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IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 16-2006-CA-1564
DIVISION: CV-C

THE BANK OF NEW YORK, AS TRUSTEE FOR
THE HOLDERS OF THE EQCC ASSET BACKED
CERTIFICATES, SERIES 2001-2,

Plaintiff,

vs.

PAULETTE WILLIAMS; MERCURY FINANCE
COMPANY OF FLORIDA, A DISSOLVED
CORPORATION,

Defendants.

Deposition of **THE BANK OF NEW YORK, by**
and through MINDY LEETHAM, taken on behalf of
Defendant Paulette Williams, pursuant to Notice of
Taking Deposition of Corporate Representative in the
above-entitled action, on Tuesday, January 15, 2008,
beginning at 10:10 a.m., at the offices of James A.
Kowalski, Jr., PL, 12627 San Jose Boulevard, Suite
203, Jacksonville, Florida, 32223, before Katharine
M. Henderson, Registered Merit Reporter, and a
Notary Public in and for the State of Florida at
Large.

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A P P E A R A N C E S

ERIC C. REED, Esquire
Shutts & Bowen, LLP
300 South Orange Avenue, Suite 1000
Orlando, Florida 32801

Appearing on behalf of Plaintiff.

JAMES A. KOWALSKI, JR., Esquire
James A. Kowalski, Jr., PL
12627 San Jose Boulevard, Suite 203
Jacksonville, Florida 32223

Appearing on behalf of Defendant Paulette
Williams.

ALSO PRESENT:

Paulette Williams.

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I N D E X

WITNESS:

THE BANK OF NEW YORK, by and through

MINDY LEETHAM

DIRECT EXAMINATION BY MR. KOWALSKI.... PAGE 4

E X H I B I T S

FOR IDENTIFICATION

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THE BANK OF NEW YORK,

by and through MINDY LEETHAM,

having been produced and first duly sworn as a
witness, testified as follows:

DIRECT EXAMINATION

BY MR. KOWALSKI:

Q Ma'am, can you state your name, please.

A Mindy Leetham.

Q M-i-n-d-y?

A L-e-e-t-h-a-m.

Q And where do you work, Ms. Leetham?

A I work for Select Portfolio Servicing.

Q And have you ever given a deposition
before?

A No, I haven't.

Q A deposition is a little bit of an
artificial conversation. If you were talking to a
friend or a coworker, there would probably be a good
bit of interrupting because you would know where
they were going and they would know where you were
going, and questions would be answered before they
were finished, et cetera. Because we're creating a
record here, and in order to take the pressure off
the court reporter, we can't do that. So we've got
to build in a little bit of a delay. I'm going to

1 do my best not to question over your answers, and
2 I'm going to ask that you do your best not to answer
3 over my questions. You'll get used to it in a
4 minute.

5 If you need to take a break, let me know.
6 If it's a yes or a no, you need to answer "yes" or
7 "no" as opposed to nodding your head or as opposed
8 to saying "unh-unh" or "uh-huh." The "unh-unh" or
9 the "uh-huh" makes it to the record, but a lot of
10 times we can't tell the difference. Fair enough?

11 A Yes.

12 Q If you answer a question that I have asked
13 without asking me to explain it or rephrase it,
14 et cetera, then I will assume, and the record will
15 reflect, that you understood the question and
16 answered it accordingly. Fair enough?

17 A Yes.

18 Q How long have you worked for SPS?

19 A For eight years.

20 Q And what is your current job
21 classification?

22 A Compliance specialist.

23 Q And what does that mean?

24 A A compliance specialist -- I work for the
25 chief compliance officer to work with the

1 departments internally and ensure that policies and
2 procedures are being followed and that they get any
3 updates to federal or state law.

4 Q Do you know how it was that you were
5 selected to be the corporate representative for the
6 deposition today?

7 A I believe it's because I've worked there
8 for a long time and I know -- I have a pretty good
9 overview of what happens in mortgage servicing.

10 Q Who is the chief compliance officer to
11 whom you report?

12 A His name is Jeff Graham.

13 Q And spell that last name, please.

14 A G-r-a-h-a-m.

15 Q And where is Mr. Graham located?

16 A In Salt Lake City, Utah.

17 Q Where are you based?

18 A In Salt Lake City.

19 Q Take me through, if you can, a history of
20 your time with SPS before you began working in the
21 compliance department.

22 A You want to know my job titles?

23 Q Your job titles and a general description
24 of what you did. And if it's easier for you to go
25 backwards, do that; if it's easier for you to start

1 at the beginning and move forward ending with the
2 compliance division, do that. Whatever's easier for
3 you.

4 A Okay. I'll start at the beginning, then.
5 I started out as a loan servicing representative in
6 our loan resolution department.

7 Q And what does that person do?

8 A And that person takes phone calls, works
9 out loss mitigation options with customers on the
10 phone, and, you know, processes payments -- well,
11 not processes. I should say they -- they -- if
12 payments are made, they can advise our cashiering
13 department how to apply them or what to do if
14 they're working with a customer on a forbearance
15 agreement or on other types of options.

16 Q How long did you work in the loan
17 resolution department?

18 A Loan resolution? About a year. And then
19 I went to the human resources department and became
20 an employee trainer.

21 Q Go ahead.

22 A And then I moved to the corporate legal
23 department and worked as a litigation specialist.

24 Q Go ahead.

25 A And then I worked back in loan resolution

1 as a supervisor over a team of representatives. And
2 then I worked in the contested foreclosure
3 department.

4 Q Go ahead.

5 A And then the ombudsman department. And
6 that brings me to compliance specialist.

7 Q Is there a document or a flow chart that
8 exists that relates, for example, corporate legal to
9 loan resolution to contested foreclosure?

10 A I don't understand your question.

11 Q Well, how do the three, those three in
12 particular, interrelate? Does one handle only
13 certain types -- for example, contested foreclosure
14 I could see flowing over into corporate legal. It
15 may not. But the terms suggest some overlap.

16 A I guess there could be some overlap, but
17 I'll try to explain the difference. Contested
18 foreclosure is a group that handles just foreclosure
19 accounts that have become contested. Once the
20 account becomes a litigated matter, or if it's a
21 separate litigated matter, that's handled by the
22 corporate legal department.

23 Q Well, take, for example, this loan.
24 There's two foreclosures, both in some sense are
25 ongoing. It's contested, but it's also in court.

1 And you're here from compliance. So how would this
2 foreclosure, for example, relate to corporate legal,
3 loan resolution, or contested foreclosure? Is
4 somebody in each department handling part of this
5 case?

6 A At one time or another loan resolution has
7 handled this account, contested foreclosure has
8 handled this account. Presently the corporate legal
9 department is handling it as a litigated account.

10 Q And again, is there some sort of mapping
11 or flow chart that defines which department handles
12 a case such as this at certain phases? In other
13 words, when something -- when a complaint gets a
14 counterclaim, does that trigger the flow chart,
15 moving it from legal to contested foreclosure, for
16 example?

17 A I think it's handled just on a
18 case-by-case basis.

19 Q Who's the captain of the ship for
20 determining which department would be handling a
21 case such as this one?

22 A David Coleman is over the contested
23 foreclosure group that handled this prior to it
24 moving over to the litigation group. And I would
25 imagine, I don't know that for a hundred percent

1 certainty, but he probably had a discussion with
2 corporate legal to say, "We believe this file should
3 be transferred to your litigation team."

4 Q Where it is now?

5 A Yes.

6 Q Is Mr. Graham your direct supervisor?

7 A Yes.

8 Q Do you know who Mr. Graham's supervisor
9 is?

10 A Yes. Well, do I? Let's see. I think
11 it's Bob Holz.

12 Q Holtz, H-o-l-t-z?

13 A Just Z, no T.

14 Q H-o-l-z?

15 A Uh-huh.

16 Q And what's Mr. Holz's title?

17 A It just changed, so I'm not sure.

18 Q What was it before?

19 A General counsel.

20 Q For SPS?

21 A Yes.

22 Q The notice, which we'll mark as Exhibit 1,
23 and I'll just leave that on there for now, that
24 brings you here actually asks for the Bank of New
25 York to designate a person to speak on behalf of

1 certain issues. Are you aware of that?

2 A Yes.

3 (Exhibit 1 was marked for identification.)

4 BY MR. KOWALSKI:

5 Q Have you reviewed Exhibit 1 before I just
6 handed it to you?

7 A Yes.

8 Q Exhibit 1 is obviously directed to the
9 Bank of New York, not to Select Portfolio Servicing;
10 do you see that?

11 A Yes.

12 Q What is it that allows you to testify as
13 the corporate representative of a separate corporate
14 entity?

15 A In matters of servicing the loan, Select
16 Portfolio Servicing is the one who would handle
17 that.

18 Q And how do you know that?

19 A Well, Bank of New York is the trustee, and
20 they don't handle the servicing of the loan. That's
21 what they have Select Portfolio Servicing do for
22 them.

23 Q And I understand that may be true as sort
24 of a general proposition.

25 A Uh-huh.

1 Q Is there something that confirms that? Is
2 there some document that says that when a -- a
3 series of questions such as these are to be asked of
4 the Bank of New York, the human being that comes is
5 an employee of SPS? Is there a document that says
6 that?

7 A I don't know for a hundred percent
8 certainty the name of the document, but I'm sure
9 there's some kind of agreement made when they hire a
10 servicer to represent them, represent the trust.

11 Q Typically a Pooling and Servicing
12 Agreement and the documents that relate to that?

13 A Typically.

14 Q Have you reviewed the Pooling and
15 Servicing Agreement in this case?

16 A No, I haven't.

17 Q It's my understanding I believe it was
18 objected to being produced. So up till today, have
19 you reviewed any document that allows you to speak
20 on behalf of Bank of New York?

21 A I haven't.

22 Q Have you spoken to anyone at Bank of New
23 York to confirm that you are allowed to speak on
24 behalf of a separate corporate entity here today?

25 A No.

1 Q So as you sit here, do you know whether
2 you have the authority from the Bank of New York to
3 testify to these matters and to bind the Bank of New
4 York as a corporation?

5 A No.

6 Q And that's fair, and that's what I'm
7 trying to ask.

8 Okay. Let's -- let me go backwards on
9 Exhibit 1. And I'll ask you to move to the very
10 last page. And Exhibit 1 asks you to bring certain
11 documents here today. And number one in particular
12 asks you to bring all documents which are reviewed
13 by the deponent in preparation for testifying here
14 today. Do you see that?

15 A Yes.

16 Q And you have a stack of documents to your
17 right, and you and Mr. Reed were kind enough to let
18 me skim through those before we started.

19 A Yes.

20 Q Other than the documents to your right,
21 have you reviewed anything else to prepare you for
22 testifying here today?

23 A Well, this accounting.

24 Q And you're referring to a -- I think it
25 was five pages.

1 A Yes.

2 Q A five-page spreadsheet that has in the
3 middle the initials KLT?

4 A That's correct.

5 Q And I'll go ahead and mark that. I think
6 we're going to be up to 6.

7 MR. KOWALSKI: Did I give you a copy of
8 this?

9 MR. REED: Yep.

10 MR. KOWALSKI: Okay.

11 (Exhibit 6 was marked for identification.)

12 BY MR. KOWALSKI:

13 Q Other than the documents to your right and
14 Exhibit -- what I'll now mark as Exhibit 6, the KLT,
15 have you reviewed anything else in preparation for
16 testifying here today?

17 A No.

18 Q And you've already testified with regard
19 to the Pooling and Servicing Agreement that you have
20 not reviewed a Pooling and Servicing Agreement
21 before coming here today, correct?

22 A That's correct.

23 Q And is it also fair to say that since the
24 documents to your right and Exhibit 6 are all that
25 you have reviewed, that you also have not reviewed

1 any other documents that explain, explore, delineate
2 the relationship between the Bank of New York and
3 SPS?

4 A That's correct.

5 Q All right. Well, let's, then, move back
6 in to Exhibit 1. And I'll ask you to turn to page
7 two. And we have asked that the Bank of New York
8 designate one or more officers, directors, or
9 managing agents or other persons to testify
10 regarding the transactions by which plaintiff
11 obtained ownership of the subject note and mortgage.
12 Do you see that?

13 A Yes.

14 Q Okay. And let me go back before I get
15 into the question one. You are not an officer of
16 the Bank of New York, correct?

17 A That's correct.

18 Q You're not a director of the Bank of New
19 York?

20 A Correct.

21 Q You're not a managing agent of the Bank of
22 New York?

23 A Correct.

24 Q So you would be in the category of other
25 persons who consent to testify on behalf of the Bank

1 of New York, correct?

2 A That's correct.

3 Q All right. Let's get into, then, issue
4 number one, the transaction by which the plaintiff
5 obtained ownership of the subject note and mortgage.
6 Tell me how the Bank of New York, as trustee for the
7 holders of the EQCC asset-backed certificates Series
8 2001-2 obtained ownership of this note and mortgage.

9 A From its origination?

10 Q From its most recent transfer. Let's go
11 backwards this time.

12 A Okay. Do you mind if I draw?

13 Q Well, not on Exhibit 1.

14 A Okay.

15 Q I'll give you another sheet. If you need
16 a different pen or something like that, let me know.

17 A Oh, that's fine.

18 (Off-the-record discussion.)

19 MR. KOWALSKI: Okay. Back on the record.

20 A Okay. So the Bank of America is the
21 trustee for the trust, which is EQCC, the numbers we
22 gave before, who -- let's see, NationsCredit was
23 back here. And I believe NationsCredit, as I
24 understand it through the assignment chain,
25 securitized this loan, which meant to pool it up

1 into this pool. This is a pool, or trust. And
2 prior to that was Aames. And I guess the retail
3 name of Aames is One Stop. I think they're the
4 same. I think One Stop is the retail name for
5 Aames, who is the actual lender, who sold the loan
6 to NationsCredit; because they don't do that, they
7 don't service or anything, to my knowledge. Sold it
8 to NationsCredit, who securitized it into a pool,
9 which is called the EQCC trust, and Bank of New York
10 is the trustee of the trust. And we are the
11 servicer.

12 Q Okay. First off, let me ask you, and you
13 can parcel this up by way of transaction if you need
14 to, is there a document that you've reviewed that
15 confirms, for example, the transfer from
16 NationsCredit into the pool or from NationsCredit to
17 the Bank of New York as trustee?

18 A Yes, I saw an assignment in the documents.

19 Q Okay. If you can find -- and it may be --

20 A Out of order?

21 Q Plaintiff's 3, 0003. And I have an extra
22 copy of it depending upon the order that you've got
23 it in.

24 A This one's from Nations to Select. I know
25 I saw one to the Bank of New York.

1 Q Well, 0003 appears to be from
2 NationsCredit to the Bank of New York as trustee.

3 A Oh, yes, okay. All right. Okay.

4 Q Have you had a chance to review what was
5 previously produced in response to request for
6 production and was Bates stamped Plaintiff's 3?

7 A Is that this one?

8 Q Yes, ma'am.

9 A Yes, I've reviewed it.

10 Q Okay. And let me ask you before we go
11 into that document, is that the document that you're
12 relying on to testify that NationsCredit transferred
13 ownership of this note and mortgage, relating to
14 Ms. Williams's mortgage, to the Bank of New York as
15 trustee?

16 A Yes.

17 Q Do you know of any other documents that
18 exist that confirm that transaction other than
19 Plaintiff's 3, which I'm going to mark separately
20 here in a second?

21 A I don't.

22 Q Okay. And I had pulled that out. And let
23 me just show this to you and have you confirm that
24 it's the same document. Let me give you the one
25 with the sticky on it, which I was going to mark

1 separately as 2.

2 (Exhibit 2 was marked for identification.)

3 (Off-the-record discussion.)

4 BY MR. KOWALSKI:

5 Q Okay. Have you had a chance to review
6 what's been now marked as Exhibit 2?

7 A Uh-huh, yes.

8 Q And can you confirm that it's the same as
9 Plaintiff's 3, in fact, they have the same Bates
10 stamp on them, as was in the stack of documents to
11 your left --

12 A Yes.

13 Q -- or to your right?

14 A (Nods head.)

15 Q Okay. All right. Let's look at what
16 we've now marked as Plaintiff's -- as Exhibit 2,
17 separately Bates stamped as Plaintiff's 3. You
18 agree that Exhibit 2 is dated September 24, 2004?
19 And you can toss that now.

20 A Oh. Yes.

21 Q And that September 24, 2004, is the date
22 on the document that you're relying upon to testify
23 that NationsCredit transferred and sold this note
24 and mortgage to the Bank of New York as trustee,
25 correct?

1 A Yes.

2 Q So there's no doubt but that the Bank of
3 New York acquired this note and mortgage after
4 filing the complaint and lis pendens in the 2004
5 case, right?

6 A No.

7 Q Well, when did the bank file the lis
8 pendens in the 2004 case, 2004-4918-CA?

9 A Let me look at the . . .

10 Do you mind if I look at this?

11 Q Not at all. And you're referring to the
12 KLT screen?

13 A Yes.

14 Q Which is Exhibit 6.

15 A I don't have the date memorized. I've got
16 it written down somewhere as I looked through.

17 MR. KOWALSKI: Let me take a quick break
18 and I'll pull that lis pendens.

19 THE WITNESS: Okay.

20 (Short break.)

21 BY MR. KOWALSKI:

22 Q Let me show you what I'll mark as Exhibit
23 3, which is the copy of the filed and recorded lis
24 pendens in case 2004-4918. Have you had a chance to
25 look at Exhibit 3?

1 A Yes.

2 (Exhibit 3 was marked for identification.)

3 BY MR. KOWALSKI:

4 Q And you see it's signed on July 11, 2004,
5 and filed and recorded on July 17, 2004.

6 A Okay.

7 Q And that's a date that is before September
8 24, 2004, which is the date on Exhibit 2, correct?

9 A Correct.

10 Q So again, there's no doubt but that the
11 Bank of New York acquired the subject note and
12 mortgage after it filed its notice of lis pendens in
13 the 2004 case, correct?

14 A Well, I don't know how to answer that. I
15 believe it was just not recorded at the time it
16 was -- I believe the assignment was completed but
17 not recorded in the proper timing.

18 Q Okay.

19 A The way I understand it.

20 Q Well, now, for better or for worse, is the
21 time to testify to the transactions by which
22 plaintiff obtained ownership of the subject note and
23 mortgage. If there's something you've got on behalf
24 of the Bank of New York that can show us that the
25 Bank of New York acquired this note and mortgage

1 before the record shows, I need to see that.

2 A Another recorded document?

3 Q Some other writing, since mortgages are
4 only transferred in Florida by writing, by an
5 assignment in writing, or by merger or by some other
6 document. I need to see something that confirms
7 that the Bank of New York acquired the note and
8 mortgage before it sued Ms. Williams in 2004-4918,
9 which we're referring to as the 2004 case.

10 A I don't have anything with me.

11 THE WITNESS: Do I? Is there anything
12 that shows that?

13 MR. REED: (Shakes head.)

14 A Okay.

15 Q Let's get further into the Exhibit 2. And
16 it says just above the signature line, "Select
17 Portfolio Servicing, fka Fairbanks Capital Corp. as
18 attorney in fact for NationsCredit Mortgage
19 Corporation of Florida. Do you see that?"

20 A Yes.

21 Q Is there a document or some other indicia
22 that confirms that Nations -- I'm sorry, that
23 confirms that Select Portfolio Servicing can act as
24 attorney in fact for NationsCredit Mortgage
25 Corporation of Florida?

1 A I don't know. I don't know.

2 Q Okay. You have not reviewed anything?

3 A No.

4 Q And again, I'm not doing this to be hard
5 on you, I'm actually doing it to be hard on him and
6 on your client, his client, because you are the
7 corporate representative who is supposed to be here
8 to testify to the transaction by which the ownership
9 was obtained, correct?

10 A Uh-huh.

11 Q Is that a yes?

12 A Yes.

13 Q And the only document that you've produced
14 today that relates to the transaction that brings
15 the note and mortgage to the Bank of New York is
16 Exhibit 2, correct?

17 A Correct.

18 Q Okay. It's signed by a person named
19 Michelle, with two Ls, Andersen, whose title is
20 Document Control Officer. Do you see that?

21 A Yes.

22 Q Do you know Ms. Andersen?

23 A Yes.

24 Q And was her title in 2004 Document Control
25 Officer?

1 A Yes, it was.

2 Q Do you know what that means to SPS?

3 A It means she was overseeing that
4 department of the document control.

5 Q And what does the document control
6 department do? Maybe that's a better question.

7 A Generally they handle obtaining
8 assignments and getting it recorded, completing
9 assignment chains. Just getting anything that has
10 to do with origination documents or, you know,
11 obtaining servicing and origination files, they
12 handle that.

13 Q Do you know that from your work in your
14 various department with SPS?

15 A Yes.

16 Q And you never worked in document
17 control --

18 A No.

19 Q -- is that correct?

20 A That's correct.

21 Q Before a foreclosure is filed, is it
22 document control with SPS that has the
23 responsibility for checking the chain of ownership;
24 in other words, to confirm that the named plaintiff
25 owns the note before the lawsuit is filed?

1 A I think it overlaps somewhat with the
2 foreclosure department. I think they work hand in
3 hand on that.

4 Q Is there some checklist or manual where
5 that particular issue is confirmed before the
6 foreclosure is filed; in other words, it is
7 confirmed that the named plaintiff owns the note and
8 mortgage before it files its lawsuit?

9 A I don't know of a manual. I don't know.

10 Q Well, do you know how it is that the
11 people who populate those departments know to do
12 that task before the foreclosure is filed?

13 A There are internal policies and procedures
14 that are followed.

15 Q Is it in the form of a checklist? In
16 other words: Confirm ownership, confirm location of
17 original note and mortgage, that type of thing?

18 A Possibly. Or it could be in -- in a
19 system format where they look at a computer screen.
20 I'm not sure.

21 Q Is there a prompt that has to be completed
22 for that task in particular? For example, is there
23 something on a computer screen where the person is
24 looking at the prompt that says "confirm plaintiff
25 owns note and mortgage before filing suit"?

1 A I don't know.

2 Q Okay. Just for a moment, bounce down to
3 paragraph four of Exhibit 1, which is the notice.
4 You are the Bank of New York representative here to
5 testify to the decision to pursue foreclosure in the
6 prior action, which is the 2004 action, specifically
7 including but not limited to all employees or agents
8 of Bank of New York with knowledge the bank's lack
9 of standing was glaring, straightforward and clear
10 and that the bank's case was doomed from the outset.
11 This area of inquiry includes but is not limited to
12 the identify of all Bank of New York employees or
13 agents responsible for approving the filing of the
14 amended complaint, amended notice of lis pendens and
15 motion for summary judgment after having actual
16 knowledge the bank's lack of standing was glaring,
17 straightforward and clear and that the bank's case
18 was doomed from the outset. Do you see that?

19 A Yes.

20 Q Isn't it fair to say that my question
21 regarding what checklists are followed and what
22 personnel, agents, or employees of the Bank of New
23 York followed those actions would be a question
24 directed at topic four?

25 A Well, your question was very specific and

1 very technical, and I couldn't answer yes or no to
2 it.

3 Q My question relates to the identity of the
4 Bank of New York's employees or agents responsible
5 for pursuing foreclosure knowing the bank lacked
6 standing, which, again, relates directly -- and
7 correct me if I'm wrong, you're free to do that --
8 relates directly to which agents or employees of the
9 bank examined the issue of standing, ownership of
10 the note and mortgage, before the foreclosure was
11 filed. I mean, I'm asking you how is that not
12 related directly to my question?

13 A That is related to your question. But in
14 your question you asked me if someone checks off a
15 list, and I don't know specifically how they do
16 their task, how they -- I know a broad overview that
17 somebody must go over that information, but I don't
18 know the technical procedure.

19 Q Well, who did it in this case?

20 A In 2002? I don't know the --

21 Q In --

22 A -- the person.

23 Q You're right.

24 A Or in 2004.

25 Q Prior to filing the 2004 case, who on

1 behalf of the Bank of New York conducted a review of
2 the ownership of the note and mortgage to confirm
3 that the Bank of New York owned the note and
4 mortgage before it sued Ms. Williams?

5 A That would have been our foreclosure
6 department, and with the help of document control.

7 Q And the names, please.

8 A Well, I have the name of Michelle
9 Andersen. I don't know the name of the person in
10 the foreclosure department that reviewed it prior to
11 the lis pendens being filed.

12 Q Do you know the identity of the Bank of
13 New York employees or agents responsible for
14 approving the filing of the amended complaint,
15 amended notice of lis pendens and motion for summary
16 judgment?

17 A No.

18 Q Why not?

19 A I don't have the names in front of me.

20 Q Do you have the names in your memory?

21 A Who actually filed it?

22 Q Who approved the filing. I understand a
23 lawyer filed it, or a -- probably a clerk filed
24 it --

25 A Uh-huh.

1 Q -- but who approved the filing?

2 A The same department, foreclosure.

3 Q Right. I'm asking for the names.

4 A I don't know the name of the exact
5 representative.

6 Q Does SPS or the Bank of New York have that
7 information somewhere?

8 A Yes.

9 Q You just don't have it here today?

10 A I just don't have it here.

11 Q Okay. Okay. Let me ask you, then, with
12 regard to Exhibit 2, is it your testimony, going
13 backwards in the chain of assignments, that
14 NationsCredit Mortgage Corporation of Florida owned
15 the note and mortgage as of September 23, 2004, so
16 that it could sell it and assign it to the Bank of
17 New York?

18 A Could I ask Eric a question first?

19 Q Yes. Either I can step out or you can ask
20 him to step out, whatever is easier for you.

21 MR. REED: Yeah, we can -- we'll step out
22 for a minute.

23 (Short break.)

24 (The following question was read by the
25 reporter: "Let me ask you, then, with regard

1 to Exhibit 2, is it your testimony, going
2 backwards in the chain of assignments, that
3 NationsCredit Mortgage Corporation of Florida
4 owned the note and mortgage as of September 23,
5 2004, so that it could sell it and assign it to
6 the Bank of New York?")

7 A And I'm going to say that I believe there
8 was some overlapping in the period of time that the
9 loan was transferred and the assignment was
10 completed and then recorded, and that seems to be
11 the issue.

12 Q I'm sorry, can you explain that?

13 A The -- the issue with saying yes or no to
14 whether or not they owned this loan as of September
15 of '04 and assigned it to NationsCredit at that time
16 as owner, I'm saying there's some overlapping; that
17 this is when it was actually recorded, but the
18 transfer of the loan happened prior to that.

19 Q Okay. Now, I'm not referring to the
20 recording date, I'm actually referring to the date
21 on the document itself suggesting that that's the
22 date the transfer took place. And let me go back
23 and re-ask the question.

24 Did NationsCredit Mortgage Corporation of
25 Florida have legal ownership of the note and

1 mortgage as of the time it transferred and assigned
2 the note and mortgage to the Bank of New York? In
3 other words, did it own it to sell it?

4 A Yeah, I understand your question, I'm just
5 not sure if there's something legal prior to this
6 document that would have allowed them to do that. I
7 don't know.

8 Q Is there anything in the paperwork that
9 you've brought here today in response to subject
10 number one that would otherwise illuminate that
11 question or illuminate that issue?

12 A I don't know if there's a document, but
13 possibly you could understand that through reading
14 the contact history and just seeing the transfer of
15 the loan from one entity to the next.

16 Q Well, I understand that the servicing was
17 transferred --

18 A Uh-huh.

19 Q -- and that there was a servicer before
20 SPS. Is that what your contact history would show?

21 A Yes.

22 Q What I'm getting at is the ownership of
23 the actual note and mortgage, not the servicing, but
24 the ownership. Do you have any other document that
25 would either confirm or contest whether

1 NationsCredit Mortgage Corporation of Florida owned
2 this note and mortgage in order to assign it as set
3 forth in Exhibit 2?

4 A Not that I know of.

5 Q You do believe, in response to my earlier
6 questions, that there is something that allowed SPS
7 to act as attorney in fact for NationsCredit
8 Mortgage Corporation of Florida, correct?

9 A Yes.

10 Q And allowed SPS to act as attorney in fact
11 for NationsCredit Mortgage Corporation of Florida as
12 of September 24, 2004?

13 A Yes.

14 Q You just don't have that here today?

15 A Correct.

16 Q Okay. Let me show you what I'll mark as
17 Exhibit 4, which are some documents from the
18 Secretary of State for the State of Florida and ask
19 you to review that.

20 (Exhibit 4 was marked for identification.)

21 BY MR. KOWALSKI:

22 Q Have you had a chance to look at Exhibit
23 4?

24 A Yes.

25 Q What Exhibit 4 are -- or is, is an

1 Articles of Merger relating to a series of
2 corporations that used to exist. Do you see that?

3 A Uh-huh, yes.

4 Q And one, two, three, four, five, six,
5 seven -- seven down from the top we see the
6 corporation listed as NationsCredit Mortgage
7 Corporation of Florida. Do you see that?

8 A Yes.

9 Q And this document confirms that
10 NationsCredit Mortgage Corporation of Florida merged
11 into NationsCredit Financial Services Corporation as
12 of November 30, 1999. Do you see that?

13 A Yes.

14 Q And thereafter would have ceased to exist
15 as a separate corporate entity. So assuming that's
16 true, can you explain to me how SPS had authority to
17 act as attorney in fact for a corporation that
18 ceased to exist five years earlier?

19 A Oh, I've never seen this Articles of
20 Merger before.

21 Q I understand that. It was actually
22 produced in the pleadings in the '04 case.

23 A So I can't answer that.

24 Q Well, I'm asking you for purposes of the
25 question to assume that the Secretary of State's

1 records are accurate and reflect that NationsCredit
2 Mortgage Corporation of Florida ceased to exist as a
3 separate corporate entity as of November 30, 1999.

4 Do you see that?

5 A Yes.

6 Q Assuming that to be true, can you explain
7 how SPS would have been able to act as attorney in
8 fact for a corporation that ceased to exist five
9 years earlier?

10 A Perhaps they had a document that said
11 "formerly known as NationsCredit Mortgage
12 Corporation of Florida."

13 Q And again, that's a document or documents
14 that specifically relate to the authority of SPS to
15 sign on behalf of NationsCredit Mortgage Corporation
16 of Florida that you don't have here today?

17 A That's correct.

18 Q Let me ask you to review Exhibit 5 which
19 was previously produced to us and bears Bates stamp
20 Plaintiff's 188. Do you see that?

21 A Yes.

22 (Exhibit 5 was marked for identification.)

23 BY MR. KOWALSKI:

24 Q Have you reviewed Exhibit 5 before today?

25 A Yes.

1 Q What is Exhibit 5?

2 A It is the assignment from Aames Capital
3 Corp. into NationsCredit Financial Services Corp.

4 Q And when did the assignment or sale of
5 this note and mortgage purport to have occurred?

6 A Date of assignment says October 13th,
7 2004.

8 Q And October 13, 2004, is after September
9 24, 2004, which is the date on Exhibit 2, correct?

10 A That's correct.

11 Q And this assignment is to the correct
12 corporate entity that appears on Exhibit 4, correct?

13 A Correct.

14 Q So as of October 13, 2004, who owned the
15 note and mortgage?

16 A NationsCredit Financial Services Corp.

17 Q And so as of February 23, 2005 -- I'm
18 sorry, February 23, 2006, who owned the note and
19 mortgage?

20 A Bank of New York.

21 Q How do you know that?

22 A We just saw that one, didn't we? This
23 one.

24 Q Right. But we've just agreed that this
25 assignment to Bank of New York is dated before this

1 assignment to the correct corporate entity,
2 NationsCredit Financial Services Corporation, which
3 according to the Secretary of State was the only
4 corporate entity which existed in 2004.

5 So my question again to you as a
6 representative of Bank of New York is who owned this
7 note and mortgage as of February 2006?

8 A I thought there was one more assignment.

9 Q If you can, please find it.

10 A It was -- well, maybe it's just this one
11 and I just didn't realize the dates were out of
12 sync. Do you mind if I look through for just a
13 minute?

14 Q Not at all.

15 A Okay.

16 MR. KOWALSKI: I'm going to step out for a
17 minute. Anybody else need a break?

18 (Short break.)

19 BY MR. KOWALSKI:

20 Q All right. Ready?

21 A Yes.

22 Q Okay. I think when we took our break you
23 were looking for some assignment that was after
24 October of 2004.

25 A Well, I found the one that was confusing

1 me, which is an assignment in 2001 to the Bank of
2 New York.

3 Q Right. This is an assignment, it's
4 Plaintiff's 166. Is this your copy?

5 A It was in this stack, yes.

6 Q Okay. Is it okay to make this an exhibit?

7 A Yes.

8 Q And I think we are up to 7. Let me mark
9 that assignment as Exhibit 7. And it is Plaintiff's
10 166 in the Bates stamping.

11 (Exhibit 7 was marked for identification.)

12 A I don't see a Number 6.

13 Q The KLT screen is marked as 6. Go ahead
14 and hold on to 7 for me.

15 A Okay.

16 Q And what you've pulled out is an
17 assignment dated November 8, 2001, correct?

18 A Yes.

19 Q And it's assigning it to NationsCredit
20 Financial Services Corporation as successor in
21 interest by merger with NationsCredit Home Equity
22 Services Corporation, correct?

23 A That's what it says.

24 Q Okay. Can you find where NationsCredit
25 Home Equity Services Corporation ever owned this

1 note?

2 A I'm looking for the original note and
3 mortgage just so I can see it. I know it's in this
4 stack somewhere, right?

5 Q Look at Plaintiff's 130, if you can
6 find --

7 A 130?

8 Q On the lower right of your documents, if
9 they were from the bank they were Bates stamped.
10 And I believe the original mortgage is at 130.

11 A Okay.

12 Q And that should be followed by the note at
13 139.

14 A I think we have a different stack of the
15 same documents. Let's see.

16 Q And I believe they appear several times in
17 this stack.

18 A Yes. I found it in a different place,
19 actually.

20 Q You're at Plaintiff's 13?

21 A Yes. I don't have a document that answers
22 your question.

23 Q So can you sit here and testify that
24 NationsCredit Home Equity Services Corporation ever
25 owned this note?

1 A Not with a document -- I can't prove that
2 with a document.

3 Q Can you prove it with anything at all?

4 A Just from the assignment chain and just
5 knowing that we had a right to service it.

6 Q I understand about the servicing. I think
7 that's probably pretty clear that the servicing went
8 from one entity to -- I believe NationsCredit
9 actually serviced its own loan, or a division of
10 NationsCredit serviced its own loan, and then it
11 went to SPS. What we're here to talk about, though,
12 in topic one is ownership. And for better or for
13 worse, you're the person here to talk about it.

14 A Uh-huh. And your question was?

15 Q My question is do you have anything,
16 document, e-mail, carrier pigeon, anything at all
17 that can tell us that NationsCredit Home Equity
18 Services Corporation ever owned this note and
19 mortgage?

20 A I guess this would -- this assignment
21 would. Do you want to see that?

22 Q Well, this assignment is from
23 NationsCredit Mortgage Corporation of Florida, which
24 as we know from the Secretary of State is a separate
25 corporate entity from NationsCredit Home Equity

1 Services Corporation. I understand about
2 NationsCredit Mortgage Corporation of Florida. And
3 we've already talked about the fact that it ceased
4 to exist in 1999. What I'm asking you about is the
5 separate corporate entity of NationsCredit Home
6 Equity Services Corporation and whether or not that
7 named corporate entity ever owned this note and
8 mortgage.

9 A I don't know.

10 Q We --

11 A I would imagine that as successor in
12 interest by a merger, they would be recognized as
13 the owner of the note.

14 Q Well, we know that NationsCredit Home
15 Equity Services Corporation existed because it
16 appears on Exhibit 4 as a corporate entity that
17 merged into NationsCredit Financial Services
18 Corporation, so at least the assignor is correctly
19 named. In other words, we know that NationsCredit
20 Financial Services Corporation was a successor in
21 interest by merger with NationsCredit Home Equity
22 Corporation -- Home Equity Services Corporation, but
23 we also know that Home Equity Services Corporation
24 is a separate corporate entity from NationsCredit
25 Financial Services Corporation of Florida, which is

1 the entity that purports to assign the note in
2 September of '04.

3 A Okay.

4 Q So again, do you have anything at all that
5 suggests that NationsCredit Home Equity Services
6 Corporation ever owned this note?

7 A I don't.

8 Q Okay. This assignor is NationsCredit
9 Financial Services Corporation, the successor in
10 interest by merger with NationsCredit Home Equity
11 Services Corporation, to assignee, and there's a
12 little asterisk that drops you down to the Bank of
13 New York, correct?

14 A Correct.

15 Q Now, the Bank of New York is named here as
16 the Bank of New York, correct?

17 A Yes.

18 Q Whereas here, on Exhibit 2, the assignor
19 is specifically named as the trust, or to Bank of
20 New York in its capacity as trustee, correct?

21 A Yes.

22 Q Not the Bank of New York as a separate
23 corporation at 5 Penn Plaza, 16th Floor, correct?

24 A Correct.

25 Q And we know from Exhibit 5 that

1 NationsCredit Financial Services Corporation didn't
2 even get it from Aames until October of '04,
3 correct?

4 A Correct.

5 Q So who owned this note and mortgage in
6 February 2006?

7 A Bank of New York.

8 Q Show me something that proves that.
9 Because the only thing we have in front of us, and
10 the only thing you've brought, shows us that
11 NationsCredit Financial Services Corporation, which
12 is a valid corporation as of that date, owned it as
13 of October 13, 2004. Show me something that tells
14 me that Bank of New York acquired ownership of this
15 note and mortgage after October 2004. Anything at
16 all.

17 All right. Mr. Reed has handed you what?

18 A Plaintiff's 0003, the assignment -- oh,
19 Exhibit 2, sorry.

20 Q All right. We've --

21 A Which --

22 Q We've already confirmed the Exhibit 2
23 predates Exhibit 5, correct?

24 A Yes.

25 Q So find me something that post dates

1 Exhibit 5, anything at all, a writing, a
2 memorialization, a billboard. I'm not trying to be
3 facetious, but find me anything that can prove to a
4 court of competent jurisdiction that the Bank of New
5 York acquired this note and mortgage after October
6 13, 2004, which pursuant to Exhibit 5 is when
7 NationsCredit acquired it; specifically,
8 NationsCredit Financial Services Corporation, which
9 according to Exhibit 4 is the only corporate entity
10 that would have existed in 2004.

11 A I don't have anything with me that shows
12 that.

13 Q Do you know if anything exists that shows
14 that the Bank of New York acquired this note and
15 mortgage after the date on Exhibit 5?

16 A I don't personally know that, but I'm
17 going to ask that question.

18 Q So it's fair to say as of today you are
19 not able to testify fully as to issue number one in
20 Exhibit 1?

21 A That's correct.

22 Q All right. Let's look at issue number
23 two. And before we do that, let's just make a quick
24 confirmation that we have all the exhibits.

25 (Off-the-record discussion.)

1 BY MR. KOWALSKI:

2 Q Okay. Let's move to area number two on
3 Exhibit 1. The decision to pursue foreclosure in
4 this matter, which is the '06 matter specifically,
5 2006-1564-CA, including but not limited to the
6 decision to pursue foreclosure while Case No.
7 2004-4918-CA was pending, including but not limited
8 to the decision to seek a default judgment alleging
9 an inability to locate defendant. This area of
10 inquiry specifically seeks the identify of all Bank
11 of New York management-level employees or agents
12 with knowledge of the 2004 and 2006 actions. Do you
13 see that area of inquiry?

14 A Yes.

15 Q Okay. First off, just for the record,
16 when we're discussing or using -- when I'm using the
17 term "SPS," I'm using it to mean Select Portfolio
18 Servicing. Do you understand that?

19 A Yes.

20 Q And when I'm referring to the '04 case or
21 2004 case, I'm referring to 2004-4918. When I'm
22 referring to the '06 or 2006 case, I'm referring to
23 2006-1564. And then with regard to whether or not
24 SPS is an agent of the Bank of New York, would you
25 agree with me that Select Portfolio Servicing is

1 acting as the agent of the Bank of New York with
2 regard to the 2004 and 2006 actions?

3 A Yes.

4 Q All right. Let's go back, then, to two.
5 We asked for the identity of all Bank of New York
6 management-level employees or agents with knowledge
7 of 2004 and 2006 actions. And tell us who those
8 would be and where they would be found.

9 A Okay. David Coleman in Salt Lake City.
10 And that's the only management level that I know
11 would know both cases.

12 Q Do you know any management-level employee
13 or agent who would be only aware of the '04 case?

14 A Employee would be Troy Noble.

15 Q And where is Mr. Noble located?

16 A Salt Lake City.

17 Q And do you know of any employees or agents
18 with knowledge of only the 2006 case?

19 A I think Dustin Stevenson. And he may have
20 knowledge of both. I don't know.

21 Q And he's in Salt Lake City?

22 A Yes.

23 Q All right. Let's go back to Mr. Coleman.
24 And I think you told us before that he was head of
25 contested foreclosure?

1 A That's correct.

2 Q And again, an employee of SPS?

3 A Yes.

4 Q Have you spoken to Mr. Coleman in
5 preparation for your testimony here today?

6 A No.

7 Q And tell me what knowledge Mr. Coleman has
8 with regard to the 2004 action.

9 A He would have information and knowledge
10 of -- of the case. And I don't know specifically
11 the decisions made, but he would have a general
12 knowledge of the whole case.

13 Q Do you know if Mr. Coleman would have
14 knowledge of the decision to seek a default judgment
15 alleging that the Bank of New York could not locate
16 Ms. Williams in the '06 case while the '04 case
17 remained pending?

18 A Do you mind if I look at the contact
19 history?

20 Q Not at all. You just need to tell us what
21 you're looking at.

22 A Contact history.

23 Q And tell us where that's found in your
24 documents. You can identify it by the Bates --

25 A Oh, Plaintiff 0065 through 104.

1 (Short break.)

2 BY MR. KOWALSKI:

3 Q Okay. We are back to --

4 MR. KOWALSKI: I'm sorry, can you . . .

5 (The following questions and answers were
6 read by the reporter: "Do you know if Mr. Coleman
7 would have knowledge of the decision to seek a
8 default judgment alleging that the Bank of New York
9 could not locate Ms. Williams in the '06 case while
10 the '04 case remained pending?

11 "Answer, Do you mind if I look at the
12 contact history?

13 "Question, Not at all. You just need to
14 tell us what you're looking at.

15 "Answer, Contact history.

16 "Question, And tell us where that's found
17 in your documents.")

18 THE WITNESS: You heard where it was,
19 right?

20 (The following answer was read by the
21 reporter: "Plaintiff 0065 through 104.")

22 A So the last question was would David
23 Coleman have knowledge of the '04 case?

24 Q Would he have knowledge of the decision to
25 seek a default in the '06 case alleging that the

1 Bank of New York couldn't find Mrs. Williams to
2 serve her while the '04 case was pending?

3 A Most likely he would know.

4 Q Are you aware that that's what happened?
5 In other words, are you aware that the bank sued
6 Ms. Williams in the '06 case, alleged it couldn't
7 find her for service of process, and then took a
8 default judgment against her in the '06 case that
9 had to be then set aside?

10 A I did not know all the details of that.

11 Q Okay. Were you aware that the bank
12 alleged in the '06 case that it couldn't find
13 Ms. Williams to serve her with the '06 lawsuit?

14 A Yes. I mean, I understood that just prior
15 to coming here, yes.

16 Q And were you aware that at the time the
17 '04 case was pending in another division?

18 A Uh-huh.

19 Q Yes?

20 A Yes.

21 Q Okay. So you think that Mr. Coleman would
22 have knowledge of the bank's decision to seek a
23 default alleging that it couldn't find Ms. Williams
24 in the '06 case?

25 A Yes. David Coleman would have knowledge

1 of the case, yes.

2 Q And what are you looking at to know that?

3 A I just -- I don't know the specifics that
4 he will know, but I know that he will have knowledge
5 of the case.

6 Q And how do you know that?

7 A Because he is over that department and he
8 knows what goes on in the files.

9 Q You're assuming that he knows what his
10 people are doing, in other words?

11 A Yes.

12 Q Because you know Mr. Coleman?

13 A Yes.

14 Q Is there anything in the record that shows
15 his actual knowledge?

16 A Not to that detail. However, there are
17 notes in here that show that he is working along
18 with his group on the file.

19 Q And show me what you're looking at, or
20 just tell us what page and what section.

21 A Parts of it have been redacted, but they
22 are e-mails from David Coleman to his group and to
23 other people regarding the case.

24 Q And you're looking at, for example, 65?

25 A Yes.

1 Q Near the bottom it says, "Process opened
2 10/3/2006 by user David Coleman"?

3 A Yes.

4 Q And then there's e-mails back and forth
5 from Dustin Stevenson to David Coleman and cc'ing a
6 Rebecka, R-e-b-e-c-k-a, Mayoh, M-a-y-o-h?

7 A Yes.

8 Q And that's what you're relying on?

9 A Yes.

10 Q Who is Ms. Mayoh?

11 A I don't know Ms. Mayoh.

12 Q Do you know if she's an employee of SPS?

13 A I believe she is.

14 Q Do you know where she works?

15 A I think she's a foreclosure
16 representative.

17 Q And did Mr. Stevenson report to
18 Mr. Coleman?

19 A Yes.

20 Q You said that Mr. Coleman was the head of
21 contested foreclosure. Do you know his actual
22 management title? Is he a vice-president, for
23 example?

24 A He is either a director or a
25 vice-president. I'm not sure.

1 Q And is it fair to say that most of your
2 testimony regarding his knowledge comes from your
3 knowledge of him?

4 A Yes.

5 Q You also referenced a Troy Noble who was
6 in Salt Lake --

7 A Uh-huh.

8 Q -- specifically on the 2004 case. And
9 where do you -- where do you get that information
10 from?

11 A That is also in the contact history notes
12 and in some of the documents in this stack
13 (indicating), letters to Ms. Williams. And they
14 corresponded back in 2004.

15 Q And you believe Mr. Noble relates -- is it
16 Noble or Nobles?

17 A It's Noble.

18 Q Relates to the 2004 case?

19 A Yes.

20 Q Do you know in 2004 what his job title
21 was?

22 A Contested foreclosure representative.

23 Q Do you know if Mr. Coleman ran the
24 contested foreclosure department back in 2004?

25 A Yes.

1 Q So is it fair to say that Mr. Noble would
2 have been reporting to Mr. Coleman in 2004 as well
3 as in --

4 A Yes.

5 Q -- or similar to what Mr. Stevenson was
6 doing in 2006?

7 A Yes.

8 Q And then you also referenced Dustin
9 Stevenson, who we see here in some of the 2006
10 messages. And I think you testified you believe he
11 may have been involved in the 2004 case as well?

12 A He may have.

13 Q And where do you get that information
14 from?

15 A I -- that's just my knowledge, that he was
16 in that department at that time.

17 Q How many people work for SPS in Salt Lake
18 City?

19 A I think approximately 800 to 1,000 in Salt
20 Lake.

21 Q And how many do you have daily or weekly
22 contact with?

23 A Probably 25 or 30.

24 Q Do you know with regard to Mr. Noble and
25 Mr. Stevenson what particular knowledge they would

1 have with regard to the '04 and '06 cases?

2 A They would have detailed, extensive
3 knowledge. I believe they actually were assigned
4 the file. As well as John Peterson, but I don't
5 think he's with the company anymore.

6 Q Where was Mr. Peterson assigned?

7 A He was also in the contested foreclosure
8 group, I believe. That one, I'm not a hundred
9 percent sure of.

10 Q And what time frame would Mr. Peterson
11 have worked for SPS?

12 A In 2004.

13 Q Okay. Are there any other Bank of New
14 York management-level employees or agents with
15 knowledge of the 2004 and 2006 actions that we
16 haven't already discussed?

17 A Not that I would know for sure.

18 Q Is there some other document, some other
19 writing that references the identity of other SPS
20 employees who would have had knowledge of the '04
21 and '06 cases?

22 A Not that I know of.

23 Q When a case such as this is in litigation
24 and also being serviced by SPS, is there any contact
25 with an employee of Bank of New York at any time in

1 a typical matter?

2 A It's not common to do so.

3 Q Do you know or can you tell from what you
4 have here today whether anybody with Bank of New
5 York knows that the 2004 and 2006 cases are pending?

6 A No.

7 Q You can't say or you don't know?

8 A I don't know.

9 Q Do you know if anybody with the Bank of
10 New York is aware that there's a judgment against
11 it?

12 A I don't know.

13 Q Do you know if there's any document that
14 sets forth when SPS is supposed to tell Bank of New
15 York what's going on with its own cases?

16 A I don't know that either.

17 Q You thought there might be a document that
18 allowed SPS to act for NationsCredit Mortgage
19 Corporation of Florida, correct?

20 A Yes.

21 Q And I believe you testified, and correct
22 me if I'm wrong, that you thought there was a
23 document, such as the Pooling and Servicing
24 Agreement, that allowed SPS to speak for the Bank of
25 New York, correct?

1 A That's correct.

2 Q You don't have that here today?

3 A No.

4 Q And you don't have any other documents
5 that set forth in any way the relationship between
6 the Bank of New York and SPS?

7 A That's correct.

8 Q All right. Let's -- three is going to
9 take a little while, so let's move to four, area of
10 inquiry four, which is page two of Exhibit 1. Have
11 you had a chance to look at area of inquiry four?

12 A Yes.

13 Q Do you agree that the Bank of New York
14 lacked standing to file the 2004 case?

15 A Can you be more specific on your question?

16 Q Do you agree that the Bank of New York did
17 not own the note and mortgage at the time it filed
18 the 2004 case?

19 A Well, I can say that there's no recorded
20 document showing that date.

21 Q When I speak of "standing," I'm referring
22 to with regard to topic four as to whether or not
23 the bank had standing to file the foreclosure,
24 meaning whether or not it owned the note and
25 mortgage at the time the foreclosure was filed.

1 That's what "standing" means for purposes of topic
2 four.

3 Do you agree that the bank lacked standing
4 to file the 2004 case?

5 A It appears that way.

6 Q Do you agree that the lack of standing was
7 straightforward?

8 A I don't know.

9 Q Do you agree that the lack of standing was
10 clear?

11 A No.

12 Q Why not?

13 A Because of the overlapping of dates and
14 the obvious issues with the assignment chain, it's
15 not clear that it was straightforward.

16 Q Do you agree that the bank's lack of
17 standing doomed its case from the outset?

18 A No.

19 Q Let me show you what I'll mark as Exhibit
20 8, which is the brief that was filed by the bank in
21 the '04 case. Have you read Exhibit 8?

22 A No.

23 (Exhibit 8 was marked for identification.)

24 BY MR. KOWALSKI:

25 Q Let me ask you to turn to page 19 of

1 Exhibit 8. And I'll ask you to read the first full
2 paragraph.

3 A Below the highlighted portion?

4 Q No, including the highlighted portion. In
5 other words, the first -- the first paragraph on
6 page 19 that includes the highlighted portion.

7 A Okay. That starts on page 18?

8 Q Right.

9 A "Again, this testimony" --

10 Q No, no, no, you don't have to read it out
11 loud, I'm just talking about for you.

12 A Okay.

13 So what is this document? When was
14 this . . .

15 Q This was the bank's appellate brief in the
16 '04 case. This is the bank's position that it has
17 taken before the First District Court of Appeal in
18 the 2004 case. And you can read all of Exhibit 8 if
19 you need to. I'm also going to ask you to read page
20 eight.

21 A Okay.

22 Q And the sentence, and I'll point you to
23 where it appears, that it states, "While there was a
24 standing issue, that issue was straightforward and
25 clear."

1 A Meaning the '04?

2 Q Meaning the lack of standing in the 2004
3 case. And to read into the record the section I had
4 you read on page 19 of Exhibit 8 where the bank
5 states, "In fact, the issue of whether the bank had
6 standing to bring the suit was a substantial issue,
7 and, while straightforward, essentially doomed the
8 bank's case from the outset. The bank conceded as
9 much when it declined the court-granted option to
10 amend its complaint a second time, and instead filed
11 the 2006 case, having remedied the glaring standing
12 problem."

13 A Who wrote this?

14 Q Your lawyers.

15 A The foreclosure . . .

16 Q The fellow sitting to your left.
17 Signature page is at the end.

18 A Okay. I just wasn't sure how far back we
19 were, this 2004/2006. I know that back in 2004
20 there were other attorneys involved.

21 Q This brief was filed September of '07.

22 A Okay. Could I take a minute and talk to
23 Eric again?

24 Q Absolutely.

25 (Short break.)

1 BY MR. KOWALSKI:

2 Q Okay. We're back.

3 A Okay.

4 Q And have you had a chance to both look at
5 Exhibit 8 and talk to Mr. Reed about --

6 A Yes.

7 Q -- Exhibit 8?

8 A Yes, I have.

9 Q Okay. Do you agree that the position that
10 the bank has taken in the appeal is that the lack of
11 standing was straightforward?

12 A I'm going to say I'm not comfortable
13 with -- with the words in here of "straightforward"
14 and "glaring" and "doomed" because I'm not an
15 attorney, so I don't really know what impact that
16 has. So I'll just say that I -- I feel like there
17 appears to be an assignment chain issue. And, I
18 mean, I just -- I can see that there was a contract
19 here between two parties. And there's a lot of
20 delinquencies on her end of the contract. And
21 there's issues with an assignment chain, and I don't
22 know if that makes it doomed or straightforward or
23 glaring. I just -- I don't -- I don't want to say
24 yes to those words.

25 Q Why not?

1 A Because. I don't -- I don't understand
2 them well enough to feel like I can say that.

3 Q Well, I have asked in topic four that the
4 bank designate a person, who happens to be you, to
5 testify to the decision to pursue the foreclosure in
6 the '04 case, specifically including but not limited
7 to all employees or agents of the Bank of New York
8 with knowledge that the bank's lack of standing was
9 glaring, straightforward and clear and that the
10 bank's case was doomed from the outset. And I have
11 taken those words from the bank's own position that
12 it is advocating right now before the First District
13 Court of Appeal.

14 So what I want to know from you is who at
15 the bank or who at SPS approved the filing of the
16 2004 case with knowledge that the bank's lack of
17 standing was glaring. Who from SPS approved the
18 filing of the '04 case knowing that the bank's lack
19 of standing was straightforward and clear? And who
20 from SPS approved the filing of the foreclosure
21 knowing that lack of standing doomed the case from
22 the outset?

23 A I don't know that person. I don't know
24 the specific person that approved that.

25 Q But that's what you're here to testify to.

1 A I don't know the answer.

2 Q Can I ask why not? Can I ask why the bank
3 picked you when you don't know the answer to the
4 topic or to the question?

5 A I don't -- I don't know.

6 Q Do you agree with the statement that the
7 bank lacked standing to file the 2004 case?

8 A I just don't know. Like I said, I can see
9 that there is assignment chain issues, but I don't
10 know if that constitutes a lack of standing.

11 Q Let me go back, then, and define lack of
12 standing as I did before. Lack of ownership of the
13 note and mortgage at the time the foreclosure was
14 filed. Does that definition help at all in
15 answering topic four? Do you agree that the bank's
16 lack of ownership of the note and mortgage was clear
17 at the time it filed the 2004 case?

18 A I'll say lack of proof of ownership.
19 That's what I can answer to.

20 Q Do you agree that the bank's lack of proof
21 of ownership was glaring when it filed the 2004
22 case?

23 A Can you tell me when you say "glaring"
24 what that means?

25 Q I haven't the foggiest idea. I'm taking

1 it directly from your employer, in effect, since
2 you're here as the Bank of New York. I'm taking it
3 from your employer's position that it is currently
4 advocating in the First District Court of Appeal.
5 I'm using your words.

6 A Well, I personally can't say if I feel it
7 was glaring.

8 Q Do you disagree that the bank's lack of
9 proof of ownership was -- doomed the case from the
10 outset?

11 A I can't personally say that.

12 Q Do you disagree --

13 A Yeah, I do.

14 Q -- with those questions?

15 A I disagree with -- with it because of the
16 fact that there's a mortgage contract, and there's
17 two parties involved. And the simple fact is that
18 payments aren't being made, so that in my opinion I
19 cannot say that this is doomed from the outset based
20 on a possible assignment chain issue.

21 Q So you're categorizing the assignment
22 chain issue as a possible issue at the beginning of
23 the 2004 case?

24 A I don't know when it was the issue, if it
25 was the 2004 case or 2006.

1 Q Well, we've already looked at the lis
2 pendens in the 2004 case showing that the lis
3 pendens was filed on July 17, 2004, correct?

4 A Uh-huh.

5 Q Yes?

6 A Yes.

7 Q Okay. When is it that you believe the
8 lack of proof of ownership arose?

9 A Well, yes, with 2004. 2004.

10 Q But you've characterized the lack of proof
11 of ownership as an issue, as opposed to something
12 that's set in concrete as is suggested by Exhibit 8;
13 is that correct?

14 A Uh-huh, yes.

15 Q An issue that wasn't clear as of July 17,
16 2004; is that your testimony? In other words, is it
17 your testimony the lack of proof of ownership was
18 not clear as of July 17, 2004, when the lis pendens
19 was filed in the 2004 case?

20 A Yes, that's my testimony.

21 Q And you're testifying, again, on behalf of
22 the Bank of New York?

23 A Yes.

24 Q Let's take it, then, to the second
25 sentence in topic four where I ask for the identity

1 of the Bank of New York employees or agents
2 responsible for approving the filing of the amended
3 complaint, amended notice of lis pendens and motion
4 for summary judgment after having actual knowledge
5 the bank's lack of standing was glaring and
6 straightforward and clear and that the bank's case
7 was doomed from the outset. I think I understand
8 your testimony.

9 A Okay.

10 Q And I'm going to give you plenty of time
11 to clarify it if I'm getting this wrong. But as I'm
12 understanding your testimony, you are not able to
13 identify the Bank of New York employees or agents
14 responsible for approving the filing of the amended
15 complaint, amended notice of lis pendens and motion
16 for summary judgment after having actual knowledge
17 the bank's lack of standing what glaring,
18 straightforward and clear and that the bank's case
19 was doomed from the outset because you disagree that
20 the lack of standing, which you've defined as the
21 lack of proof of ownership of the note and mortgage,
22 was not clear from the outset; is that correct?

23 A That's what it appears to be to me, yes.

24 Q And that's because it's your testimony
25 that the lack of proof of ownership was not clear as

1 of July 17, 2004, when the lis pendens was filed?

2 A Yes, that's what it appears to me.

3 Q And we've already gone over the 2006 case
4 with regard to whether the bank owned the note when
5 the 2006 case was filed. You don't know based on
6 the assignments that you have in front of you,
7 correct?

8 A Correct.

9 Q So it's not your testimony that the issue
10 is clear against the bank; it's your testimony that
11 the issue is unclear to you as you sit here on
12 behalf of the bank?

13 A That's correct.

14 Q Okay. Let me go back to some comments
15 that you made a little while ago, because your
16 testimony appears to be based in part on your
17 understanding that there is a contract between two
18 parties and that payments were not made according to
19 that contract, and that's your testimony, we'll get
20 into that in a second. You believe that to be true?

21 A Yes.

22 Q Do you understand that it's only the party
23 that owns the contract that can enforce the
24 contract?

25 A The servicer.

1 Q And the servicer, if they have the legal
2 authority to do so --

3 A Correct.

4 Q -- on behalf of the entity that owns the
5 contract?

6 A Yes.

7 Q Okay. You agree that the servicer steps
8 into the shoes of the entity for which its servicing
9 the note and mortgage, correct?

10 A Yes, yes.

11 Q So the servicer's ability to enforce the
12 note and mortgage rests entirely on whether the
13 entity into whose shoes it is stepping owns the note
14 and mortgage at that time, correct?

15 A Yes.

16 Q Again, it's only the entity that owns the
17 note and owns the contract that gets to enforce it,
18 correct?

19 A Yes.

20 Q And you agree that that's completely
21 independent of whether or not payments are being
22 made in accord with the contract?

23 A Yes.

24 Q All right. Let's, then, go to topic
25 three.

1 MR. KOWALSKI: And let me just go off the
2 record just a second.

3 (Short break.)

4 BY MR. KOWALSKI:

5 Q Okay. Ms. Leetham, if you could, we are
6 going to turn now to the payment history for the
7 subject loan including but not limited to payments
8 made to the prior servicer by Ms. Williams, as well
9 as all reviews of the payment history and payment
10 disputes with the prior servicer undertaken by
11 employees or agents of Bank of New York. Do you see
12 that?

13 A Yes.

14 Q Okay. Let's actually start with the
15 second clause of that topic which relates to review
16 of the payment disputes with the prior servicer.
17 And let me ask you first off, are you aware that
18 there is or was an issue with regard to a payment
19 made to the prior servicer on Ms. Williams's behalf
20 by a city welfare agency?

21 A Yes.

22 Q You're aware that that issue arose?

23 A Yes.

24 Q Okay. And tell me what you understand
25 that issue to involve.

1 A How much would you like me -- where should
2 I start?

3 Q We'll start broad and then we'll kind of
4 narrow it.

5 A Okay. It's my understanding that there
6 was an agency that Ms. Williams contacted, and they
7 agreed to pay two months worth of payments. And
8 that's what she thought it was, and that's what they
9 intended to do, apparently.

10 They sent an amount that was short of two
11 payments. It was \$822. And when the payment came
12 in to the prior servicer, they applied it as one
13 monthly payment and the remaining to escrow, which
14 had been advanced on her behalf. So it was an
15 amount that she did owe, but it was not applied as
16 she thought it was going to be, as a second payment.

17 Q Is there anything in your review that
18 suggested that the city agency understood the same
19 thing that Ms. Williams purportedly understood,
20 which is that the partial amount would be accepted
21 as two full payments?

22 A Well, there's actually a contact history
23 note that said that they were sending 882, which
24 would have been two payments. And that wasn't the
25 amount received.

1 Q Where do you find that?

2 A Let me see. Hold on. At the beginning of
3 the contact history . . .

4 Q I can tell you we were produced 43 pages
5 of what appear to be contact notes starting at Bates
6 65 --

7 A You've got -- this was -- oh, okay. Here
8 we go.

9 Q -- and ending at 107.

10 A All right. 107.

11 Q You're on 107?

12 A Yes. On February 6th of 2002 the system
13 note from the prior servicer says, "Ms. Williams
14 left a message on my voice mail requesting that I
15 call her with two payments. Said they requested
16 that we fax them a letter stating that we will
17 accept \$882 from them. Said the person that's
18 working with her is Paulette Mitchell. Advised
19 Mrs. Williams I will give her a call."

20 Q And to be clear, is this a payment history
21 from a NationsCredit servicer?

22 A A contact history note.

23 Q I'm sorry, a contact history.

24 A Yes.

25 Q From NationsCredit?

1 A Yes.

2 Q This is before SPS took over servicing?

3 A Yes.

4 Q And you're reading from Bates Plaintiff's
5 107?

6 A That's correct.

7 Q Okay. Is there any indication that the
8 letter referenced as being faxed was ever sent?

9 A I don't know if that ever happened.

10 Q Is there anything in the history or
11 servicing that was transferred to SPS that reflects
12 a letter being sent?

13 A No. All I ever saw was this note. That's
14 all I could find.

15 Q Can you tell whether or not in looking at
16 NationsCredit's servicing notes whether there is a
17 way to tell if a letter was generated?

18 A No.

19 Q I mean, I understand you may not be
20 familiar with their system.

21 A No, but it says "note," "note," "note."
22 All these say "note" on the type. And maybe it
23 would say "letter" if they were going to generate a
24 letter. That's a possibility. But I don't know.
25 Maybe it was just a separate letter, if they sent

1 one.

2 Q Okay. And then what's the entry that's
3 farther up at 7:48 a.m. that begins "left a
4 message"?

5 A "Left a message on Ms. Mitchell's voice
6 mail with Mental Health and Welfare Agency stating
7 we will accept the assistance."

8 Q And then there's a note that follows on --

9 A "I left my number for her to call." And
10 it just says she'll accept the assistance. It
11 doesn't state in that note that it will be applied
12 in any particular way.

13 Q And then there's a note just above that on
14 March 13, 2002?

15 A "Maker," which is the mortgagor, "called
16 in, verified everything, and then hung up." And
17 then, "follow up with one and a third payment by the
18 end of the month, April and May. Request
19 Ms. Williams pay additional fee by June."

20 Q If you could, turn to Plaintiff's 98.

21 A Okay.

22 Q And there's a notation there of 6/20/2003
23 at 3:24 p.m. by J-o-h-n P-e-t.

24 A Yes.

25 Q Do you see that?

1 A Uh-huh.

2 Q Would this have been after SPS took over
3 the note?

4 A Yes.

5 Q There is a reference there, and it begins
6 after the notation 7 slash 1.

7 A Uh-huh.

8 Q Can you read that?

9 A Yes. First let me just say that this is a
10 contact history note where John Peterson received a
11 voice mail from Ms. Williams. Let me just read up
12 to this, please. He advised that he may be able to
13 waive some fees to make up for the error that
14 NationsCredit made by promising to post her 822 to
15 two payments when it was only enough for one.

16 "Advised that most of these fees aren't
17 waiveable because they're justified, but I will work
18 on waiving the 434.81 interest on advances and the
19 126.28 for late fees. Advised her that she needs to
20 be aware that this is a six-month forbearance to
21 review" -- oh, "if it is approved there will be a
22 balloon payment at the end, and the expectation is
23 that she will cure that with her settlement. She
24 said okay."

25 Q Can you tell from either that note on

1 Plaintiff's 98 -- and I'll either go through and
2 attach these individual pages or we'll do it another
3 time. Obviously I couldn't copy the entire thing
4 because I wasn't sure which pages you would be
5 looking at or referring me to or bringing other
6 documents.

7 Can you tell from either that entry on
8 Bates stamp 98 or from any of these other entries
9 whether or not either NationsCredit or SPS resolved
10 the question of whether NationsCredit made an error
11 by promising to post the 822 to two payments?

12 A I think that everyone assumes there was an
13 error. They -- they agree that \$822 came in; it was
14 intended to be for two payments. However, there was
15 some kind of breakdown in the communication of how
16 to apply the payments, and the loan transferred to
17 Fairbanks Capital Corp. shortly thereafter. So that
18 communication that was given to NationsCredit did
19 not transfer over. But as soon as Fairbanks Capital
20 Corp. heard about it, they were willing to work with
21 her and waive some fees and make up for it. And she
22 did still get the credit for that amount of money in
23 her -- paying down her escrow. It wasn't that it
24 was rejected or sent back or anything else; it went
25 to one payment and paid down her escrow advance

1 balance.

2 Q Okay. And you're pointing to the KLT?

3 A KLT, uh-huh.

4 Q Exhibit 6?

5 A Yes.

6 Q Let's -- let me ask you, though, I
7 understand you've testified to the fact that SPS did
8 something after the fact. But let me ask you to put
9 yourself in the shoes of NationsCredit as of the
10 date that you referenced before, in February 2002.
11 If NationsCredit had accepted these two payments as
12 full payment, what would have been the status on the
13 loan?

14 A If that would have been two payments --

15 Q In other words, if they had done what
16 apparently was agreed . . .

17 A Then she would have only been 30 days, but
18 almost 60 days, late at that point.

19 Q If the payments had been accepted in
20 February of '02?

21 A Yes.

22 Q Okay. And what are you looking at on the
23 KLT, Exhibit 6, to tell us that?

24 A I'm looking at the payment due date, the
25 transaction date, and the effective date of that

1 \$822 check.

2 Q And what page are you looking at?

3 A Page two.

4 Q Two of the KLT?

5 A Yes.

6 Q Okay. And you're seeing the 822 being
7 received and posted as of 2/25/2002; is that
8 correct?

9 A Yes.

10 Q And assuming that was all posted properly,
11 what are you looking at to tell you what the status
12 is?

13 A I'm looking at the payment due date on the
14 far left column.

15 Q And tell us again how that -- how that
16 leads to the rest of what you just said.

17 A Okay. The \$822 being applied to one
18 payment, it paid the December 1st, '01 payment. Had
19 they applied a second payment, it would have been
20 due for the January -- or it would have paid the
21 January 1 of '02 payment. And when the loan
22 transferred to Fairbanks Capital, it would have then
23 been due for February 1st of 2002.

24 Q Due for February 1st, 2002?

25 A Yes, yes, it would have been.

1 Q And when was the loan transferred to SPS?

2 A April 2nd, 2002.

3 Q Now, you have a handwritten note here that
4 says "boarded, FCC slash SPS."

5 A Yes.

6 Q And boarded is the technical term for when
7 servicing began?

8 A Yes.

9 Q And FCC is Fairbanks?

10 A Yes.

11 Q Okay. And there's not a date there. That
12 line is put between the 3/18/2002 and the 4/10/2002
13 space.

14 A Yes. Because the date was I believe April
15 2nd, 2002, April 1st. I have it. It's written down
16 somewhere, but I don't know that right off.

17 Q Okay.

18 A Okay.

19 Q So when the loan was boarded by SPS, if
20 the payment had been properly allotted it would have
21 been due for February 1?

22 A Uh-huh.

23 Q She -- Ms. Williams would have then not
24 been shown as paying March 1, and so when SPS took
25 it over, it would have been 60 days?

1 A That's correct.

2 Q Now, do you know what happened in between
3 the time that NationsCredit improperly allocated the
4 822, assuming that they did --

5 A Yes.

6 Q -- and the next payment that's shown on
7 April 30, 2002?

8 A Yes. What do you -- what do you mean? Do
9 I know what happened with NationsCredit?

10 Q Yes. Do you know what happened with
11 NationsCredit, with SPS, and with the contact with
12 Ms. Williams?

13 A From what I learned through the contact
14 history, it looked to me as though maybe they
15 didn't -- nobody realized that it hadn't been
16 applied the way Ms. Williams intended, including
17 Ms. Williams, until after the loan came over to
18 Fairbanks Capital. And there were attempts to
19 contact her which were unsuccessful. Even a video
20 was sent to her to encourage her to call in.

21 Q And you're reading on 107?

22 A Yes. And then it looks like contact was
23 made when she called in on -- let's see. On page
24 106, Plaintiff's 106, you'll see where it says
25 "Phase 1A." That's all talking about us trying to

1 find a good working phone number to get ahold of
2 her. And then a letter was sent to her letting her
3 know that it was going to be referred to
4 foreclosure. And then it looks like she called in.
5 Let's see, "M1 called in." Mortgagor 1 is what M1
6 stands for. On April 29th, 2002, she called in.
7 And it looks like Troy Noble was assigned the
8 account at that time.

9 Q What is the entry for 4/26/2002 that
10 references a promise to pay?

11 A Oh, it looks like there was a promise to
12 pay a Western Union -- a Western Union
13 representative called in to get the code city for a
14 \$900 promise to pay.

15 Q And that apparently was received on April
16 26th, 2002, according to the KLT?

17 A Yes. Yes, it was. And I believe, as you
18 look at the top, Troy Noble created a breakdown here
19 for a forbearance plan to be prepared by the
20 attorney. And the \$900 was to be used for the down
21 payment, which it was.

22 So they -- we received a signed
23 forbearance agreement and the down payment. And I
24 know at that time she was still concerned with the
25 822. And I believe, from what I read, that she felt

1 that she didn't get credit for that money that came
2 in.

3 Q Well, before we get to there, on
4 Plaintiff's 107, have you been able to decipher the
5 two notes on 3/13?

6 A From NationsCredit?

7 Q Yes, ma'am.

8 A What -- which ones? Do you want me to
9 read them?

10 Q Right. If you understand the
11 abbreviation.

12 A Yes. The first one, "MKR," means maker,
13 the mortgagor, "called in, verified everything and
14 then hung up." Then, "follow up with one and a
15 third payment by the end of month, April and May."
16 So it sounds to me like a verbal arrangement was
17 made.

18 Q Well, do you know what the NationsCredit
19 person intended to say by referencing, "verified
20 everything"?

21 A Oh, just made sure she was speaking to
22 Ms. Williams. She verified her address and maybe
23 four digits of her Social Security number, something
24 like that.

25 Q And how do you know that?

1 A It's just servicing lingo. I guess to
2 verify you're talking to the person before you give
3 personal information. That would be my assumption.
4 I guess I don't know a hundred percent. But that's
5 what you'll see in a lot of contact history, that
6 the call will start out saying everything is
7 verified.

8 Q In the KLT, after this 822 payment is
9 referenced, there's an escrow advance activity noted
10 of 396.34 on that same day.

11 A Yes.

12 Q Do you know what that relates to?

13 A That is the portion of the \$822 that was
14 applied to her outstanding balance. The brackets
15 mean that it was a credit to her balance of paying
16 it down. So it went from \$1,053 that she owed in
17 escrow down to 657.16. So they split it up that
18 way; they made it a payment and escrow.

19 Q And then the inspection that's referenced
20 on 4/10/2002 would have then been something that SPS
21 would have done?

22 A Yes.

23 Q And is that referenced as a cost of 1135?

24 A Yes.

25 Q And what is that cost for?

1 A That cost is for a loan that is in a
2 delinquent status, which when it came over to us was
3 90 days delinquent. And it just is somebody that
4 drives by, takes a look at the property, makes sure,
5 you know, it hasn't been vandalized, whether or not
6 it's vacant or occupied, you know, just gets a look
7 at it to let us know.

8 Q Is there a report that's actually
9 physically generated?

10 A Yes. It's -- well, I haven't ever seen
11 the actual paper report that comes in, but in the
12 system there is a little space for that comment.

13 Q Do you show a reference for the report for
14 this date of 4/10/2002?

15 A Not on the KLT. And it wouldn't be in the
16 contact history, I don't believe. But it does
17 show -- yes, you're right, it shows property
18 inspection, reported for inspection.

19 Q I'm just asking about the actual report.

20 A Report? It would be in the system.

21 Q On another screen?

22 A Yes.

23 Q Do you know what the name of that screen
24 is?

25 A Well, it's a whole path of things to an

1 inspection report screen. Just call property
2 inspections and you can view if there's a list of
3 them and see what date they were completed.

4 Q Okay. As I'm -- correct me if I'm wrong,
5 but it appears as though that when this loan was
6 sold, or when the servicing was taken over by SPS --
7 we talked about the questions about when it was
8 sold, but when the servicing was taken over by SPS,
9 this loan was being reported as being 90 days past
10 due; is that correct?

11 A Yes.

12 Q Let's assume that NationsCredit had
13 allocated the 822 to two full payments, leaving
14 Ms. Williams due for February 1, 2002. Would the
15 loan have been reported or boarded differently for
16 SPS? Would it have started out with a different
17 department?

18 A It would have been less delinquent. I
19 mean, it would have been 60 days, so it would have
20 been treated the same way, a loan in default.

21 Q Is a loan in default at 60 treated
22 differently than a loan in default at 90?

23 A Well, typically at day 92 a loan is
24 referred to foreclosure. So a loan at 60, it is
25 treated a little differently prior to being referred

1 to foreclosure. Is that what you meant?

2 Q Right. Does it actually start in a
3 different department when it's boarded by SPS?

4 A Yes.

5 Q What department would it have started in?

6 A The primary collections that are based
7 here in Jacksonville, actually. They have the 30
8 and 60-day accounts.

9 Q And it's called primary collections?

10 A Uh-huh, yes.

11 Q And those back in '02 would have been here
12 in Jacksonville as opposed to Hatboro, for example?

13 A Oh, yeah, you're right. Might have been
14 in Hatboro.

15 Q Okay. And it's called primary
16 collections?

17 A Yes.

18 Q 30 and 60. And then what department did
19 it go to at 90?

20 A That would be loan resolution in Salt Lake
21 City.

22 Q Do you know whether or not -- well, let me
23 ask you another question first. You referenced the
24 92 days. Does SPS use the 92 days as its guidelines
25 for foreclosure regardless of whether or not the

1 RESPA rules apply to a particular note?

2 A Which --

3 Q The HUD rules. I'm sorry, the HUD rules
4 relating to a foreclosure not supposedly needing to
5 start until 90 days past due. Does Fairbanks adopt
6 that for all of its servicing?

7 A Yes.

8 Q Regardless of whether that particular rule
9 applies to this particular note?

10 A I don't know when the rules would be
11 different.

12 Q Okay. Do you show when the next letter
13 would have been sent? The first letter, I'm sorry,
14 would have been sent to Ms. Williams after SPS took
15 over the case, took over the servicing?

16 A The first letter that was sent to her was
17 on April 25th, 2002, trying to get an updated phone
18 number.

19 Q And where do you show that?

20 A On Plaintiff's 106, April 25th, 2002.

21 Q Is that the Phase 1?

22 A The one that says "sent skip letter."

23 Q Okay. Skip U-I-L letter?

24 A Yes.

25 Q Okay. There's a reference here on April

1 23 at the bottom of 106 that the original documents
2 were requested. "Please provide the original
3 collateral to the FC R-E-P." Do you see that at the
4 very bottom of 106?

5 A Uh-huh, yes.

6 Q And the original collateral is the
7 original note and mortgage?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q At that point, where would the original
12 loan documents have come from? It says "request."
13 Request --

14 A Yeah, it says requested. It most likely
15 was from what we call the custodian, the holder of
16 the actual collateral, physical file.

17 Q Is there anything in these documents to
18 tell us who that was?

19 A No.

20 Q When the collateral is requested, does
21 that include the chain of assignments?

22 A Supposed to.

23 Q And the reason I ask for that is that
24 there is a reference on April 24 at 8:15 a.m. to "FC
25 title ordered through F-A-T-C-O."

1 A Yes.

2 Q What does that mean?

3 A Foreclosure title was ordered through
4 First American Title Company. That is -- Rusty H.
5 is a foreclosure representative. He's not with the
6 company any longer. He was just ordering a title,
7 updated title.

8 Q Is the title itself, in other words, the
9 result of this order --

10 A Uh-huh.

11 Q -- from First American Title Company, is
12 the result of this request somewhere in SPS's
13 documents?

14 A It would have been in the foreclosure file
15 held by that foreclosure attorney. And I don't know
16 if we have a copy of that file or not.

17 THE WITNESS: Did that transfer over to
18 you, those documents?

19 MR. REED: I don't know.

20 Q He can't really answer any questions.

21 A Oh, sorry.

22 Q It would be shorter depositions if we could. Or
23 maybe they'd be longer, I'm not sure which.

24 So as you sit here today, do you know what
25 original collateral and what title documents were

1 received by SPS in April 2002?

2 A No, but typically it's the original
3 documents. The note, the mortgage, the truth in
4 lending disclosure, any riders. Let's see. And the
5 title is just an updated title search to make sure
6 it's clear.

7 Q Would you expect the title search to have
8 revealed the assignments?

9 A I would guess so. I --

10 Q I mean, in Florida they're all recorded,
11 or they're supposed to be.

12 A I mean, I don't know if that's
13 state-specific or if that's something that everybody
14 records, but I would assume so.

15 Q In SPS's review process, who with SPS is
16 supposed to look at the original documents and the
17 foreclosure title? Who in this case was supposed to
18 actually read the things?

19 A I think that was the foreclosure attorney.

20 Q Whoever SPS hired?

21 A Yes.

22 Q Does it show who that would be?

23 A It was Echevarria, I believe. I don't
24 know if it shows it in here.

25 Q Can you tell if the original collateral

1 and the foreclosure title ever passes through SPS on
2 the way to the foreclosure attorney or whether SPS
3 gets a copy at the same time that the originals are
4 sent to the foreclosure attorneys?

5 A It's not typical, but they could. They
6 could request a copy.

7 Q Do you know in the normal course? I'm not
8 asking about this case. In the normal course, is it
9 up to the foreclosure attorney, then, to review the
10 title and the original collateral and the
11 assignments to confirm proof of ownership?

12 A Yes.

13 MR. KOWALSKI: All right. I think that's
14 a good point. It's ten to one.

15 THE WITNESS: Okay.

16 MR. KOWALSKI: And based on the witness's
17 testimony with regard to topics one and two and
18 four, we are going to adjourn, as opposed to
19 conclude, this deposition. If it's ordered --
20 I will probably order it. I don't know if you
21 want to read or waive in part, whatever you
22 want to.

23 MR. REED: Do you want to wait to order it
24 until we conclude this last part or do you want
25 to order it now? What do you think?

1 MR. KOWALSKI: I typically order just to
2 help my memory more than anything else, but
3 I -- I'll wait. I'll wait. That way you can
4 make the decision at the end. Okay. I'll keep
5 the rest of it in my head.

6 (Witness excused.)

7 (Whereupon, at 12:53 p.m. the taking of
8 the deposition was adjourned.)

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CERTIFICATE OF OATH

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STATE OF FLORIDA)
COUNTY OF DUVAL)

I, Katharine M. Henderson, Registered
Merit Reporter, and Notary Public in and for the
State of Florida at Large, do hereby certify that
MINDY LEETHAM was duly sworn by me on January 15,
2008.

WITNESS my hand and official seal this 6th
day of February 2008.

Katharine M. Henderson, RMR
and Notary Public
State of Florida at Large
DD 631109
My commission expires:
03/17/2011

1 REPORTER'S DEPOSITION CERTIFICATE

2
3 STATE OF FLORIDA)

4 COUNTY OF DUVAL)

5
6 I, Katharine M. Henderson, Registered
7 Merit Reporter, certify that I was authorized to and
8 did stenographically report the deposition of **MINDY**
9 **LEETHAM** and that the transcript is a true and
10 complete record of my stenographic notes.
1112 I further certify that I am not a
13 relative, employee, attorney, or counsel of any of
14 the parties, nor am I a relative or employee of any
15 of the parties' attorney or counsel connected with
16 the action, nor am I financially interested in the
17 action.
1819 DATED this 6th day of February 2008.
2021 _____
22 Katharine M. Henderson, RMR
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