

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

ARCPE 1 LLC,

Plaintiff,

vs.

CASE NO. 2018-005714-CA-01
Civil Div.: Section CA 06

PEDRO DAMAS, a/k/a PEDRO A. DAMAS, ZAIDA
DAMAS a/k/a ZAIDA M. DAMAS, SANTA BARBARA
TOWN HOMES HOWNOWNERS' ASSOCIATION, INC., a
Florida corporation, JOHN DOE, unknown tenant
in possession, JANE DOE, unknown tenant in
possession.

Defendants.

BEFORE: HONORABLE CHARLES D. JOHNSON

PLACE: Zoom videoconferencing

DATE: May 7, 2024
Commencing at 10:30 a.m.

REPORTED BY: MARIA E. RODRIGUEZ, RPR, FPR
Notary Public

MOTIONS HEARING
(via Zoom videoconferencing)

1 - 37

A P P E A R A N C E

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FOR THE PLAINTIFF:

WILLIAM NUSSBAUM, III, ESQUIRE
LAW OFFICE OF GARY GASSEL, P.A.
2191 Ringling Boulevard
Sarasota, FL 34237
Pleadings@Gassellaw.com

FOR THE DEFENDANT:

EYAL FRIEDMAN, ESQUIRE
LAW OFFICES OF E.I. FRIEDMAN, P.A.
10633 North Kendall Drive
Miami, FL 33176
eif712@aol.com

ALSO PRESENT:

RICK DIAZ, Bailiff
Natasha, Clerk

P R O C E E D I N G S

1
2 WHEREUPON, the following was reported
3 stenographically, via Zoom videoconferencing, and
4 transcribed as follows:

5 THE COURT: Good morning, folks. We're
6 here on ARCPE, LLC, versus Pedro Dams.
7 Could you announce your appearances for the
8 court reporter.

9 MR. NUSSBAUM: Good morning, Your
10 Honor. This is Bill Nussbaum on behalf of
11 the Plaintiff.

12 MR. FRIEDMAN: Good morning, Your
13 Honor, Eyal Friedman on behalf of Pedro
14 Damas and Zaida Damas, his wife.

15 THE COURT: So it's competing Motions
16 for Summary Judgment. Go Ahead, Mr.
17 Nussbaum.

18 MR. NUSSBAUM: Sure. I believe it's --
19 am I mistaken, it's only a noticed for my
20 Motion for Summary Judgment today?

21 MR. FRIEDMAN: No, both of us are on
22 today.

23 MR. NUSSBAUM: Okay. Sure. I'll be
24 happy to go first, Your Honor.

25 The Defendant in this matter defaulted

1 on a loan on June 1st 2013. Subsequently,
2 my predecessor and counsel filed this action
3 in 2018. Defendant has filed an Answer
4 Affirmative Defenses to Plaintiff's
5 complaint all the way up to a Fourth Amended
6 Answer Affirmative Defenses, Your Honor.

7 The last Amended Answer and Affirmative
8 Defenses, we filed another Motion to strike,
9 which the court subsequent, ultimately
10 denied, and leaves us here with about 11
11 affirmative defenses for The Court to hear
12 right now.

13 Although I say 11, a lot of them are
14 kind of intertwined and make somewhat
15 similar argument, so I'll try to keep them
16 together as much as possible.

17 Defendant's first defense is a defense
18 based upon an alleged HAMP violation.
19 That's the Home Affordable Modification
20 Program. Defendant makes some allegations
21 that Plaintiff was required to dismiss its
22 foreclosure complaint due to the
23 modification of the prior -- or the first
24 mortgage.

25 This is a second mortgage, Your Honor,

1 but those guidelines really seem
2 inapplicable in that this action was filed
3 after -- after the first modification was
4 modified.

5 Regardless Congress cannot impair
6 Plaintiff's contract with the Defendant, and
7 I don't believe that argument to be well
8 taken. As another defense, Defendant claims
9 that Plaintiff violated Florida Statute
10 687.0304, which seemingly is alleging that
11 Plaintiff failed to attach a modification to
12 its complaint; however, there is no
13 modification of the second loan so there
14 really is nothing to modify.

15 Plaintiff filed its Affidavit in
16 Support of Summary Judgment as well as its
17 Supplemental Affidavit in Support of Summary
18 Judgment and alleges that there is no, you
19 know, no modification. The next defense is
20 another defense based upon HAMP violations,
21 which I have addressed, then argument based
22 upon standing.

23 When this action was filed, Your Honor,
24 Plaintiff's prior counsel filed a copy of
25 The Note, which contained a blank

1 endorsement and copy of the mortgage.
2 Additionally, Plaintiff's prior couple also
3 filed a note certification which indicated
4 physical possession of the original loan
5 documents.

6 During the course of this action when
7 the Plaintiff changed its attorney to our --
8 to my office, the Plaintiff elected to
9 endorse the blank endorsement. I'm not 100
10 percent positive why they opted to do that,
11 but, you know, Florida and the UCC provides
12 that a holder may endorse its end loan it
13 owns; however, it has become a point of
14 contention as it pertains to the Defendant
15 as The Note was subsequently endorsed during
16 the course of the action.

17 Notwithstanding that, The Note
18 certification indicates physical possession
19 of the loan documents prior to the filing of
20 this action, which is all the UCC requires
21 for enforcement purposes.

22 The next defense is another -- the next
23 two defenses actually are defenses
24 predicated on standing, and the -- as I've
25 already responded to. And then the next, I

1 believe that to be the seventh defense
2 references an argument based upon unclean
3 hands.

4 Specifically, the Defendant alleges
5 that they issued a QWR, which is a Qualified
6 Written Request to the loan servicer, which
7 was not responded to. Again, Plaintiff
8 addressed its -- Plaintiff addressed this
9 issue in its supplemental response or its
10 supplemental affidavit in support of summary
11 judgment, and the documents that Defendant
12 has attached in support of this action show
13 that a Qualified Written Request was sent to
14 the Plaintiff, the originator of the loan
15 after they had signed a loan.

16 And Defendant really cites to no
17 authority which makes this a viable
18 affirmative defense as it pertains to
19 Plaintiff's foreclosure action. At best, he
20 may be able to obtain some sort of measure
21 of damages, but again, this Qualified
22 Written Request was sent to the prior owner
23 after they had already conveyed any interest
24 that they had.

25 The next defense is an argument that

1 Plaintiff failed to mitigate its damages.
2 That, first of all, Plaintiff has no
3 required -- no duty to mitigate its damages.
4 That's -- Florida Supreme Court has
5 addressed this fact. Notwithstanding that,
6 Plaintiff really has not seeking damages at
7 this time.

8 They're asking The Court to adjudicate
9 the amounts claimed due and owing, and after
10 the sale of the property, there may be
11 damages, but at this time Plaintiff is not
12 seeking damages.

13 The next argument is a failure to state
14 a cause of action. The subject complaint --
15 complies with Rule 1.944 of the Florida
16 Rules of Civil Procedure. And it
17 affirmatively states a cause of action for
18 mortgage foreclosure action.

19 Finally, the Defendant makes an
20 argument based upon fraud. As I've
21 indicated to you during the course of this
22 action, Your Honor, my client opted to
23 endorse the blank endorsement to a specific
24 endorsement, and Defendant predicates this
25 argument as evidence of fraud.

1 When Plaintiff filed its amended
2 complaint, it, specifically, provided a
3 footnote in its amended complaint that it
4 had elected to endorse The Note into a
5 specific endorsement.

6 There is no fraud here, as there is no
7 intent to deceive as Plaintiff plainly filed
8 its amended complaint and stated in a
9 footnote that Plaintiff had opted to do so.
10 So there is no attempt to subterfuge.

11 If anything, all it did was muddy the
12 waters for Plaintiff and provide Defendant
13 another avenue to make some sort of
14 argument; however, The Note was endorsed in
15 blank at the time of filing and Plaintiff's
16 prior, prior attorney also filed a note
17 certification, which indicated physical
18 possession of the original loan documents.
19 That is really all that the UCC requires.

20 Plaintiff did file, obviously, its
21 Motion for Summary Judgment and Defendant
22 filed its response to Plaintiffs as well as
23 of moving for summary judgment. The basis
24 of that motion really pertains to the
25 qualified written request argument, which I

1 have addressed.

2 Additionally, Defendant filed an
3 affidavit in response to Plaintiff's Motion
4 for Summary Judgment, but the affidavit is
5 deficient, Your Honor, in that it's more of
6 an acknowledgement and not an oath.

7 That is certainly not what's required
8 under the Florida Rules of Civil Procedure.
9 It says it is acknowledged and it's not
10 sworn to. So that's been an record for
11 many, many months. Defendant had ample
12 opportunity to update their affidavit to
13 comport with the requirements of Florida
14 law. So I'm not sure that The Court can
15 really entertain Defendant's Motion of
16 Summary Judgment with a faulty affidavit at
17 the helm.

18 Plaintiff filed its Affidavits in
19 Support of Summary Judgment on October 17th
20 '22, as well as its Supplemental Affidavit
21 in Support of Summary Judgment on January
22 31st 2024. All of Defendant's arguments
23 have been addressed via Plaintiff's
24 affidavit, which is sworn to as required
25 under law. And Plaintiff contends it is

1 entitled to judgement, as a matter of law,
2 in the amount of \$77,369.44, Your Honor.

3 THE COURT: Thank you. Mr. Friedman?

4 MR. FRIEDMAN: Good morning, Your
5 Honor. I'm going first refer to my verified
6 Motion of Summary Judgment. Counsel had
7 stated that the affidavit that was filed was
8 incorrect that there was -- that I placed an
9 acknowledgement rather than sworn to. I did
10 not file an affidavit.

11 What I basically did was simply have
12 the client affirm the arguments made. And
13 you will notice that all the arguments made
14 are basically legal argument. That's why I
15 did not do so. That's why I did not file a
16 separate affidavit.

17 The only issue that is really factual
18 in this matter is to when the original loan
19 was filed. That's it. So let me just get
20 to the argument. If I can just share my
21 screen very quickly, Your Honor.

22 THE COURT: Sure.

23 (WHEREUPON, Mr. Friedman sharing screen via
24 Zoom.)

25 MR. FRIEDMAN: This is. Your Honor,

1 can you see the screen?

2 THE COURT: I can about, but it's
3 blank.

4 MR. FRIEDMAN: See, Rick, I always told
5 you I have a difficult time on how you do
6 this.

7 THE COURT: There. There you go. It's
8 up.

9 MR. FRIEDMAN: You can see it now?

10 THE COURT: Yep.

11 MR. FRIEDMAN: All right. Great. If
12 you see here, Your Honor. In 2014 my
13 clients -- first of all, let's start at the
14 very beginning. This originally started as
15 a Complaint for Foreclosure of a Second
16 Mortgage for the sum of \$46,000. The Note
17 and mortgage were from May 26th of 2005, and
18 they were basically foreclosing on a second
19 lien.

20 This document that you're looking at
21 was a HAMP document, Home Affordable
22 Modification Agreement. It was executed --
23 and I'll just go down to the very bottom.
24 If you can see this, it was executed on June
25 17th 2014. This was the original loan

1 agreement between the parties.

2 Of course, as I just stated in this
3 bill I've explained, we are involved here
4 with a second loan modification -- a second
5 mortgage lien. On January 25th of 2023,
6 counsel filed his Amended Complaint, and in
7 his Amended Complaint he stated that he is
8 in second position to the original
9 complaint. That's what his complaint says,
10 and, of course, it's just accurate. That is
11 absolutely correct.

12 Well, I'm going to show you, Your
13 Honor, the HAMP guidelines. And it says,
14 "Dismissal of Foreclosure." CAN you see
15 this, Your Honor?

16 THE COURT: You're still on the same
17 page. I can see the five running along the
18 bottom. There you go.

19 MR. FRIEDMAN: Is this -- you see the
20 second document now?

21 THE COURT: Yes.

22 MR. FRIEDMAN: All right. So it talks
23 about Dismissal of Foreclosure Items, and
24 this is under the HAMP guidelines. It
25 states, Section 4 of Chapter 5 of the HAMP

1 requires the second mortgage provider
2 servicer to dismiss any outstanding
3 foreclosure action on the borrowers second
4 lien, which this is, if the borrowers
5 corresponding first lien is permanently
6 modified.

7 I just showed you a moment ago,
8 Document Number One, where it was
9 permanently modified. That modification was
10 done on June 6th 2014. He had -- Mr. and
11 Mrs. Damas had been paying on that first
12 loan modification since 2014. This is a
13 second lien modification. Based on the HAMP
14 guidelines -- and the argument is very
15 straightforward.

16 Based on the HAMP guidelines, the
17 second servicer must dismiss any outstanding
18 foreclosure action. And this was one of our
19 affirmative defenses. If you look at
20 counsel's response, what he basically states
21 is well it shouldn't matter because HAMP
22 ended in 2016. And I'm certainly not
23 arguing that statement.

24 Hamp did end in 2016, but my client
25 took advantage of that matter in 2014 and

1 has had a permanent modification since that
2 time. In his -- actually, by the way, it
3 actually ended if you can see down in the
4 document, actually ended in 2017. In his
5 motion it states "Defendant's" -- and I'm
6 quoting from Plaintiff's response to my
7 motion. "Defendants ignore the fact that
8 Plaintiff's loan was not modified, thus
9 placing it outside of the requirement they
10 it apparently rely upon."

11 It's simply not true. The first loan
12 was modified. Once the first loan is
13 modified under HAMP, you must dismiss, the
14 second lien -- the second mortgage. And why
15 did they do this? Evidently, so people will
16 start paying, get back on track, start
17 working things out. What ends up happening
18 is that these companies, they end up selling
19 their second and third mortgages to other
20 people, and then they're foreclosing on
21 people.

22 And people don't realize they have this
23 opportunity if they originally satisfy the
24 first loan and entered into a permanent
25 modification, as I showed you in Exhibit

1 Number One --

2 THE COURT: Let me ask you,
3 Mr. friedman, this is the same -- the
4 same mortgage company issued both the first
5 and the second lien? Same --

6 MR. FRIEDMAN: No. It is not, Your
7 Honor. It is not.

8 THE COURT: So that your position that
9 the interpretation of this is that
10 irrespective of how you get a second lien,
11 different company, different lender, and
12 that lien is not swept up in this first
13 modification with the first lender, it
14 eviscerates the second lien regardless?

15 MR. FRIEDMAN: That is absolutely
16 correct. That's what I'm arguing. It
17 states in -- counsel had made the comments
18 than, you know, that Congress cannot get
19 around contract law in the State of Florida.
20 It simply not true.

21 These things were done in order to help
22 homeowners keep their homes, and this is
23 what we're arguing about. Now, we can go
24 also to some of the other arguments. And
25 there was the issue as to whether there was

1 fraud or not. And I'll go to Exhibit Number
2 A, and let me know -- can you see this
3 document, Your Honor?

4 THE COURT: Yes.

5 MR. FRIEDMAN: Okay. This is the first
6 note. If you look at the first note -- and
7 this was done back in 2005 for \$46,000, you
8 will notice -- whoops. You will notice that
9 in the endorsement, the endorsed in blank.

10 Now, if you go, they end up amending
11 the complaint several years later. And they
12 have -- and I'll go to it now. This is what
13 the attached to the amended complaint. And
14 this amended complaint, you will see that
15 somebody put in the language ARCPE I, which
16 is the Plaintiff in this case.

17 So my argument is this: That there are
18 general issues of material fact as to
19 whether ARCPE actually owned the loan at the
20 time. You see, they end up including a
21 case, the case being -- and I'm going to
22 quote their own case because it helps me.
23 It's JP Morgan vs. Pierre, which is a 2017
24 case.

25 Now, I'm quoting: "Here JP Morgan

1 attached a copy of The Note bearing a blank
2 endorsement to his complaint and presented
3 the original note, which was identical to
4 the copy attached." And then it goes on:
5 "That is sufficient."

6 That's not what's going on here, Judge.
7 In the original complaint that they filed in
8 2018, it was endorsed in blank. Somehow and
9 I'm not even sure how this happened, they
10 put, "Paid to the order of ARCPE I, LLC."
11 Now, all I'm saying is it just creates an
12 issue of fact as to when they came into
13 ownership.

14 When you look at the response to my
15 motion, they never address it. They do the
16 standard arguments: "I agree that, well, we
17 have the prior attorney. We had the
18 original note. Yes, we do have it." But in
19 this particular case, we have an issue of
20 fact as to whether ARCPE actually owned The
21 Note prior to the time that it was
22 originally filed. That's -- it's an very
23 straightforward argument.

24 Now, let me just continue. Right.
25 Now, the qualified written request, Your

1 Honor. This was my last argument that I
2 made, and what I would have done back in
3 March of 2016 -- I mean, March 16th of 2018,
4 Mrs. Damas had filed a qualified written
5 request. And she executed and she signed
6 it.

7 They received no response to any of
8 these issues, and these issues are extremely
9 important regarding whether Flagstar was
10 licensed and regarding whether Gene Jarrad
11 was actually permitted to execute to endorse
12 the documents, to assign it to another
13 company. And it goes on and on and they
14 never, excuse me, provided any responses to
15 these claims. And my argument is that
16 summary judgment cannot be granted simply
17 because they have never complied with these
18 issues.

19 Now, as a response to their Motion for
20 Summary Judgment. And, Judge, it's always
21 the same. It's simply a boilerplate
22 affidavit to a summary judgment where they
23 stand or they just put down real quick
24 whoever is the servicer or whoever is the
25 representative of the servicer and they

1 apply to all of it.

2 You see it every single time in every
3 foreclosure action, but once you look at it
4 very, very closer, and you'll see my
5 affirmative defenses, they never place any
6 procedures as to check as to the accuracy of
7 the information. Why is this important?
8 Because this particular company, which is
9 Palm Planet, it became servicer of these --
10 of this loan back in August of 2021.

11 This is a 2005 second note, so there
12 are 14 years of documents that are missing.
13 The Plaintiff is asking The Court to simply
14 take their word for the fact that all the
15 prior documents or the fact that they did
16 not include it in their information or in
17 their packet. Should be ignored.

18 And my argument to Your Honor is that
19 it cannot be ignored. You have to check to
20 the accuracy of this information. There was
21 no testimony as to the loan-boarding
22 process, no information regarding that this
23 was made in according to industry standard.
24 They failed to provide any provision that
25 the -- that he was validly transferred with

1 both the mortgage and The Note.

2 There was no information regarding
3 independent review, and no testimony
4 regarding the familiarity with the
5 recordkeeping system; in other words, they
6 start with a boilerplate affidavit. And
7 these boilerplate affidavits oftentimes
8 don't reflect the actual case that we're
9 dealing with at the moment.

10 And this is what we're dealing with
11 right now. So, in summary, under HAMP, I'm
12 entitled to a summary judgment because there
13 was a second -- there was a first lien that
14 was modified. Based on HAMP, all subsequent
15 second mortgages have to be dismissed. It
16 was tampered with because there's a
17 difference between the first one and what
18 they wanted to provide to you, I mean, by
19 the first endorsement, which was made in
20 blank. They want to provide to you a
21 document that was changed somehow after the
22 fact, and there is -- we're saying that
23 "Well, it was a mistake." These are not
24 simple mistakes, Your Honor.

25 One last thing in regarding that issue

1 as to whether it was tampered. Counsel had
2 made the argument -- I'm looking for it now.
3 I apologize. Oh, that they are permitted,
4 once they own it, Under 60 -- I can't
5 remember the exact statute. They are
6 permitted to change from a blank endorsement
7 to a specific endorsement. And they quote a
8 specific statutory provision.

9 If you look at the statute, Your Honor,
10 it doesn't say that you are permitted to
11 transfer -- that you -- the statute
12 basically say, if A transfers to B, you can
13 change it from a general or a blank
14 endorsement to a specific endorsement. It
15 does not say that.

16 Once I am an owner of The Note, I am
17 somehow able to change to a specific
18 endorsement, I will be endorsing it to
19 someone else. So their entire argument
20 falls apart.

21 Defendants are entitled to summary
22 judgment in this particular case. They have
23 done everything that they have been required
24 to do. Plaintiff's summary judgment just
25 falls flat because it just makes boilerplate

1 arguments without specificity. Thank you,
2 Your Honor.

3 THE COURT: Thank you, Mr. Friedman.
4 Is there any case law because what you
5 basically stated for the HAMP issue is
6 because of this rule, all second mortgages,
7 their loans are just entirely written off
8 the books. Their ability to contract has
9 just been eviscerated, and they are all
10 written off the books because of this
11 program now matter how large amount of
12 money. Any cases construe that rule that
13 way?

14 MR. FRIEDMAN: I have not, Your Honor.
15 And this is kind of interesting because this
16 particular argument is truly unique. This
17 is the first time -- I've actually made this
18 argument in another case, it just hasn't
19 flowed through the system yet. But this is
20 just an incredible, in my opinion, appellate
21 issue because it has never been brought up
22 in the State of Florida as to whether once
23 the first loan is modified whether, by
24 right, all second ones are done.

25 I agree 100 percent. I'm looking

1 strictly at the HAMP guidelines and what
2 it's telling me is that it has to be
3 extinguished.

4 THE COURT: Thank you. Mr. Nussbaum,
5 Mr. Friedman has raised an issue of all the
6 way back to, I guess, WAMCO. I think that
7 was a 2005. This whole boarding process.

8 Is there any evidence before me that
9 you filed regarding your business records
10 folks who indicated that this was boarded,
11 that this information was -- apparently,
12 it's gone through several servicers, from
13 what I'm being told? Tell me. You're
14 muted, Mr. Nussbaum.

15 MR. NUSSBAUM: Thank you. It happens
16 at least once a week. I apologize. Yes,
17 we've, certainly, overcome the hearsay
18 exception to that. WAMCO does provide that
19 you can utilize a prior servicer's records.
20 Our affidavit follows the forms required as
21 it says they were independently verified for
22 accuracy as well as integrated into the
23 boarding -- integrated into my client's
24 records, thus becoming their own records.

25 WAMCO case explicitly provides for use

1 of prior servicer's records. Although, if
2 that weren't the case, none of these matters
3 were hardly go to judgment during the
4 summary judgment process, otherwise, we
5 would have a trial on every issue.

6 There has been no doubt that there have
7 been prior servicers, but we certainly meet
8 the requirements of, I believe, it's 90.9028
9 for integrating prior servicer's records in
10 that our affidavit explicitly provides to
11 the extent that any of these records come
12 from prior servicers, they are independently
13 verified, done so at the time that they were
14 received and integrated into my client's own
15 business records.

16 I'd like to address this HAMP argument
17 as well as the other arguments because I
18 believe he's omitted some kind of pertinent
19 facts here. First, as it pertains to the
20 HAMP argument. Whether the program
21 sunsetted in 2016 or 2017, I believe the
22 language he really -- he cited to kind of
23 betrays his position in that it says any
24 outstanding foreclosure actions must be
25 dismissed.

1 So when he has a modification in 2016
2 and the HAMP program ends in either 2016 or
3 2017, how does that -- how does that make
4 any impact on a foreclosure action that's
5 filed in 2018 when the HAMP program no
6 longer exists? This is a 2018 action.
7 Maybe I'll be willing --

8 THE COURT: I think playing devil's
9 advocate, I think he's saying because the
10 Congress' language just essentially
11 dismissed every other second mortgage, if
12 you enter into this. Is that the intent of
13 those folks? You know, probably not, but
14 that --

15 MR. NUSSBAUM: Yes, I understand. But
16 the language itself said any outstanding
17 foreclosure actions. This wasn't an
18 outstanding foreclosure --

19 THE COURT: Okay. Oh, I follow you.
20 I'm sorry.

21 MR. NUSSBAUM: It wasn't an outstanding
22 foreclosure action at that time --

23 THE COURT: Oh, to read the full
24 sentence in context, this didn't exist at
25 the time. I gotcha.

1 MR. NUSSBAUM: Next. He made some
2 arguments as it pertains to Plaintiff's
3 standing. We addressed that. That was
4 addressed in our amended complaint. That
5 was addressed in our affidavit in support of
6 summary judgment.

7 I, certainly, acknowledge that my
8 client converted the blank endorsement into
9 the special endorsement, and there is
10 language that it, specifically, provides for
11 that process. We cited to it in our
12 response. It's Florida Statute 678.30141
13 (1) which expressly provides, "a holder may
14 convert a blank endorsement to a special
15 endorsement." We or the prior attorney --

16 THE COURT: I understand. It's their
17 paperwork. They can endorse it to somebody
18 else if they want to as well. I understand.

19 MR. NUSSBAUM: Right. So there is a
20 note certification that, specifically,
21 provides that we were with the holder of the
22 loan and the owner at the time this action
23 was filed.

24 He seemingly ignores some the other
25 attachments that are attached to our --

1 amended or our second amended complaint,
2 which also show an assignment of mortgage
3 from the time that this action was filed.

4 So that, specifically -- which was,
5 specifically, done before this action was
6 filed and recorded prior to that time, which
7 shows, which shows the Plaintiff as ARCPE I,
8 LLC, which is the same Plaintiff in this
9 action. It really doesn't confuse the issue
10 because we have a loan certification at the
11 time the complaint was filed.

12 And, again the UCC only requires that
13 you be an owner or a holder, and we
14 explicitly in a memo showed that we were the
15 holder of the loan prior to this action
16 being filed. Next, I kind of want to -- I
17 also would like to attempt to do the share
18 screen because he says this was some sort of
19 the boilerplate reaction or a boilerplate
20 response when it was actually quite a
21 substantive response as it pertains to his
22 QWR response.

23 Let me see if I can get it up. This
24 the letter from the prior owner of the loan
25 from April 13th 2018, which acknowledged

1 receipt of the qualified written request.
2 And explicitly said, "I'm not really sure
3 what you were asking for."

4 Now, is it, is it the answer they may
5 have wanted to receive? No, but to say that
6 this is some sort of boilerplate response
7 when we filed a supplemental affidavit in
8 support of summary judgment just is
9 factually incorrect.

10 Our affidavit, specifically, addressed
11 a lot of the issues that Defendant has now
12 complained about. And, specifically, shows
13 a substantive response to the claims he's
14 made. I'll go through the pertinent parts,
15 which is right here, which is a qualified
16 written request part said they asserted that
17 they issued a QWR to the originator of the
18 loan in March 2018.

19 At that time Flagstar had already
20 signed its loan to Plaintiff. And contrary
21 to these allegations, they provided its
22 initial response to the Defendants, QWR,
23 April 13th 2018, and in a supplemental
24 response on May 8th 2018. So what he's
25 claiming is just factually incorrect. This

1 is not a boilerplate response.

2 This is actually required quite a bit
3 of digging to obtain this type of
4 information from a prior servicer. So I
5 don't believe his argument that these are
6 boilerplate responses that anyone could have
7 done is not well-founded because we had
8 provided substantive response in the form of
9 an affidavit that says that is not correct.

10 And the reason why I also brought up
11 initially that it is a verification. This
12 is a factual issue that they did this. And
13 we have sworn testimony, and they have, you
14 know, an acknowledgement that they claim is
15 done. So at a minimum, his Motion of
16 Summary Judgment should be denied and
17 Plaintiff's motion should be granted, Your
18 Honor.

19 THE COURT: Mr. Friedman, can you pull
20 up that language again? Can you stop
21 sharing now, Mr. Nussbaum?

22 MR. NUSSBAUM: Yes.

23 THE COURT: Can you pull up that HAMP
24 language that you had up for me again?

25 MR. FRIEDMAN: Sure.

1 THE COURT: I mean, it's an interesting
2 novel action. I don't think that anyone --
3 any court is going to find that someone's
4 mortgage, that their loan has been wiped out
5 of books, but I'd like to read the language
6 one more time.

7 (WHEREUPON, Mr. Friedman sharing
8 screen.)

9 THE COURT: The borrower permanently
10 modified currently first lien outstanding
11 foreclosure. Okay. (Reading.)

12 So, essentially, Mr. Nussbaum, just a
13 plain text argument, you're submitting, any
14 outstanding foreclosure, this did not exist
15 at the time it was not outstanding. That's
16 your stature?

17 MR. NUSSBAUM: That is correct, Your
18 Honor, that is Plaintiff's position --

19 THE COURT: Folks, it's a novel
20 argument. I'm going to deny the Motion for
21 Summary Judgment for the Defense; I'm going
22 to grant it for the Plaintiff with one
23 caveat, I don't have the original -- the
24 documents, Mr. Nussbaum. I don't know if
25 you sent them, so I'm not going to grant it

1 beyond that.

2 I think you've proven your possession,
3 your standing. I think that you've, you
4 know, disproven their kind of generic
5 contentions of fraud, I think you've
6 responded to the QWR arguments
7 appropriately. And so I'm going to grant
8 the foreclosure pending -- I don't have the
9 documents.

10 Do you know what happened to them? Did
11 you send them already or not?

12 MR. NUSSBAUM: Yes, Your Honor, they
13 were sent on January 24th 2024.

14 THE COURT: Natasha, do you know if we
15 have them? It's an interesting argument.
16 It doesn't mean I'm right, folks.

17 THE CLERK: Yeah. Of the mortgage
18 documents?

19 THE COURT: Yeah.

20 THE CLERK: I don't have them.

21 THE COURT: You don't have them? Rick,
22 do you know if you have them?

23 THE BAILIFF: I'm checking the list
24 now.

25 THE COURT: Yeah. Rick creates a list.

1 MR. FRIEDMAN: Your Honor, would Your
2 Honor consider staying foreclosure -- I
3 think this is just such a unique argument --

4 THE COURT: I'll tell you why I won't,
5 Mr. Friedman because it is, it is
6 interesting. I think there's two grounds
7 that I think hurdles that are probably
8 insurmountable, but maybe I'm wrong.

9 One, it says, "Outstanding
10 foreclosure." This is clear text. And this
11 wasn't an outstanding foreclosure. It
12 wasn't done until 2018. Too I just do not
13 see any way because this would -- it evokes
14 images of Hoover Town during the great
15 depression.

16 If \$50,000 in a loan was wiped off the
17 books because of some stroke of a pen
18 without any due process consideration for
19 the people that who offered the loan, I
20 just -- I would be very surprised if that
21 would be supporting the case law. But,
22 nonetheless, even if we don't get to that,
23 the very language in the act indicates
24 outstanding foreclosures, which it wasn't at
25 the time.

1 Rick, do we have? No? Counsel, do we
2 have -- so I'm not signing anything --
3 Mr. Friedman, I'm not signing anything from
4 the Plaintiff until I see that note. So, I
5 don't know --

6 MR. NUSSBAUM: I show delivery on
7 January 26th. I have a FedEx tracking,
8 but --

9 THE COURT: Did you send it to -- did
10 you send it to the Clerk's office or did you
11 send it to me?

12 MR. NUSSBAUM: It says, "Delivered to
13 receptionist front desk," on FedEx tracking
14 information.

15 THE COURT: So that would be
16 the Clerk's.

17 THE CLERK: When was that again?

18 MR. NUSSBAUM: January 26th.

19 THE CLERK: I'm going to check again.

20 THE COURT: We'll see. I'll let you
21 folks know if we can't find it because we
22 have a box here of some older ones, but Rick
23 keeps very precise -- a lot better than I
24 do -- precise details of which ones come in
25 for us.

1 The Clerk's office probably has it, but
2 I'll let you know by E-mail if they have it
3 or if they don't, one way or the other.

4 So, Mr. Nussbaum, I'm granting your
5 motion. I need you to frame that -- you can
6 state for the reasons stated on the record.
7 I think I covered all of that. I think have
8 possession and you have standing. I think
9 I've discussed the fraud issue, I've
10 discussed the QWR issue, so I think you can
11 state for the reasons stated on the record.

12 I think that's sufficient, but if you
13 put more detail, more detail is better. It
14 doesn't mean I won't edit it, but I need you
15 to prepare that order, run it by
16 Mr. FRIEDMAN, but I'm going to tell you
17 folks it's going to sit in my cue until I
18 see the paperwork -- the documents.

19 MR. NUSSBAUM: Your Honor. You want a
20 supplemental order on the Motion for Summary
21 Judgment as opposed to just the final
22 judgment? Is that what you're asking for,
23 Your Honor?

24 THE COURT: No, just send in the final
25 judgment order with the factual discussion.

1 And so I'll let you know, folks, if we get
2 it or, ultimately, if we don't. One way or
3 the other I'll let you know.

4 What time frame were you seeking on the
5 foreclosure, Mr. Nussbaum?

6 MR. NUSSBAUM: I like IO, so what do
7 your clients need to IO.

8 MR. FRIEDMAN: This is actually what I
9 was going to ask Your Honor because I -- as
10 soon as I get off the phone, I was planning
11 to call Bill. I have to tell you, Judge,
12 this was as a second mortgage for \$46,000.
13 I have been screaming at my clients, you
14 know, you don't risk a house because of
15 \$46,000. We went to a informal I think
16 mediation --

17 THE COURT: Should we stop with the
18 court reporter for the time being because
19 this is --

20 MR. FRIEDMAN: Okay.

21 THE COURT: Okay.

22 (Discussions were held off the record.)

23 (Concluded at 11:07 a.m.)

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STATE OF FLORIDA) .
) CERTIFICATE OF REPORTER
COUNTY OF HILLSBOROUGH)

I, MARIA E. RODRIGUEZ, Notary Public in and for
the State of Florida at Large, hereby certify that the
foregoing proceedings was held.

I FURTHER CERTIFY that the proceeding was reported
in Stenotype by me, and that the foregoing pages
constitute a true and correct transcription of my
recordings thereof.

I FURTHER CERTIFY that I am neither an attorney
nor of counsel for the parties to this cause, nor a
relative or an employee of any attorney or parties
connected with this litigation, and that I have no
interest in the outcome of this action.

WITNESS my hand and seal this 5th day of
September, 2024, at Tampa, Hillsborough County, Florida.




MARIA E. RODRIGUEZ, RPR
Notary Public
Commission Number: HH 363312
Expires: 2/15/27

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