of time back here
17 going over all the exhibits and, Your Honor, I
18 agreed that I would not object to the original
19 mortgage coming in and the original note coming in,
20 copies of the right to cure letter, but I refuse to
21 agree to any other original coming in.

22 I was given a copy of the original note
23 that does have the property description page in it.

24 THE COURT: Let me ask a question. Do
25 the copies reflect the recording stamp for Aiken

1 County? PATSY JUDD - EX. BY MS. CREECH

2 MR. WOODRUFF: Your Honor, it does.

3 THE COURT: Okay.

4 MR. WOODRUFF: I'll concede that, but
5 I'd still object to anything other than the
6 original coming in, but I will -- in all candor
7 with the Court, yes, sir, that is -- the missing
8 page is recorded with the RMC office.

9 THE COURT: Okay.

10 All right. Now, besides the legal
11 description, are there any other attachments that
12 you're proposing to introduce?

13 MS. CREECH: I don't believe so. I
14 think all the riders are also included there as
15 well. It's just the description that was
16 inadvertently not included.

17 THE COURT: Okay. So you'd agree the
18 legal description is the only thing they're
19 proposing, Mr. Woodruff, in addition to what's
20 already in? I'm just trying to see -- just make
21 sure we have on the record any other documents you
22 object to.

23 MR. WOODRUFF: As to Exhibit Number

24 2 --

25 THE COURT: Okay.

PATSY JUDD -- EX. BY MS. CREECH

1 MR. WOODRUFF: -- it appears that the
2 only page that is missing is the property
3 description, but here again, I would, number one,
4 insist that the original full document come in
5 because that's what we're here for, is the
6 mortgage. I mean, this -- that's what everything
7 in this entire case turns on, is the mortgage, and
8 so, yes, I do object to approve a copy coming in,
9 particularly whenever there is not a certified copy
10 from the RMC office to come in. This case is a

11 2014 case, we're now toward the end of March 2017,
12 and I'll object to it.

13 THE COURT: I'm going to note the
14 objection. I will note, though, based on documents
15 that have been introduced and the fact that we do
16 have a copy which is, as I understand it, a copy of
17 the legal description -- I'm not saying it's not
18 critical. I note Mr. Woodruff's objection, but
19 since it is a document recorded within the county
20 and those numbers are reflected on that requested
21 addition I'll allow the admission of that document.

22 MS. CREECH: I'd like to move to
23 mark -- it will be 21, the copy of the mortgage
24 which includes the property description into
25 evidence.

1 PATSY JUDD - EX. BY MS. CREECH
MR. WOODRUFF: May I?

2 MS. CREECH: It's the same one you
3 have.

4 MR. WOODRUFF: You and I have been
5 having problems with what you've been giving me.

6 Your Honor, this does appear to be a
7 copy that was produced to me. It also appears to
8 be a copy of the original that was recorded. There
9 are some additional Bates stamp numbers on the
10 bottom, and that's how it was provided to me, so I
11 don't have a problem with the addition of the Bates
12 stamp numbers.

13 THE COURT: But you still reserve your
14 objection with regards to it not being the
15 original?

16 MR. WOODRUFF: Absolutely.

17 THE COURT: Okay. Just making the
18 record clear.

19 So we've got Plaintiff's Number 21 at
20 this point admitted over the objection.

21 Proceed with the questions.

22 (PLF. EXH. 21, Mortgage, was marked for
23 identification.)

24 BY MS. CREECH:

25 Q. If you could please review the

1 PATSY JUDD - EX. BY MS. CREECH
2 certified copy of the mortgage, the property
3 description and tell us -- does it reflect any
4 description of the mobile home?

5 A. Yes, it does.

6 Q. So in conjunction with the origination
7 appraisal, is it your understanding that the mobile
8 home was intended to secure the loan along with the
9 real property?

10 A. Yes.

11 Q. When we previously discussed the
12 various documents you reviewed as part of the
13 origination file, was one of them an authorization
14 to obtain credit information?

15 A. Yes.

16 MS. CREECH: We'd like to move to offer
17 as Plaintiff's 9 the authorization to obtain credit
18 information.

19 MR. WOODRUFF: Objection, Your Honor.
20 And my objection is they don't have the original.
21 This case again is a 2014 case. I've got problems
22 with copies of documents coming in, particularly
23 copies of documents that purport -- purport to have
24 my client's signature on them. If they had
25 original copies then clearly they could have gone
and hired a handwriting expert, but apparently they

PATSY JUDD - EX. BY MS. CREECH

1 don't have a handwriting expert. They already told
2 the Court that they've got two witnesses. They've
3 got the witness on the witness stand and they have
4 another witness. Quite frankly, when they're
5 trying to introduce copies of documents under the
6 business record exceptions when the documents are
7 vital -- absolutely vital to the entire matter, to
8 our entire defense, I have to object to copies
9 being introduced. They claim they own -- they
10 claim, oh, we own it. Why can't they produce the
11 original document that purports -- purports to have
12 my client's signature? Judge, it's a simple case.
13 We don't need to be going through all this. What
14 you need is a handwriting expert to come up here
15 and testify. They don't have a handwriting expert.
16 So I definitely object as far as the business
17 records. It's not an exception to the business
18 records. It's a crucial, critical document and I
19 object to the introduction of a copy.

20 THE COURT: I'm glad to hear a
21 response.

22 MS. CREECH: Your Honor, we're simply
23 asking Ms. Judd to authenticate the document as
24 being one that CitiMortgage maintains with regard
25 to its regular course of business with respect to

1 PATSY JUDD - EX. BY MS. CREECH
2 the servicing of the loan that is the subject of
3 this action.

4 THE COURT: So she's not offering any
5 testimony, obviously, about who signed the document
6 or anything of the accuracy of that?

7 MS. CREECH: That's correct.

8 THE COURT: Just as far as whether
9 that's kept in the regular course of business?

10 MS. CREECH: Yes.

11 THE COURT: All right. Limited to that
12 I'll allow the introduction of it, again noting
13 Mr. Woodruff's objection, and also by the limits,
14 which I think he addressed partly in his objection.
15 So I'll allow the questions. Go ahead.

16 (PLF. EXH. 9, Authorization to Obtain
17 Credit Information, was marked for identification.)

18 MS. CREECH: So that was our
19 Plaintiff's 9. For Plaintiff's 10 we'd like to
20 offer another authorization form.

21 THE COURT: Has she answered the
22 question about if it's kept in the normal course of
23 business?

24 MS. CREECH: I may have overlooked
25 that.

BY MS. CREECH:

1 PATSY JUDD - EX. BY MS. CREECH
2 Q. Is that document one that is kept in
3 CitiMortgage's regular course of business?

4 A. Yes.

5 MS. CREECH: I'd like to offer it as
6 Plaintiff's 9.

7 MR. WOODRUFF: Your Honor, again, I
8 object to a copy being introduced.

9 THE COURT: I'll note the objection.
10 I'm going to allow it for the purposes of -- it's a
11 regularly kept copy. I'm not -- there is no
12 testimony from this witness about the signature or
13 authenticity of the signature or who signed it, and
14 I'm noting that in my notes and it's on the record
15 in regards to that. It's just whether that's a
16 document that's normally kept in the course of
17 business on files that she in her position reviews
18 in that position, as I understand it. So I'll note
19 the objection, but I'll allow that in for that
20 purpose.

21 BY MS. CREECH:

22 Q. Will you please identify that document
23 as well?

24 A. This document is an authorization form
25 signed by a Mr. William --

 MR. WOODRUFF: Objection. I object to

1 PATSY JUDD - EX. BY MS. CREECH
2 her testifying who -- anybody who has signed
3 anything unless she has an original or knows of her
4 own personal knowledge who signed it.

5 THE COURT: All right. Let's back up a
6 minute. Give me that exhibit number question.

7 MS. CREECH: This is Plaintiff's 10.

8 THE COURT: All right. I'm going to
9 allow some questions. I don't even know where
10 she's going with it on this in regards to the
11 purpose of the document being introduced. Go
12 ahead.

13 THE WITNESS: This is an authorization
14 form that William -- it states William Moxley gives
15 authority to Mary Moxley to speak on his behalf on
16 the loan in question.

17 BY MS. CREECH:

18 Q. Can you tell us -- these types of
19 forms, those are particularly given under what set
20 of circumstances?

21 A. Normally if another party or a spouse
22 or a child -- if the person who signs the note
23 wishes -- wants us to give information to somebody
24 other than themselves we have to have an
25 authorization on file signed by them that gives the
other person that authority so we can actually

PATSY JUDD - EX. BY MS. CREECH
1 speak to them over the phone regarding anything on
2 the note.

3 Q. So in this instance, based on the note
4 that we've produced, Mr. Moxley would have been the
5 borrower?

6 A. Yes.

7 MS. CREECH: I'd like to move to offer
8 that as Plaintiff's 10 and -- let me back up for a
9 moment.

10 BY MS. CREECH:

11 Q. This document, is this something that
12 CitiMortgage would regularly maintain in the course
13 of business?

14 A. Yes.

15 MS. CREECH: I'd like to move to offer
16 that as Plaintiff's 10.

17 (PLF. EXH. 10, Authorization form, was
18 marked for identification.)

19 MR. WOODRUFF: I'll object. It's not
20 the original, Your Honor.

21 THE COURT: All right. Let's take
22 about a ten minute break here.

23 (A recess transpired.)

24 THE COURT: So I'm looking at the
25 objection in regards to the authorization form. In

PATSY JUDD - EX. BY MS. CREECH

1 doing that I tried to go take some time here so I
2 could go back and review under 803.6, I believe it
3 is, records of regularly conducted activity and
4 memorandum report, record of data compilation. Any
5 form of acts, events, conditions or diagnosis made
6 at or near the time by, or from information
7 transmitted by, a person with knowledge, if kept in
8 the regularly conducted business activity, and if
9 it was the regular practice of that business
10 activity to make the memorandum, report, record or
11 data compilation, all as shown by the testimony of
12 the custodian or other qualified witness, unless
13 the source of information or the method or
14 circumstances of preparation indicate a lack of
15 trustworthiness, provided, however, subjective
16 opinions and judgments found in business records
17 are not admissible during the business as used in
18 this subsection, including the business,
19 institution, association, profession, occupation
20 and calling of every kind, whether or not conducted
21 for a profit.

22 Also I took a look at Rule 100.2, and
23 this is under the contents about contents of
24 writings, recordings and photographs in the Rules
25 of Evidence. An original writing, recording or

PATSY JUDD - EX. BY MS. CREECH
1 photograph is required in order to prove its
2 content unless the rules or federal statute provide
3 otherwise. A duplicate under Rule 100.3 is
4 admissible to the same extent as the original
5 unless a genuine question is raised about the
6 original's authenticity or the circumstances make
7 it unfair to admit the duplicate.

8 Based on that -- and I say this on this
9 particular document, but I've got a feeling this is
10 going to come in on some other documents that are
11 introduced, and is by no means to limit anybody's
12 argument. I'm just letting the parties know what
13 I'm reviewing -- that the copies, as far as being
14 part of the regularly kept business records, can be
15 admissible for the purpose that they're part of the
16 business records. That does not -- that does not
17 establish authenticity as to the signature on the
18 document or, depending on the language of the
19 document, the content of the document, but it does
20 mean that is it is a regularly kept business record
21 that this custodian has reviewed. That's how I
22 read the rules in regard to this.

23 And I believe we had an objection when
24 I took the recess. Is that right, Mr. Woodruff, or
25 the parties agreed there was a pending objection at

1 PATSY JUDD - EX. BY MS. CREECH
the time that I said I'll be a few minutes?

2 MS. CREECH: That's our understanding.

3 THE COURT: Okay. I'll be glad to hear
4 from you, Mr. Woodruff. I don't want to cut you
5 off if you've got something to put on the record in
6 regards to that.

7 MR. WOODRUFF: Your Honor, clearly --
8 clearly I'd -- what has been marked as Plaintiff's
9 Exhibit 10 that we were looking at -- that we were
10 discussing --

11 THE COURT: Yes, sir. That is correct.

12 MR. WOODRUFF: -- is an item that is
13 kept in the normal course of business. However, I
14 do believe that some of the items that opposing
15 counsel will be attempting to introduce copies are
16 not copies that are actually kept in the normal
17 course of business, but in fact are copies that
18 they, CitiMortgage or counsel for CitiMortgage,
19 obtained from David Ratchford's office, which is an
20 attorney in Conyers. I have a problem with any
21 copies being introduced as business records when
22 they were only obtained by counsel for purposes of
23 this litigation and then submitted for testimony as
24 to being business records.

25 THE COURT: I think it's warranted that

1 PATSY JUDD - EX. BY MS. CREECH
2 he have some clarification when you ask the
3 questions in the regular course of business. And
4 maybe that's something -- of course you're
5 always -- in regards to the admission, if there is
6 a dispute, I suppose, as to whether or not it's
7 simply admitted in this case in particular, meaning
8 it's not kept in the regular course of business,
9 then that exception wouldn't apply. So I'm going
10 to have to let the plaintiff -- but I can't know
anything about these documents until I let some

11 questions come in. And I'll note the objection.
12 If you object and say they have not established
13 some fact in that then I'll obviously leave the
14 plaintiff open to see if that fact can be
15 established or I'll rule based on what's in at the
16 time. But I'll note the objection.

17 My purpose in taking a break was to
18 come back in and just let everybody know the
19 rules -- the exact rules that I'm looking at that I
20 think may apply in this case so we're all on the
21 same page in regards to that.

22 So I'll let the plaintiff, since we
23 took a break, go back and re-ask the questions on
24 the admission of this document.

25 Mr. Woodruff still wants to object, but

PATSY JUDD - EX. BY MS. CREECH

1 I'm drawing a little bit of a distinguished feature
2 between a regularly kept business record, meaning
3 that that is exactly what it is, not that it is
4 necessarily for the proof of any matter asserted in
5 there, that that's an accurate -- that that
6 establishes any fact, if that makes it clear. Does
7 that make it clear in that regard?

8 MR. WOODRUFF: Yes, sir. And I
9 appreciate your ruling.

10 THE COURT: Okay. Let's go back and
11 ask your questions, ma'am, if you would, about
12 Plaintiff's Exhibit Number 10, which I believe was
13 identified as an authorization form.

14 MS. CREECH: And I would like the
15 record to reflect that Plaintiff's 10 does bear
16 Bates stamp PL0046 at the bottom and it was
17 produced as part of Plaintiff's responses to
18 Ms. Moxley's discovery requests.

19 BY MS. CREECH:

20 Q. Ms. Judd, earlier when we were
21 reviewing this document I asked you if this is
22 something that CitiMortgage has regularly
23 maintained in its course of business with respect
24 to this loan and you responded that, yes, it was?

25 A. Yes.

PATSY JUDD - EX. BY MS. CREECH
Q. Is that correct?

A. That's correct.

Q. Is this a document that would typically
be found in a loan origination file?

A. Not necessarily, no. It could be
obtained later.

Q. So this is a document that may be
obtained during the course of the servicing of the
loan when you previously testified the borrower
wishes to provide a third party with an
authorization to discuss the terms of the loan or
to discuss the account which they're not a party
on; is that correct?

A. That's correct.

MS. CREECH: I would like to move that
based on Ms. Judd's testimony that a third party
authorization form is a regularly maintained
business record as part of CitiMortgage's business
of mortgage servicing. I'd ask that Plaintiff's 10
be admitted into evidence.

THE COURT: Mr. Woodruff.

MR. WOODRUFF: I continue with my
original objection that it is not the original.
The Court has indicated that it is ruling that it's
admitting it, but not accepted in that it does

1 PATSY JUDD - EX. BY MS. CREECH
2 actually -- that anybody has agreed as to what it
3 actually says.

4 THE COURT: Right. There's been no
5 testimony by this witness as to what the document
6 means or attaching the evidentiary purpose to that
7 regard. The only portion of evidence, as I
8 understand it, is it is being introduced as a
9 regularly kept document in the business records.
10 So to that extent I'll allow the admission of the
11 document.

12 MR. WOODRUFF: Thank you, Judge.

13 BY MS. CREECH:

14 Q. If you will please look at the document
15 we've premarked as Plaintiff's 11. Can you
16 identify that document, please.

17 A. This is a document -- part of the
18 origination package that we received from ABN AMRO
19 basically is what it is.

20 Q. So this is, in fact, a part of the
21 origination file for the subject loan which
22 CitiMortgage maintains in its regular course of
23 business?

24 A. Yes, it is.

25 MS. CREECH: I'd like to move to offer
Plaintiff's 11 into evidence.

PATSY JUDD - EX. BY MS. CREECH
THE COURT: What is this?

MS. CREECH: This is a -- it states
financial services authorization and agreement, and
it also bears Bates number PL000036 and was
produced in Plaintiff's responses to Defendant's
requests for production.

THE COURT: All right. Mr. Woodruff.

MR. WOODRUFF: Your Honor, I'll object
to it because it's not an original, and I'll also
object to it because I don't think there's been
sufficient testimony as to it being a document
maintained in the ordinary course of business.
This is not on ABN AMRO's, it is not on
CitiMortgage's, it is on Sturkie Mortgage
Corporation letterhead. There is no indication as
to when it appeared in CitiMortgage's files.
I'm -- I believe that this document is one of the
documents that actually was obtained by opposing
counsel from documents that were produced by
Ratchford attorneys in Columbia relating to the
closing, but...

THE COURT: You indicated that there
was a Sturkie Mortgage?

MR. WOODRUFF: Sturkie, yes, sir,
S-T-U-R-K-I-E, Mortgage Corporation.

1 PATSY JUDD - EX. BY MS. CREECH
2 THE COURT: That's on the letterhead on
3 the exhibit?

4 MR. WOODRUFF: That is the letterhead
5 on the exhibit, and that actually is a former
6 employer of one of the witnesses that the plaintiff
7 is calling.

8 MS. CREECH: Your Honor, if I may,
9 Ms. Judd testified that this document was included
10 as part of the loan origination file which
11 CitiMortgage obtained when it began servicing of
12 the loan after the merger in 2007. As part of the
13 origination file which it does maintain in its
14 regular course of business this would constitute a
15 business record.

16 MR. WOODRUFF: Your Honor, I'm curious
17 as to how she knows what was in the origination
18 file and what was not. And I think that question
19 was asked of her, but I think that she just
20 acknowledged it. I don't know if this is a
21 document that's normally obtained in an origination
22 file, but it's highly suspect that all they have is
23 a copy and not the original.

24 THE COURT: On this particular document
25 was she asked the question is this particular
document normally kept in an origination file? Did

1 PATSY JUDD - EX. BY MS. CREECH
2 I miss that?

3 MS. CREECH: I may have asked that,
4 Your Honor. I believe I did ask whether it would
5 be part of an origination file and that the
6 origination file, whatever documents from
7 origination the original lender passes onto the
8 subsequent servicer, that it would be part of that.

9 THE COURT: I think she as custodian
10 said -- my notes reflect she said part of the
11 origination package kept in the regular course of
12 conduct. I'm going to allow the exhibit, but I'm
13 going to allow cross-examination in regards to that
14 document. Whatever weight I'm going to give it,
15 I'm going to allow Mr. Woodruff to cross-examine
16 about that on the issues, especially with the
17 letterhead and the other things on that.

18 So I'll note the objection,
19 Mr. Woodruff, but I'll allow it under that same
20 exception. But I'm certainly not going to prevent
21 you from questioning about some of the issues that
22 you've raised.

23 MR. WOODRUFF: Thank you, Your Honor.

24 THE COURT: All right. Proceed.

25 That's Plaintiff's Number 11.

(PLF. EXH. 11, Financial Services

1 PATSY JUDD - EX. BY MS. CREECH
2 Authorization and Agreement, was marked for
3 identification.)

4 BY MS. CREECH:

5 Q. Take a look at what we have premarked
6 as Plaintiffs 12. Can you identify this document?

7 A. This is a HUD 1 settlement statement
8 that was received in the origination file from ABN
9 AMRO and is part of our business records.

10 Q. Does it indicate the date of this
11 closing?

12 A. Yes, 9/29/2000.

13 Q. And the name of the borrower?

14 A. William C. Moxley, Jr.

15 Q. And the property address?

16 A. 398 Glenwood Drive, Warrentville, South
17 Carolina.

18 Q. And you've previously testified that
19 this was included with the origination file
20 obtained from ABN AMRO; is that correct?

21 A. That's correct.

22 Q. And that's a document regularly
23 maintained in the course of business?

24 A. Yes.

25 MS. CREECH: I'd like to move to offer
Plaintiff's 12 into evidence.

PATSY JUDD - EX. BY MS. CREECH
THE COURT: All right. Mr. Woodruff?

MR. WOODRUFF: Your Honor, I object. I think that any lawyer that ever did any real estate closings any at any point in their career is very, very familiar with a HUD 1, and I think any lawyer that ever practiced any type of real estate closings knows how many copies of HUD 1s there were. It is highly suspect that the original is not included in this lawsuit.

And when the witness testifies that it came from the origination package, it very well could have come from the origination package, but it also could have come from the office of Mr. Ratchford in response to documents that Plaintiff's counsel obtained from that law firm and, therefore, I've got a major problem with a copy being introduced as opposed to an original, particularly, here again, when that copy purports -- purports to have my client's signature on it when the entire question for this entire case all revolves around my client's signature. So, quite frankly, I know she's testified under the business records exception, but I've got a problem when every lawyer that ever closed real estate loans knows how many original HUD 1s there are.

1 PATSY JUDD - EX. BY MS. CREECH
2 There certainly would be ample opportunity for an
3 original to be here. Highly suspect that the
4 original is not here, particularly -- particularly
5 given the facts of this case where for at least the
6 last two years we have denied that my client ever
7 signed anything.

8 THE COURT: All right. Go ahead.

9 MS. CREECH: Your Honor, again,
10 Ms. Judd testified that this document was within
11 the origination file that CitiMortgage has in its
12 possession. It is not a document obtained in
13 discovery. Additionally, there's no indication
14 that there are other copies of the settlement
15 statement, as Mr. Woodruff stated. We're simply
16 offering this document as part of the origination
17 file which CitiMortgage as the successor in
18 interest to ABN AMRO possesses in the regular
19 course of business.

20 THE COURT: All right. I note that
21 copies of the HUD 1 in these type cases are
22 regularly introduced. I would also note this
23 witness is not qualified and has not offered any
24 testimony that purport to the signatures or the
25 authenticity of any signatures on the document. So
to the extent it is part of the origination file.

1 PATSY JUDD - EX. BY MS. CREECH
2 which she as the custodian of the records is
3 reviewing I'll allow that under the business
4 records based on the information. And the
5 objection -- so I'll overrule the objection and
6 I'll allow that in as Plaintiff's Number 12.

7 Plaintiff may proceed.

8 (PLF. EXH. 12, HUD 1 Settlement
9 Statement, was marked for identification.)

10 BY MS. CREECH:

11 Q. If you could please identify what we've
12 premarked as Plaintiff's 12 [sic].

13 THE COURT: 13.

14 BY MS. CREECH:

15 Q. I'm sorry -- 13.

16 A. This is a scope of representation form.

17 Q. And does this document appear to be one
18 that was included with the origination file which
19 ABN AMRO transferred to CitiMortgage when it
20 merged?

21 A. This appears to be, but I can't for
22 sure say it was.

23 MS. CREECH: We'd just like to mark
24 that as Plaintiff's 13 for identification purposes.

25 THE COURT: Not for admission. I'm
assuming no objection at this time then?

PATSY JUDD - EX. BY MS. CREECH
MR. WOODRUFF: Not at this time.

THE COURT: All right then. Number 13
is marked for ID only.

(PLF. EXH. 13, Scope of Representation
Form, was marked for identification.)

MS. CREECH: I'd also like to do the
same with Plaintiff's 14.

MR. WOODRUFF: For ID only?

THE COURT: You say do the same. We're
marking it for ID only?

MS. CREECH: Yes. We would like to
mark Plaintiff's 14 for identification only.

THE COURT: All right.

BY MS. CREECH:

Q. With respect to Plaintiff's 14,
Ms. Judd, can you please tell us what this document
purports to be.

A. This is a document that is a seller,
slash, borrower affidavit and indemnity agreement.

Q. And what is the date of this
instrument?

A. 27th day of September 2000.

Q. And can you please read the printed
names at the top of the page?

A. William C. Moxley, Jr., and Mary L.

1 Moxley. PATSY JUDD - EX. BY MS. CREECH

2 MS. CREECH: Thank you.

3 MR. WOODRUFF: I'm sorry. I didn't
4 understand her question or --

5 THE COURT: She asked about the printed
6 names on the document. She didn't ask anything in
7 regards to -- just can she identify the printed
8 names.

9 MR. WOODRUFF: Are we talking about
10 Exhibit 14?

11 THE COURT: Correct.

12 MS. CREECH: That's correct,
13 Plaintiff's 14.

14 MR. WOODRUFF: Thank you.

15 BY MS. CREECH:

16 Q. Is this type of document, not
17 specifically this one, but this type of record
18 something that you would typically see in a loan
19 origination file?

20 A. I haven't seen this form before.

21 THE COURT: Anything else on this one?

22 MS. CREECH: No, Your Honor.

23 THE COURT: We'll mark it for ID only
24 at this time. So I'm assuming no objection at this
25 moment, Mr. Woodruff?

PATSY JUDD - EX. BY MS. CREECH
MR. WOODRUFF: Not at this point, Your

Honor.

THE COURT: Okay.

(PLF. EXH. 14, Seller/Borrower
Affidavit and Indemnity Agreement, was marked for
identification.)

BY MS. CREECH:

Q. If you could please identify the
document we have premarked Plaintiff's 15.

A. This is an affidavit and agreement.

Q. And what is the date on this document?

A. September 29, 2000.

Q. And it appears to bear two signatures;
is that correct?

A. Yes.

Q. And can you read those signatures?

MR. WOODRUFF: Objection.

MS. CREECH: I'm not asking her to
testify to the authenticity, but simply read what
the document purports to contain.

THE COURT: I'll let her say what she
thinks the signatures are, but then not any
testimony to indicate that that means that person
signed the document.

MS. CREECH: That's all we're seeking.

PATSY JUDD - EX. BY MS. CREECH
THE COURT: Okay.

THE WITNESS: The signatures William C.
Moxley, Jr. and Mary L. Moxley.

BY MS. CREECH:

Q. Is this affidavit of agreement a
document that you would typically see in an
origination file?

A. You would typically see this.

MS. CREECH: I'd like to mark this for
identification purposes only as Plaintiff's 15.

THE COURT: All right. Reserving any
objection, correct, Mr. Woodruff?

MR. WOODRUFF: Correct.

THE COURT: All right.

(PLF. EXH. 15, Affidavit and Agreement,
was marked for identification.)

BY MS. CREECH:

Q. If you could please identify this
document which was premarked Plaintiff's 16.

A. This is a notice of right of rescision.

Q. And can you tell me the printed name
that appears at the top?

A. William C. Moxley -- or William Moxley
is printed.

Q. And the account number above that, does

PATSY JUDD - EX. BY MS. CREECH
1 that appear to be the CitiMortgage's account number
2 for this loan?

3 A. Yes, it does.

4 Q. And is this a document you would
5 typically see as part of an origination file?

6 A. Yes.

7 MS. CREECH: I'd like to --

8 BY MS. CREECH:

9 Q. Based upon the documents you reviewed
10 in the origination file, does this appear to be a
11 notice of rescision as part of CitiMortgage's
12 origination file for this loan?

13 A. Yes.

14 Q. And this would be a document maintained
15 in the regular course of business?

16 A. Yes.

17 MS. CREECH: I'd like to move to offer
18 16 into evidence.

19 MR. WOODRUFF: Objection, Your Honor.

20 THE COURT: Go ahead.

21 MR. WOODRUFF: My objection is that it
22 does not appear to be the original document.
23 Again, on page one of this document it does not
24 have my client's name, nor my client's signature.
25 On page two there is a hand drawn line that

1 PATSY JUDD - EX. BY MS. CREECH
2 purports to have my client's signature. Again,
3 Your Honor, and I'm sorry to keep hounding this
4 away, but this entire case revolves around one
5 question, maybe two. The primary question is did
6 the defendant, Mary Moxley, ever sign any
7 documents, and we have consistently maintained that
8 my client has no recollection of ever attending any
9 closing, nor ever signing any of these documents.
10 So when they are attempting -- when the plaintiff's
11 counsel is attempting to introduce a document that
12 is purported to be signed by my client and they
13 don't bring the original it is highly suspect and I
14 have a problem with a copy being introduced.

15 THE COURT: I'm going to note the
16 objection. I'm going to -- I also believe in this
17 case there's been no ruling on the foreclosure at
18 all, and that includes Mr. Moxley being part of
19 this. And so in regards to documents being
20 introduced as they are kept in the regular course
21 of business and part of the origination package,
22 which I believe she's identified this is, I will
23 allow the copies in. Again, that does not mean, in
24 regards to Mrs. Moxley, that that's her signature
25 on there. She has not testified to that and
there's been no testimony in regards to that. I do

1 PATSY JUDD - EX. BY MS. CREECH
2 note the objection. I'm glad -- I appreciate you
3 identifying that hand drawn line in the signature,
4 as you stated, it's purported to be, but obviously
5 there still is testimony to be delivered, I assume,
6 in regards to that which I have not heard. I'm
7 only ruling on the document at this time.

8 Is there anything else from Plaintiff
9 on this before I rule?

10 MS. CREECH: No.

11 THE COURT: All right. Based on what
12 I've placed in the record there as my review of
13 this -- so I will note the objection, but, again,
14 I'll overrule that and include Plaintiff's 16.

15 (PLF. EXH. 16, Notice of Right of
16 Recision, was marked for identification.)

17 BY MS. CREECH:

18 Q. If you could, please identify what
19 we've premarked as Plaintiff's 17.

20 A. This is an authorization to correct.

21 Q. Can you please state the written
22 names -- the typewritten names that appear at the
23 top of the page.

24 A. William C. Moxley, Jr. and Mary L.
25 Moxley.

Q. The property?

1 PATSY JUDD - EX. BY MS. CREECH
2 A. 398 Glenwood Drive, Warrenville, South
3 Carolina.

4 Q. And the lender name which appears on
5 the page?

6 A. ABN AMRO, Inc.

7 Q. Based on the documents that you've
8 reviewed, would this document be part of the loan
9 origination file which CitiMortgage maintains in
10 the regular course of business?

11 A. This document would -- it appears to
12 be. I haven't seen this particular one.

13 MS. CREECH: We'd like to offer 17 for
14 identification purposes only, Your Honor.

15 MR. WOODRUFF: Your Honor, if I may.

16 THE COURT: Yes, sir. Go ahead.

17 MR. WOODRUFF: This document also
18 purports to obtain a signature of my client and it
19 is not the original. And the other point that
20 concerns me greatly is the witness's testimony a
21 moment ago when she said, I've never seen this. So
22 I'm not sure how many other documents that have
23 been discussed up here today that this witness has
24 never seen before, but clearly if she stated, and I
25 believe honestly so, that she's never seen this
 document before I don't know how she can testify

1 PATSY JUDD - EX. BY MS. CREECH
2 that, yes, this is a document that was normally
3 maintained in the course of CitiMortgage's
4 business. She's never seen it before. She
5 testified it could be, but she's never seen it.

6 THE COURT: I think in regard to this
7 document, as I understand the testimony, she did
8 not say it was part of the loan origination. I
9 understood the testimony to be that she had not
10 seen the document as well. So I think this would
11 have to be introduced, if it's going to be
12 introduced, by some other witness on there because
13 her testimony at this point is she's never seen it
14 and doesn't know anything about it, is what I
15 understand the testimony.

16 Go ahead. You want to respond to that?

17 MS. CREECH: Yes, Your Honor. We're
18 simply offering this for identification purposes
19 only as a document that would typically be in the
20 file. That was her testimony she said specifically
21 with respect to this document.

22 THE COURT: Go ahead, sir.

23 MR. MOORE: With the Court's
24 permission. We're both here representing the
25 plaintiff. But the testimony that's going to be
offered here today and the reason we're getting

PATSY JUDD - EX. BY MS. CREECH
1 these in for identification is Ms. Moxley is -- it
2 has been suggested does not recall signing some of
3 these documents. She merely looks at the document
4 and she says, yes, that is my signature or, no,
5 that doesn't look like my signature, or, yes, that
6 looks like my signature, or, no, it doesn't.

7 We also have a witness here that's
8 going to testify as to what documents were executed
9 at closing. So I think all in all the testimony
10 needs to be taken as a whole. With this witness we
11 only want this particular document to be marked for
12 identification only as a document -- but her
13 testimony is, this is a document that I would
14 normally see in a file. I think she's qualified to
15 say that based on her background and the
16 information that she's already offered to the Court
17 as to her experience.

18 THE COURT: Mr. Woodruff?

19 MR. WOODRUFF: Judge, she's testified
20 she's never seen it before. If they want to get it
21 in through another witness let them get it in
22 through another witness and let that other witness
23 explain why the original is not here, but I have a
24 problem with documents that the witness says, never
25 seen it before, and they want -- I mean...

PATSY JUDD - EX. BY MS. CREECH

1 THE COURT: Here's my issue. It's only
2 for ID. It's not coming in for admission this
3 time. So if she says it is something that she can
4 see -- she's testified she has not seen it before
5 today in this record, then they -- still as far as
6 getting it in they could have another witness come
7 up. It's not coming in right now. It's only going
8 to be marked for identification only.

9 MR. WOODRUFF: Okay. As long as it's
10 only for identification at this time.

11 THE COURT: All right. Then it's
12 marked as Plaintiff's 17 for identification only.

13 (PLF. EXH. 17, Authorization to
14 Correct, was marked for identification.)

15 BY MS. CREECH:

16 Q. If you could, please identify what's
17 been premarked as Plaintiff's 18.

18 A. This is a truth in lending disclosure
19 statement.

20 Q. Have you reviewed this document before?

21 A. Yes, I have.

22 Q. Where did you see it?

23 A. This was in the origination file
24 received from ABN AMRO into Citi's records.

25 Q. And, again, that origination file is

PATSY JUDD - EX. BY MS. CREECH
1 one that's maintained in the regular course of
2 business?

3 A. Yes.

4 Q. Can you please identify the name of the
5 borrower, the typed name at the top?

6 A. William Moxley.

7 Q. The date of the document?

8 A. September 29, 2000.

9 Q. And the name of the lender?

10 A. ABN AMRO Mortgage Group, Inc.

11 MS. CREECH: I'd like to move to offer
12 this into evidence as Plaintiff's 18.

13 MR. WOODRUFF: I object, Your Honor.
14 It is not an original document. Again, it purports
15 to bear the signature of my client and it -- again,
16 the crux of this whole case deals with is this a
17 genuine signature. Obviously the original exists
18 somewhere. It's incumbent upon the plaintiff to
19 prove it. What they're trying to do is trying to
20 prove a case using Xerox copies of documents, and
21 in some cases extremely, extremely poor copies of
22 Xerox documents. I object to it and I would ask
23 that the Court require the original.

24 THE COURT: I'll note the objection,
25 but based on the testimony of the witness and the

1 PATSY JUDD - EX. BY MS. CREECH
2 purpose of the testimony as far as the custodian
3 just establishing it as a business record I'll
4 allow the exhibit to be introduced as Plaintiff's
5 Number 18.

6 (PLF. EXH. 18, Truth in Lending
7 Disclosure Statement, was marked for
8 identification.)

9 BY MS. CREECH:

10 Q. If you could, please identify what
11 we've premarked as Plaintiff's 19.

12 A. This exhibit is a copy of two driver's
13 licenses.

14 Q. And whose driver's licenses do these
15 appear to be?

16 A. Mary L. Moxley and William Clyde
17 Moxley, Jr.

18 Q. What are the addresses associated with
19 these two licenses?

20 A. The address, I believe -- it's hard to
21 read. It's 390 [sic] Glenwood Drive.

22 Q. And the property that is the subject of
23 this action is 398 Glenwood Drive; is that correct?

24 MR. WOODRUFF: Objection. You're --
25 she's leading the witness.

THE COURT: I'll sustain the objection.

PATSY JUDD - EX. BY MS. CREECH

THE WITNESS: I really can't read this

well, Your Honor.

THE COURT: I think she can't read the

copy.

THE WITNESS: It's really hard, yeah.

It's Glenwood Drive, Warrentville, South Carolina.

I just can't distinguish the numbers.

BY MS. CREECH:

Q. Okay. That's fine.

Tell me, did -- have you seen this
document before today?

A. Yes, I have.

Q. And where did you see it?

A. I saw a copy of this in the origination
file that we received from ABN AMRO that's in our
business records.

MS. CREECH: I'd like to move to offer
this as Plaintiff's 19.

THE COURT: Mr. Woodruff?

MR. WOODRUFF: I don't think she's laid
a sufficient foundation as to how those documents
would have gotten in her file. And I believe the
witness just testified that she saw it in the
origination file that CitiMortgage obtained from
another lender and I'm just curious as to whether

1 PATSY JUDD - EX. BY MS. CREECH
2 or not this witness actually has brought a copy of
3 that origination file with her.

4 THE COURT: I don't know the answer to
5 that question, but in reference to this exhibit,
6 she's testified -- previously through her position
7 she's testified this was in the origination file.
8 So for the purposes of identifying it as a document
9 in the origination file that would be kept in the
10 course of business on this type of transaction I'll
11 permit it as Plaintiff's 19.

12 (PLF. EXH. 19, Copy of two driver's
13 licenses, was marked for identification.)

14 BY MS. CREECH:

15 Q. And, again, you've previously testified
16 that CitiMortgage is the successor in interest to
17 ABN AMRO, it's not simply a mere servicing
18 relationship; is that correct?

19 MR. WOODRUFF: Objection. She's
20 leading the witness.

21 THE COURT: I'll let her ask that
22 question. I think it's -- go ahead.

23 BY MS. CREECH:

24 Q. If you could clarify the
25 relationship -- you previously testified that
CitiMortgage is the surviving entity by virtue of a

1 PATSY JUDD - EX. BY MS. CREECH
2 merger with ABN AMRO; is that correct?

3 A. That is correct.

4 Q. And that the origination file, amongst
5 other documents, are records that it obtained as a
6 result of that merger; is that correct?

7 A. That is correct.

8 MS. CREECH: Nothing further. I just
9 wanted to clarify that point.

10 THE COURT: All right. Anything else?

11 MS. CREECH: Yes. We'd like to offer a
12 copy of the subject deed that's been recorded at
13 the RMC's office as Plaintiff's 20.

14 THE COURT: Is there any objection to
15 the deed?

16 MR. WOODRUFF: Your Honor, the
17 agreement that I thought I had with opposing
18 counsel is that I would not object to the deed as
19 long as she got a certified copy of the deed from
20 the RMC's office as opposed to a simply a copy.
21 Was that the agreement?

22 MS. CREECH: Yes. We can certainly do
23 that.

24 Should we just mark this for
25 identification purposes for now?

THE COURT: We'll mark that for

PATSY JUDD - EX. BY MS. CREECH
1 identification and then substitute a certified
2 copy. I'll allow that.

3 MR. WOODRUFF: That's typical.

4 THE COURT: I assume that the copy
5 you're introducing for identification has the
6 stamp, book and page numbers?

7 MS. CREECH: Yes, sir.

8 THE COURT: Okay.

9 (PLF. EXH. 20, Deed, was marked for
10 identification.)

11 BY MS. CREECH:

12 Q. I'm jumping around a little bit here,
13 but, Ms. Judd, with respect to the loan that is the
14 subject of this action, can you tell me were the
15 payments made as required under the terms of the
16 mortgage?

17 A. No, they were not.

18 Q. What date was this loan considered in
19 default?

20 A. July 1, 2013.

21 Q. Is the loan still considered in
22 default?

23 A. Yes, it is.

24 Q. Has the default been cured?

25 A. No.

1 PATSY JUDD - EX. BY MS. CREECH
2 Q. Has this loan ever been modified?

3 A. No.

4 Q. Has this loan ever been reinstated?

5 A. Early in 2013 it was behind in
6 payments, but it was reinstated prior to -- I think
7 it was in June 2013 it was reinstated with four
8 payments paid to bring it current.

9 Q. Okay. And you testified that the loan
10 is considered in default as of July 1, 2013?

11 A. That's correct.

12 MS. CREECH: If I may, I'd like to
13 offer what we've premarked as Plaintiff's 3.

14 BY MS. CREECH:

15 Q. Take a look at that and tell us what it
16 is.

17 A. That is a default letter notifying the
18 borrower on the account that the loan is in default
19 and how much the amount was of the default.

20 Q. What is the date of this letter?

21 A. September 3, 2013.

22 Q. And to whom is it addressed?

23 A. William Moxley, estate of.

24 MS. CREECH: I'd like to move to offer
25 Plaintiff's 3 into evidence.

THE COURT: Any objections?

PATSY JUDD - EX. BY MS. CREECH
MR. WOODRUFF: I agreed I would not

object to those letters.

THE COURT: Plaintiff's 3 admitted.

BY MS. CREECH:

Q. Ms. Judd, you stated that this default
letter was addressed to the estate of Mr. Moxley;
is that correct?

A. That's correct.

Q. How did CitiMortgage learn of
Mr. Moxley's passing?

A. Mrs. Moxley -- Mary Moxley called in to
notify of his death in March of -- early March of
2013.

Q. And at that point CitiMortgage updated
its records to reflect that?

A. Yes.

Q. And what business records would you
have reviewed -- or contained that information with
respect to Ms. Moxley contacting Citi to inform
them of --

A. That would be in our collection notes,
our Citi link notes.

Q. If you could look at what we've
premarked as Plaintiff's 6. Do those appear to be
the collection notes that CitiMortgage has

1 PATSY JUDD - EX. BY MS. CREECH
maintained for this account?

2 A. Yes, this does.

3 Q. Again, that is a document that is
4 regularly maintained in the course of business?

5 A. Yes, it is.

6 MS. CREECH: I'd like to move to offer
7 Plaintiff's 5 into evidence.

8 THE COURT: Mr. Woodruff?

9 MR. WOODRUFF: Your Honor, these
10 documents that they are attempting to introduce
11 were produced to my office on Friday at
12 approximately 2:45 p.m. by the U.S. mail. These
13 documents contain -- the packet that I got has
14 approximately 279 pages. Judge, fortunately, I
15 didn't have to read 279 pages because the vast
16 majority, other than the redaction sheets where
17 they redacted the vast majority of it, has been
18 protected under the attorney-client privilege.
19 These pages are mostly blank. I don't know if the
20 Court can see it or not.

21 THE COURT: Yeah, you can see it when
22 you're flipping through.

23 MR. WOODRUFF: Basically what I got
24 was -- 95 percent is nothing but white pages
25 totally, totally blacked out. There are portions

1 PATSY JUDD - EX. BY MS. CREECH
2 in here that you can read, but here again, I am
3 estimating that 95 percent is blacked out and these
4 are documents that I received at approximately --
5 via mail that was postmarked Tuesday at 3:45 this
6 past Friday.

7 THE COURT: Were these previously
8 requested in discovery?

9 MR. WOODRUFF: I don't specifically
10 recall requesting these, but obviously opposing
11 counsel felt a need to deliver them to me.

12 The sole reason for every single
13 redaction -- of 95 percent of the redaction is
14 attorney-client privileged communication applies to
15 all entries. I'm not sure how 95 percent of
16 collection notes are attorney-client privileged. I
17 don't know what it says, but I have a problem with
18 this witness testifying as to the records that are
19 produced to me on Friday afternoon before we come
20 for trial Monday morning where 95 percent is
21 redacted. So I object to it.

22 THE COURT: All right. Plaintiff,
23 thoughts?

24 MS. CREECH: Your Honor, if I may,
25 the -- these are the CitiMortgage's collection
notes we supplemented our discovery with which in

1 PATSY JUDD - EX. BY MS. CREECH
2 the unredacted portion which are not attorney
3 privileged contain notes that Mrs. Moxley contacted
4 CitiMortgage, made payments on the loan subsequent
5 to Mr. Moxley's death, and for that purpose, Your
6 Honor, we would like to offer this exhibit to
7 question Ms. Judd about its content. And I would
8 submit that if there is any issue with respect to
9 the redaction, that's not relevant for purposes of
10 the testimony today because we're simply discussing
11 the portions that are relevant to the matters that
12 we're here today to discuss and that certainly
13 there's an opportunity to cross-examine Ms. Judd
14 about this business record, but again, we're
15 offering it for the purpose of showing where
16 CitiMortgage's records reflect the calls made by
17 Ms. Moxley and the communications made by
18 Ms. Moxley with respect to this loan.

18 THE COURT: All right. Mr. Woodruff,
19 in regards to that limited admission of the
20 documents, what's your objections?

21 MR. WOODRUFF: My objection is when it
22 was delivered to my office on Friday it was
23 delivered with a privilege log. These documents
24 start at page 200 and go through at least page 479.
25 That's how I know there are 279 page there.

1 PATSY JUDD - EX. BY MS. CREECH
2 Approximately 95 percent has been redacted. There
3 is no explanation as to what the privilege is
4 claimed for. It is just a blanket attorney-client
5 privileged communications applies to all entries.
6 If 95 percent of the collection notes relating to
7 the life of this mortgage are protected under an
8 attorney-client privilege, but five percent that
9 opposing counsel wants to question their own
10 witness about is not protected by attorney-client
11 privilege, I have a problem with that. I've got a
12 problem. It doesn't smell right. And I know I
13 have to be more precise, but there's a problem that
14 95 percent is protected and five percent that she
15 wants to have the witness testify is not protected.

16 THE COURT: Ma'am?

17 MS. CREECH: Your Honor, if I may, this
18 case has been pending since 2014, and as Your Honor
19 is aware, we've been involved in litigation for
20 quite some time. Our client, CitiMortgage,
21 communicates with us through a web based platform
22 and as an officer of the Court I can tell you that
23 the communications that have been redacted here are
24 the communications with our office through that
25 platform. I do have a clean, unredacted copy if
there's any question that the Court would like to

1 PATSY JUDD - EX. BY MS. CREECH
2 inquire with respect to what's been redacted, but
3 again, for the purposes of Ms. Judd's testimony,
4 she testified that this is a copy of the collection
5 notes and we have specific questions that are
6 relevant to today's proceedings with respect to
7 Ms. Moxley's communications with CitiMortgage with
8 respect to this loan.

9 THE COURT: Let me ask the obvious
10 question, I guess. As you said, it's been pending
11 since 2014. Why is Mr. Woodruff just getting it on
12 the Friday before trial today?

13 MS. CREECH: Well, in preparing for
14 these proceedings, Your Honor, we felt it was
15 appropriate to supplement our discovery and it was
16 not something that had been previously requested,
17 to the best of my knowledge.

18 THE COURT: I believe Mr. Woodruff said
19 he didn't specifically request those documents in
20 there.

21 All right. Mr. Woodruff, it's your
22 objection in there on the 95 percent. They've got
23 it -- I think the procedure would be that the Court
24 would look at those documents if you want to raise
25 the issue or question as to whether or not there's
attorney-client privilege on those. So what's your

1 Patsy Judd - Ex. By Ms. Creech
2 pleasure?

3 MR. WOODRUFF: May I have two minutes
4 to walk outside with opposing counsel and let me
5 ascertain a question that I have in my mind that's
6 not answered?

7 THE COURT: Yeah. Let's take -- it's
8 ten until 12:00. Let's convene until 12:00 and
9 then we'll come back.

10 MR. MOORE: Your Honor, I don't think
11 they've changed that clock.

12 THE COURT: I'm sorry. It's ten until
13 1:00. You're right. I'm glad you brought that up.

14 (A recess transpired.)

15 THE COURT: We're back in session. Let
16 me inquire into a little housekeeping. Well, let
17 me tell you, first, we took a recess so the
18 attorneys could have a discussion based on this
19 last set of documents, the collection notes,
20 Plaintiff's Exhibit Number 6, to be introduced.
21 Where are we at in regards to that?

22 MR. WOODRUFF: Judge, 200 and -- at
23 least 200 and --

24 THE COURT: I've got the number of
25 pages. You've got those and 95 percent of those
you estimated was redacted. So whatever it is, but

1 PATSY JUDD - EX. BY MS. CREECH
2 the majority of it is redacted. No question about
3 that.

4 MR. WOODRUFF: I am told that the only
5 questions that are going to be asked of this
6 witness concerning this 279 pages is whether or not
7 four payments were made after Mr. Moxley's death.

8 THE COURT: Okay.

9 MR. WOODRUFF: And if that's all -- and
10 we can establish Mr. Moxley's death date. And if
11 that's the only question that is going to be asked,
12 if there are four payments made all on the same day
13 by Mary Moxley, I don't have a problem with that
14 being asked.

15 THE COURT: Okay.

16 MR. WOODRUFF: If they want to go
17 further into it then I am going to ask that
18 Plaintiff's counsel go ahead and submit to the
19 Court both the redacted and unredacted versions.

20 THE COURT: All right. Is that going
21 to be the limits of the question?

22 MS. CREECH: Your Honor, yes. We are
23 seeking to elicit testimony regarding the four
24 payments made subsequent to Mr. Moxley's death and
25 also as to the third-party authorization form that
was offered as Plaintiff's Exhibit 10 which

1 PATSY JUDD - EX. BY MS. CREECH
2 authorize CitiMortgage to discuss the mortgage with
3 Mr. Moxley to the extent there were discussions
4 that appear in these collection notes which are
also subject to our questions.

5 THE COURT: Okay.

6 MS. CREECH: That is the extent.

7 THE COURT: All right. Now, let me ask
8 you before -- I'll let you do that in a minute, but
9 let me take care of a couple housekeeping items.
10 First, I'm okay with continuing to go. As pointed
11 out correctly, and I appreciate that, the clock is
12 wrong. It's 1:00, not 12:00. However, I don't
13 like to have court reporters -- if they need a
14 lunch break, and the other people in here, I don't
15 like it to be an endurance contest either. So I'm
16 willing to ask a question at this point about how
17 much longer you think this witness may be, any idea
18 in with regards to that, and have some discussion
19 as to what we're going to do schedule-wise. So how
20 much longer do you think you're going to have with
21 the witness?

22 MS. CREECH: I think no more than
23 30 minutes, Your Honor, for our questioning. And I
24 do know she has a flight at 5:00.

25 THE COURT: 5:00. All right. Well, I

PATSY JUDD - EX. BY MS. CREECH
1 would suggest then we keep going and let's see if
2 we can finish this witness if we're going to be 30,
3 45 minutes and we'll just take a late lunch, but
4 you're not going to have to sit here until
5 5:00 without eating. I'm going to give you a lunch
6 break.

7 So, with that, let's continue with the
8 questions then.

9 BY MS. CREECH:

10 Q. If you don't mind refreshing our
11 memories, when we left off you testified that you
12 had reviewed the collection notes and you had
13 determined that payments were made subsequent to
14 Mr. Moxley's death; is that correct?

15 A. Yes.

16 Q. Can you tell us what date those
17 payments were made?

18 A. June 6, 2013.

19 Q. And what document -- excuse me. And
20 what do the collection notes reflect with respect
21 to that entry?

22 A. The collection notes, this reflects
23 that Mary Moxley called in to the line and there
24 was discussion about the file, and it says that
25 she's the spouse of the borrower, that she made a

PATSY JUDD - EX. BY MS. CREECH
1 payment by phone in the amount of \$3,306.86, which
2 once posted would show that there were four
3 payments included in that, and the fee of \$15 for
4 doing the payment over the phone.

5 Q. So for those four payments did they
6 reinstate the loan?

7 A. They brought it current to June 6th,
8 yes.

9 Q. Which is the default --

10 A. I mean June 1st. Sorry. June 1st.

11 Q. And you testified that the default date
12 was what?

13 A. July 1st.

14 Q. Sorry. Of what year?

15 A. '13. Sorry. 2013.

16 Q. Thank you.

17 THE COURT: So without objection, as I
18 understand it, Mr. Woodruff.

19 MR. WOODRUFF: Correct, but that's
20 subject to my cross-examining.

21 THE COURT: Certainly. This will be --
22 Plaintiff's Number 6 is admitted.

23 (PLF. EXH. 6, Collection notes, was
24 marked for identification.)

25 BY MS. CREECH:

1 PATSY JUDD - EX. BY MS. CREECH
2 Q. If you could, identify what we've
3 marked as Plaintiff's Exhibit 4.

4 A. This is the payment history on the
5 loan.

6 Q. Have you reviewed this document?

7 A. Yes.

8 Q. Is this document one that CitiMortgage
9 maintains in the regular course of business?

10 A. Yes, it is.

11 THE COURT: I'm sorry. What was that
12 exhibit number again?

13 MS. CREECH: Four, Your Honor.

14 THE COURT: Four. Okay.

15 BY MS. CREECH:

16 Q. Ms. Judd, are you prepared to testify
17 today as to the amounts that are due and owing
18 under the mortgage?

19 A. Yes, I am.

20 Q. Is there another document you would
21 need to review other than the payment history to
22 provide that information?

23 A. If I have a copy of what the figures
24 are, but this would tell us exactly everything.

25 MS. CREECH: I'd like to move to offer
 Number 4 into evidence.

1 PATSY JUDD - EX. BY MS. CREECH
2 THE COURT: Objections?

3 MR. WOODRUFF: Has she testified to
4 the --

5 THE COURT: The regular course of
6 business.

7 MR. WOODRUFF: If she's testified to
8 that I have no objections.

9 THE COURT: Okay. That was the first
10 question, I believe, I have in my notes.

11 Okay. So admitted as Plaintiff's
12 Exhibit Number 4.

13 (PLF. EXH. 4, Payment History, was
14 marked for identification.)

15 BY MS. CREECH:

16 Q. If you would, please identify what
17 we've premarked Plaintiff's Number 5.

18 A. This is a communication from
19 CitiMortgage on the judgment figures, the amounts
20 that are due and owing on the loan.

21 Q. Is this a document that CitiMortgage
22 regularly maintains in the course of business?

23 A. Yes, it is.

24 Q. Can you tell us then what the total
25 amount due and owing, exclusive of attorney's fees
and costs, is under the note and mortgage?

PATSY JUDD - EX. BY MS. CREECH

1 A. I'm sorry. With everything? Is that
2 what you said?

3 Q. Yes. The total --

4 A. Total amount due --

5 Q. The total judgment amount.

6 A. \$91,574.84.

7 Q. Would you be able to give us a
8 breakdown of that figure?

9 THE COURT: Could you give me that
10 figure again? 91,574 and what?

11 THE WITNESS: 84 cents.

12 THE COURT: Okay.

13 THE WITNESS: The breakdown there is
14 the unpaid principal balance of \$58,644.97. There
15 is interest due from the time of default through
16 the date of the figures of \$21,554.85. There is
17 paid attorney's fees and costs of \$2,311.69.

18 THE COURT: How much?

19 THE WITNESS: \$2,311.69.

20 THE COURT: Mr. Woodruff, do you have
21 something?

22 MR. WOODRUFF: I was under the
23 impression that the question was phrased without
24 attorney's fees and costs, but that -- I'm going to
25 not object to her testifying about that.

PATSY JUDD - EX. BY MS. CREECH

1 THE COURT: That was originally what
2 she asked for in the breakdown. I think the
3 witness gave her that narrative off the document.
4 So unless there's an objection to it I'll allow
5 that.

6 MR. WOODRUFF: I'm not going to object
7 to it at this point.

8 THE COURT: All right. Continue.

9 THE WITNESS: There was an inspection,
10 \$491.50, and then there's a negative escrow balance
11 that was advanced escrow of \$7,847.82.

12 MS. CREECH: I'd like to move to offer
13 the judgment figures as Plaintiff's 5.

14 THE COURT: Any objection?

15 MR. WOODRUFF: Yes, sir. I object. I
16 don't think that there's been a foundation as to
17 who calculated these amounts and how they were
18 calculated.

19 THE COURT: All right. I think it's
20 being offered just as something she had reviewed in
21 the business records; is that correct?

22 MS. CREECH: That's correct, Your
23 Honor, but if the opposing counsel would like me to
24 ask some more questions about the nature of this
25 record I'd be happy to do that.

PATSY JUDD - EX. BY MS. CREECH

THE COURT: Mr. Woodruff, is that what
you're requesting?

MR. WOODRUFF: Well, Your Honor, she
does not appear that she prepared these figures.
It appears they were prepared by somebody else. It
doesn't appear that these figures were ever sent to
her. These are figures that were sent to the
Finkel Law Firm. And so if she's testifying as to
numbers that I don't know if she's ever seen until
today I've got a problem with her testifying as to
what those figures are without a foundation as to
where these amounts came from.

THE COURT: Go ahead and respond.

BY MS. CREECH:

Q. Ms. Judd, you testified that this is a
record that CitiMortgage maintains in the course of
business?

A. Yes, it is.

Q. Are the events that are reflected in
this record prepared at or near the time of the
events recorded?

A. Yes.

Q. Are they prepared by someone with or
from information transmitted by a person with
knowledge?

1 PATSY JUDD - EX. BY MS. CREECH
2 A. Yes.

3 Q. And you've already testified that
4 they've been prepared in the regular course of
5 business?

6 A. That's correct.

7 Q. And that record also appears to be
8 transmitted to the Finkel Law Firm; is that
9 correct?

10 A. That's correct.

11 Q. From someone at CitiMortgage?

12 A. At CitiMortgage, yes.

13 Q. Would that be part of the ordinary
14 course of business in communicating with law firms
15 with respect to the debt figures under a specific
16 note?

17 A. Yes.

18 THE COURT: All right. I'm going to
19 overrule the objection in regards to that. If she
20 wants to give -- she's testified, and you can
21 certainly on cross-examination ask her how she
22 calculates those figures and her knowledge of --
23 and I can go to that. That's typically how the
24 amounts in a foreclosure action are established in
25 regard to this. So I'm going to allow this. What
 was the plaintiff's exhibit number?

PATSY JUDD - EX. BY MS. CREECH
MS. CREECH: Plaintiff's 5.

THE COURT: Plaintiff's Number 5, to
that extent.

MS. CREECH: Thank you, Your Honor.

(PLF. EXH. 5, Judgment figures, was
marked for identification.)

BY MS. CREECH:

Q. Ms. Judd, a moment ago you were telling
us about the negative escrow with respect to this
loan.

A. Yes.

Q. Can you tell us what CitiMortgage paid
with respect to escrow on this account?

A. Hazard -- you mean you want it broken
down? I'm sorry.

Q. Yes, ma'am. If you can tell us what
escrow went towards.

A. Hazard insurance was paid at \$4,940.40.
Then there was additional flood insurance of \$2,211
and there was county taxes of \$688.42.

Q. Has CitiMortgage continuously paid for
property taxes and insurance since the date of
default?

A. Yes.

Q. Do the note and mortgage allow for

1 PATSY JUDD - EX. BY MS. CREECH
2 recovery of the costs and fees with respect this
3 action?

4 A. Yes, it does.

5 Q. Where is that reflected in the loan
6 instrument?

7 A. In the note on 6E, I believe, and on
8 paragraph 21 on the -- of the mortgage. Sorry.

9 Q. And can you tell us what these judgment
10 figures -- the date these judgments figures are
11 good through?

12 A. They're good through April 14, 2017.

13 Q. Can you tell us what that means?

14 A. That means that it was calculated as of
15 that date if this were to be reinstated that would
16 bring it current.

17 Q. Okay. And so that includes escrow --
18 excuse me. That includes interest through that
19 date?

20 A. Yes, that's correct.

21 Q. So to determine the amount that would
22 be due and owing today we would need to subtract
23 the per diem interest between today's date and the
24 good through date; is that correct?

25 A. That's correct.

Q. Approximately how many days is that?

PATSY JUDD - EX. BY MR. WOODRUFF

A. 24 days.

Q. What is the per diem interest rate?

A. I don't have it off the top of my head.
I'm sorry. I'm not seeing it on this document.

Q. Is it reflected on the breakdown on the
second page?

A. I'm sorry. There it is. I just
couldn't find it. The per diem is 15.26380.

Q. So we would need to multiply 24 times
the per diem and have that figure subtracted from
the total payoff to have today's total debt figure?

A. That's correct.

MS. CREECH: Nothing further, Your
Honor.

THE COURT: All right.

Mr. Woodruff.

MR. WOODRUFF: Thank you.

EXAMINATION

BY MR. WOODRUFF:

Q. Ms. Judd, the original amount of this
loan was how much?

A. 69,700.

Q. 69,700?

A. That's correct.

Q. And as of June of 2013 the loan was

1 PATSY JUDD - EX. BY MR. WOODRUFF
current; is that correct?

2 A. Yes.

3 Q. And now we're at March or April of
4 2017, a little bit less than three years later, and
5 there haven't been any payments made since June of
6 2013; is that correct?

7 A. That's correct.

8 Q. But now the amount that is due to pay
9 this loan off in its entirety is how much?

10 A. \$91,574.84.

11 Q. So basically to pay it off today would
12 cost approximately \$23,000 more than when the loan
13 was originated in September of 2000; is that
14 correct?

15 A. Approximately, yes.

16 Q. Possibly or --

17 A. No. Approximately, yes.

18 Q. Approximately?

19 A. Yes.

20 Q. And this is a pretty high interest
21 rate, isn't it?

22 MS. CREECH: Objection.

23 THE WITNESS: Yes, it is.

24 BY MR. WOODRUFF:

25 Q. What's the state of --

PATSY JUDD - EX. BY MR. WOODRUFF
THE COURT: I'm sorry?

MS. CREECH: Objection to the
characterization.

THE COURT: Rephrase the question.

MR. WOODRUFF: She's already answered
it, but...

BY MR. WOODRUFF:

Q. This is a high interest rate, is it
not?

A. The 9.5 interest rate is a high
interest rate, yes.

Q. And you've been with CitiMortgage for
the last eight years?

A. Yes, sir.

Q. And what is your title?

A. Business operation analyst.

Q. And what was your former title?

A. I was a foreclosure specialist and
attorney escalation foreclosure specialist.

Q. Attorney escalation foreclosure
specialist?

A. That's correct.

Q. What are the job functions of an
attorney escalation foreclosure specialist at
CitiMortgage?

PATSY JUDD - EX. BY MR. WOODRUFF

1 A. When an attorney, so one of our
2 attorneys or -- mostly one of our attorneys needs
3 something immediately from Citi on a case they will
4 call the escalation line and they will get a
5 representative such as myself that could provide
6 that, such as postponing a sale, something that
7 they would need immediately, and I would go online
8 to get that done. I would go to get permission or
9 to provide a document that they needed right away.

10 Q. What is your job function today with
11 CitiMortgage? Do you fly all over the United
12 States to basically be a professional witness?

13 A. No. I do a lot of -- I do do witness,
14 but I do a lot of research on files for mediations,
15 for trial witnesses such as this. Also on
16 litigated cases I research Citi records for the
17 information that attorneys may need.

18 Q. Well, we're missing a lot of original
19 documents, aren't we, in this case?

20 A. There's -- yes, there are some missing,
21 yes.

22 Q. Ma'am?

23 A. Yes.

24 Q. What happened to the originals?

25 A. In this case I couldn't tell you for

1 PATSY JUDD - EX. BY MR. WOODRUFF
2 sure where the originals are. I would have to
3 research that.

4 Q. Was there ever any attempt made in this
5 case that you're testifying here on today to
6 attempt to obtain those original documents?

7 A. Not that I'm aware of.

8 Q. Do you know what the issues in this
9 lawsuit are?

10 A. Yes, I do.

11 Q. Tell me what the issues are.

12 A. What I -- from what I understand, the
13 issue of the -- whether Ms. Moxley signed the
14 security instrument or not, that she doesn't
15 remember doing so.

16 Q. And so if CitiMortgage has original
17 documents in their possession that would have
18 Mrs. Moxley's -- Mary Moxley's original signature
19 on those documents do you think that's not relevant
20 to this case?

21 MS. CREECH: Objection. Your Honor,
22 she's not qualified to answer that question.

23 THE COURT: Sustained.

24 BY MR. WOODRUFF:

25 Q. Why was no attempt to obtain the
original documents ever made?

PATSY JUDD - EX. BY MR. WOODRUFF

1 A. When we are asked to produce documents
2 we have a Citi system that we rely on for the
3 documents and we get -- we scan those documents --
4 the documents are scanned in there and those are
5 business records. We go to that over the computer
6 to get the records, which is our official business
7 records, and we rely on those records as being
8 accurate.

9 Q. You rely on those records as being
10 accurate, but the originals are available, to the
11 best of your knowledge, somewhere, are they not?

12 A. That's correct.

13 Q. But in this case no one bothered to
14 look for them?

15 A. We didn't feel the need to do so.

16 Q. So if a person's signature is the issue
17 in the case -- and I believe you testified that you
18 understood that's what the major issue is; is that
19 correct?

20 A. That's what I understand.

21 Q. And if you understood that and you have
22 in your records additional documents, original
23 documents that purport to have the defendant Mary
24 Moxley's signature on it, it wasn't important
25 enough to attempt to find those original documents?

PATSY JUDD - EX. BY MR. WOODRUFF
MS. CREECH: Same objection, Your

Honor. She's not qualified to answer that
question.

THE COURT: I'll sustain that
objection. She's testified that she did not and
what their procedure is. So I accept that
testimony.

BY MR. WOODRUFF:

Q. You have all of the exhibits in your
lap; is that correct?

A. Yes.

Q. Do you have Plaintiff's Exhibit Number
8? I'm sorry. Yes, Plaintiff's Exhibit Number 8,
and it's entitled appraisal. That is a document
that you testified is in the origination package
that would have been forwarded from the merger to
CitiMortgage; is that correct?

A. That is correct.

Q. And would the original of this document
be available?

A. I don't know. To the best of my
knowledge, it would if it is -- if we still have
the original -- the origination files, the
originals, it would be in there.

Q. You're aware that this lawsuit was

PATSY JUDD - EX. BY MR. WOODRUFF
1 begun in 2014, are you not? Do you know what was
2 the -- do you know when this foreclosure action
3 started?

4 A. Yes.

5 Q. What year?

6 A. In 2014.

7 Q. On Plaintiff's Exhibit 8 would you
8 please turn to the second page. That's a form,
9 isn't it, that somebody's filled in?

10 A. Yes.

11 Q. And then it says borrower and you can
12 read the word Moxley; is that correct?

13 A. That is correct.

14 Q. And then it says property address, does
15 it not?

16 A. Yes.

17 Q. And you can read the numbers 398?

18 A. Yes.

19 Q. Other than the word Moxley and the
20 three numbers, 398, on page two of Plaintiff's
21 Exhibit 8 can you read anything else in that box
22 and tell me what it says?

23 A. The Citi -- I mean Williams and the
24 Citi.

25 Q. What is the name of the Citi?

PATSY JUDD - EX. BY MR. WOODRUFF

1 A. Or Williams -- maybe I can't read the
2 whole thing.

3 Q. Well, I mean, if you think you can read
4 it tell me what it says, but if you can't read it
5 tell me you can't read it.

6 A. Yeah, I can't read it.

7 Q. There's some kind of code off to the
8 right. Can you read that?

9 A. No.

10 Q. Let me ask you another question. Page
11 two of this document, other than the word Moxley
12 and 398, can you read anything on this document
13 that's filled in? Anything anywhere on here?

14 A. No.

15 Q. On the mortgage that is marked as
16 Plaintiff's Exhibit 2, that original mortgage was
17 obtained and the original note was obtained; is
18 that correct?

19 A. That is correct.

20 Q. And then the original mortgage is
21 missing a page, and so on a temporary basis we have
22 Plaintiff's Exhibit 21 that does have a property
23 description; is that correct?

24 A. Yes. That's correct, yes.

25 Q. So Exhibit 21, on the property

1 PATSY JUDD - EX. BY MR. WOODRUFF
description, which I think is page 110 --

2 A. Yes.

3 Q. And then there is a property
4 description that includes the land and derivation
5 and a tax map number and another tax map number and
6 then a place for a serial number for a mobile home;
7 is that correct?

8 A. That's correct.

9 Q. And that serial number is totally
10 blank?

11 A. That's correct.

12 Q. Let's go back to the four payments.
13 Four payments were made by Mrs. Moxley. They were
14 all made in either June or July. I think you said
15 June; is that correct?

16 A. June 6th.

17 Q. And all made in a lump sum; is that
18 correct?

19 A. It was a lump sum was taken over the
20 phone.

21 Q. And are you aware that Mr. Moxley died?

22 A. Yes.

23 Q. And he died on February 21, 2013.

24 A. That's correct.

25 Q. Do you know the circumstances of his

1 Patsy Judd - Ex. By Mr. Woodruff
2 death?

3 A. I do not.

4 Q. Do you think it would be unusual for
5 somebody after suffering the death of their spouse
6 to not be able to recall things that happened
7 within a four month period of the date of death?

8 MS. CREECH: Objection, Your Honor.
9 She's not qualified to answer that.

10 MR. WOODRUFF: I'll withdraw the
11 question.

12 THE COURT: Okay. Withdraw the
13 question.

14 BY MR. WOODRUFF:

15 Q. You do have some of the origination
16 documents. Do you -- well, you've got the
17 appraisal in your hand, don't you?

18 A. Yes.

19 Q. Does that appraisal indicate that this
20 property is located in any flood zone?

21 A. No.

22 Q. But yet on this \$91,576 that
23 CitiMortgage says it is now owed on the original
24 \$68,000 loan from 2000 you're charging how much for
25 flood insurance? Plaintiff's Exhibit -- I'm sorry.
It's Plaintiff's Exhibit 5.

PATSY JUDD - EX. BY MR. WOODRUFF

1 A. It's \$2,211.

2 Q. And who are those payments made to?

3 A. I'm sorry. I don't have that
4 information.

5 Q. Well, they're made to an insurance
6 company to provide flood insurance; is that
7 correct?

8 A. They would be, yes. There would be an
9 insurance --

10 Q. Ma'am?

11 A. I'm sorry. What was the question?

12 Q. My question is: The flood payments
13 would be made to an insurance company to provide
14 flood insurance; is that correct?

15 A. That's correct, yes.

16 Q. But you don't know who those payments
17 were made to?

18 A. No.

19 Q. But you know that in the year 2000 the
20 appraisal does not indicate this was within any
21 flood zone?

22 A. That's correct.

23 Q. And so do you have any idea when it was
24 either remapped or when CitiMortgage decided that
25 flood insurance was needed?

PATSY JUDD - EX. BY MR. WOODRUFF

A. I do not know that date.

Q. And you don't know who the flood insurance payments were made to?

A. No, sir.

Q. Does CitiMortgage ever use the benefits of the National Flood Insurance Program offered through the federal government or do they use private flood insurance?

A. That I don't know.

Q. You're also charging -- and I guess the loan went delinquent in July after those four payments were made, July of 2013?

A. That's correct.

Q. And so for the last four years CitiMortgage has been paying the homeowners insurance on that property; is that correct?

A. That's correct.

Q. And homeowners insurance is actually a misnomer because it doesn't provide the homeowner with anything, the only person it protects is CitiMortgage; is that correct?

A. Okay. You might need to rephrase the first question. Homeowners insurance or mortgage insurance? What were you referring to? I'm sorry.

Q. I'm talking about mortgage -- I'm

1 PATSY JUDD - EX. BY MR. WOODRUFF
2 talking about insurance in case the mobile home
3 burned down to make CitiMortgage whole.

4 MS. CREECH: Objection, Your Honor.
5 She isn't qualified to respond to what the
6 insurance does and does not cover.

7 THE COURT: I'll let her answer whether
8 she knows or not. In her position I'm not sure she
9 knows or not. If she doesn't know she doesn't
10 know.

11 THE WITNESS: To the best of my
12 knowledge, homeowners insurance protects the
13 homeowner and the mortgage company in case the
14 house was to burn down.

15 BY MR. WOODRUFF:

16 Q. And sometimes that's referred to as
17 forced placed insurance, is it not?

18 A. If it was -- if there was no insurance
19 on the home and we had no insurance policy in place
20 or if it lapsed then we would force place
21 insurance, but it's -- regular insurance is not
22 forced placed.

23 Q. Do you have any idea who -- well, over
24 four years. The charges for four years was how
25 much?

26 A. \$4,948.40.

PATSY JUDD - EX. BY MR. WOODRUFF

1 Q. So over a four year period basically
2 \$1,250 a year just roughly?

3 A. Yes.

4 Q. But you don't know what type of
5 insurance that was?

6 A. No, I don't. I don't know who it was
7 paid out to.

8 THE COURT: Are you asking what type of
9 insurance or who it was paid to? I'm getting
10 confused on the question.

11 MR. WOODRUFF: I'm asking -- first I
12 asked what type of insurance it was, and I think
13 she offered her explanation.

14 BY MR. WOODRUFF:

15 Q. Now I'm asking: Do you know who the
16 insurance payments were made to?

17 A. No. I'm not sure.

18 Q. And if you don't know who they were
19 made to you don't know if CitiMortgage has a
20 financial interest in that insurance company that's
21 providing the insurance, do you?

22 A. I wouldn't know, no.

23 Q. So we've got about \$7,000 worth of
24 insurance, including flood insurance, for a piece
25 of property that when the loan was originated was

PATSY JUDD - EX. BY MR. WOODRUFF
not in a flood zone?

MS. CREECH: Objection, Your Honor.
She hasn't testified to that. She simply testified
as to what the contents were.

THE COURT: She testified that the
appraisal wasn't in the flood zone. I'll sustain
the objection based on that.

BY MR. WOODRUFF:

Q. Do you have any documents or in your
review in preparation to fly from Arizona to
testify here today do you have anything that you
can show me or tell me why this is now in a flood
zone?

A. I do not.

Q. Have you ever testified in a South
Carolina court before?

A. No, I have not.

Q. You're aware that different states have
different standards that make a mortgage valid?
Are you?

A. Yes.

Q. Do you know what are the requirements
to have a valid mortgage in the state of South
Carolina?

MS. CREECH: Objection, Your Honor.

1 PATSY JUDD - EX. BY MR. WOODRUFF
2 THE COURT: Go ahead. What's the
3 nature of the objection?

4 MS. CREECH: The nature of the
5 objection is that he's asking her a legal
6 conclusion.

7 THE COURT: I think she said initially
8 that she may know in certain states so I'll let her
9 answer the question.

10 THE WITNESS: I'm not aware of
11 specifically those requirements.

12 BY MR. WOODRUFF:

13 Q. Do you know how many witnesses there
14 have to be to a mortgage?

15 A. No, I do not.

16 Q. Are you a notary?

17 A. Yes.

18 Q. In what state?

19 A. Arizona.

20 Q. And tell me the function of a notary in
21 your home state of Arizona. What does a notary do?

22 A. A notary verifies that the person that
23 is signing the document is the person that's
24 attested to on the document as -- and the signature
25 is that person.

Q. In Plaintiff's Exhibit 2 there is a

1 PATSY JUDD - EX. BY MR. WOODRUFF
mortgage, is there not?

2 A. Yes.

3 Q. What is marked at the top of the page,
4 page 109, that's the recording page. Do you see
5 that?

6 A. Yes.

7 Q. That's basically the last page of the
8 mortgage, is it not? And when I say basically,
9 that's the signature page?

10 A. That's the signature page.

11 Q. And on this mortgage there's two
12 signatures by where borrowers -- borrower or
13 borrowers would sign; is that correct?

14 A. That's correct.

15 Q. And there's a signature William Moxley,
16 Jr. -- William C. Moxley, Jr.?

17 A. Yes.

18 Q. And underneath that there's a signature
19 that purports to be Mary L. Moxley; is that
20 correct?

21 A. That's correct.

22 Q. And then there's two witnesses?

23 A. Yes.

24 Q. And that's Tracy L. Kirkpatrick; is
25 that correct?

PATSY JUDD - EX. BY MR. WOODRUFF

A. That's correct.

Q. And then the second witness is John Ballentine; is that correct?

A. I couldn't tell who that was.

Q. Okay. Do you know John Ballentine?

A. I don't know him.

Q. Do you know who this gentleman is in the gray suit sitting with his 13 year old daughter?

A. I believe he -- he's John Ballentine.

Q. Okay. If you drop down to the bottom of the page that we're discussing it says, State of South Carolina, County of Richland; is that correct?

A. That's correct.

Q. Personally appeared before me, Tracy L. Kirkpatrick, who made oath that he, slash, she saw the within named, William Moxley, sign, seal and his acts and deeds deliver the within mortgage, and that herewith John Ballentine witnessed the execution thereof; is that correct?

A. That's what it says.

Q. Then there's a signature line where Tracy L. Kirkpatrick signed her name?

A. Yes.

PATSY JUDD - EX. BY MR. WOODRUFF

1 Q. All right. Based on you being a notary
2 in the state of Arizona, what exactly does that
3 mean? Does that mean that somewhere in Richland
4 County Tracy L. Kirkpatrick appeared before John
5 Ballentine and swore that she was with John
6 Ballentine when that mortgage was signed in
7 Richland County, South Carolina?

8 MR. MOORE: Object to the form, Your
9 Honor. That is not what this form says. He is
10 suggesting an answer on this thing. This document
11 has an oath that was executed in Richland County.
12 It does not state that the witness executed this
13 mortgage in Richland County and he's misleading the
14 witness by suggesting that that's what this states.

15 MS. CREECH: I'll withdraw the
16 question.

17 THE COURT: All right. Question
18 withdrawn.

19 BY MR. WOODRUFF:

20 Q. Go back up to the signature block. It
21 says, signed, sealed and delivered in the presence
22 of, and there's two signatures, Tracy L.
23 Kirkpatrick and John Ballentine; is that correct?

24 A. Yes, sir. If that's -- if that's his
25 signature.

PATSY JUDD - EX. BY MR. WOODRUFF

1 Q. Tell me what that means. Does that
2 mean that when it was signed by William Moxley that
3 both people were present?

4 A. That they were present, yes.

5 Q. In their presence?

6 A. That's what it says, yes.

7 Q. And there's a signature line and it's
8 handwritten in that purports to be Mary L. Moxley's
9 signature; is that correct?

10 A. That's correct.

11 Q. And based upon this document it appears
12 on the face of this document that Mary Moxley was
13 also in the presence of both Tracy L. Kirkpatrick
14 and John Ballentine at the time of the signing; is
15 that correct?

16 A. It appears so.

17 Q. And let me ask you one other question.
18 In your occupational specialty with CitiMortgage,
19 if you have a mortgage that is not witnessed is it
20 valid in any state of the United States?

21 MS. CREECH: Again, objection, Your
22 Honor. That's a legal conclusion.

23 THE COURT: Sustained.

24 BY MR. WOODRUFF:

25 Q. In your capacity as -- with your job

1 PATSY JUDD - EX. BY MR. WOODRUFF
2 title with CitiMortgage have you ever seen a
3 mortgage that was not witnessed?

4 MS. CREECH: Objection as to relevance.

5 THE COURT: I'll note the objection.
6 I'll let her answer if she's ever seen one.

7 THE WITNESS: Not that I recall.

8 BY MR. WOODRUFF:

9 Q. I'm going to direct your attention to
10 what has been marked as Plaintiff's Exhibit 12.

11 A. Is that the truth in lending?

12 Q. That's the HUD 1.

13 A. Oh. The HUD 1.

14 Q. On the HUD 1 -- and, of course, we --
15 at least I always start on page two of the HUD 1.
16 If we go to item 801, that's the loan origination
17 fee; is that correct?

18 A. Yes.

19 Q. And how much was the loan origination
20 fee paid to Sturkie Mortgage?

21 A. \$1,394.

22 Q. And then there was a lender inspection
23 fee on line 805?

24 A. Yes.

25 Q. How much was that inspection fee?

A. Zero.

PATSY JUDD - EX. BY MR. WOODRUFF

Q. I'm sorry. You're right. It is.

And on line 806 there was an
underwriting fee of how much?

A. \$200.

Q. And that was paid to CitiMortgage's
predecessor, ABN AMRO Mortgage?

A. Yes.

Q. And then there was a document
preparation fee also paid to ABN AMRO Mortgage of
\$150; is that correct?

A. That's correct.

Q. And that's on line 807?

A. Uh-huh.

Q. What documents typically are prepared
in the document preparation fee?

A. Normally the origination, the note, the
deed, the -- anything that has to do with the
mortgage to put it all together and record.

Q. So normally the -- normally the
mortgage is not prepared by the attorney that
closes the loan, it's prepared by the lender?

A. Normally, in my experience that I've
known.

Q. But you don't know what that \$150 was
actually for, do you?

PATSY JUDD - EX. BY MR. WOODRUFF

1 A. No, because I don't work for them.

2 Q. Ma'am? Because you don't work for
3 them? They don't exist anymore.

4 A. Right. And I didn't originate the loan
5 so I wouldn't know what that would be.

6 Q. Right. Because they were bought out by
7 the company you work for?

8 A. They merged, yes.

9 Q. And then line 808 is a yield spread
10 premium paid to Sturkie Mortgage; is that correct?

11 A. Yes.

12 Q. And that is paid outside of closing?

13 A. That's what it looks like.

14 Q. And that was about \$2,000. Can you
15 tell me what a yield spread premium is?

16 A. No, I cannot.

17 Q. Would it be fair to say that a yield
18 spread premium is basically a kickback to the
19 mortgage company for writing the mortgage at a
20 higher interest rate than what the borrower would
21 qualify for?

22 MS. CREECH: Objection, Your Honor.
23 She already testified that she doesn't know what
24 that charge is.

25 THE COURT: I'll sustain the objection.

PATSY JUDD - EX. BY MR. WOODRUFF
BY MR. WOODRUFF:

Q. If you'd come down to the title charges. There was a title charge of \$155 to a title examiner to clear title; is that correct?

A. Yes.

Q. Title insurance binder of \$25 to Ratchford & Associates?

A. Yes.

Q. Attorney fees to Ratchford & Associates?

A. Yes.

Q. Title insurance to Ratchford & Associates --

A. Yes.

Q. -- for \$200; is that correct?

A. Yes.

Q. And that only included the lender's coverage, it didn't include anything for the owner; is that correct?

A. That's what -- yes, that's correct.

Q. Do you know what was covered under those attorney's fees that were paid to Ratchford & Associates?

A. I do not.

Q. What normally would be covered under

1 PATSY JUDD - EX. BY MS. CREECH
attorney's fees to Ratchford & Associates?

2 A. I do not know.

3 MR. WOODRUFF: You don't know.

4 That's all the questions I have.

5 THE COURT: Anything on redirect?

6 MS. CREECH: If I could have just one
7 moment.

8 THE COURT: Sure.

9 MS. CREECH: I just have one question,
10 Your Honor.

11 EXAMINATION

12 BY MS. CREECH:

13 Q. Ms. Judd, you previously testified that
14 the origination appraisal did not have any
15 indication regarding the location of the property
16 in the flood zone; is that correct?

17 A. Not that I saw. Yes, that's correct.

18 Q. Is it possible that there's other
19 documentation from the origination that would
20 indicate that the property is in a flood zone?

21 A. There usually is determination of that
22 in the origination package.

23 Q. So it is possible?

24 A. Yes, it is.

25 MS. CREECH: Thank you.

PATSY JUDD - EX. BY MR. WOODRUFF

THE COURT: Go ahead, Mr. Woodruff. I

assume that's in response to that one question?

MS. CREECH: Yes, sir, it is.

THE COURT: Okay.

EXAMINATION

BY MR. WOODRUFF:

Q. You indicated you reviewed this entire package before you came from Arizona, basically across the United States, to South Carolina to testify; is that correct?

A. That's correct.

Q. Do you recall seeing anything other than the charges for flood insurance that would indicate this is now in a flood zone?

A. I don't recall seeing anything.

Q. On the HUD 1, which is Plaintiff's Exhibit 12, that was the last document you and I were talking about --

A. Yes.

Q. Is there any -- are there any charges on the HUD 1 that would indicate that this property was in a flood zone in the year 2000?

A. I see nothing on there.

MR. WOODRUFF: That's all the questions I have.

PATSY JUDD - EX. BY MS. CREECH
EXAMINATION

BY MS. CREECH:

Q. Have you seen the standard flood hazard certification determination with respect to this loan?

MR. WOODRUFF: Your Honor, I think I object. She's already testified that she doesn't have any recollection of seeing anything.

THE COURT: That was the answer that you asked -- the question you just asked. I'll let her answer on the specific document and I'll let you recross on that question.

THE WITNESS: I -- I can't recall. There were a lot of documents. I can't recall.

MS. CREECH: If I may, Your Honor.

THE COURT: Has Mr. Woodruff seen that?

BY MS. CREECH:

Q. Have you seen this document before?

A. I can't say whether I have or haven't. It looks familiar, but I really couldn't say.

Q. Can you tell us what the document is?

A. It's a Federal Emergency Management -- FEMA standard loan hazard determination.

Q. And does it appear to be related to the loan that is the subject of this action?

1 PATSY JUDD - EX. BY MS. CREECH
2 A. Yes, it does.

3 Q. Does it identify the property or the
4 borrower?

5 A. Yes. Both the property and the
6 borrower.

7 Q. And what's the date of that document?

8 A. 9/25/2000.

9 Q. Which is the same year as the closing
10 for the document?

11 A. That's correct.

12 Q. Does this document make any
13 determination with respect to whether the property
14 is in a flood zone or requires flood insurance?

15 A. It makes some determination that it's
16 at a minimal or moderate flood risk area. It is
17 not a -- it also notes that it's not in a special
18 flood hazard area. That's all I note on that.

19 Q. And in your experience, properties that
20 may not necessarily be in a special flood area but
21 that are in a low to moderate flood risk area, do
22 those require flood risk insurance for purposes of
23 CitiMortgage's servicing of mortgages? Is that
24 typically a lender requirement?

25 A. It's typically a lender -- yes. It's
 up to the lender -- I was just going to say it's up

1 PATSY JUDD - EX. BY MR. WOODRUFF
2 to the lender to determine which areas they
3 determine need flood insurance to protect the
4 property.

5 MS. CREECH: No more questions.

6 THE COURT: All right.

7 Mr. Woodruff?

8 EXAMINATION

9 BY MR. WOODRUFF:

10 Q. Somebody was receiving money for
11 providing flood insurance and you testified you
12 don't know who it was?

13 A. No. I couldn't -- I don't know who it
14 was.

15 Q. Does CitiMortgage provide insurance and
16 receive a premium for writing that insurance?

17 MS. CREECH: Objection as to relevance.

18 MR. WOODRUFF: I think it's relevant if
19 CitiMortgage is actually forcing insurance on their
20 customers and also collecting a premium or a
21 commission for writing that insurance. I think
22 it -- I think it does go to show the business model
23 of system.

24 THE COURT: What was your question
25 again?

BY MR. WOODRUFF:

PATSY JUDD - EX. BY MR. WOODRUFF

1 Q. Does CitiMortgage provide insurance --
2 forced insurance or flood insurance or any type of
3 insurance product for which CitiMortgage receives a
4 commission for writing that insurance?

5 MS. CREECH: Your Honor, we
6 additionally object on the grounds that this
7 question is beyond the scope of the redirect, which
8 was limited to the question of the property being
9 in a flood zone or being described in a flood zone
10 in any of the servicing records.

11 MR. WOODRUFF: She opened the door,
12 Judge.

13 THE COURT: It's cross-exam. It should
14 be limited to that. I'm going to allow -- since we
15 are also talking about flood insurance I'm going to
16 allow it if the witness knows the answer to that
17 question.

18 THE WITNESS: CitiMortgage does not --
19 is not an insurance company. So we do not provide
20 insurance, nor do we collect premiums on insurance.

21 BY MR. WOODRUFF:

22 Q. Does CitiMortgage get a commission when
23 they force place insurance?

24 A. Not that I'm ever aware of.

25 Q. You've never been made aware of that?

1 PATSY JUDD - EX. BY MR. WOODRUFF
2 A. No.

3 MR. WOODRUFF: That's all the questions
4 I have.

5 THE COURT: Anything else for this
6 witness?

7 MS. CREECH: Nothing further.

8 THE COURT: All right, ma'am. You can
9 take a seat. Make sure all the exhibits are still
10 here, please.

11 MS. CREECH: And if we may, Your Honor,
12 have this witness excused for her flight.

13 THE COURT: We've got one thing, a form
14 that was introduced here. Is that an exhibit --

15 THE WITNESS: The flood --

16 THE COURT: -- or was that just for
17 questioning purposes?

18 MS. CREECH: Could we maybe offer it as
19 21 [sic] just for identification purposing since we
20 discussed it?

21 THE COURT: For ID only, Mr. Woodruff?

22 MR. WOODRUFF: I don't mind --

23 MS. CREECH: 22. Excuse me.
24 Plaintiff's 22.

25 MR. WOODRUFF: I don't mind if it's
produced.

PATSY JUDD - EX. BY MR. WOODRUFF
MS. CREECH: We'll offer it into

evidence then.

THE COURT: Plaintiff's 22. What's the
title of the document?

THE WITNESS: It's the flood
determination.

THE COURT: Flood determination.
That's without objection.

(PLF. EXH. 22, Flood Determination, was
marked for identification.)

MR. WOODRUFF: Your Honor, this
witness -- obviously she's flying back to Arizona.
She's going to be in the air even with the time
difference. We have no objections to her being
dismissed.

THE COURT: Thank you.

All right, ma'am. Thank you for being
here. You're free to go.

THE WITNESS: Thank you very much.

THE COURT: All right. We have two
witnesses remaining. The court reporter says she's
hungry. So why don't we break until 3:00 and then
you can call your next witness. Let me ask: How
much time do you think that witness is going to
take, estimated?

PATSY JUDD - EX. BY MR. WOODRUFF
MR. MOORE: 15 minutes.

THE COURT: What do you think on
cross-examination? I know you don't have any idea
because you haven't heard direct, but I'm just
trying to get an estimate. You've probably got
some idea of some of the questions you're going to
ask.

MR. WOODRUFF: 15 minutes. And quite
frankly, I don't anticipate my client is going to
be on the witness stand that long. I don't know
how bad --

THE COURT: 30 minutes total you think
if you had to estimate?

MR. WOODRUFF: I would think.

THE COURT: We'll get through by 5:00,
it sounds like, if the other witnesses are only
going to be 30 minutes.

All right. Let's come back by 3:00
then from lunch.

(A luncheon recess transpired.)

MS. CREECH: I'd like to offer one
additional document into evidence. I just pulled
this from the Aiken County Assessor's office. It's
a certified copy of the parcel flood map which
indicates the subject property is on -- take a look

1 PATSY JUDD - EX. BY MR. WOODRUFF
at that. I'll show you a copy of the receipt.

2 Again, it's a document of which the Court can take
3 judicial notice of and we would move to offer that
4 as Plaintiff's 23, I believe.

5 MR. WOODRUFF: I'm going to object to
6 this unless she can testify that that's an accurate
7 document.

8 MS. CREECH: Your Honor, I was told
9 that this documentation from the Assessor's office
10 is their official sealing for this type of record.
11 This is the only kind of certified document they
12 would provide.

13 THE COURT: Let me take a look at the
14 document, please.

15 MR. MOORE: Your Honor, we would think
16 it's a certified public record, which is self
17 authenticating, and there's no need for a witness
18 to testify.

19 THE COURT: All right, Mr. Woodruff.
20 I'll be glad to hear your objections.

21 MR. WOODRUFF: Judge, it doesn't appear
22 to have any certification on it, to me. I think if
23 she had somebody that could testify that, yes,
24 that's a true and accurate copy of some record that
25 the county maintains, or if she had certification

1 PATSY JUDD - EX. BY MR. WOODRUFF
2 authenticating it, but unless I missed it -- I was
3 really trying to determine where the property was.
4 But I just don't see it on there, unless I'm
5 missing it. And I could have been. I'm just --

6 THE COURT: What were they indicating
7 was their mark on here that --

8 MS. CREECH: The bottom left-hand
9 corner, Your Honor.

10 THE COURT: Where it says prepared by
11 the county government 3/20/17 --

12 MS. CREECH: Yes, sir.

13 THE COURT: -- initials J.B.

14 MS. CREECH: And I also have the
15 corresponding receipt for the copy which is from
16 the Aiken County government.

17 THE COURT: Let me see that as well,
18 please.

19 MR. WOODRUFF: Judge, if she wants to
20 testify to it I'd love to have the opportunity to
21 cross-examine her.

22 THE COURT: All right. I'll note the
23 object on it. However, I will admit it as
24 Plaintiff's Number -- which number are we at?

25 MS. CREECH: 23, Your Honor.

THE COURT: The receipt will be part of

1 that as well.

2 (PLF. EXH. 23, Certified copy of the
3 parcel flood map, was marked for identification.)

4 MR. MOORE: Your Honor, the plaintiff
5 calls John Ballentine.

6 JOHN BALLENTINE
7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. MOORE:

10 Q. Mr. Ballentine, can you state your full
11 name for the Court, please.

12 A. My name is John Keith Ballentine.

13 Q. And your address?

14 A. Home address?

15 Q. Yes.

16 A. 60 Beacon Hill Court, Columbia, South
17 Carolina.

18 THE COURT: Can you spell your last
19 name for me, please.

20 THE WITNESS: Yes, sir.
21 B-as-in-boy-A-L-L-E-N-T-I-N-E.

22 THE COURT: All right.

23 BY MR. MOORE:

24 Q. And, Mr. Ballentine, what's your
25 current occupation?

1 A. Current occupation, I work at Palmetto
2 Health as director of administration and finance
3 for graduate medical education.

4 Q. And how long have you been there?

5 A. One year and nine months in that
6 position.

7 Q. Prior to that, where did you work?

8 A. Prior to that, I worked at South
9 University as director of finance.

10 Q. And in your current position what are
11 your job responsibilities?

12 A. Current position, primarily we have
13 approximately 24 residency programs and I help with
14 the accreditation standards, budgets. Every one of
15 them has their own budget, finance issues, capital
16 projects, et cetera.

17 Q. In September of 2000 where were you
18 employed?

19 A. In September of 2000 I was employed
20 with Ratchford & May.

21 Q. What was your capacity at Ratchford &
22 May?

23 A. Loan closer there.

24 Q. Was that a law firm?

25 A. Yes.

1 Q. Did you have a designation as a
2 paralegal?

3 A. Yes.

4 Q. What did you do in that role as
5 paralegal and loan closer?

6 A. Primarily it was traveling the state
7 doing closings and then doing closings in the
8 office.

9 Q. When you say doing closings, what would
10 you do?

11 A. The packages were prepared and the
12 closings were lined up ahead of time. The package
13 was then given to me -- and these were only
14 refinance. I never did a purchase closing. The
15 packages were given to me, I would go to wherever
16 the borrower was at that time, get the appropriate
17 signatures and then return the signed documents.

18 Q. I'm going to hand you what's been
19 marked as Plaintiff's Exhibit Number 2 and ask you
20 to look at that document, please. Just let me know
21 when you're through looking at it.

22 A. Okay.

23 Okay.

24 Q. Do you see your signature on that
25 document?

1 A. I do.

2 Q. Where do you see your signature on that
3 document?

4 A. My signature on this document is on
5 page five of five, based on this document, and is
6 there next to the signatures and then also down
7 under the notary area.

8 Q. Okay. You signed that document as a
9 witness?

10 A. Yes.

11 Q. And as a notary public?

12 A. Yes.

13 Q. Are you a notary public?

14 A. Yes.

15 Q. You still are?

16 A. Still am, yes.

17 Q. And you were a notary public at that
18 point in time?

19 A. Correct.

20 Q. What were you witnessing?

21 A. At this point I was witnessing the
22 signatures of the borrowers that were there to sign
23 the documents. That was primarily what I was
24 looking to witness, was make sure that the person
25 that was signing the documents was, in fact, the

1 person they attested to be.

2 Q. All right. And so you witnessed the
3 execution of this document?

4 A. Yes.

5 Q. Who did you witness the execution --
6 who told you they were signing this document?

7 A. At this point it would have been
8 William Moxley and Mary L. Moxley.

9 Q. Let me get you to look at a document
10 that's been marked as Plaintiff's Exhibit Number
11 19. That document has been identified by
12 Plaintiff's witness as a copy of two driver's
13 licenses. Do you see that?

14 A. Yes, I do.

15 Q. Is that what you recognize those to be?

16 A. Yes, these are driver's licenses,
17 correct.

18 Q. The witness also -- and you were here
19 for the testimony -- testified that they were in
20 the loan origination file.

21 A. Correct.

22 Q. Do you know how these -- the copy of
23 these driver's licenses got in the loan origination
24 file?

25 A. Yes. That would have been one of two

1 ways. In this particular closing I'm not sure
2 which way, but it would have been -- I would have
3 picked it up at the closing when I arrived. Prior
4 to my going to the closing the borrowers are
5 notified to have a copy of their driver's license
6 so that we can take that back. If for some reason
7 or another that was not there at the time, the
8 photocopy wasn't, I would verify -- visually verify
9 driver's licenses and then we would receive that
10 later. So, yes, that was how that would get into
11 the origination file.

12 Q. All right. And so why do you ask for
13 driver's licenses?

14 A. To verify the identity of who is
15 signing these documents.

16 Q. All right. So before anybody signed --
17 and let's look just at Exhibit Number 2. Before
18 anybody signed Exhibit Number 2 you requested that
19 they provide you with a driver's license?

20 A. I would have needed a driver's license
21 prior to, yes.

22 Q. All right. And so these are the two
23 driver's licenses that you reviewed on this
24 closing?

25 A. These would have been -- I don't

1 remember this closing in particular. There were a
2 lot of closings. However, I can speak to my
3 standard practices, and it was nobody would sign as
4 a person unless I had verified with a federal ID
5 that they were, in fact, that person.

6 Q. So looking in Exhibit Number 2, before
7 Mary Moxley signed that document you got a copy of
8 her driver's license and you looked at it and you
9 verified that it was her?

10 A. Yeah. I would have seen her driver's
11 license and verified it was her, correct.

12 Q. And you said you don't specifically
13 recall this?

14 A. This particular closing, I don't.

15 Q. Okay. You've seen Ms. Moxley.

16 A. Uh-huh.

17 Q. She's sitting over here with her
18 attorney today. Seeing her today, does that
19 refresh your recollection?

20 A. I does not. I'm sorry. We did a lot
21 of closings.

22 Q. All right. So based on the presence of
23 these driver's licenses in the origination file,
24 the mortgage that you have reviewed as Exhibit
25 Number 2 and your witnessing of that mortgage, can

1 you tell the Court that Mary Moxley signed this
2 mortgage?

3 A. Based on what I know and my procedure
4 around this and what I see in my hand I would not
5 have any doubt that Mary Moxley would have signed
6 this mortgage.

7 Q. All right. I am going to hand you two
8 other documents. Let's just put those back in the
9 stack there. We're going to look at Exhibit
10 Numbers 14 and 15. If you could pull those out.

11 MR. MOORE: Your Honor, these -- 14 and
12 15 have been marked for identification purposes
13 only. Neither one of them are in evidence.

14 THE COURT: Okay.

15 THE WITNESS: Okay.

16 BY MR. MOORE:

17 Q. Do you have those in front of you?

18 A. Yes, sir.

19 Q. Looking at both of those documents, do
20 you see your signature on either of those?

21 A. I do see my signature on both of these.

22 Q. All right. And the first one, Number
23 14, what is that?

24 A. The seller/borrower's affidavit and
25 indemnity agreement. This was a standard document

1 that was in our closing packet at Ratchford & May.

2 Q. So you recognize this as a document
3 that you would have taken with you to a closing --
4 to a residential closing such as the Moxley
5 closing --

6 A. Correct.

7 Q. -- to witness as executed?

8 A. Yes, correct.

9 Q. And Number 15, what is that?

10 A. Number 15, affidavit and agreement.

11 This is another one that is a standard document we
12 had. There were a couple of standard documents
13 that went with every single loan closing and this
14 looks just like one of the other standard copies in
15 there.

16 Q. And your signature is at the bottom of
17 both of these documents?

18 A. Correct.

19 Q. And you're signing as a notary?

20 A. Correct.

21 Q. What were you signing as a notary for?

22 A. To attest to the fact that the
23 signatures that are on here as borrowers, or
24 sellers in some cases, were, in fact, the folks
25 that they professed to be based on visual

1 verification of their driver's license.

2 Q. So before they signed these documents
3 that you notarized you would verify the identity
4 through a driver's license?

5 A. Yes, sir.

6 MR. MOORE: Your Honor, we'd offer
7 Exhibit Number 14 and Exhibit Number 15 into
8 evidence.

9 THE COURT: Mr. Woodruff?

10 MR. WOODRUFF: Judge, I believe the
11 witness testified that he has no independent
12 recollection of this particular closing. He's
13 testified he doesn't recognize Mrs. Moxley. He's
14 testified as to what his procedures were. There's
15 a signature on each one, on both 14 and 15, that
16 purport to be the signature of my client.
17 Obviously, CitiMortgage had the opportunity to
18 obtain the original documents. The original
19 documents are not here. I don't think that John
20 Ballentine is sitting up there as a witness stating
21 that these are records that he maintained in the
22 normal course of his business. I would welcome the
23 originals to be introduced. CitiMortgage has them.
24 CitiMortgage brought this lawsuit in 2014 to take
25 away my client's home. My client has consistently

1 stated she never signed this. I object. If they
2 want to get the original, that's fine, but I
3 object.

4 THE COURT: All right. Go ahead,
5 Plaintiff.

6 MR. MOORE: Your Honor, these are being
7 offered to prove that Mary Moxley attended the
8 closing and that she signed documents related to
9 that closing. That is the purpose of these
10 documents, not to prove what is in the documents.
11 This witness has testified to his original
12 signature on a mortgage. These are documents which
13 Defendant's counsel has indicated come from a
14 closing attorney's file. This is the person that
15 that law firm sent to close. He is testifying that
16 he knows that he was there because these documents
17 contain his notarization following the execution by
18 the two witnesses and read that in conjunction with
19 the driver's license and the original signatures
20 there on the mortgage.

21 THE COURT: What does the original give
22 you, Mr. Woodruff, that the copy doesn't give you
23 if he recognizes his signature? He would still say
24 he can't remember the particular closing. I
25 remember that. He can't remember Mrs. Moxley. I

1 don't disagree with you on that. He's testified to
2 that. He's said, here's what my procedure is, that
3 is my signature on these, and here's the procedure
4 I would do. If he had the original how would the
5 testimony be any different?

6 MR. WOODRUFF: Judge, I don't think it
7 matters if the testimony was any different. What
8 does matter is under the South Carolina rules of
9 evidence there are certain times that it's
10 appropriate to introduce copies and there's other
11 times that copies are not admissible. I don't
12 think that anyone can claim that this witness right
13 here maintained the copies in the normal course of
14 his business. He says -- his testimony was he
15 doesn't remember. He looked at copies and said,
16 yes, those are documents that existed 17 years ago
17 when he was a paralegal apparently going throughout
18 the state closing loans, but I maintain you still
19 have to have the originals. These are not
20 admissible.

21 The plaintiff had ample -- ample
22 opportunity -- this is a 2014 case. If they wanted
23 to get the originals, they could.

24 THE COURT: Anything else from the
25 plaintiff?

1 MS. CREECH: Nothing.

2 MR. MOORE: No, Your Honor.

3 Your Honor, if I could ask a follow-up
4 question to this witness.

5 THE COURT: In reference to --

6 MR. MOORE: In reference to the
7 admissibility of these two exhibits.

8 THE COURT: I'll allow another
9 question.

10 BY MR. MOORE:

11 Q. Looking at Exhibit Number 14 and
12 Exhibit Number 15, does that help you confirm your
13 understanding that you were present at a closing
14 where Mary Moxley was present and signed loan
15 closing documents?

16 A. Based on what I'm seeing here and what
17 I can remember from that time frame, I would really
18 have no doubt in my mind that I was at this
19 closing.

20 Q. And that Mary Moxley was present and
21 signed these documents?

22 A. Correct.

23 MR. MOORE: And that's the purpose for
24 which we're offering it in evidence, Your Honor,
25 not for what the documents themselves say.

1 MR. WOODRUFF: There, again, Your
2 Honor, they have to have the original. They have
3 the original in their possession. They could have
4 gotten the original. This is 2014 case. They can
5 get 270 some odd pages of records from their
6 computer, they can redact it, they can drop it on
7 my door, have it delivered by the post office at
8 2:45 p.m. on Friday afternoon before we come to
9 court at 10:00 a.m. on Monday.

10 The prior Plaintiff's witness testified
11 that one of her functions as a liaison in
12 foreclosures was when lawyers needed documents she
13 would get those documents and send them to the
14 lawyers. And apparently -- I got the impression it
15 was the lawyer has -- I believe it was foreclosure
16 lawyers escalation specialist. She said it was her
17 job to get the documents. They had ample -- ample
18 opportunity to get any original documents that they
19 wanted to get, but they didn't bother to do that.

20 THE COURT: Okay. I think what I
21 recall from her response to that was they scanned
22 documents in and that became the origination
23 folder. So I assume anything they normally seen
24 would be copies. I don't know about that objection
25 on the original. I'm looking at 100.2 South

1 Carolina Rules of Evidence and it talks about the
2 original writing and forwarding of photographs
3 prior in order to prove its content unless the
4 rules or statute provides otherwise.

5 Rule 100.3 talks about the
6 admissibility of duplicates. A duplicate is
7 admissible to the same extent as the original
8 unless a genuine question is raised as to the
9 original's authenticity or the circumstances make
10 it unfair to admit the duplicate.

11 MR. WOODRUFF: Your Honor, if I could
12 address that. That is the entire crux of this
13 whole case. The entire crux of this whole case is
14 did my client sign it. And that's what we have
15 consistently -- consistently stated. She has no
16 recollection of ever signing anything.

17 So that's what this whole case is
18 about. And for something as important as what this
19 case has been for the last two years, I -- it's
20 almost inconceivable to me that they come up here
21 with two documents that they purport to be copies
22 of originals when they could have so easily gotten
23 the originals.

24 THE COURT: Well, as I read it, it says
25 or circumstances make it unfair to admit the

1 duplicate. That's why I asked that additional
2 question.

3 I'm sorry. If you have something to
4 add....

5 MR. MOORE: The only thing I would add,
6 Your Honor, and we'll get into this when Ms. Moxley
7 testifies, but her testimony is not only that she
8 does not remember this closing, but that also she
9 doesn't think that certain documents look like her
10 signature, but on each of these documents the
11 evidence that we'll produce here today, she says
12 those do look like her signature. So she had the
13 opportunity during her deposition to look at each
14 one of these that were a copy. She provided
15 testimony in her deposition as to copies without
16 demanding the originals.

17 THE COURT: I think we're getting a
18 little ahead on that argument because she hasn't
19 testified yet. And I don't know what it's got to
20 do with these documents on this witness, but I
21 still look at the unfair nature of admitting the
22 duplicate on here. I really have not heard an
23 argument on the original, why it would place a
24 certain or unfair advantage based on the testimony,
25 which is he recognizes his signature and here is

130.
1 his procedure. I think that the rest of it goes to
2 his weight. He says he does not remember
3 Mrs. Moxley and he does not remember that
4 particular closing. He said, here's my procedure,
5 he says, based on his procedure he feels confident
6 that he was there, but at the same time he said he
7 can't testify she was there from his own
8 recollection or memory. That's how I see the
9 testimony that's been given, but as far as ruling
10 on the documents, because I don't see the unfair
11 nature of the admissions of these based on the
12 testimony I'm going to note the objection for the
13 record, but I'm going to allow those in as
14 Plaintiff's Exhibits 14 and 15 subject to,
15 obviously, cross-examination about them.

16 All right. You may proceed.

17 MR. MOORE: Thank you, Your Honor.

18 BY MR. MOORE:

19 Q. Let me ask you to look at documents
20 which have been admitted into evidence that are
21 numbered Plaintiff's Exhibits 12, 16 and 18. Have
22 you found them?

23 A. I've got 12.

24 Q. And you have 16 and 18 as well?

25 A. Yes, I do. Okay.

1 Q. Exhibit Number 12 is a -- I call it a
2 HUD 1 settlement statement. Is that the type of
3 document that you would normally have executed in a
4 residential real estate closing transaction?

5 A. Yes.

6 Q. How about Number 16, the notice of
7 rider residual?

8 A. Yes, this would have been a standard
9 document.

10 Q. And Number 18?

11 A. Truth in lending, yes, this would have
12 been a standard document.

13 Q. And these are the types of documents
14 that you would have had executed at closing?

15 A. Yes.

16 Q. Based on your review of all the
17 documents you've seen here today, the other closing
18 documents, the mortgage, the driver's licenses, can
19 you say -- can you tell the Court whether or not
20 Mary Moxley signed these documents?

21 MR. WOODRUFF: Objection, Your Honor.
22 The witness has already testified that he has no
23 independent recollection of this closing, nor of
24 Mrs. Moxley. And since he's already testified, now
25 what opposing counsel is attempting to do is say,

1 well, you did it and Mr. Moxley was there, after
2 he's already testified he has no recollection of
3 it. So I object to this question.

4 THE COURT: Response from Plaintiff?

5 MR. MOORE: Your Honor, we just merely
6 asked if he can say from the documents that he
7 reviewed, which are dated the same day as the
8 mortgage and the other documents that are in
9 evidence, whether these are the documents that
10 Ms. Moxley signed -- would have signed at closing.

11 THE COURT: I think you can ask him
12 about what normally happens during the procedure,
13 but I kind of agree with Mr. Woodruff on this
14 objection. With him saying -- if I understood the
15 question, it was -- you were asking him did
16 Ms. Moxley sign those documents. He's already said
17 he doesn't remember her, he doesn't remember the
18 closing in specifics. He remembers what his
19 procedure is. Based on that, here's what would
20 happen. I think he can testify to those things,
21 but to come out and say that she signed and respond
22 to that direct question when he says he doesn't
23 have any memory of it, I'm troubled by that. So I
24 think you could rephrase it, but I'm going to grant
25 the objection based on how I understood the

1 question on that one.

2 BY MR. MOORE:

3 Q. Looking at these three documents, if
4 you were handling closing of this transaction,
5 which you testified you were, would anybody other
6 than Mary Moxley have appeared before you and
7 signed these documents?

8 MR. WOODRUFF: Objection, Your Honor.

9 MR. MOORE: I think he can testify
10 whether or not somebody other than the named
11 person --

12 THE COURT: Let me hear the objection.

13 MR. WOODRUFF: He testified that he has
14 no recollection of the closing that occurred
15 17 years ago and for opposing counsel to come in
16 and attempt to use the back door as an entrance to
17 ask a question that you just ruled is not
18 admissible based on his prior testimony, I don't
19 think -- I don't think he can actually testify. He
20 has no recollection. That's what he testified to.
21 I don't think he can change the testimony.

22 THE COURT: I think that question was a
23 little bit different. If you ask that -- do you
24 know the question you asked of him?

25 BY MR. MOORE:

JOHN BALLENTINE - EX. BY MR. WOODRUFF

Q. Let me just ask it a different way.

Did you ever conduct a closing where someone other than the person who was to sign the documents came in and signed the documents?

A. No.

THE COURT: Any objection to that question?

MR. WOODRUFF: Other than I don't think you always know. And I do know of instances here in Aiken where people have brought other people to closings.

THE COURT: Well, that's subject to cross-examination. You can ask him about that.

MR. MOORE: No further questions of this witness, Your Honor.

THE COURT: All right.

Cross-examination.

EXAMINATION

BY MR. WOODRUFF:

Q. All right. Mr. Ballentine, I'm Tom Woodruff. You and I met this morning.

A. Yes, sir.

Q. You're here with your 13 year old daughter?

A. Yes.

JOHN BALLENTINE - EX. BY MR. WOODRUFF
Q. Impressive young lady.

Let's talk about your background. You
are currently in the finance administration field
for a hospital -- for Palmetto Health; is that
correct?

A. That is correct.

Q. All right. Prior to that -- let's go
all the way back to 2002. You testified that you
were a paralegal for Ratchford & Associates; is
that correct?

MR. MOORE: Objection, Your Honor. I
think it was 2000.

BY MR. WOODRUFF:

Q. 2000. I'm sorry.

A. That was my title there, yes, sir.

Q. You were a paralegal?

A. Yes.

Q. Tell me what your duties as a paralegal
were.

A. The duties around that job were to take
loan packages that were prepared, to schedule the
loans and then to go to the client in most cases --
occasionally they would come to our office in
Columbia, but usually it was to go to the client's
residence or an office close by and then --

JOHN BALLENTINE - EX. BY MR. WOODRUFF

1 Q. Sorry. What?

2 A. Or an office close by to them. So if
3 it was a mortgage broker in Aiken I would go to the
4 mortgage broker's office in Aiken or, you know,
5 different areas.

6 So, anyway, it was to go to that site,
7 obtain the proper signatures, proper
8 identification, and to verify their identity,
9 obtain their signatures on it, and then return to
10 our office with that package.

11 Q. And what was your background to hold
12 yourself out as a paralegal? What legal training
13 did you have to hold yourself out to the public as
14 a paralegal?

15 A. I had no official certification in that
16 area.

17 Q. What was your background to hold
18 yourself out in that position?

19 A. That was the title that was given to me
20 when I got that job.

21 Q. Had you ever been involved in any law
22 field prior to getting that job with the firm
23 Ratchford & May, as it was known back then?

24 A. No.

25 Q. So basically you came in off the street

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 and you were hired and you automatically became a
3 paralegal?

4 A. I was given that title, yes, sir.

5 Q. And you would travel throughout the
6 state primarily conducting loan closings?

7 A. Correct.

8 Q. And you would get documents signed and
9 one of the documents you would get signed is what
10 has been admitted as Plaintiff's Exhibit 13?

11 A. That is correct, yes.

12 Q. And that document is titled Scope of
13 Representation; is that correct?

14 A. Yes, sir.

15 Q. And that says, Ratchford & Associates
16 hereby notifies the borrower that our firm
17 certifies title on your property to your new lender
18 and that we may represent the lender in this
19 transaction; is that correct?

20 A. Yes, sir.

21 Q. And then it says a little bit more, and
22 then it does a laundry list of what Ratchford &
23 Associates would do, and then the very last thing
24 in the laundry list of 15 items that Ratchford &
25 May would do is number 15; is that correct?

A. That is correct.

JOHN BALLENTINE - EX. BY MR. WOODRUFF

1 Q. And that is provide a closing and
2 witness service to the lender's documents.

3 A. That's correct.

4 Q. What is -- and this transaction we're
5 talking about is actually a refinance?

6 A. Correct.

7 Q. What is a closing?

8 A. A closing is the -- this is going to be
9 in layman's words, but it is the culmination of a
10 lot of effort from a lot of different parties to
11 pull together a loan, a securitization on a piece
12 of property, you know, with all the proper title
13 work that has been done. It is the culmination of
14 all that into the documents that are required to
15 execute on that agreement.

16 Q. And documents are prepared for that
17 closing; is that correct?

18 A. Yes, sir.

19 Q. And who prepares those documents?

20 A. That would be a mix of the lender, who
21 would transmit the closing documents to the
22 attorney's office, to our office, and then also
23 some of these ones which were produced to go along
24 with that package there in the office before it
25 went out to be closed.

JOHN BALLENTINE - EX. BY MR. WOODRUFF

1 Q. Who would prepare the mortgage?

2 A. The lender would prepare the mortgage.

3 Q. Who would record the mortgage?

4 A. Ratchford's office would record the
5 mortgage.

6 Q. Who would prepare the HUD 1?

7 A. That was prepared at Ratchford's
8 office.

9 Q. Who explained the HUD 1 to the borrower
10 or to the borrowers?

11 A. That would have been myself in the
12 situation of a refinance where I was there.

13 Q. Who would explain the mortgage to the
14 borrower or borrowers?

15 A. At the time of the closing that would
16 have been myself in a situation like that.

17 Q. When you would travel throughout the
18 state from the home office in Columbia would you
19 ever carry a lawyer with you?

20 A. No.

21 Q. Would you ever carry anyone else from
22 your office, another paralegal or a secretary, with
23 you to these closings?

24 A. No.

25 Q. Are you familiar with case numbers and

JOHN BALLENTINE - EX. BY MR. WOODRUFF
case cites?

A. Case names and case cites?

Q. Case names and case cites. Case cites,
C-I-T-E?

A. No, I'm not familiar with that.

Q. If I quoted State versus Buyers
Services --

MR. MOORE: Objection, Your Honor, as
to relevance.

MR. WOODRUFF: It's relevant, Judge.

THE COURT: Well, let me get the name
and let's see what the witness says and then if you
want to renew your objection we'll start delving
into it.

Go ahead.

BY MR. WOODRUFF:

Q. Have you ever heard of the case titled
State versus Buyers Services at 292 South Carolina
426, comma, 352 -- I'm sorry -- 357 Southeastern
second, page 15?

A. No.

MR. MOORE: Objection, Your Honor. I
object to this whole line of questioning. I think
it's a subject of our motion in limine that was
argued before Your Honor. We're getting into an

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 issue of the unauthorized practice of law and the
3 enforceability of the mortgage. The Court's
4 already made a determination on those things and
5 that's why we filed the motion in limine.

6 THE COURT: That was subject to what we
7 talked about in the motion in limine, which is
8 based on what the Court's already ruled on.

9 MR. WOODRUFF: I'm sorry. Can you --

10 THE COURT: How is that case you're
11 citing -- of course, he said he doesn't know what
12 it is anyway, but we have got an objection. But
13 how is that relevant to the case here now given the
14 fact that we've ruled on certain things through two
15 summary judgment motions that we talked about this
16 morning, the motion in limine?

17 MR. WOODRUFF: The prior -- the prior
18 rulings, as I understood it, had to do with the
19 attorney and the insurance preference selection
20 statute, and that no longer exists and we're not
21 seeking any --

22 THE COURT: And the unfair trade
23 practice.

24 MR. WOODRUFF: And the unfair trade
25 practice action. However, clearly what has been
described here in the last ten minutes does -- as

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 you're aware and as both Plaintiff's attorneys are
3 aware, does constitute under our case law the
4 unauthorized practice of law. And if that's what
5 was going on, I think that I have a right to bring
6 it out. I'm not bringing it out for any unfair
7 trade practices act, but if you have somebody that
8 is, quite frankly, engaging in the unauthorized
9 practice of law, and we are talking about basically
10 witness only closings which are illegal in this
11 state and a violation of the statute and the
12 unauthorized practice of law, it's relevant. It's
13 relevant when you're talking about who signed what.

14 MR. MOORE: Your Honor.

15 THE COURT: Go ahead.

16 MR. MOORE: The Matrix case which came
17 after Buyers Services was very clear, and the Court
18 had to come back to us three times in order to make
19 it clear, that transactions that were closed
20 prior -- some of them were in 2011 and 2012, the
21 penalty for the unauthorized practice of law was a
22 nonauthorized mortgage. The Court also has said
23 that's not a defense to the mortgage and court's
24 not going to set those aside.

25 We're looking, but I think the Court's
already ruled on this point as well. It wasn't

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 just the Unfair Trade Practices Act claim and
3 attorney preference claim, but also ruled on this
4 particular issue.

5 MS. CREECH: Yes, Your Honor. In
6 paragraph seven of the order filed December 1,
7 2015, the defendant's affirmative defense to
8 dismiss, to the extent the affirmative defense of
9 unclean hands and claim of equitable
10 unenforceability were based on an attorney not
11 supervising the transaction and in our motion in
12 limine we contend that that order is an unappealed
13 order and stands as the law of the case and that
14 raising these issues is not relevant or proper in
15 these proceedings.

16 MR. WOODRUFF: Your Honor, may I
17 address that? That took away my causes of action.
18 It did not take away my right to assert these as a
19 defense to the plaintiff's action. I certainly
20 acknowledge that your order stands. We did not
21 appeal your order, but if Plaintiff's counsel wants
22 to say that I don't have a right to defend my
23 client based on an unauthorized practice of law
24 question in this state then I -- that is not my
25 understanding of the law. I understand the motion
in limine that I got on Wednesday afternoon. I

JOHN BALLENTINE - EX. BY MR. WOODRUFF
1 think I understand it. But I'm not asserting any
2 claims against CitiMortgage, but I have a right, I
3 believe, to use it as a defense.

4 MR. MOORE: The evidence is being
5 solicited to say the mortgage is unenforceable.
6 Ms. Moxley signed the -- we are contending she
7 signed the mortgage. She did not sign the note.
8 That was just by her husband. So the issue here is
9 is this an enforceable mortgage. The only
10 reasoning he could be offering this would be to say
11 it's not an enforceable mortgage. In Matrix and
12 the cases that follow Matrix it says that
13 unsupervised closings are not the basis for
14 unenforceability of a mortgage prior to a certain
15 date, and this occurred before that.

16 THE COURT: Do you disagree that on
17 Matrix that that was the final conclusion?

18 MR. WOODRUFF: That was the final
19 conclusion in Matrix, but Matrix did not overrule
20 Buyer Services. Matrix did not overrule in the
21 matter of Forbson. It did not overrule Doe versus
22 McMaster. In all of those cases the Supreme Court
23 announced and pronounced what is the practice of
24 law in the state of South Carolina and what is not
25 the practice of law in the state of South Carolina.

JOHN BALLENTINE - EX. BY MR. WOODRUFF

1 As far as my trying to get the mortgage
2 unenforceable under -- under the violation of the
3 attorney and insurance preference selection
4 statute, I'm not trying to do that. I am going to
5 do that in a while whenever I get to the witnessing
6 of the mortgage, but under Matrix I acknowledge
7 that Matrix stands. It says that as of the date of
8 this decision any violation of the attorney
9 preference statute will make a mortgage
10 unenforceable. I know what Matrix says, I know
11 what Buyers Services says, and I know what is the
12 unauthorized practice of law according to our
13 Supreme Court, and I think that Plaintiff's counsel
14 also knows what is the unauthorized practice of
15 law.

16 MR. MOORE: Your Honor, we agree that
17 Buyers Services and those other cases that follow,
18 Doe versus McMaster, define five things that are
19 the practice of law, but Matrix and then BSE versus
20 Kinder that came after that had to clarify what
21 Matrix said made it confusing as to was this just a
22 retroactive application of this penalty or was this
23 a prospective application of the penalty and the
24 Court unequivocally says it's a prospective
25 application. And the date is either 2012, 2011,

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 sometime in that frame, but this is a closing that
3 occurred in 2000. So it's way before, and so the
4 Court's determination that retroactive
5 applicability of its decision doesn't happen. It
6 makes it unavailable as a defense to Mrs. Moxley.
7 And so any effort to elicit testimony as to the
8 unauthorized practice of law could only be going to
9 one thing, and that is whether or not this mortgage
10 is enforceable and we don't think it is
11 appropriate.

12 THE COURT: Anything else,
13 Mr. Woodruff?

14 MR. WOODRUFF: Yes, sir. And plainly
15 why Plaintiff's counsel is attempting to cut me off
16 is to go into further questioning about the
17 witnessing of the mortgage.

18 I acknowledge what Matrix said, I
19 acknowledge what the prior orders of this Court
20 said, but I believe that I have an absolute right
21 to bring out that this mortgage was closed in
22 violation of South Carolina law.

23 THE COURT: How about we bring out the
24 facts of the closing. I'll let you all submit
25 something to argue that. Although I've got to say
I believe the plaintiff's interpretation of Matrix

JOHN BALLENTINE - EX. BY MR. WOODRUFF
1 is correct in regards to that date on that. So I'm
2 not going to allow -- certainly I'm not going to
3 allow this witness to start interpreting what the
4 cases are and be asked questions about what the
5 Supreme Court has said. And we may have to rule on
6 it as it goes along on what comes in and what
7 doesn't, I guess, and whether I ruled on it
8 already.

9 So he said he doesn't know anything
10 about the case. I'm going to sustain the objection
11 in regard to that question and then I'm going to
12 allow him to ask whatever questions he's going to
13 ask him and we'll just have to move on from there.

14 I'm going to sustain the objection on
15 that question. Basically I'm not sure of the
16 relevance. After all these arguments I'm still not
17 sure of the relevance. And, number two, he said he
18 doesn't know anything about the case you're citing
19 anyway. So I'll sustain that objection and you can
20 move on to the next question.

21 BY MR. WOODRUFF:

22 Q. Would you please -- Plaintiff's Exhibit
23 Number 2 is the mortgage. Do you see that?

24 A. I do.

25 Q. On the signature page of the

JOHN BALLENTINE - EX. BY MR. WOODRUFF
mortgage --

A. Yes, sir.

Q. -- at the top of the copy I'm looking
at it has page 109 on it.

A. Yes, correct.

Q. That has what purports to be the
signature of William C. Moxley, Jr. --

A. Uh-huh.

Q. -- and then on the hand drawn line what
purports to be the signature of Mary Moxley; is
that correct?

A. That's correct.

Q. And it is apparently supposedly signed,
sealed and delivered in the presence of, and on the
top signature line is Tracy Kirkpatrick; is that
correct?

A. Can you repeat the question?

Q. According to that mortgage --

A. Yes.

Q. -- who witnessed it?

A. Tracy Kirkpatrick.

Q. And who else?

A. And myself.

Q. And Tracy Kirkpatrick is a paralegal at
Ratchford & May, LLC; is that correct?

JOHN BALLENTINE - EX. BY MR. WOODRUFF

1 A. That's correct.

2 Q. And she's still there; is that correct?

3 A. To my knowledge, yes.

4 Q. And you told me twice in the hall this
5 morning --

6 MR. MOORE: Objection, Your Honor.
7 Objection as to what's been told in the hall. He
8 can ask him any question --

9 THE COURT: Just ask the question.
10 I'll sustain. Rephrase and just ask the question.

11 BY MR. WOODRUFF:

12 Q. When you came to Aiken purportedly and
13 got this mortgage signed --

14 MR. MOORE: Objection, Your Honor.
15 That's not the testimony. He says that he travels,
16 but he hasn't said in this particular case that he
17 remembers anything about traveling to Aiken.
18 There's no testimony.

19 THE COURT: That's right. It goes both
20 ways. It worked for you. He said he doesn't
21 remember in particular, so you can ask him a
22 general question about it.

23 BY MR. WOODRUFF:

24 Q. Did you ever travel to Aiken, to the
25 best of your recollection, with Tracy Kirkpatrick?

JOHN BALLENTINE - EX. BY MR. WOODRUFF

1 A. No.

2 Q. How, to the best of your memory, would
3 Tracy Kirkpatrick's signature end up being as a
4 witness with your signature on a document that
5 purportedly was signed in Aiken, South Carolina?

6 MR. MOORE: Objection, Your Honor.
7 There's no testimony that this document was
8 executed in Aiken, South Carolina.

9 THE COURT: I'll sustain the objection.
10 You can ask him about the signatures, how would
11 that happen, but I don't know about the location.
12 Nobody's testified as to that yet.

13 BY MR. WOODRUFF:

14 Q. How would Tracy Kirkpatrick's signature
15 and your signature both appear on this document?

16 A. On this document the only way I can
17 imagine that being possible is Tracy would have
18 signed it once I returned back to the office with
19 the document.

20 Q. Did that happen often?

21 A. I would say, you know, often is a
22 difficult word, but I would say it did occur, yes.

23 Q. Would it happen once a week? Would it
24 happen once a month?

25 A. I really can't say for sure how often.

JOHN BALLENTINE - EX. BY MR. WOODRUFF
1 I mean, it would happen. I just have no idea how
2 to -- because occasionally what would happen is
3 when I would go the borrower's home or the mortgage
4 broker's office that was out of Columbia somebody
5 else would be there that would be a witness. It
6 would not be somebody traveling from Ratchford with
7 me. I could almost say that never happened. I
8 believe I did testify that never happened.
9 However, occasionally there was a witness there
10 that was provided by some other means.

11 Q. But it was never Tracy L. Kirkpatrick;
12 is that correct?

13 A. Correct. It was never Tracy
14 Kirkpatrick.

15 Q. And you know Tracy Kirkpatrick?

16 A. Yes, I do.

17 Q. And that's whose name purports to be on
18 here?

19 A. It does appear to be Tracy's, yes, sir.

20 Q. So if you had to suppose what happened
21 in this transaction you would guess --

22 MR. MOORE: Objection, Your Honor, to
23 the witness supposing and guessing.

24 THE COURT: Based on the form of the
25 question I sustain.

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 BY MR. WOODRUFF:

3 Q. You have no independent recollection of
4 this transaction whatsoever?

5 A. No, sir.

6 Q. Mary Moxley is sitting 20 feet from
7 you. Do you -- do you recognize her after
8 17 years?

9 A. No, sir, I do not.

10 Q. On some occasions documents, mortgages
11 would be witnessed solely by you, you would take
12 those documents back to Columbia where another
13 paralegal at Ratchford & Associates or Ratchford &
14 May office would witness those documents?

15 A. Yes, sir.

16 Q. This document -- this loan was
17 originated at 9.8 percent by Sturkie Mortgage
18 Company.

19 A. Okay.

20 Q. You were with Sturkie Mortgage Company
21 for seven years?

22 A. Correct. I started there in May of
23 2001 or June of 2001.

24 Q. Ultimately what was your title?

25 A. At Sturkie?

Q. At Sturkie, yes.

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 A. Loan officer.

3 Q. What is a yield spread premium?

4 A. A yield spread premium is a -- there's
5 a par rate -- when we're looking at an interest
6 rate chart of different interest rates there would
7 be what's called a par rate, and the par rate would
8 be -- basically it would be plus or minus a tiny
9 little fraction, but was assumed to be zero and
10 then a rate absolutely above that or slightly below
11 that would adjust in yield spread. So to give an
12 example, if the rate was half a percent higher
13 above par, the yield spread may be, you know, one
14 percent -- I'm just going to say one percent of the
15 loan amount and it was there -- it would change
16 every day. So that's what the yield spread premium
17 was. And it could go the other way. We could go
18 below rate, too.

19 Q. Would it be accurate to say that yield
20 spread premium is sort of a back end fee given to
21 the mortgage broker or mortgage originator for the
22 borrower paying a higher interest rate based on his
23 qualifications than he had to and it was paid
24 directly from the lender to the borrower?

25 MR. MOORE: Objection, Your Honor.
There are a number of assumptions that were based

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 in that question. With the -- not considering the
3 way that the question was characterized, he's
4 asking this witness to assume things that are not
5 in evidence and when you start asking whether or
6 not a particular witness qualified or would have
7 qualified or if this is something higher than they
8 would have qualified for, I think these are
9 assumptions that there needs to be some evidence
before he offers testimony.

10 THE COURT: I'm going to let you
11 rephrase the question, and then you can make the
12 objection again if you need to. Let's break it
13 down because you're asking -- to me, it's a
14 compound question. I'm not even sure that if he
15 answers what he's answering. So I'm going to ask
16 you to simplify the question, please, based on that
17 last question, and then I'll take the objection. I
18 think I can rule on the objection better if you
19 simplify the question.

20 BY MR. WOODRUFF:

21 Q. Clearly what's been marked as
22 Plaintiff's Exhibit 12 is a HUD 1.

23 A. Yes.

24 Q. You're familiar with HUD 1s?

25 A. Yes.

JOHN BALLENTINE - EX. BY MR. WOODRUFF

1 Q. If you turn to page two of that HUD 1
2 and you look at item number 808 --

3 A. Yes.

4 Q. -- that is the yield spread premium --

5 A. That's right.

6 Q. -- that was made to Sturkie by the
7 lender; is that correct?

8 A. Correct.

9 Q. Was it paid outside of closing?

10 A. Yes.

11 Q. And that was a \$2,000 payment outside
12 of closing paid by the lender to Sturkie over and
13 above the approximately \$1,400 origination fee and
14 other fees that Sturkie charged Mr. Moxley, the
15 borrower; is that correct?

16 A. It is in addition to that loan
17 origination fee, yes, sir.

18 Q. So, actually, the back end yield spread
19 premium pay, in this case over \$2,000, was actually
20 higher than the one loan origination fee; is that
21 correct?

22 A. It does appear to be, yes.

23 Q. And that is for having the borrower pay
24 a higher interest rate; is that correct?

25 A. Yes. The yield spread was generated by

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 the interest rate going above the par rate, and
3 depending on how far above the par rate it would
4 have been it would have changed that. It was a
5 tool to help lower origination costs, to help keep
6 the expenses related to a loan -- you could balance
7 between origination fee and interest rate and you
8 could move it around inside of a certain realm to
9 help whatever would make the most sense for the
10 borrower.

11 Q. Can I ask you to examine what has been
12 marked as Plaintiff's Exhibit 19. Those are the
13 driver's licenses.

14 A. Okay.

15 Q. You indicated that you would have
16 driver's licenses available for you to bring down;
17 is that correct?

18 A. For me to bring down? I would review
19 them when I arrived at a closing, yes.

20 Q. I thought you said there was one or two
21 scenarios. I thought the first scenario is you
22 would be given copies of driver's licenses --

23 A. Yes.

24 Q. -- such as a photocopy like this,
25 correct?

A. That is correct.

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 Q. And then the second scenario is you
3 would ask for the driver's license when you got
4 down there?

5 A. Yes. Well, I can't say for sure if I
6 wouldn't even look at the license when they handed
7 me this. This was just part of a standard request
8 preclosing. It was, please have a copy of your
9 driver's license available. And even if they did
10 have this I can't say one way or another whether I
11 would have looked at ID that moment. I would have
12 likely expected to have seen this, or if this
13 wasn't clear when it was given to me then I
14 definitely would have verified ID.

15 Q. Well, if you read what's been marked as
16 Plaintiff's Exhibit 19, the photograph that I have
17 is of a South Carolina driver's license for Mary L.
18 Moxley that was issued in December of 1997,
19 20 years ago; is that correct?

20 A. Uh-huh.

21 THE COURT: Say yes or no the for court
22 reporter, please.

23 THE WITNESS: Yes, sir. I'm sorry.

24 THE COURT: That's okay.

25 BY MR. WOODRUFF:

Q. The photograph purportedly of

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 Ms. Moxley -- the photograph is basically -- can
3 you make anything out? Can you even tell the race
4 of the person in that photograph?

5 A. This photograph is not a good
6 photograph. I cannot tell really any distinctive
7 features on this particular photograph.

8 Q. Can you even tell if this person was
9 white or -- was Caucasian or black?

10 A. No. That would be difficult, yes, sir.

11 Q. When you would come to Aiken for one of
12 the closings -- I believe you said when you
13 traveled you would go to homes and you would go to
14 sometimes mortgage brokers' offices; is that
15 correct?

16 A. Correct.

17 Q. Do you recall any mortgage broker in
18 the approximate time frame of the year 2000 that
19 you ever went to?

20 A. Yes.

21 Q. Where?

22 A. It would have actually -- when I was
23 working for Ratchford & May we would routinely do
24 closings at Sturkie Mortgage's office.

25 Q. In Aiken?

A. No, not in Aiken. None of these would

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 have been in Aiken. So if you would like me to
3 limit it to Aiken then I could answer that.

4 Q. Well, I'm asking you where you would go
5 in Aiken, yes.

6 A. In Aiken -- I don't recall coming to a
7 mortgage broker's office in Aiken, no.

8 Q. Do you recall coming to Aiken to any
9 homes?

10 A. Yes.

11 Q. Do you know approximately how many
12 closings you performed in Aiken County in that time
13 period?

14 A. It would be a really wild guess, but I
15 would say between 75 to 100 approximately.

16 Q. In Aiken County alone?

17 A. Yes, sir.

18 Q. And you said you would also go to
19 Sturkie Mortgage Company in Columbia or West
20 Columbia?

21 A. West Columbia at the time, yes, sir.

22 Q. And if the closing was performed at
23 Sturkie Mortgage Company in West Columbia -- in the
24 Columbia area there would not have been a need to
25 have gone back and asked Tracy Kirkpatrick to act
as a second witness, would there?

1 A. In a closing like that, most likely
2 not.

3 Q. So would it be fair to say that in all
4 probability if, in fact, the closing took place --
5 you don't remember, but in all probability as to
6 procedure --

7 A. Uh-huh.

8 Q. -- if there was a mortgage signed,
9 another document signed, you would have been the
10 only witness and you would have taken those back to
11 Columbia and gotten a second witness to add their
12 name to the document so that it could be recorded?

13 A. Yes.

14 MR. WOODRUFF: That's all the questions
15 I have.

16 THE COURT: Any redirect?

17 MR. MOORE: Yes, Your Honor.

18 EXAMINATION

19 BY MR. MOORE:

20 Q. Looking at the documents that are
21 before you that you examined today, do you know
22 where this transaction closed?

23 A. Where it closed?

24 Q. Yes.

25 A. Based on what I am seeing and how we

JOHN BALLENTINE - EX. BY MR. WOODRUFF
normally operated business, my -- I would have to
assume this transaction closed at the residence.

Q. Is that an assumption that you're
making?

A. It would be an assumption.

Q. Is it a possibility it closed at the
office in Columbia?

A. There is a possibility of that, yes,
sir.

MR. MOORE: No further questions.

EXAMINATION

BY MR. WOODRUFF:

Q. One follow-up question.

A. Yes, sir.

Q. There's a possibility that it closed at
the office in Columbia, but in all probability it
occurred here in Aiken; is that correct?

A. It would be hard to assign a
probability to it, but it would be -- I think it
would be better than a 50 percent chance that it
would be here in Aiken versus Columbia.

Q. So it might -- if you just sort of tip
the scales of justice --

A. I would say yes to Aiken.

MR. WOODRUFF: Okay. That's all the

1 JOHN BALLENTINE - EX. BY MR. WOODRUFF
2 questions I have.

3 THE COURT: All right. Anything else
4 for this witness?

5 MR. MOORE: No, Your Honor.

6 THE COURT: Thank you, sir. You can
7 have a seat.

8 MR. MOORE: Your Honor, we do want to
9 call Ms. Moxley for one piece of evidence. And
10 maybe I can get counsel to stipulate.

11 MR. WOODRUFF: I will stipulate that I
12 am going to call her as a witness. I think at this
13 point there's probably some motions I need to make
14 for the record.

15 THE COURT: I don't think he's
16 completed his case until he questions Ms. Moxley,
17 though. Is it in reference to that or in reference
18 to motions you're going to make in closing the
19 case?

20 MR. WOODRUFF: Well, I like to make
21 motions at the close of the Plaintiff's case --

22 THE COURT: I understand.

23 MR. WOODRUFF: -- and then I like to
24 make motions at the --

25 THE COURT: Understood, but he's not
there yet.

MARY L. MOXLEY - EX. BY MR. MOORE
MR. WOODRUFF: Okay. That's fine.

THE COURT: As I understand, he's going
to call Ms. Moxley before he closes his case.

MR. WOODRUFF: That's fine.

MR. MOORE: That's correct, Your Honor.

THE COURT: All right.

MARY L. MOXLEY

being first duly sworn, testified as follows:

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

THE COURT: Yes, sir.

EXAMINATION

BY MR. MOORE:

Q. Ms. Moxley, I'm handing you Plaintiff's
Exhibit 19. Is that your driver's license?

A. It's got my name on it, but you know
what, I'm like you guys, I can't see that picture.
It's got my name on it, though. As far as me
saying, yeah, that's a picture of me, I can't do
that.

Q. Ms. Moxley, do you remember when I took
your deposition?

A. Yes, sir.

MR. MOORE: Your Honor, I have -- I'd
like to ask her questions about her deposition.

1 MARY L. MOXLEY - EX. BY MR. MOORE
That's the original.

2 THE COURT: Do you have a copy there?

3 MR. WOODRUFF: No. I'm fine, Judge.

4 THE COURT: All right. I'm opening the
5 original. If you'll give me the page number.

6 MR. MOORE: Your Honor, I'd like to
7 give it to the witness. I only have one copy. I'm
8 looking at -- I'm going to be asking her questions
9 about page 52 lines three through eight.

10 THE COURT: All right. There you go.
11 BY MR. MOORE:

12 Q. Ms. Moxley, what I'm going to do is I'm
13 going to hand you this. This is the original
14 deposition that was taken in --

15 A. What line?

16 Q. Yes, ma'am. I'm on page 52 and I'm
17 going to go up to --

18 A. Can I get my glasses?

19 THE COURT: I was going to ask you
20 that, ma'am.

21 MR. MOORE: I'll bring them to you.

22 MR. WOODRUFF: I'll take them to her.

23 THE WITNESS: These are not the right
24 ones, you guys. I've got my contacts in. I'm
25 sorry.

MARY L. MOXLEY - EX. BY MR. MOORE

THE COURT: Take your time.

THE WITNESS: I'm sorry.

THE COURT: That's all right.

THE WITNESS: Okay. Now page 52, did
you say?

BY MR. MOORE:

Q. Yes, ma'am. I'm going to make it even
more confusing to you because my question refers to
Exhibit Number 11 which is attached to that
deposition. So you need to go to the back. If you
look at line three I identify Exhibit Number 11 and
in the back there's an exhibit with a number 11 on
it.

A. What page? Can you tell me that? Can
you --

Q. It would be after the testimony, ma'am.
Can I handle that?

A. Yes, sir. I sure will. I'll be glad
to. I've never done anything like this. I'm
sorry.

Q. Yes, ma'am.

Well, actually, this is a first for me.
There are not copies of the exhibits attached to
the original deposition.

THE COURT: Let me see if we've got

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 anything else in the package. I'm pulling out the
3 original looks like Plaintiff's 1 through 14
4 exhibits, Mr. Woodruff.

5 MR. WOODRUFF: That's fine.

6 BY MR. MOORE:

7 Q. Now, look at the one that says Exhibit
8 Number 11 there. Is Exhibit Number 11 the same
9 thing as Plaintiff's Exhibit Number 19?

10 A. Yep. It's the same.

11 Q. Let me hand this back to you.

12 So I was asking you a question about
13 Exhibit Number 11. I want you to read along with
14 me. Starting at line four I ask: I'm going to
15 show you Plaintiff's Exhibit Number 11. Is that
16 your driver's license?

17 And the response was: Yeah. The black
18 face looks like me, now, don't it? Yeah, that's my
19 driver's license. Let's see. Yeah, that's my
20 driver's license.

21 A. Well, that's -- that's right there with
22 my husband. I'm assuming that's my driver's
23 license.

24 Q. My question --

25 A. But I looked and you cannot tell.

Q. My question for you: After looking at

MARY L. MOXLEY - EX. BY MR. MOORE
1 the deposition, why do you have reservations today
2 about this being your driver's license and you
3 didn't when I asked you the question at your
4 deposition?

5 A. Well, I stood up here and put my right
6 hand up and I've got to tell the truth, and the
7 truth is I really don't -- you cannot tell that's
8 me. I mean, yes, I'm going to say that's me
9 because that's my husband, but I cannot see my
10 face.

11 Q. All right. When I asked you -- when I
12 examined you in your deposition were you telling me
13 the truth then?

14 A. Yes, sir.

15 Q. And you made no reservation about the
16 driver's license, did you?

17 A. That it is not -- to me, that's me
18 because that's my husband and if I were to -- we
19 would have done this we would have done it
20 together, as far as I know.

21 What year was this supposed to take
22 place?

23 THE COURT: He's got to ask the
24 questions.

25 THE WITNESS: Well, I was going to --

MARY L. MOXLEY - EX. BY MR. MOORE

THE COURT: That's all right.

THE WITNESS: Sorry.

THE COURT: No need to apologize.

BY MR. MOORE:

Q. If you would hand that back to me,
please.

A. This.

Q. Yes, ma'am. If we could just keep all
that together.

MR. MOORE: Okay. Thank you.

No further questions, Your Honor.

THE COURT: Mr. Woodruff?

MR. WOODRUFF: Do you want me to go
ahead and conclude with her as my witness or do you
want me to stay solely on the questions that
plaintiff's counsel has asked?

THE COURT: Well, I've got a feeling I
know what Plaintiff's position is going to be. Do
you want him to just ask in regards to that
question or has it opened up here?

MR. MOORE: We'll allow him to open up,
Your Honor.

THE COURT: All right. If that's your
preference you can go ahead.

MR. WOODRUFF: If we're going to open

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
2 it up then I'm going to go ahead and examine my
3 witness and that's going to be my defense. I do
4 have some motions I'd like to make at the
5 conclusion of the plaintiff's case, as well as --

6 THE COURT: We'll arrive at those
7 points at the same time, won't we?

8 MR. WOODRUFF: I think we probably are.
9 So it's a little bit unusual.

10 THE COURT: I'm not saying you have to.

11 MR. WOODRUFF: That's fine.

12 MR. MOORE: Your Honor, as long as I'm
13 not limited in my cross-examination I think he can
14 open it up.

15 THE COURT: All right.

16 EXAMINATION

17 BY MR. WOODRUFF:

18 Q. Mary, there's some documents up there
19 and I'm going to show you what's been marked as
20 Plaintiff's Exhibit Number 2. That's the mortgage,
21 and if you'd turn to the fourth page in there it's
22 got a signature page. Try the fifth page. It's
23 got a signature page on there and there's a
24 signature with a line that has been added that
25 purports to be your signature; is that correct?

A. Yep.

MARY L. MOXLEY - EX. BY MR. WOODRUFF

1 Q. Do you have any recollection of ever
2 signing this document?

3 A. Nope. Sure don't.

4 Q. Would you have ever mortgaged --
5 remortgaged your home in the year 2000?

6 A. No, sir.

7 Q. Did you ever travel to Columbia, South
8 Carolina in the year 2000, to the best of your
9 recollection?

10 A. I've only been to Columbia maybe twice,
11 and that was to see my granddaughter graduate and
12 all. I've never been downtown Columbia. I don't
13 go to Columbia. I don't go to Augusta. I'm a
14 widow. I stay home. I don't drive after dark.

15 Q. In the year 2000 you do not have any
16 recollection of going to Columbia?

17 A. I've never been to Columbia. I've
18 never been to the mall in Columbia. I'm just being
19 honest.

20 Q. John Ballentine's here with his
21 beautiful 13 year old daughter. He's testified.
22 Do you have any recollection of ever meeting John
23 Ballentine before?

24 A. No. And I don't ever remember him
25 coming to my house or where this was supposed to be

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
done at. I have no idea.

2 Q. Do you have any recollection of anyone
3 ever coming to your house, whether it was John
4 Ballentine or any other person, to get you to sign
5 numerous documents relating to refinancing your
6 home?

7 A. No, sir.

8 Q. You heard the witness from CitiMortgage
9 testify that in either June or July there were four
10 payments made all at the same time on that account.

11 A. In 2013.

12 Q. In 2013. In the summer of 2013.

13 A. Yes. That's the year that I lost Bill
14 and I might have done that, but I don't remember
15 because I was pretty heavy sedated for a while
16 because of what I went through that night with him.

17 Q. Well, I hate to bring up the tragic
18 circumstances of your husband's death, but your --
19 how long were you and Bill married?

20 A. 2009. It was 25 years. And he lived
21 to '13. So you figure it up.

22 Q. And so he lived until February '13?
23 I'm sorry?

24 A. February 21st.

25 Q. Of 2013 was his date of death?

MARY L. MOXLEY - EX. BY MR. WOODRUFF

1 A. Yeah. In 2009 was our 25th wedding
2 anniversary. So 29 years together, 30.

3 Q. Bill shot himself, did he not?

4 A. That's what the death certificate says,
5 suicide, but he shot himself in here somewhere.

6 Q. And you were in the kitchen when that
7 happened?

8 A. No. I was sitting in my bedroom doing
9 the bills. And he had went to bed. Because he
10 slept in the back bedroom because it was warmer.
11 He'd been through radiation and chemo. And in the
12 top drawer of our chest of drawers, I always threw
13 his socks up there because I can't even see in that
14 drawer. And I threw his wool socks up there. And
15 he come in the bedroom where I was at and got
16 something out of the top drawer. I thought it was
17 socks because he was always cold. And he went
18 in -- and I could see his head. You know, my couch
19 comes around this like. My whole living room and
20 kitchen is kind of open. It's sectioned off by
21 glass, three glass walls. But from my bedroom --
22 I've got French doors and I could see him sitting
23 on the couch. And I was sitting on the bed doing
24 my mail because I had been running and running with
25 him, you know, to the doctors and this, that and

MARY L. MOXLEY - EX. BY MR. WOODRUFF
1 the other, and I let it pile up. And then all of
2 the sudden I heard a shot.

3 Q. And then ultimately the paramedics and
4 law enforcement got there. Did law enforcement
5 keep you at the house for an extended --

6 A. I just stood -- I just had to stand on
7 the front porch while they got him on the stretcher
8 and all, but he was dead before they got there. He
9 drained out all his blood. He must have hit his
10 heart -- his blood -- I don't know. And I couldn't
11 stop it from bleeding.

12 Q. I'm sorry I --

13 A. I'm sorry.

14 Q. I sorry I drug you through that.

15 Through the next period of time after
16 that happened do you think that you were thinking
17 right or functioning right?

18 A. When?

19 Q. After that happened in February.

20 A. No, I didn't think right probably. I'd
21 say I'm probably getting back on track a little bit
22 better now, but it's been slow and it's been hard.

23 Q. And that was in 2013?

24 A. Yes.

25 Q. So you don't have any recollection of

MARY L. MOXLEY - EX. BY MR. WOODRUFF
1 making that payment four months or three and a half
2 months after your husband died, do you?

3 A. No, sir. I don't even remember looking
4 at my husband in the casket. I couldn't tell you
5 hardly anything about his funeral.

6 Q. I'm going to show you what's been
7 marked as Plaintiff's Exhibit 1. That is the note.
8 Your name is not on that note, is it?

9 A. No, sir.

10 Q. Your signature is not on that note, is
11 it?

12 A. No, sir.

13 Q. And you testified that as to the
14 mortgage, you have no recollection of ever signing
15 that; is that correct?

16 A. That's right. Yes.

17 Q. So here's just the bottom line
18 question: Is that your signature on that mortgage?

19 A. On this one?

20 Q. On the mortgage, yeah.

21 A. I don't think so. I really don't think
22 so because I make big loops with my Ls. I don't
23 think that's my signature.

24 Q. Do you believe you owe CitiMortgage any
25 money?

MARY L. MOXLEY - EX. BY MR. MOORE

1 A. No, sir. I've been there a long time
2 and my trailer is falling apart. I only got one
3 bathroom. The big bathroom is just -- you can't
4 use the tab. You can't use the tub. My son took
5 the tub out. You can't use the shower. It's old,
6 it's run down, but it's the only home I have.

7 MR. WOODRUFF: That's all the questions
8 I have. Please answer any questions that
9 Plaintiff's counsel may have.

10 EXAMINATION

11 BY MR. MOORE:

12 Q. Ms. Moxley, do you need to take a
13 break?

14 A. I'm good. I'm used to this.

15 Q. Well, as I told you when I took your
16 deposition, I'm sorry that we have to go back
17 through these things.

18 A. It's okay.

19 Q. And I'm sorry for the conflict.

20 A. I still have dreams.

21 It's okay.

22 Q. On May 26th of 2016, which would have
23 been last year, I took your deposition. Do you
24 remember that?

25 A. Yes, sir.

MARY L. MOXLEY - EX. BY MR. MOORE

1 Q. And when I took your deposition you
2 told me that at that point in time you still don't
3 have your right mind.

4 A. And I didn't. I don't -- I'd -- like I
5 just stated, I feel like I'm just now trying to get
6 back up, and that's because of my daughter pushing
7 me and making me do it.

8 Q. As you're sitting here offering
9 testimony today do you feel like you have a right
10 mind?

11 A. Yeah, because I've been to the
12 psychiatrist. I've been taking my medicine. I'm
13 doing much better, like I said. Yes. Do I have
14 bad days, sure I do.

15 Q. When did your mind come back?

16 A. I never lost my mind. It's just that I
17 got real forgetful because I was having to take
18 medicine. And I have to take medicine to sleep now
19 and sometimes that causes you not to remember -- be
20 able to remember real good, but I'm trying real
21 hard to stop taking medicine. I can't stand the
22 thought of ever being addicted to anything.

23 Q. When I took your deposition on May 26,
24 2016 you had been under the care of a psychiatrist?

25 A. I've been under the care of a

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 psychiatrist for many, many years.

3 Q. When I asked you what you meant by you
4 didn't have a right mind, you explained that since
5 your husband's death in February of 2013 you've
6 been taking Ambien.

7 A. Yes. And I have to take Xanax. I have
8 to take Seroquel. I have to take Prozac. Would
9 you like a list of the medicine that I had to take?

10 Q. Are you still taking those medicines
11 now?

12 A. Yes, sir.

13 Q. And when I asked you about those
14 medicines I said, do those medicines affect your
15 long-term and short-term memory, and you told me
16 they did.

17 A. They do. And I believe they do.
18 That's the reason I really want to get off of them,
19 because I don't want to be addicted to anything. I
20 just want to be addicted to the Lord.

21 Q. So the drugs that you're taking right
22 now affect your memory?

23 A. Not as bad as they used to because you
24 get -- you get immune to them and your tolerance
25 builds up.

26 Q. When I took your deposition back in

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 May 2016 you told me they did affect it.

3 A. Yeah. And they do at times, but like I
4 told you, I try to cut back. I try to not take
5 them. And, see, if I can sleep -- I mean, I'm
6 really struggling to get back to the normal me so
7 that I can live a normal life.

8 Q. And when I asked you, you said you
9 didn't recall anything about your finances back in
10 2000.

11 A. No, I didn't. I don't because I had
12 like five surgeries within 18 months.

13 Q. And really the only thing that you've
14 testified to is that you don't remember signing
15 these loan documents and some of these signatures
16 don't look like yours?

17 A. That's right.

18 Q. Let's look at that mortgage, which
19 Exhibit Number 2.

20 A. I'm sorry to cry, you guys. I'm sorry.

21 Q. Ms. Moxley, look, you've been through a
22 lot and we're putting you through more. If you
23 need to take a break --

24 A. No. I'm fine.

25 Q. Okay.

A. I just want to...

MARY L. MOXLEY - EX. BY MR. MOORE

1 Q. This is the mortgage, Exhibit Number 2.

2 When we took your deposition I asked some questions
3 about that mortgage. And do you remember that you
4 told me that that didn't appear to be your
5 signature on the last page?

6 A. It don't even look like my initials. I
7 might not have wrote those.

8 Q. So you're confirming that that's not
9 your --

10 A. I don't believe that's my signature.

11 Q. It doesn't look like your signature?

12 A. My daughter didn't think so either.

13 Q. You can't testify to that.

14 A. Okay.

15 Q. You can testify as to what you believe.
16 That doesn't look like your signature?

17 A. Right.

18 Q. And then there are initials at the
19 bottom of each one of those pages.

20 A. Uh-huh.

21 Q. And you told me that those weren't your
22 initials?

23 A. Uh-huh.

24 Q. Go back to page number one. At the top
25 of the page there's an initial. At the top of the

MARY L. MOXLEY - EX. BY MR. MOORE
1 page there's your initials. Do you see that?

2 A. Yes.

3 Q. Do you remember telling me that that
4 was your initials?

5 A. No.

6 Q. You don't remember when I asked you,
7 you said, that looks like my initials?

8 A. I might have said it looks like, but I
9 can't be positive.

10 Q. Let's go back to that deposition which
11 is right there, and let me ask you --

12 A. Where am I going to find the answer?

13 Q. Yes, ma'am. Look at page 57 line 16.

14 A. I'm sorry. I'm trying.

15 What line, sir?

16 Q. Let me correct that. Hold on just a
17 second. Page 57 line 16. Are you with me right
18 there?

19 A. Yeah. Let's look back to the first
20 page of that --

21 Q. -- document. And then I say: And up
22 at the top it says this mortgage is given
23 September 29, 2000. The mortgagor is William
24 Moxley, a married man, and then the words, and Mary
25 L. Moxley are written in. Do you see that?

MARY L. MOXLEY - EX. BY MR. MOORE

1 And you said, uh-huh, and the court
2 reporter marked that as an affirmative response.
3 Do you see that?

4 A. Yes, sir.

5 Q. And next -- and then my question was at
6 line 23 on page 57: And next there are initials
7 M.L.N. Do you see that?

8 And you say: Uh-huh. Affirmative
9 response.

10 And at the top of page 58 I said: Is
11 that your writing?

12 And you said: Uh-huh, which is an
13 affirmative response.

14 Right?

15 A. Yep.

16 Q. So at least when I took your deposition
17 you believed --

18 A. I thought it was maybe, but it don't
19 really look like my print.

20 Q. So now your testimony today is those
21 aren't your initials and those don't look like your
22 initials?

23 A. It don't look like what I would write,
24 no. These right here -- that right there does not
25 look like my initials.

MARY L. MOXLEY - EX. BY MR. MOORE

1 Q. But when I took your deposition you
2 told me they did, right?

3 A. Yeah. If you say I did, yes.

4 Q. No, ma'am. I read -- we just went over
5 the testimony.

6 A. Yeah. Okay. Yes, I did.

7 Q. All right. I want you to look at
8 Exhibit Number 9 and Exhibit Number 11.

9 A. Nine.

10 Q. No, ma'am. They're going to be here.
11 That's Exhibit Number 11 and that's Exhibit Number
12 9.

13 A. Okay. Which one are you going to
14 first?

15 Q. Let me take those exhibits from you.
16 That will help.

17 A. Thank you.

18 Q. All right. Have you got Exhibit
19 Numbers 9 and 11 in front of you?

20 A. Yes, sir.

21 THE COURT: Are these the exhibit
22 numbers from the trial exhibits or from the
23 deposition exhibits?

24 MR. MOORE: These are the trial
25 exhibits, Your Honor.

MARY L. MOXLEY - EX. BY MR. MOORE
BY MR. MOORE:

Q. Did those documents contain your
signature or what appears to be your signature?

A. It don't look like it to me.

Q. Okay.

A. But...

Q. Do you remember --

A. I feel like -- you know, I feel like
I've been crazy.

Q. But do you remember in your deposition
when I asked you that same question you told me
that both of those look like your signature?

A. What line? I'm on this book. That's
all of that.

Q. If you want to go to the book let's
look at the deposition first, page 30 line 13.

A. Okay. Yeah, it looks like it.

Q. Let me show you the document we're
referring to, which is Exhibit 3 from your
deposition, which is the same thing as Exhibit
Number 9. And in that -- if you look at your
deposition now, when I asked you if that appeared
to be your signature you said, yes, it did; is that
correct?

A. Yes, it could be. My handwriting has

1 MARY L. MOXLEY - EX. BY MR. MOORE
changed a lot over the years back and forth.

2 Sometimes I can't even write, my hands shake so
3 bad.

4 Q. All right. Well, here's my problem,
5 Ms. Moxley. Today you're telling me this does not
6 look like your signature on Exhibit Number 9, but
7 when I took your deposition back in May you told me
8 it did look like your signature. Which is your
9 testimony?

10 A. Well, which is my testimony?

11 Q. Which one is right?

12 A. I really don't know. Like I said, you
13 know, my handwriting has changed, but do I believe
14 this is mine, do I believe we refinanced or
15 anything my home, no, sir. And I never remember
16 ever going to Columbia, and I never remember
17 anybody coming to my house. Because I worked hard
18 to get on that little piece of land and I was
19 trying to pay it off.

20 Q. All right. As to Exhibit Number 11,
21 look at your -- look at the deposition, page 32
22 line eight.

23 A. Okay. 32 line eight.

24 Q. We were asking questions about Exhibit
25 Number 4 to your deposition --

MARY L. MOXLEY - EX. BY MR. MOORE

1 A. Wait a minute.

2 Q. -- and I'm going to show you that --

3 A. Where are we at?

4 Q. -- is the same document as Exhibit

5 Number 11 -- Plaintiff's Exhibit Number 11 at

6 trial.

7 A. Yeah.

8 Q. Okay?

9 A. Yeah.

10 Q. And I asked you a question about that,

11 and looking at your deposition to refresh your

12 recollection, didn't you tell me that looked like

13 your signature?

14 A. Yes, but I've told Tom some of these --

15 and my daughter's told Tom, they don't look like my

16 mom's writing.

17 THE COURT: You cannot testify what

18 your daughter was talking about. Just answer his

19 question.

20 THE WITNESS: I'd say, yeah, it could

21 be, you know, because --

22 BY MR. MOORE:

23 Q. Well, actually, you said it looks like

24 your signature, right?

25 A. Yes.

MARY L. MOXLEY - EX. BY MR. MOORE

1 Q. You didn't say it could be. You said
2 it looked like your signature.

3 A. That's right.

4 Q. And today you're saying it does not
5 look like your signature?

6 A. I don't know. I really don't know, to
7 be honest with you. My signature has changed so
8 many times. And my psychiatrist asked me that.

9 In September of 2000 I was trying to
10 help take care of my father. He died in November
11 of that year. And I know I wouldn't be trying to
12 refinance my house. I wouldn't have never did
13 that. I wouldn't have agreed to it.

14 Q. Okay. I'm handing you another
15 document, Exhibit Number 12.

16 A. Okay. Where to go in this other book?

17 Q. No. I want you to first look at that
18 document and look at the second page and tell me
19 whether or not that appears to be your signature.

20 A. It looks just like all the rest of
21 them.

22 Q. Does that appear to be your signature,
23 though? That's the question.

24 A. It's not my signature in there, no.

25 Q. All right. When I asked you that

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 question back on May 26, 2016, do you recall
3 telling me it did look like your signature?

4 A. Yes. And I told Tom the same thing.
5 Yeah, it looks like it could be, but...

6 Q. But today you're saying it's not your
7 signature?

8 A. It looks like it could be, but I'm not
9 sure.

10 Q. Exhibit Number 13. Is that your
11 signature?

12 A. No. You can tell that's even
13 different. No. Somebody else has been signing my
14 name.

15 Q. All right. When I asked you that
16 question on May 26, 2016, you told me it looks like
17 your signature.

18 A. Okay. Where is that in here? On what
19 page?

20 Q. I'm going to ask you to look at page 47
21 line 13.

22 A. Okay. 14 you say?

23 Q. Yes, ma'am.

24 A. Yes, that's my signature. That's all I
25 can say, I guess. I don't know for sure, but I
don't remember signing nothing like this and I

MARY L. MOXLEY - EX. BY MR. MOORE
1 don't remember that name. That's Ratchford.

2 Q. All right. And I was asking you about
3 Exhibit Number 7 to your deposition, the scope of
4 representations document, which is the same as
5 Plaintiff's Exhibit Number 15 here at trial.

6 A. Well, I have --

7 Q. Let me show you --

8 A. I didn't know what a deposition was.

9 Q. Let me show you. That 17 at your
10 deposition exhibits is the same thing as
11 Plaintiff's Exhibit Number 13.

12 A. That ain't my signature.

13 Q. All right. Ms. Moxley, you just said
14 you did not know what a deposition was.

15 A. I didn't.

16 Q. Did you understand that you were giving
17 testimony under oath?

18 A. Then?

19 Q. Yes, ma'am.

20 A. I don't know. I can't remember.

21 Q. Do you remember a court reporter being
22 there?

23 A. Yeah.

24 Q. Do you remember her taking your oath
25 and you swearing to tell the truth?

MARY L. MOXLEY - EX. BY MR. MOORE

1 A. I don't remember, but I tell you what.
2 I'm not going to raise my right hand and tell a lie
3 because I love the Lord and I don't want to go to
4 Hell.

5 Q. So we've looked at a lot of different
6 documents. We've got other examples that are here
7 today. Some of them you remember -- or you believe
8 look like your signature and some didn't and today
9 you're questioning that testimony. So really you
10 don't know which of these are your signatures and
11 which aren't your signatures, do you?

12 A. I know some of them is not mine, but
13 I'm not sure about some other ones. But like -- I
14 don't think that they're mine, and that's just the
15 truth because I wouldn't have -- I wouldn't -- I
16 would have fought Bill, argued with Bill, however
17 you want to put it, about refinancing my house
18 because I was trying to get it paid off. But Bill
19 left me in 2009 for five months and I don't know
20 what he did.

21 Q. In 2000 who took care of your family
22 finances?

23 A. In 2000?

24 Q. Yes, ma'am.

25 A. He must have did because I didn't have

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 a mind to do nothing in 2000 because I'd been
3 through four or five surgeries, I was taking care
4 of my father, and he died in November.

5 Q. Does the house -- this property where
6 you live, does it have a mobile home on it?

7 A. Yes.

8 Q. How long has that --

9 A. 1990 Clemson mobile home.

10 Q. How long has that mobile home been
11 there?

12 A. Ever since we moved there.

13 Q. When was that?

14 A. Tell me what year --

15 THE COURT: He can't answer.

16 THE WITNESS: I'm sorry. I don't know
17 nothing about court.

18 THE COURT: That's all right.

19 THE WITNESS: I think '90 or '91.

20 BY MR. MOORE:

21 Q. Has any other mobile home or trailer
22 been on that property since '91?

23 A. Yeah. We have another lot back at the
24 back. My daughter had her trailer there and they
25 moved. Bill let his brother park a trailer there
for a little while. We never charged him. His

1 MARY L. MOXLEY - EX. BY MR. MOORE
nephew had a trailer there, his brother, his
2 nephew, my daughter. I guess that's it.

3 Q. But you've always lived in the same
4 trailer since '90 or '91?

5 A. That's the only home I've ever had of
6 my own. We've always rented, my parents did. I
7 don't own it, but it's the only home I've got.

8 Q. Before your husband passed away do you
9 remember ever having any communication with
10 CitiMortgage concerning this mortgage and paying of
11 this mortgage?

12 A. No, sir. Going through taking care of
13 him and going through that radiation and chemo with
14 him, I didn't do nothing but just try to take care
15 of him. I'd done been through open heart surgery
16 and everything with this man.

17 Q. Is there any way that you could have
18 had conversations with people at CitiMortgage and
19 you forgot about them?

20 A. I don't think so. I don't think I
21 would have tried to talk to anyone because I
22 wouldn't have known what to say, I guess. I don't
23 know. But I know I didn't talk to anyone. All I
24 did was took care of my husband.

25 MR. MOORE: I beg the Court's

MARY L. MOXLEY - EX. BY MR. MOORE
1 indulgence for just one moment and then I think I'm
2 going to be finished.

3 Go off record for one second.

4 (Off-the-record conference.)

5 BY MR. MOORE:

6 Q. I'm going to ask you to look at
7 Plaintiff's Exhibit Number 6 to the trial, which
8 are the collection notes, and in this -- in the
9 information that I have reviewed, starting with
10 page 498, and I've given you that, there are seven
11 communications that are noted that you had with
12 CitiMortgage prior to your husband's death and you
13 had called concerning payments and making
14 electronic payments. Do you recall any of that?

15 A. No.

16 Q. I'm sorry?

17 A. No, sir.

18 Q. On page 498, if you'll look, there's
19 six numbers over to the --

20 A. Where is the page number?

21 Q. I'm sorry. Let me show you. Right
22 down here at the bottom.

23 A. Okay.

24 THE COURT: How about we back up since
25 she didn't know the page number and make sure she

MARY L. MOXLEY - EX. BY MR. MOORE
1 was looking at the right page when you asked the
2 last question.

3 THE WITNESS: Thank you.

4 BY MR. MOORE:

5 Q. 498. Are you looking at 498?

6 A. I'm at 498.

7 Q. All right. From this period of time
8 forward, if you look at the first column there are
9 six numbers, 042208, and I'm going to represent to
10 you that that is April 22, 2008. Do you see that
11 halfway down the page where it says --

12 A. Okay. 042208?

13 Q. Yes, ma'am.

14 A. There's 11 of them.

15 Q. Right, but do you see your name there
16 where it says Mary Moxley?

17 MR. WOODRUFF: Your Honor, if I could
18 interject, if this is what we're -- is this what
19 we're talking about?

20 THE WITNESS: I see my name --

21 MR. MOORE: Yes.

22 THE WITNESS: -- on some of them.

23 THE COURT: Hold on, ma'am. Hold on.

24 MR. WOODRUFF: Judge --

25 MS. CREECH: Plaintiff's 6.

MARY L. MOXLEY - EX. BY MR. MOORE

1 MR. WOODRUFF: My client never saw this
2 until this morning. This was received by me at
3 2:45 p.m. on Friday. I've never given a copy of
4 this to my client.

5 THE COURT: I don't think he's asking
6 anything document specific. He's asking her about
7 the notes in there, if she remembers ever having
8 any communication --

9 THE WITNESS: No, but Bill had --

10 THE COURT: That's all right. You
11 don't have to say anything right now.

12 THE WITNESS: I'm sorry.

13 THE COURT: That's what I understand
14 the question to be, Mr. Woodruff. So if he asks
15 anything specific about the content of the
16 documents, but as I understand the question, he is
17 not doing that at this point. He's just saying
18 these documents reflect that and does she remember
19 making any contact. Am I correct on that?

20 MR. MOORE: It's purely does this
21 refresh your recollection because she testified
22 that she did not have any involvement.

23 THE COURT: And she doesn't know
24 anything, I agree. She hasn't seen those
25 documents. I know you didn't see them until Friday

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 so she couldn't have seen them prior to trial here
3 today. So I don't disagree with that. I think you
4 can answer that question.

5 THE WITNESS: Did I make those phone
6 calls?

7 BY MR. MOORE:

8 Q. Does it refresh your recollection about
9 making phone calls to CitiMortgage?

10 A. I didn't call CitiMortgage.

11 Q. All right. Look at the next page from
12 that first page. The number down at the bottom is
13 PL000494. Do you see that?

14 A. Okay. The next page?

15 THE COURT: What page number are you
16 looking at?

17 MR. MOORE: PL000494.

18 THE WITNESS: Okay. I'm sorry. Okay.

19 BY MR. MOORE:

20 Q. That's the wrong page. It's here. I'm
21 pointing to an entry at the top of the page that is
22 dated May 19, 2010.

23 A. Yes.

24 Q. And do you see where it says, as per
25 LOA Mary Moxley, due to medical condition of her
husband they can send in a payment. Do you see

MARY L. MOXLEY - EX. BY MR. MOORE

1 that?

2 A. Yeah, I see that.

3 Q. Do you recall communicating with
4 CitiMortgage about your ability to make a payment
5 based on your husband's medical condition?

6 A. No, sir. Like I told you, my husband
7 left me in 2009 and he found out he had cancer in
8 February of 2010 and that's the only reason he
9 stayed with me. He could have had his sister do
10 this or his sister-in-law. I didn't do it.

11 Q. So the things that you've looked at in
12 this Exhibit Number Exhibit 6 do not refresh your
13 recollection as to any communications you may have
14 had with Citi about your husband's death?

15 A. Huh-uh.

16 Q. You have no memory.--

17 A. No.

18 Q. I'm sorry?

19 A. No, sir. He pretty much took care of
20 that.

21 MR. MOORE: No further questions, Your
22 Honor.

23 THE COURT: All right. Mr. Woodruff?

24 MR. WOODRUFF: Thank you.

25 EXAMINATION

MARY L. MOXLEY - EX. BY MR. WOODRUFF
BY MR. WOODRUFF:

Q. Mary, the last question that opposing
counsel asked you, you don't have any -- he was
sort of beating you up. You don't remember that?
It happened 19 years ago.

A. No. I don't remember yesterday. I can
walk in one room and forget what I went in there
for.

Q. And he really --

A. I have a really bad -- I don't know
what to say. I'm not totally illiterate, but I
don't have a good memory.

Q. Right. But the bottom line, what
Mr. Moore was doing is he was beating you up and he
was saying --

MR. MOORE: Objection, Your Honor.

THE COURT: Sustained.

BY MR. WOODRUFF:

Q. He was saying -- well, he was asking
you if this doesn't refresh your memory.

A. (Shaking head.)

Q. And I started by asking you some really
difficult questions about the death of your
husband, didn't I?

A. Yeah.

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
2 Q. All right. Well, let's just take this
3 in order. I want you to tell me...

4 THE COURT: Place those deposition
5 exhibits back in the package, please, if you don't
6 need those.

7 MR. WOODRUFF: I just want to make sure
8 that I have everything. I'm missing six. Do we
9 have a six?

10 MR. MOORE: Six is that big, fat
11 document.

12 THE COURT: Six is on the bottom here,
13 I believe.

14 MR. WOODRUFF: It is?

15 THE COURT: Yes.

16 MR. WOODRUFF: I'm missing 14, 15 and
17 16. I can tell you what they are if you want me
18 to.

19 MR. MOORE: No, we're not.

20 MR. WOODRUFF: We're not missing them
21 anymore.

22 BY MR. WOODRUFF:

23 Q. All right, Mary -- ma'am?

24 A. This is empty. I'm going to set it
25 right there.

26 Q. Mary, the very first document that was

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
introduced is the note. There's no question this
2 doesn't have your signature on it, it's not in your
3 name, there's nothing on there; is that right?

4 A. Yes.

5 Q. Okay. On this mortgage somebody's gone
6 in and they've added a signature on it, have they
7 not?

8 A. Yes.

9 Q. Is that your signature?

10 A. No.

11 MR. MOORE: Objection, Your Honor.
12 This isn't -- actually, this is recross and I
13 didn't -- she's testified, he asked her, I asked
14 her, and now he's asking her again if she signed
15 it. We know she said she didn't sign it or it
16 doesn't look like her signature.

17 MR. WOODRUFF: Your Honor, if I can
18 tell you my recollection of what happened, my
19 recollection of what happened is Mr. Moore
20 basically started badgering Ms. Moxley when she was
21 in an emotional condition and he pushed her and
22 pushed her and pushed her and said, well, that's
23 not your signature, that's not your signature,
24 that's not your signature. The emotional condition
25 that she's in, I'm concerned about some of her

MARY L. MOXLEY - EX. BY MR. WOODRUFF
1 responses. And, you know, what is a verdict? A
2 verdict is a search for the truth. That's all I'm
3 trying to get to, is what really happened. I
4 don't -- and because of the way, quite frankly,
5 Mr. Moore conducted his examination I just want to
6 go through every one of those exhibits and I think
7 I have the right to.

8 THE COURT: All right. Let me say
9 this. First, I'm not going to characterize
10 Mr. Moore's activity as badgering the witness. I
11 understood him to be asking some questions, she was
12 upset, he asked her on more than one occasion if
13 she needed to take a break. He referenced the
14 deposition on the signatures, she reviewed both
15 documents, she knew what the page numbers were. So
16 that testimony is in. Nothing incorrect or
17 improper about the questions that were done on
18 that.

19 Now, we've opened up a little bits of a
20 can of worms here because of the way we've done
21 this, which I thought everybody was in agreement
22 with, but now we're going to start raising
23 questions, you can't ask that question because here
24 is what you're asking. You opened in full, he came
25 back, which I understood was cross-examination, but

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
2 nevertheless, we're still not at a stage where
3 you've closed your case. So I'm going to let him
4 ask about the documents, but I assume he's going to
5 through a litany of, is this your signature. If
6 it's something else, you can object to that. I'm
7 going to let him ask that question even though I
8 think it's already in the record from both sides.

9 MR. WOODRUFF: Point of clarification,
10 I don't know that we've closed our case, Your
11 Honor.

12 THE COURT: I agree with that. That's
13 what I said. So when I started saying where we're
14 at and what this is, just like you started to do,
15 say this is recross or redirect, when we went down
16 this road with Mr. Woodruff and you all didn't
17 object, and I asked you if you had any objection to
18 opening in full and you said no, I'm going to go
19 back and let him ask the questions on some of these
20 things even though at least where he's starting has
21 already been asked and answered, I think, a couple
22 times. You may ask it. He's asked it.

23 MR. MOORE: And I'm trying to figure
24 out a shortcut to this. There are documents -- and
25 I'm going to be perfectly fine if she wants to go
through and testify that none of these signatures

MARY L. MOXLEY - EX. BY MR. WOODRUFF
1 are hers. My point is when we took her deposition
2 her testimony was, this doesn't look like mine,
3 this does look like mine. Some that did look like
4 hers then don't look like hers today. That's the
5 only point. If you want to stipulate that she says
6 every document in there with her signature on it is
7 not hers, that's fine.

8 MR. WOODRUFF: I don't want to
9 stipulate to that. I want to ask my witness
10 whether or not that's her signature on those
11 documents and she can answer.

12 MR. MOORE: Okay.

13 THE COURT: We've tried to alleviate
14 it. I think some of them have been asked and
15 answered, some of them you may not have asked
16 about. I'm not going to go back in the record and
17 try to figure out which ones have been asked about
18 and which ones haven't.

19 MR. MOORE: I've been accused of
20 badgering. I did -- I did back off --

21 THE COURT: I disagree with that.

22 MR. MOORE: Thank you, Your Honor.

23 I did back off and I didn't ask her
24 about every one of the documents in challenge. I
25 thought I had enough in to prove my case, but if

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
2 we're going to go back through and do that I would
3 suggest that if you want to ask her that, instead
4 of me taking her back through this that I be able
5 to submit a memorandum to the Court showing where
6 any deposition testimony is inconsistent with what
7 she offers here today. Otherwise, we're going to
8 be here tomorrow.

9 MR. WOODRUFF: I don't mind being here
10 tomorrow. I have court tomorrow, but I can get --

11 THE COURT: We won't be back tomorrow
12 because my calendar is full tomorrow. We'll be
13 back at some point.

14 MR. MOORE: I'm just trying to find an
15 easy way to do this. If she wants to go through
16 then maybe we can go through and, Tom, you can say
17 these are the ones she says are not her signature.
18 I'm fine with that. And we can just go back
19 through and point out in her deposition, which is
20 in the record, where she said something different.
21 That's my only point.

22 THE WITNESS: Well, I told Tom --

23 THE COURT: Ma'am, you don't need to
24 say anything right now.

25 MR. WOODRUFF: Judge, you know, it's
ten minutes after 5:00 and my client has been --

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
2 I've been allowed to present my case for maybe --
3 maybe 30 to 45 minutes and for Mr. Moore to stand
4 up here and say, well, it's such a late hour, when
5 this started at 10:00 and now he's recommending to
6 the Court, well, maybe we could just submit briefs
7 and I can write you a memorandum and say this is
8 the inconsistencies and here's --

9 THE COURT: Okay. I've heard enough.
10 Go ahead with your questions. We'll go on, but let
11 me notify the Court -- see what the deputies are
12 going to say because we're not going to be out of
13 here at 5:30 at this pace.

14 (A recess transpired.)

15 THE COURT: Let's proceed.

16 MR. WOODRUFF: Thank you, Judge.

17 BY MR. WOODRUFF:

18 Q. Are you okay, Mary?

19 A. Yes.

20 THE COURT: By that I don't mean we
21 have to complete, I don't want anybody to feel
22 pressured on that, but we'll have to reschedule
23 another day to finish.

24 BY MR. WOODRUFF:

25 Q. Mary, on Exhibit 1 -- Plaintiff's
Exhibit 1, the note, your signature is not on here.

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
and your name is not on here?

2 A. At all, is it? I'm trying to remember
3 when I first -- you first saw showed me papers and
4 I told you --

5 THE COURT: Ma'am, let Mr. Woodruff ask
6 questions and you answer them so we can move along.

7 THE WITNESS: I'm sorry.

8 BY MR. WOODRUFF:

9 Q. Plaintiff's Exhibit 2, which is the
10 original mortgage, there is your name on here and
11 it purports to be your signature. Is that, in
12 fact, your signature?

13 A. It ain't how I make my Ls.

14 Q. And what is marked as Plaintiff's
15 Exhibit 3, that is simply collection letters.
16 Plaintiff's Exhibit 4 is consolidated notes,
17 Plaintiff's Exhibit 5 is individual messages
18 purportedly as to the balance due, Plaintiff's
19 Exhibit 6 is the approximately 300 pages of mostly
20 redacted material that was delivered to my office
21 Friday afternoon. Have you ever seen that
22 information?

23 A. No.

24 Q. Plaintiff's Exhibit 7 is a New York
25 State merger authorization, Plaintiff's Exhibit 8

MARY L. MOXLEY - EX. BY MR. WOODRUFF
1 is an appraisal, Plaintiff's Exhibit 9 is titled
2 Authorization to Obtain Credit Information that
3 purportedly has your signature on it. Is that your
4 signature?

5 A. No. I wouldn't have done that in 2000.

6 Q. But is that your signature --

7 A. No.

8 Q. -- on Plaintiff's Exhibit 9?

9 On Plaintiff's Exhibit 10 is that your
10 signature?

11 A. My signature is not on that. There is
12 no signature on there..

13 Q. You're right. There's not. I'm sorry.

14 Plaintiff's Exhibit 11, which is
15 Sturkie Mortgage Company where they were going to
16 get a loan at 8.5 percent interest, charge two
17 percent fee, is that your signature that is on the
18 bottom of that document?

19 A. No. It don't look like the same to me.

20 Q. On Plaintiff's Exhibit 12, which is the
21 HUD 1, on page two there is a signature that is
22 purported to be Mary Moxley. Is that your
23 signature?

24 A. Huh-uh. I wouldn't say so, no.

25 Q. I mean, that's just not your signature?

1 MARY L. MOXLEY - EX. BY MR. WOODRUFF
2 A. (Shaking head.)

3 Q. And you've got to say it verbally so
4 the court reporter can take it down.

5 A. No.

6 Q. Plaintiff's Exhibit 13, scope of
7 representation --

8 A. No, that's not my signature.

9 Q. Plaintiff's Exhibit 14, Fidelity
10 National Title Insurance Company, is that your
11 signature on Plaintiff's Exhibit 14?

12 A. No. Nope, nope, nope.

13 Q. Plaintiff's Exhibit 15, affidavit and
14 agreement. Is that your signature?

15 A. Nope.

16 Q. Plaintiff's Exhibit 16, page two. This
17 is a notice of right of rescission. Is that your
18 signature? I'm sorry. On page two.

19 A. No.

20 Q. Plaintiff's Exhibit 17, authorization
21 to correct, is that your signature?

22 A. No.

23 THE COURT: Ask her that last question
24 again. Ma'am, you've got to answer out loud.

25 BY MR. WOODRUFF:

Q. Mary, I'm going to re-ask my last

MARY L. MOXLEY - EX. BY MR. MOORE
1 question Plaintiff's Exhibit 17. This is titled an
2 Authorization to Correct. Is that your signature
3 on that document?

4 A. No.

5 Q. On Plaintiff's Exhibit 18, which is
6 titled Truth In Lending Disclosure, is that your
7 signature on that document?

8 A. No.

9 Q. Plaintiff's Exhibit 19 is driver's
10 license copies, and 20 is the original deed, and 21
11 is another copy of the mortgage, 22 is something
12 related to flood hazard determination, and 23 is a
13 map in color dated today's date. So on all the
14 exhibits that have been introduced today is there
15 any of these documents that have your signature on
16 them?

17 A. (Shaking head.)

18 Q. No?

19 A. Nope. No. Excuse me. I'm sorry.

20 MR. WOODRUFF: That's all the questions
21 I have, Your Honor.

22 THE COURT: All right.

23 EXAMINATION

24 BY MR. MOORE:

25 Q. Ms. Moxley, is it your testimony that

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 those are not your signatures or they don't look
3 like your signatures?

4 A. I do not believe those are my
5 signatures. I know in 2000 I wouldn't have done
6 nothing like that. There's just -- I was trying
7 the take care of my father and stuff. I wouldn't
8 have done that.

9 Q. Exhibit number 14, you have just
10 testified that's not your signature; is that
11 correct?

12 A. Yeah, that's not my signature.

13 Q. Do you remember that when I took your
14 deposition that you told me that it looked like
15 your signature?

16 A. I --

17 MR. WOODRUFF: Objection, Your Honor.
18 He's already asked that question and that's when he
19 was badgering the witness --

20 THE COURT: Stop characterizing on the
21 badgering on there. Just make the objection. I
22 don't know if he's asked about Plaintiff's Exhibit
23 14. I can go back on the list and we can try to
24 determine that.

25 MR. MOORE: Your Honor, I stopped at
13.

MARY L. MOXLEY - EX. BY MR. MOORE

1 THE COURT: So do you have something
2 that says different that he's asked specifically
3 about 14?

4 MR. WOODRUFF: No, sir, I don't.

5 THE COURT: I don't have anything on my
6 notes that looks like Exhibit 14. So proceed with
7 the question.

8 BY MR. MOORE:

9 Q. Do you remember telling me when I took
10 your deposition in May of 2016 that that did look
11 like your signature?

12 A. Yep.

13 Q. All right. And if we looked at your
14 deposition at page five line three we would see
15 that testimony, wouldn't we?

16 A. Yeah, I think I did, yeah, because I --

17 MR. MOORE: All right. Your Honor,
18 I've got the rest of this in as her testimony.

19 THE WITNESS: Some of them could look
20 like mine, but I don't believe they are.

21 BY MR. MOORE:

22 Q. Exhibit Number 15 --

23 A. No.

24 Q. -- you testified that was not your
25 signature today.

MARY L. MOXLEY - EX. BY MR. MOORE

1 A. No.

2 Q. Do you recall telling me in May of 2016
3 that that does look like your signature?

4 A. Yep.

5 Q. Why has your testimony changed?

6 A. Well, it's like I told Tom, some of
7 them do look like my signature, but I know that I
8 did not do this in 2000.

9 Q. And if we looked at your deposition
10 page 50 line 25 we would probably see where you
11 testified that did look like your signature.

12 A. Yeah. Just like I told Tom, some of
13 them looks like my signature, but they're not mine.

14 Q. And they're not yours because you would
15 never have entered this transaction?

16 A. I never signed these.

17 Q. But why else would you say there's not
18 yours?

19 A. Because that's not my signature.

20 Q. But you said it looked like it?

21 A. Well, yeah, on some of them it looked
22 like it.

23 Q. And document number 16, the notice of
24 right to rescission --

25 A. That's not my signature.

MARY L. MOXLEY - EX. BY MR. MOORE

1 Q. Do you recall telling me in May of 2016
2 that it did look like your signature?

3 A. Yeah. I told Tom the same thing, some
4 of them do look like my signature.

5 Q. And if we looked at your deposition at
6 page 59 line 13 you'd probably see where you
7 provided that testimony?

8 MR. WOODRUFF: She doesn't have a copy
9 of her deposition in front of her so she doesn't
10 have a clue what her deposition says.

11 THE WITNESS: It's okay because I've
12 told you and I've told him it looks like it could
13 be, but I know that I did not do this.

14 THE COURT: Do you want her to review
15 the deposition? Is that what we're doing?

16 MR. MOORE: That was the objection.

17 BY MR. MOORE:

18 Q. So page 59 line 13.

19 A. Oh, jeez.

20 Okay. They look to be, but I don't
21 know. That's what I said and that's what I told
22 Tom.

23 Q. Do you have that document?

24 A. Sir?

25 Q. I'm through with that document.

MARY L. MOXLEY - EX. BY MR. MOORE

1 A. I'm sorry.

2 Q. I was just looking for a document. Let
3 me make sure we've got them all.

4 MR. MOORE: No further questions, Your
5 Honor.

6 THE COURT: Anything in response to
7 those questions, Mr. Woodruff?

8 MR. WOODRUFF: No, sir.

9 THE COURT: All right, ma'am. You can
10 have a seat.

11 Anything else from the plaintiff?

12 MS. CREECH: Your Honor, I'd like to
13 offer an affidavit of attorney's fees and costs
14 that has been executed by me as the plaintiff's
15 counsel. As Ms. Judd testified, the terms of the
16 note and mortgage do provide for securing of the
17 fees and costs associated with the enforcement of
18 this action and I'd like to offer an affidavit to
19 that effect, and that includes the time spent on
20 this matter and our hourly rate to handle the
21 contested aspects of the case and litigation
22 through today's date.

23 THE COURT: Anything, Mr. Woodruff?

24 MR. WOODRUFF: Your Honor, I'd object
25 to the attorney's fee request as I would like to go

1 MARY L. MOXLEY - EX. BY MR. MOORE
into that a little bit further.

2 THE COURT: All right. Go ahead.

3 MR. WOODRUFF: Number one, it is
4 obvious from the testimony of John Ballentine that
5 the --

6 THE COURT: This is on your objections
7 to attorney's fees and costs.

8 MR. WOODRUFF: This will be on my
9 objection to the mortgage, but --

10 THE COURT: Let's talk about this one
11 first. They haven't closed the case. She's asked
12 to admit this as an exhibit on attorney's fees and
13 costs.

14 MR. WOODRUFF: Your Honor, I'm going to
15 object to the validity of the mortgage. If she
16 want to introduce this to collect attorney's fees
17 based on a mortgage I don't have a problem with her
18 doing it, but I'm going to object to the validity
19 of the mortgage.

20 THE COURT: If you're going to bring
21 that argument about the mortgage then obviously
22 they won't have attorney's fees and costs, which
23 right now, as I understand, we're just talking
24 about the admission of this document.

25 MR. WOODRUFF: I don't have any

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 problems with the admission of her document at this
3 point today.

4 THE COURT: All right.

5 MR. WOODRUFF: Judge, I would like to
6 discuss the mortgage.

7 THE COURT: Why don't we mark this as
8 an exhibit. This will be Plaintiff's Exhibit 17
9 [sic], attorney's fees and costs, as I understand
10 it, without objection.

11 MR. WOODRUFF: 17 or 24?

12 THE COURT: I'm sorry. Yeah, I'm
13 looking at my notes from the last question. What
14 number are we on?

15 MS. CREECH: 24, I believe, Your Honor.

16 THE COURT: 24. Is this the original
17 or --

18 MS. CREECH: Actually, I'll just put
19 the copy in evidence and I'll mail the original.

20 MR. WOODRUFF: I don't have a problem
21 if she want to introduce a copy of her attorney's
22 fees affidavit.

23 (PLF. EXH. 24, Affidavit of Attorney's
24 Fees and Costs, was marked for identification.)

25 THE COURT: All right. We'll mark that
in as Plaintiff's Exhibit 24. Anything else from

MARY L. MOXLEY - EX. BY MR. MOORE
the Plaintiff's?

MR. MOORE: That's the Plaintiff's
case, Your Honor.

THE COURT: All right. Any other
witnesses from the defendants?

MR. WOODRUFF: None by the defendants.

THE COURT: All right. Any motions?

MR. WOODRUFF: I have motions.

THE COURT: All right.

MR. WOODRUFF: Your Honor, at this
point I would like to make a motion for -- do you
want me to go into the motions that are normally
made at the close of the plaintiff's case or just
go into everything? Because I'm not -- my witness
has testified. I'm not going to have anything --

THE COURT: Your witness is closed
altogether. You said you have no other witnesses.
That concluded the testimony so make whatever
motions I would assume are at the end of the case
because that's where we're at.

MR. WOODRUFF: Judge, according to the
testimony of John Ballentine who came here today
under subpoena by the plaintiff's, he testified
that there were numerous, numerous mortgages that
were done here in Aiken County. He also testified

MARY L. MOXLEY - EX. BY MR. MOORE
1 that the general methodology of those closings were
2 he would go to the home and a witness would be
3 provided. He would tell the parties that he was a
4 paralegal for either Ratchford & May or Ratchford &
5 Associates and he would get them to sign mortgages
6 and related documents.

7 As to the mortgage, if there was an
8 extra person available he would use that extra
9 person, as I understood him, to be a witness to the
10 mortgage. If there was not an extra person
11 available he would go ahead and either sign as the
12 witness or as the notary, return the documents to
13 Columbia where another paralegal with the Ratchford
14 firm would go ahead and sign as the second
15 sustaining witness.

16 In this case the document is actually
17 signed by -- or witnessed by Tracy L. Kirkpatrick
18 and John Ballentine. Your Honor, in addition to --
19 and we went into a fairly lengthy discussion about
20 Buyers Services, in addition to the violation of
21 the prohibition against the unauthorized practice
22 of law. Quite frankly, I would have to submit to
23 the Court that every single mortgage that was
24 obtained under that methodology is going to be
25 tainted and is not going to be a valid mortgage.

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1 When Mr. Ballentine testified he testified that,
2 yes, he thought that that was probably how this
3 mortgage occurred, as I understood him to say that.

4 I would direct the Court's attention to
5 the case of Leasing Enterprise, Inc., versus the
6 Livingstons, which is at 294 South Carolina 204, as
7 well as 363 Southeastern 2nd 410, which is a 1987
8 Court of Appeals case basically noting that when a
9 document does not have two witnesses, whether it's
10 a deed or a mortgage, it is not a valid document.
11 And that case actually cites a 1972 Attorney
12 General's opinion, which is at page 225. That's a
13 1972 Attorney General's opinion.

14 And so what logically flows, Judge, is
15 the mortgage is totally invalidated. Quite
16 frankly, it should never have been recorded and
17 indexed the way that it was. The probate clause
18 indicates only that Mr. Ballentine saw William
19 Moxley sign the mortgage, and it is dated Richland
20 County. Mr. Moore told me, I don't know, maybe
21 three months ago that it was actually executed here
22 in Aiken.

23 MR. MOORE: Objection, Your Honor.
24 What we have had in discussions I don't think is
25 appropriate at all.

MARY L. MOXLEY - EX. BY MR. MOORE
THE COURT: It's not in evidence.

So...

MR. WOODRUFF: In any event, you can't go back -- and I hate to put it this bluntly, but let's just call it what it is. You can't go back and you can't lie and say, yeah, we have two witnesses, both of who are paralegals for Ratchford & Associates, that saw any individual sign a mortgage and then go on and record it when that's not what happened. And I think that's the testimony we have here today.

The additional testimony is Mary Moxley has testified she never signed any of these documents. Mary Moxley is extremely emotional. She has been through a tremendous amount over the last four years and, quite frankly, they're talking about taking her house away. They're saying, oh, you can pay us \$90,000 whenever your husband or somebody originally got a \$68,000 mortgage. But Mrs. Moxley says she never signed anything. I don't think that there had been a preponderance of the evidence of a tip of the scales of justice, by any means, for the plaintiff's to show that they're entitled to any foreclose against Mrs. Moxley. Additionally I would move that the pleadings be

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 amended to conform to the evidence that has been
3 submitted here today and I would ask that the Court
4 order that the mortgage be declared as invalid
5 based upon not meeting the statutory requirements
6 for a mortgage. And, of course, if there is no
7 mortgage we certainly object to any attorney's fees
8 or anything -- or any type of relief whatsoever.

8 THE COURT: All right. In regards to
9 the motion, I'll be glad to hear the plaintiffs.

10 MR. MOORE: Your Honor, I'm unsure what
11 the motion is.

12 THE COURT: I was going to ask. Is
13 that a directed verdict you're asking for?

14 MR. WOODRUFF: Yes, sir. But also I
15 would ask that in the event that the Court denies
16 the motion for directed verdict I would ask that we
17 be allowed to amend the pleadings, in other words,
18 our answer and counterclaim, to conform with the
19 evidence. And what we are asking, that if the
20 Court denied the directed verdict we would ask that
21 the Court go ahead and acknowledge the testimony of
22 Mr. John Ballentine, go ahead and allow us to amend
23 to seek the affirmative relief, for this Court to
24 declare the mortgage null and void based upon the
25 fraud that was involved in the purported witnessing

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 of the mortgage.

3 THE COURT: Let's take the directed
4 verdict motion in response first and then you can
5 go to the motion to amend.

6 MR. MOORE: I would first raise
7 timeliness as an issue on the directed verdict. I
8 mean, we went about this in an awkward way. We're
9 now in trial. All the evidence is in. I think --
10 we would think it would be now to the Court to
11 consider all the evidence that is in and make a
12 determination, Your Honor.

13 THE COURT: I think you'd make a
14 renewed motion to make a motion at the end of
15 submission of evidence, too. So go ahead.

16 MR. MOORE: Your Honor, this case has
17 grown out of one assertion, and that is that
18 Ms. Moxley does not remember signing this mortgage
19 and that does not look like her signature. So the
20 burden that fell on the plaintiff because of the
21 way the probate was executed was to bring the
22 witnesses or a witness who saw her execute the
23 mortgage. We have brought John Ballentine here.
24 He's testified as to his habits and as to the
25 record, as to his signature on original
documents -- the only one that's really important

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1 is the mortgage -- and he says that is his
2 signature and he witnessed the signature of someone
3 representing herself to be Mary Moxley, she
4 presented her driver's license, and it's copied in
5 the file, and she has confirmed that that is her
6 driver's license. So I think we've met our burden
7 of proving that Mary Moxley signed this mortgage.

8 Now, there have been some suggestions
9 of irregularity on the execution, and that is that
10 one of the witnesses didn't see Ms. Moxley sign. I
11 don't think that was the testimony. The testimony
12 was that could have been happened. I don't think
13 he said most probably. I think he said more
14 probably than not that is the way it happened. But
15 even if you consider the fact that there's no
16 testimony, Ms. Moxley could have called that
17 witness and had her up here testifying just like we
18 had Mr. Ballentine up here testifying. Even if
19 that was an issue that only goes to recordability
20 of the mortgage. Our recording statutes are what
21 require you to have two witnesses to the mortgage,
22 South Carolina Code Section 30-5-30, and the reason
23 you have to record the mortgage, Section 30-7-10
24 says it's so that it can be enforceable against
25 third parties. We're not trying to enforce this

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 mortgage against a third party. We're trying to
3 enforce this mortgage against Ms. Moxley. She's
4 the party who signed the mortgage and whether or
5 not it was recorded it's still enforceable against
6 her if we can prove that she signed it and I think
7 we have met the burden of proof that she signed it.

8 The only evidence offered in contrast
9 to the evidence that we put up about the execution
10 is from a woman who says she has long and
11 short-term term problems, that was and is on
12 currently on drugs that affect her memory, that she
13 is under psychiatric care and that she has
14 provided -- she testified she has provided
15 inconsistent testimony about who executed these
16 documents. We think that's unreliable and should
17 be discounted by the Court.

18 So not only do we think that we've met
19 our burden, we think that we should be successful
20 in the case that we've made.

21 Now, because of the way this case has
22 been divided and because so much happened
23 beforehand I'd like Ms. Creech to be able to
24 address some of the issues that have been raised
25 based on what happened before.

MR. WOODRUFF: Your Honor, I do object

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1 to -- if they're going to be making their closing
2 argument I object to -- I think that either one or
3 the other should be making a closing argument.

4 MS. CREECH: If I may --

5 THE COURT: These are not closing
6 arguments. We're just responding to the motion for
7 a directed verdict at this point.

8 MS. CREECH: And I'd like to respond
9 specifically to the motion with respect to the
10 validity of the mortgage. The Court has already
11 ruled upon that issue. If the subject loan was not
12 closed by an attorney, under the decision of Matrix
13 it states that a mortgage recorded after
14 August 8th. Excuse me -- after the filing date of
15 that decision would be considered -- would not be
16 considered enforceable. So anything before then
17 would be considered enforceable.

18 NBAC versus Kinder clarified that the
19 filing date meant the recorded date. And, again,
20 we're talking about a mortgage that was recorded on
21 October 6th of 2000. So any issues with respect to
22 it being the product of the unauthorized practice
23 of law are irrelevant and have already been ruled
24 upon by the Court. Ms. Moxley's affirmative
25 defenses of unclean hands and equitable estoppel

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 with respect to that have already been ruled upon
3 and dismissed. So we submit that the argument
4 today and the motion made at closing with respect
5 to the validity of the motion -- of the mortgage --
6 excuse me -- be denied.

7 THE COURT: And that has to do with
8 motion to amend?

9 MS. CREECH: Yes, because that -- yes.
10 That's already been --

11 THE COURT: That's essentially what a
12 motion to amend is.

13 MS. CREECH: That was already before
14 the Court and was already ruled upon.

15 THE COURT: All right. Anything else?
16 I'm going to let you respond. Anything else?

17 MS. CREECH: Not with respect to that,
18 Your Honor.

19 THE COURT: All right. Anything else
20 on motion to amend? I'm assuming that's the
21 argument on that; is that correct?

22 MR. MOORE: Yes.

23 THE COURT: All right. Mr. Woodruff?

24 MR. WOODRUFF: As to the motion to
25 amend, the evidence only came to light very
recently as to the witness not being there, and the

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 reason -- it really only came to light, quite
3 frankly, when there were discussions between myself
4 and Mr. Moore and I indicated to Mr. Moore, well,
5 the mortgage says it was executed in Richland
6 County, and Mr. Moore says, no --

7 MR. MOORE: Objection, Your Honor.
8 We're getting into --

9 THE COURT: You can't talk about
10 conversation you had with him before the trial.
11 Let's talk about what evidence we've got here.

12 MR. WOODRUFF: As to -- as to when we
13 became aware that the documents were fraudulent and
14 that they were not truly witnessed by the people
15 purporting to witness them, we didn't know that for
16 a fact until today. And I think I made a comment
17 to you in chambers that I was concerned that
18 Mr. Moore was going to release Mr. Ballentine from
19 his subpoena and I was concerned about this case
20 possibly being attempted to be continued and then I
21 was not going to have Mr. Ballentine present to
22 testify as to the fact that there were not really
23 two witnesses to the action.

24 And, here again, as to CitiMortgage's
25 argument saying, oh, well, we've got Matrix, too,
so I can't bring up the attorney and insurance

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 preference statute, I can't, but I think I can
3 bring up the unauthorized practice of law to show
4 the totality of the circumstances, and I think that
5 the case law is very, very precise and I think
6 there's an attorney general opinion that basically
7 says when you don't have that second witness you
8 don't have a valid mortgage.

9 THE COURT: Based on the case you
10 already stated?

11 MR. WOODRUFF: That's the case I
12 already stated, Leasing Enterprise, Inc., versus
13 Livingston at 294 SC 204, as well as the 1972
14 attorney general's opinion which is at page 22.
15 And it is actually South Carolina Attorney
16 General's opinion 3373, which the Court of Appeals
17 acknowledged is -- the Court of Appeals agreed with
18 the attorney general's opinion.

19 And so I am asking that the proceedings
20 be amended to conform with the facts that have come
21 out today and that this Court declare the mortgage
22 null and void.

23 MR. MOORE: Just extremely briefly,
24 Your Honor. I'd like to opportunity to read the
25 Livingston case so I can understand the comment to
the Court on it. That was the first thing.

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1 The second thing, there was no evidence
2 today that that second witness was not there. The
3 evidence was that could have been that happened,
4 but that was not -- that was not testimony that it
5 did happen.

6 THE COURT: All right. In reference to
7 the directed verdict motion, considering the
8 evidence in light most favorable to the nonmoving
9 party, I certainly think there's testimony and
10 documents as well as questioning of the witness,
11 the defendant that was called as a witness as well,
12 and references to the deposition, that that's not a
13 matter that would be subject to a directed verdict.
14 The Court's going to have to examine the evidence
15 and the documents and testimony and reach that
16 conclusion. But there's certainly evidence, again,
17 when you consider that motion in light most
18 favorable to the nonmoving party, that there are
19 issues that have to be determined by the Court.
20 Therefore, I will deny the directed verdict motion
21 on that.

22 On the motion to amend, I'll take the
23 arguments under advisement on that. And I'm going
24 to give you all in a few minutes a chance to submit
25 some briefs on some things, and we can add that to

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 the list in that regard. So that's where we're at
3 in regards to that.

4 Now, as I said, I'm going to ask for
5 briefs from the parties. We are about 15 minutes
6 from when we have to be out the door, but I'll be
7 glad to let parties make a closing statement. I
8 would ask the plaintiffs to just -- that just one
9 of you make a closing, if you want to make a
10 closing. You're not required to make a closing.
11 I've heard the evidence, I've got the exhibits and
12 I've married the motions, but I'm going to leave it
13 up to each party, of course, because you are
14 entitled to do that.

15 Defendants, do you wish to make a
16 closing argument? I'm sorry. Plaintiff, do you
17 wish to make a closing argument? I'm sorry.

18 MR. MOORE: We'll waive that, Your
19 Honor.

20 THE COURT: Mr. Woodruff?

21 MR. WOODRUFF: If the plaintiff waives
22 I'll waive. I think the Court has a very good
23 grasp on what's going on.

24 THE COURT: Okay.

25 All right, now. In the time that's
left, although I think Mr. Woodruff did a good job

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 of organizing and going through the documents, if
3 we could just double-check and make sure that both
4 parties agree we have all the exhibits there and --

5 MR. WOODRUFF: May I approach the
6 bench?

7 THE COURT: Yes.

8 MR. WOODRUFF: The best way I found,
9 Judge, is just to count them out, and I think
10 they're in order.

11 MR. MOORE: Is there some direction on
12 when the briefs need to be submitted.

13 THE COURT: While he's looking at that,
14 let me ask about you all's schedule. I don't want
15 to jump ahead. I mean, is three weeks enough for
16 each side on the brief?

17 MR. MOORE: It is for the plaintiff,
18 Your Honor.

19 THE COURT: Because some cases have
20 been cited, I think, in reference to -- or
21 arguments made on some motions to amend which only
22 came after the trial, obviously I'll take a -- I'll
23 be glad if you want to include that in your brief
24 on the motion to amend, arguments for and against
25 in regard to that. I'll make a ruling in regards
at the that.

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1 The other issue is the signature on the
2 mortgage. The argument of the plaintiff's, as I
3 understand it, is that that goes to the requirement
4 of two signatures is only for recording statute
5 purposes for priority notice of third parties, et
6 cetera. I'll be glad to take a brief on -- as part
7 of your brief that issue. And then, of course,
8 Mr. Woodruff would argue that it's invalid based on
9 that point, as I understand his argument, and he
10 cited the case and you all can address that issue
11 as well. That will cover the mortgage. That will
12 cover the motion to amend.

13 And this is a foreclosure. You've
14 already proven all that you're required to prove on
15 Plaintiff's part. Mr. Woodruff has argued a case
16 or a position that would void the mortgage. So is
17 there anything else that I haven't addressed that
18 you all feel like you need to address in a brief?
19 I'm trying to make it as short as possible for you.
20 So basically if there's an issue afforded to you
21 that you don't think we've addressed properly I'll
22 be glad to add that to the list to be in the brief.
23 Anything for the plaintiff's?

24 MR. MOORE: Just one second, Your
25 Honor.

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THE COURT: That's fine.

MS. CREECH: Your Honor, we'd

additionally like to -- and if this is an issue
you'd like us to brief, we can do that as well, but
based on the evidence presented today, obtain a
ruling that the plaintiff has established its
burden to show that both the subject loan is in
default and the debt amount due and owing with
respect that default notwithstanding any arguments
that have been made with respect to Ms. Moxley's
signature on that mortgage. So, in other words,
that Mr. Moxley was the borrower, that the loan
went into default, has been in default since July
of 2013, and that that based on the evidence
presented today through Ms. Judd what the total of
that amount is.

THE COURT: Mr. Woodruff, any objection
on that on?

MR. WOODRUFF: Yes, sir. And I'll tell
you what my objections are. We have contended all
along that there is no valid mortgage as to Mary
Moxley. We are, of course, now contending that
based on what we've learned today that William
Moxley -- even though we never contested the fact
that he originally signed the mortgage, it's now

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 our position that his signature is totally invalid.
3 But what Plaintiff's counsel is attempting to do is
4 they're trying to say, oh, yes, we want to go ahead
5 and say that, yes, this amount of money is owed,
6 when there's -- it's uncontroverted, and the Court
7 actually has a copy in the exhibits, as to the deed
8 where the parties, Mary Moxley, and her husband,
9 William Bill Moxley, got the property originally in
10 1990 from Biddle Real Estate and they have lived
11 there and it was in joint tenant with rider
12 survivorship.

13 It's our contention that Mr. Moxley was
14 never a party to this mortgage, and so I think what
15 she -- what Plaintiffs's counsel is attempting to
16 do is she's trying to get some kind of
17 acknowledgment -- she's trying to use this Court to
18 say, yeah, this amount is due. Well, the Court may
19 be able to do that, but they do not have the right
20 to sell the entire property. If this Court does
21 not accept my argument to allow the pleadings be
22 amended to invalidate the mortgage then the Court
23 probably does have the authority to order that the
24 undivided one half interest of William Moxley be
25 sold. They can't -- this Court -- we contend if my
client is not a party to the note she's not a party

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1 to the mortgage. This Court has no authority to
2 order her --

3 THE COURT: But nobody's -- there's no
4 evidence she signed or has anything to do with the
5 note. Everybody's in agreement on that.

6 Mr. Moxley is the only one on there, and I'm not
7 aware of any pleadings or testimony that they were
8 ever even challenging that fact. So the note --
9 for the purposes of the note being in default, I
10 don't think there's any testimony that's contested
11 that.

12 MS. CREECH: And, additionally, with
13 respect to Mr. Moxley's undivided half interest in
14 the property being encumbered by the mortgage,
15 there's been no testimony to contradict that
16 statement --

17 THE COURT: Thank what Mr. Woodruff is
18 saying is if he prevails on the argument on the
19 probate -- again, I don't want to put words in you
20 all's mouth. As I understand his argument, look,
21 if the mortgage is invalid it's invalid to both of
22 them. That's his argument if he prevails on that.

23 For the purpose of your motion, I think
24 in regards to the note and his violation -- or
25 nonpayment on the note, I don't think that's been

1 MARY L. MOXLEY - EX. BY MR. MOORE
2 challenged. I don't think there has been testimony
3 to that as far as the history on the payments and
4 there's been no conflict about that point. It
5 doesn't have anything to do with Mr. Moxley. I
6 agree with you on that. The note doesn't have
7 anything to do with her. I don't think Plaintiffs
8 have ever alleged that.

9 So I think for the purpose of what
10 you're asking for, you are entitled to a finding
11 from the Court that there has been a -- that
12 Mr. Moxley executed the note, that's there's been a
13 default in regards to the payments, and that we've
14 had testimony as to the amounts owed and what that
15 amount is. Now, I think that's as far as I can go
16 on that at this time because, again, if
17 Mr. Woodruff's arguments prevails then I'm going to
18 have to decide is it a half interest, not a half
19 interest or is the whole thing out. So I don't
20 want to rule on that part on the motion until we
21 look at everything.

22 But on the note, I agree and I'll make
23 the ruling of that that there's been an execution
24 of the note, there's been default, the debt was
25 established through testimony and there's been no
real challenge on the debt.

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1 MR. WOODRUFF: That's been testified
2 to.

3 THE COURT: That's been testified to.
4 That's still subject to some things in regards to
5 the mortgage. I agree with that, but I think
6 they're entitled to that much.

7 MR. MOORE: So the only two things the
8 Court wants a memorandum on are the motion to amend
9 and the impact of the allegations concerning the
10 witness on the mortgage?

11 THE COURT: That's the only two things
12 I really see that are still remaining because once
13 I rule on those everything else, I think, is going
14 to fall into place. Now, I'll be glad if I missed
15 something -- if the Plaintiff's feel I've missed
16 something and feel like we need to address some
17 other issue -- I'll ask you first, and I'm going to
18 ask the defendants. Anything else from the
19 Plaintiff's based on where we're at now?

20 MR. MOORE: No, Your Honor.

21 THE COURT: From defense?

22 MR. WOODRUFF: No.

23 THE COURT: All right. If you'll just
24 verify those exhibits. I'll keep this original and
25 the exhibits, Madam Court Reporter, until I get the

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1 briefs on there.

2 Now I'd like to jump in on the
3 transcript. We ran pretty long today. I usually
4 don't require a transcript unless I start looking
5 at it and feel like I need one. However, if either
6 side feels like they want a copy of the transcript
7 then the Court would like to receive a -- or want a
8 transcript, the Court would ask for a copy of that
9 transcript to review along with the parties. So,
10 Plaintiff's, will you be ordering a transcript at
11 this time?

12 MS. CREECH: I don't know, Your Honor.

13 THE COURT: Okay. Let me know. And
14 you don't have to let me know today, obviously. If
15 you all are talking about it two weeks from now
16 when you're working on those briefs I'm okay with
17 that. Just let the Court know. I just don't like
18 to be blindsided by somebody producing portions of
19 a transcript and I don't have a copy of it.

20 MR. MOORE: And we'll let opposing
21 counsel know.

22 THE COURT: Right. Mr. Woodruff,
23 unless you have a -- unless you want to request one
24 today.

25 MR. WOODRUFF: Your Honor, the only --

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1 I don't know if she will allow me -- what I would
2 like to request, I'd like to request just the
3 transcript of John Ballentine's testimony. I don't
4 even know if that's possible or not.

5 THE COURT: I don't know if that's
6 possible or not either.

7 MS. CREECH: I think if we're going to
8 do that we should just request the whole thing.

9 THE COURT: I think you have to do the
10 whole thing because --

11 MS. CREECH: We'll go ahead and --

12 THE COURT: -- she's certifying it. Is
13 that correct, Madam Court Reporter? Do you
14 understand. If you're certifying it I assume you'd
15 have to do the whole thing.

16 All right. So you want a copy of the
17 transcript?

18 MS. CREECH: Yes. Yes, sir.

19 THE COURT: Parties divide the cost on
20 a copy of the transcript.

21 MR. WOODRUFF: Are we --

22 THE COURT: You can make that subject
23 to something posttrial, but initially I want the
24 court reporter to be paid. So just divide the cost
25 and you all can address that when I make the final

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order.

All right. Thank you all.

(The hearing was concluded at

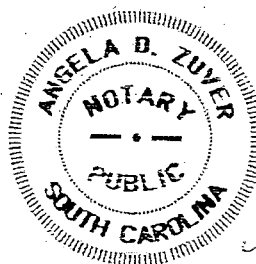
5:55 p.m.)

CERTIFICATE OF REPORTER

I, Angela D. Zuver, Court Reporter
and Notary Public for the State of South Carolina
at Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am
neither related to nor counsel for any party to the
cause pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 30th day of March,
2017 at Columbia, Richland County, South Carolina.



Angela D. Zuver, Court Reporter
My Commission expires
June 24, 2024

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2016CP0202033 NOTE

LOAN #: 612069362

CVECS
DPRW

SEPTEMBER 29, 2000

COLUMBIA,

[City]

SOUTH CAROLINA

[State]

398 GLENWOOD DR, WARRENVILLE W.C. 111
BURNETTOWN, SC 29851
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$69,700.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is ABN AMRO MORTGAGE GROUP, INC., A DELAWARE CORPORATION.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 9.500%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the 1ST day of each month beginning on NOVEMBER 1, 2000.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on OCTOBER 1, 2030, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4242 N. HARLEM AVE.
NORRIDGE, IL 60706

ATTN: CASHIERING

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$586.08.



4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E)-Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

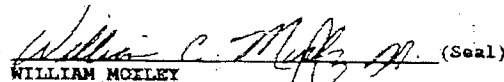
10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

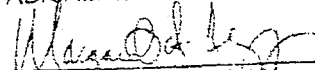
If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal)
WILLIAM MOOLEY
JK

PAY TO THE ORDER OF

WITHOUT RECOURSE
ABN AMRO MORTGAGE GROUP, INC.


MARGARET A. BEZV
VICE PRESIDENT

When recorded mail to:
ABN AMRO MORTGAGE GROUP, INC.
P.O. BOX 5064
TROY, MICHIGAN 48084
ATTN: FINAL/TRAILING DOCUMENTS

MORTGAGE
VOL 2463 PAGE 105

ORIGINAL

This instrument prepared by:



LOAN #: 612069362

[Space Above This Line For Recording Data]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on SEPTEMBER 29, 2000.
WILLIAM MOKLEY, A MARRIED MAN & Mary L. Mokley *W.C.M.*

The mortgagor is

This Security Instrument is given to ABN AMRO MORTGAGE GROUP, INC., A DELAWARE CORPORATION

("Borrower").

existing under the laws of THE STATE OF DELAWARE
and whose address is 2600 W. BIG BEAVER RD., TROY, MICHIGAN 48084

which is organized and

Borrower owes Lender the principal sum of SIXTY NINE THOUSAND SEVEN HUNDRED AND NO/100*****
***** Dollars
(U.S. \$69,700.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"),
which provides for monthly payments, with the full debt, if not paid earlier, due and payable on OCTOBER 1, 2030.
This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect
the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security
Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and
assigns the following described property located in Aiken County, South Carolina:

which has the address of 398 GLENWOOD DR, *Marionville ALA*
Burnsville W.C.M.
South Carolina 29851 ("Property Address");
[Zip Code]

[Street, City],

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the
improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of
the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in
this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph

21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment charge under the Note.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

22. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waivers. Borrower waives all rights of homestead exemption in the Property.

24. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- ☐ Adjustable Rate Rider
- ☐ Graduated Payment Rider
- ☐ Balloon Rider
- ☐ V.A. Rider

- ☐ Condominium Rider
- ☐ Planned Unit Development Rider
- ☐ Rate Improvement Rider

- ☐ 1-4 Family Rider
- ☐ Biweekly Payment Rider
- ☐ Second Home Rider

☒ Other(s) [specify] **MORTGAGE INSURANCE RIDER**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Tracey L. Kirkpatrick
Joe K. Ballh

William C. Moxley Jr.
WILLIAM MOXLEY
E. JR. W.C.M.
Nancy L. Moxley

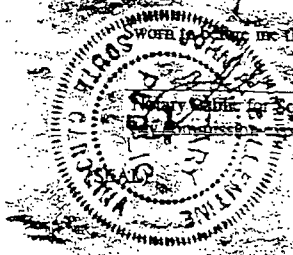
State of **SOUTH CAROLINA**
County of Richland

Personally appeared before me Tracey L. Kirkpatrick
(first witness) and made oath that he/she saw the within named WILLIAM MOXLEY

sign, seal, and as his/her act and deed, deliver the within written Mortgage, and that he/she, with _____ (grantor)
John K. Ballh
witnessed the execution thereof. _____ (second witness)

Tracey L. Kirkpatrick (signed by first witness)

WITNESSED and signed on this 29th day of Sept, 2010
Joe K. Ballh
Notary Public for South Carolina
1/26/09



LOAN #: 612069362

MORTGAGE INSURANCE RIDER

This Mortgage Insurance Rider is made this 29TH day of SEPTEMBER, 2000, and is incorporated into and shall be deemed to amend and supplement the mortgage, deed of trust, or security deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed Rate note (the "Note") to ABN AMRO MORTGAGE GROUP, INC., A DELAWARE CORPORATION

("Lender") of the same date and covering the property described in the Security Instrument and located at: 398 GLENWOOD DR, BURRHEEDS, SC 29851

W.C.M. Wescroft

The Security Instrument is amended by adding the following at the end of Section 10 (if the Security Instrument has a form date at the lower right corner of 3/99 or later) or Section 8 (if the Security Instrument has a form date at the lower right corner that is earlier than 3/99):

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive insurance." Further:

(A) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(B) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

LOAN #: 512069362

By signing below, Borrower accepts this Mortgage Insurance Rider and agrees that it amends and supplements the Security Instrument.

William C. Moxley Jr. (Seal)
WILLIAM MOXLEY

W.C.M. Jr. JR

MultiState Mortgage Insurance Rider-Single Family-Fannie Mae Uniform Instrument
Form 3160 4/00

Page 2 of 2

ESL69RDU

RETURNED TO:

Ratchford + Assoc.
1813 Pickens St.
Col. S.C. 29201

10-6-00 1130 hrs.
RECORDED
John T. Hester
REC. Aiken County