

1 IN THE CIRCUIT COURT  
2 OF THE FIFTEENTH JUDICIAL CIRCUIT  
3 IN AND FOR PALM BEACH COUNTY, FLORIDA  
4 CASE NO.: 2009 CA 007764

5 GMAC MORTGAGE, LLC,  
6 Plaintiff,

7 Vs.

8 GENEL ALEXIDA,  
9 Defendant.  
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15 DEPOSITION OF MARLIN KNAPP

16 TAKEN AT THE INSTANCE OF THE DEFENDANT

17 \* \* \* \* \*

18  
19 DATE: February 23, 2011  
20 PLACE: 2041 Vista Parkway  
21 Suite 102  
22 West Palm Beach, Florida 33411  
23 TIME: 10:05 - 11:43 o'clock a.m.  
24  
25

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1 of amounts due and owing and lost note circumstances.

2 Is that your understanding of why you're here today?

3 A. Yes.

4 Q. Who designated you at GMAC to come here today?

5 A. My manager, Juan Aguirre.

6 Q. Can you spell Mr. Aguirre's last name?

7 A. A-g-u-i-r-r-e.

8 Q. Let's back up. Can you give me the benefit of  
9 your educational background starting after you left high  
10 school going forward?

11 A. Attended the University of Central Oklahoma.  
12 Received a political Science degree.

13 Q. When did you enter the University of Oklahoma?

14 A. '94.

15 Q. When did you graduate?

16 A. '98.

17 Q. What did you do next, if anything, in education?

18 A. Went to the University of Oklahoma and received a  
19 Juris Doctor.

20 Q. When did you enter the University of Oklahoma JD  
21 program?

22 A. '98.

23 Q. When did you exit?

24 A. '01.

25 Q. Did you take the Oklahoma Bar?

1 A. Yes.

2 Q. Did you pass?

3 A. Yes.

4 Q. Are you still licensed in Oklahoma to practice  
5 law?

6 A. Yes, I am.

7 Q. Are you licensed to practice law in any other  
8 jurisdictions?

9 A. Texas.

10 Q. Sir, where do you work right now?

11 A. Dallas, Texas.

12 Q. What --

13 A. GMAC Mortgage.

14 Q. Starting from high school or from the time you --  
15 starting from the time of you left the University of  
16 Oklahoma law program, where did you have employment?

17 A. Worked at the Law Firm of Vera Aktensal.

18 Q. Where else?

19 A. Law firm of Morgan and Associates, Beal Bank,  
20 B-e-a-l.

21 Q. Thanks.

22 A. No problem.

23 Q. Where else?

24 A. Homecomings Financial slash GMAC Mortgage.

25 Q. When did you join Homecomings slash GMAC?

1 A. December of '03.

2 Q. You say, Homecomings slash GMAC. Why do you say  
3 slash?

4 A. The two companies merged in 2007.

5 Q. Let's start with the easy part. Where did you  
6 work first? Homecomings or GMAC?

7 A. Homecomings.

8 Q. You joined Homecomings in 2003?

9 A. Yes.

10 Q. In what capacity did you join Homecomings?

11 A. Loss mitigation specialist.

12 Q. How long did you hold that position at  
13 Homecomings?

14 A. Until January '09.

15 Q. What happened in January of '09?

16 A. Transitioned to the bankruptcy loss mitigation  
17 department.

18 Q. Is that the position you currently hold?

19 A. No.

20 Q. What position did you hold next after the  
21 bankruptcy mitigation?

22 A. My title now is senior mitigation analyst.

23 Q. Did you hold a position after that?

24 A. No.

25 Q. When did Homecomings merge with GMAC?

1 A. 2007.

2 Q. Did Homecomings cease to exist in 2007, or did  
3 GMAC cease to exist in 2007?

4 A. I think it still existed, but Homecomings  
5 Financial wasn't a functioning company after that point  
6 or business after that point.

7 Q. How did that happen, if you know? If you have a  
8 merger, essentially, you have one company buying the  
9 other company. They become one. Or was this an asset  
10 purchase that happened in 2007, if you know?

11 A. I'm not sure.

12 Q. Have you seen documents with regards to the  
13 merger?

14 A. Can you be more specific what documents you're  
15 referring to?

16 Q. Have you ever seen any document relating to a  
17 merger of the two companies?

18 A. I have read e-mails.

19 Q. Other than -- I'm sorry. I didn't mean to  
20 interrupt.

21 A. No. I just noticed from the company.

22 Q. Have you ever seen a merger document that would  
23 have been filed with the secretary of any state?

24 A. No.

25 Q. Any document filed with the SEC regarding a



1 merger?

2 A. No.

3 Q. Have you seen any proof that a merger actually  
4 occurred other than internal e-mails at  
5 GMAC/Homecomings?

6 A. No.

7 Q. You testified a little while ago that you thought  
8 Homecomings continued to exist in some capacity; is that  
9 correct?

10 A. Yes.

11 Q. Is that your testimony and your belief that you  
12 believe Homecomings still exists in some capacity?

13 A. It's my understanding they have not ended that  
14 business. I believe they still exist.

15 Q. Whether they transacted business or not, do you  
16 believe they exist?

17 A. I believe so.

18 Q. Well, let's go and start a little bit with your  
19 knowledge in this particular case of GMAC Mortgage  
20 versus Genel Alexida. Was this note ever the subject of  
21 a trust or pool, to your knowledge?

22 A. I don't believe there was one.

23 Q. What's your belief based upon?

24 A. The fact that we filed under GMAC Mortgage in our  
25 pleading, in our complaint.

1 Q. Just so that I understand where you're coming  
2 from, the fact that GMAC Mortgage Company -- Mortgage,  
3 LLC, filed this complaint leads you to believe that it's  
4 not a part of a trust?

5 A. Yes.

6 Q. Is there anything else that leads you to believe  
7 that it's not a part of a trust?

8 A. Not that I recall at this point.

9 Q. Have you ever known GMAC Mortgage to be a  
10 servicer of a note?

11 A. Yes.

12 Q. Have you ever known GMAC Mortgage, LLC, to be a  
13 servicer of notes that are contained in a pool?

14 A. Yes.

15 Q. Have you ever known GMAC Mortgage, LLC, to file  
16 in the name of the servicer when filing on behalf of a  
17 pool?

18 A. I wouldn't expect them to do that.

19 Q. Have you ever seen it happen where GMAC Mortgage,  
20 LLC, filed as the servicer when it was the -- not the  
21 true owner but, in fact, the pool was?

22 A. Well, I'm not aware of an instance where that  
23 happened.

24 Q. Fair enough. Who is servicing this loan, if you  
25 know?

1 A. GMAC Mortgage.

2 Q. Who's the owner of the note, if you know?

3 A. I don't recall.

4 Q. You don't know who actually owns this physical  
5 note?

6 A. No, I don't.

7 Q. If GMAC is the servicer of the note but isn't the  
8 owner, how is GMAC filing a lawsuit in its own name?

9 A. I suspect they're the owner. But I don't -- I  
10 don't recall specifically on this one, so I didn't want  
11 to testify to that.

12 Q. Well, let's start with what you're here to talk  
13 about today. Today you're here as a person with the  
14 most knowledge regarding the trust agreement as it  
15 applies to this note, correct?

16 A. If there is one.

17 Q. Is there one?

18 A. I don't believe so.

19 Q. Well, I'm asking do you know if there is one?

20 A. I don't think so.

21 Q. That's based upon what review of what documents?

22 A. It's based on the pleadings and the information  
23 contained on our system.

24 Q. Specifically, what pleadings are you referring  
25 to?

1 A. The complaint.

2 Q. What about the complaint, specifically?

3 A. Ultimately, the style of the complaint.

4 Q. Anything else?

5 A. I don't recall the specifics.

6 Q. Did you have an opportunity to review the  
7 complaint before coming here today?

8 A. Yes.

9 (Defendant's Exhibit No. 1 marked for identification.)

10 BY MR. KORTE:

11 Q. Sir, I'm going to hand you what's been marked as  
12 Defendant's 1. Can you tell me what that document is?

13 A. It is the foreclosure complaint.

14 Q. Can you review that document and tell me, in  
15 regards to my previous question, as to what sections of  
16 the complaint you were relying upon for your prior  
17 testimony?

18 A. Ultimately, the GMAC Mortgage, LLC, as Plaintiff.

19 Q. While you have it in your hand, let me ask you.  
20 You testified previously, I think, that you said you  
21 weren't aware as to who actually owned the note,  
22 correct?

23 A. At this point, I don't recall.

24 Q. Well, is there any document that would refresh  
25 your recollection?

1 A. Possibly the promissory note and mortgage.

2 Q. Can you do me a favor while I'm looking for the  
3 promissory note and document so I can hand it to you and  
4 give it to you, can you tell me what section and  
5 specifically what line in that complaint says GMAC is  
6 not the owner of the note but, in fact, just servicing?

7 A. Well, there's a provision number -- let me make  
8 sure this is -- I believe number four under Count One.

9 Q. What does that say, sir?

10 A. Plaintiff as servicer for the owner and acting on  
11 behalf of the owner with authority to do so is the  
12 present designated holder of the note and mortgage with  
13 authority to pursue the present action.

14 Q. Does that refresh your recollection as to who the  
15 true owner of the note is?

16 A. I would actually need to see a copy of the note  
17 and the mortgage.

18 Q. I got ya. Is one attached to the complaint? Is  
19 there one?

20 A. There's a mortgage attached.

21 Q. There's no note attached?

22 A. I don't see one.

23 MR. KORTE: Off the record.

24 (Recess.)

25 MR. KORTE: I'm going to mark this as 2.

1 (Plaintiff's Exhibit No. 2 marked for identification.)

2 BY MR. KORTE:

3 Q. Sir, I've handed you what's been marked as  
4 Defendant's 2. Do you recognize that document?

5 A. Yes.

6 Q. What is the document?

7 A. It's the promissory note.

8 Q. You told me earlier that you had -- if you had  
9 the promissory note, you could tell me who the true  
10 owner of the note was.

11 A. Yes, I believe so.

12 Q. Who's the true owner of the note?

13 A. Should be GMAC Mortgage.

14 Q. How do you know that?

15 A. That's based on the endorsements on the  
16 promissory note.

17 Q. Well, how many endorsements are on the promissory  
18 note?

19 A. I count a total of four.

20 Q. Can you tell me which one was first?

21 A. No.

22 Q. Can you tell me which one was placed second?

23 A. No.

24 Q. Can you tell me which one was placed in any  
25 order?

1 A. No.

2 Q. How do you come up with the testimony that GMAC  
3 Mortgage is the owner of the note?

4 A. Well, Premium Funding Corporation, that appears  
5 to be a blank endorsement. And the loan was boarded on  
6 a our system, and we have the original.

7 Q. Anything else?

8 A. No.

9 Q. You testified that GMAC Mortgage Company was  
10 servicing the note earlier. And now you've seen the  
11 note with the endorsements. Now you're certain that  
12 GMAC Mortgage is the owner also?

13 A. I believe -- I believe we are.

14 Q. Then why, in paragraph four of the complaint  
15 which is Exhibit 1, did you write you're the servicer  
16 and holding it for somebody else?

17 A. I don't know.

18 Q. Let me ask you. How would a Defendant know if  
19 you can't figure it out?

20 MR. MANCILLA: I don't know if it says that.  
21 It says, Plaintiff as servicer to the owner and acting  
22 on behalf of the owner with authority to do so is the  
23 present designated holder of the note and mortgage  
24 with...so the Plaintiff could be the owner and could be  
25 the servicer at the same time, it seems to me.

1 MR. KORTE: Is that an objection, sir?

2 MR. MANCILLA: It's just a statement of an  
3 interpretation.

4 MR. KORTE: Absolutely. It's a statement  
5 and an interpretation of a person who is not a deponent.  
6 It's strictly prohibited under the Rules of Civil  
7 Procedure.

8 MS. WULFF: Objection. The question calls  
9 for a legal conclusion.

10 MR. KORTE: Please don't do it, again.

11 MR. MANCILLA: I'll do whatever I feel like  
12 doing. I'm just saying that that --

13 MR. KORTE: Let's take a recess. Let's get  
14 a judge on the phone. Let's get a protective order  
15 right now. We're not going to have speaking objections  
16 on the record. Okay?

17 MR. MANCILLA: Go ahead.

18 (Recess.)

19 BY MR. KORTE:

20 Q. Sir, my previous question is still pending. How  
21 is the Defendant supposed to figure out whether you're  
22 the servicer or the owner?

23 MR. MANCILLA: Calls for a legal conclusion.

24 THE WITNESS: I'm not sure.

25 BY MR. KORTE:



1 Q. Since you have the note in front of you today,  
2 sir, can you tell me what day GMAC purchased this note?

3 A. We loaded it onto your system on July 18, 2005.

4 Q. That's not my question, sir. My question was:  
5 What date was it purchased?

6 A. I don't know, specifically.

7 Q. Can you tell me who it was purchased from?

8 A. The endorsement would suggest it was purchased  
9 from Premium Funding Corporation.

10 Q. Do you have any independent knowledge other than  
11 the endorsement on the note that you bought it from  
12 Premium Funding Corporation?

13 A. No.

14 Q. What did you look at before coming here today to  
15 determine what date the note was transferred to GMAC?

16 A. The mortgage serve application.

17 Q. What's the mortgage serve application?

18 A. That is our system of record.

19 Q. System of record of what?

20 A. Of practically everything relating to the loan.

21 Q. What did it say?

22 A. It listed the date that we boarded the loan as  
23 July 18, 2005.

24 Q. What does board the loan mean?

25 A. That is entering the relevant information onto

1 the mortgage serve system.

2 Q. What precisely is done when you do an entry onto  
3 the mortgage serve system?

4 A. I'm sorry?

5 Q. What precisely is done when you make an entry on  
6 the mortgage serve system?

7 A. When you say, "entry," are you referring to  
8 boarding a loan onto the mortgage serve system?

9 Q. I'm using your words. You said entered on the  
10 mortgage serve system.

11 A. Information; name, address, contact information,  
12 loan balances.

13 Q. Anything else?

14 A. Not that I can think of.

15 Q. Where do you get the information from?

16 A. It's my understanding the information was  
17 provided by the prior owner.

18 Q. How is it provided?

19 A. I don't know the specifics.

20 Q. In this case, how was it provided?

21 A. Well, I don't know.

22 Q. Specifically, what information was entered in  
23 this case onto the mortgage loan system?

24 A. Borrower's name, mailing address, property  
25 address, contact information and the loan balances.

1 Q. Anything else?

2 A. None that I can think of.

3 Q. Can you specifically tell me where you got the  
4 information from?

5 A. Not specifically.

6 Q. You've indicated there are four endorsements on  
7 that note, correct?

8 A. Yes.

9 Q. One of the endorsements is in blank, is it not?

10 A. Yes.

11 Q. Can you tell me today how many times this note  
12 has been transferred and negotiated before being  
13 delivered to GMAC?

14 A. I'm not sure.

15 Q. Can you tell me how every prior owner got their  
16 information relative to the loan balances of this  
17 account?

18 A. No.

19 Q. Was this loan or has this loan always been  
20 serviced by GMAC?

21 A. Can you repeat?

22 Q. Can you tell me how any of the prior owners  
23 transferred their information to the subsequent owner?

24 A. I wouldn't know.

25 Q. Would it be fair to say that GMAC is relying upon

1 information transferred to it from its source that it  
2 does not know?

3 A. Not necessarily.

4 Q. In what way is GMAC not relying upon sources that  
5 it doesn't know the information from?

6 A. I'm at a bit of a disadvantage answering the  
7 specifics of this question because I've never personally  
8 boarded a loan into the system. So I don't know the  
9 specific process.

10 Q. Do you have any way of determining, as we sit  
11 here today, whether or not this loan was ever in a trust  
12 or a pool?

13 A. Not to my knowledge.

14 Q. Do you have any way of determining that it was or  
15 it wasn't?

16 A. I don't believe it was.

17 Q. Why don't you believe that it was?

18 A. Essentially because I -- I don't remember seeing  
19 any information that it had ever been placed in a trust.

20 Q. What information were you looking at?

21 A. Anything that might indicate the name of a trust  
22 associated with this loan.

23 Q. Let's attack this from a different direction  
24 then. Who was the originator of the loan, if you know?

25 A. That should be Premium Funding Corporation.

1 Q. Who would Premium Funding sell it to, if you  
2 know?

3 A. I assume they sold it to us.

4 Q. Directly?

5 A. I believe so.

6 Q. Premium Funding made the loan and sold it to you?

7 A. Yeah. I would -- I believe they sold it to a  
8 GMAC company.

9 Q. Specifically, who did they sell it to?

10 A. I don't have that information in front of me.

11 Q. Well, there are four endorsements on that note,  
12 one of which is blank, correct?

13 A. Yes.

14 Q. Can you testify from personal knowledge that  
15 Premium Funding sold this loan to GMAC?

16 A. Based on the endorsements, it appears that they  
17 did.

18 Q. What are the rest of the endorsements for?

19 A. I'm sorry. Can you rephrase?

20 Q. There are four endorsements on the document,  
21 correct?

22 A. Yes.

23 Q. You just testified that it was a direct sale from  
24 Premium Funding to GMAC, correct?

25 A. Yes.

1 Q. Can you tell me why the rest of the endorsements  
2 are on that document?

3 A. Are you referring to the title of the companies  
4 in association with the endorsements, or what are --

5 Q. Anything you're referring to to tell me why the  
6 rest of those documents are endorsed?

7 A. Endorsement in blank. And here is an endorsement  
8 for GMAC Mortgage.

9 Q. I see you're indicating with your hand starting  
10 at the top of the page moving to the bottom of the page.  
11 Does that mean you are referring to some order of  
12 insertion of those endorsements on the document?

13 A. Not necessarily.

14 Q. I asked you earlier -- and I'm going to give you  
15 another opportunity to tell me in what order those  
16 endorsements were placed upon that document.

17 A. I'm not sure.

18 Q. You are sure that you had a direct endorsement  
19 from the maker to GMAC?

20 A. There was a blank endorsement from Premium  
21 Funding Corporation.

22 Q. You can't tell me who that note went to after it  
23 left Premium, can you?

24 A. Not at the moment.

25 Q. Well, let me ask the question and give you

1 another opportunity to answer it. Who did GMAC buy the  
2 note from?

3 A. I'm not sure.

4 Q. You're the person with the most knowledge as to  
5 the transfer of the note to GMAC, correct?

6 A. Yes.

7 Q. Let's move on from there and discuss the  
8 calculation of damages. Okay?

9 A. All right.

10 Q. Are you the person with the most knowledge of the  
11 calculation of damages in this particular case?

12 A. Yes.

13 Q. Can you tell me how GMAC calculated its damages  
14 in this particular case?

15 A. Well, I did it myself. We could review the  
16 numbers, if you'd like.

17 Q. I'm just asking how you did it, just generally  
18 speaking?

19 A. We referred to our mortgage serve application.

20 MR. KORTE: I'm going to mark this as  
21 Exhibit 3.

22 (Defendant's Exhibit No. 3 marked for identification.)

23 BY MR. KORTE:

24 Q. Sir, have you seen that document before?

25 A. Yes.

1 Q. Can you tell me what it is?

2 A. It is the affidavit as to amounts due and owing.

3 Q. Are there any inaccuracies in that document that  
4 you're aware of?

5 A. I did not compare it to my numbers.

6 Q. Can you review it quickly and tell me if there's  
7 any inaccuracies in that document?

8 A. Well, that's going to be difficult.

9 Q. Why?

10 A. Well, this was done in December; and I did my  
11 calculations based on the amount owing now.

12 Q. What would be different between the numbers that  
13 you did and the numbers that were presented in court  
14 under an affidavit of amounts due and owing?

15 A. Specifically, per diem interest.

16 Q. Anything else?

17 A. Escrow -- well, escrow.

18 Q. Anything else?

19 A. The property inspection amount seems to have  
20 increased. And I've also included the fees relating to  
21 the foreclosure action.

22 Q. Let's start at the top. Let's start with the  
23 principle number.

24 A. Okay.

25 Q. How was that number calculated?



1           A. There's a screen in the mortgage serve  
2 application.

3           Q. What does that say?

4           A. Well, with the number on there, that number was  
5 one hundred and thirty-eight thousand three hundred and  
6 fifty-three dollars and thirty-six cents.

7           Q. You didn't make the calculation yourself? You're  
8 just relying upon the computer screen?

9           A. Yes.

10          Q. Can you tell me how the computer calculates it?

11          A. We start with the original principle amount.  
12 And, as we received payments, the principle portion of  
13 those payments would reduce the unpaid principle  
14 balance.

15          Q. I understand how it's done. I'm asking if you  
16 know how the computer calculates it?

17          A. Not specifically, no.

18          Q. Let's talk about the interest charges. How much  
19 interest do you believe is owed in this case?

20          A. Today, twenty-one thousand nine hundred  
21 forty-five dollars and twenty-two cents.

22          Q. How was that calculated, sir?

23          A. It's at a per diem of twenty-two dollars and  
24 seventy-four cents from the due date.

25          Q. Can you tell me what the rate was?

1 A. I didn't write that down.

2 Q. Did you do the calculation yourself, or did  
3 someone else do the calculation?

4 A. The system will provide a calculation for the  
5 interest owed.

6 Q. Do you know if the system uses a  
7 three-hundred-and-sixty-day year or three-sixty-five-day  
8 year or a three-hundred-and-fifty-day year?

9 A. I don't specifically know which one was used on  
10 this one.

11 Q. Can you tell me if there was a default rate of  
12 interest was applied and when it was applied?

13 A. I would anticipate that this -- the interest is  
14 still being calculated at the six percent interest rate.

15 Q. Do you know that, or are you just guessing?

16 A. I don't have my system in front of me.

17 Q. Would you calculate it yourself, or would  
18 somebody else calculate that number for you?

19 A. The interest rate?

20 Q. Yes, sir.

21 A. It's on a screen on our system.

22 Q. Would it be fair to say that the system uses the  
23 boarded number that was made when you did the first  
24 entry?

25 A. Not necessarily.

1 Q. How did it do it?

2 A. If it's a fixed rate, then, most likely, it would  
3 use the boarded interest rate. If it's an  
4 adjustable-rate mortgage, then, obviously, that amount  
5 would change.

6 Q. Is this a fixed rate or is this an adjustable  
7 rate?

8 A. This looks like a fixed rate.

9 Q. Let me ask my question. I probably asked it  
10 unartfully.

11 A. Sorry.

12 Q. The amount of interest being charged bares some  
13 relationship to the amount of the principle balance,  
14 correct?

15 A. Yes.

16 Q. The principle balance used in this particular  
17 case used the boarded number as a starting place,  
18 correct?

19 A. Yes.

20 Q. Is that true for today's calculation of interest  
21 damages?

22 A. I'm sorry. What was your question? Whether we  
23 used the original boarded principle amount to make the  
24 calculations?

25 Q. Yes, sir.

1 A. I believe that's an accurate statement.

2 Q. The next line item that I have on the affidavit  
3 is pre-acceleration late charges. Can you tell me what  
4 those are?

5 A. Those are the late charges up to the acceleration  
6 date.

7 Q. How are they calculated?

8 A. It's my understanding the promissory note would  
9 control how we administer or assess late fees.

10 Q. I'm just asking you how you came up with eight  
11 hundred and nineteen dollars and eight cents?

12 A. I apologize. I did not write the late fee down,  
13 but there's going to be an amount that is assessed each  
14 month. And you can take that sum; and, since the loan  
15 has a due date of August 1, 2008, basically just add the  
16 number of months multiplied by whatever the monthly late  
17 charge is. That's how that is calculated.

18 Q. Is that number compounded on top of the principle  
19 balance before the calculation of interest?

20 A. I'm not sure I follow.

21 Q. There is some pre-acceleration late charges that  
22 is being charged, correct?

23 A. Yes.

24 Q. Is that number added to the principle balance  
25 before your calculation of overdue interest or not?

1           A. I'm not entirely sure I follow. But I -- it -- I  
2 don't believe it's factored into any of the other  
3 numbers or influences any of the other numbers. I  
4 believe what the answer to your question is it's added  
5 at the end.

6           Q. Let me just ask this question. There was an  
7 interest charge you gave me of approximately twenty-one  
8 thousand nine hundred and forty-five dollars and  
9 twenty-two cents, correct?

10          A. Yes.

11          Q. You told me that was based upon a principle  
12 amount at six percent interest; is that correct?

13          A. It's my understanding it's six percent.

14          Q. Do you know whether or not that principle amount  
15 contains any other charges other than principle, such  
16 as, pre-acceleration late charges?

17          A. It would not.

18          Q. Do you know that from personal experience?  
19 You've done the calculation yourself?

20          A. I haven't specifically done the calculation  
21 myself.

22          Q. Do you know how the computer does the  
23 calculation, specifically?

24          A. I don't have the form in front of me.

25          Q. To your personal knowledge, you can't say with

1 certainty whether or not anything is added back into  
2 principle before the application of interest?

3 A. It's my understanding it's not.

4 Q. Take me through this phase. A person has a  
5 principle balance of about a hundred and thirty-eight  
6 thousand dollars and they're late by a month, what  
7 happens to that late charge if it's unpaid?

8 A. It falls to an uncollected late fee column.

9 Q. Does that uncollected late fee bare interest?

10 A. It's my understanding, it does not.

11 Q. Is the late fee a fixed amount?

12 A. I believe this one would be.

13 Q. How much is that fixed-amount late fee?

14 A. According to the promissory note, the amount of  
15 the charge will be five percent of any overdue payment  
16 of principle and interest.

17 Q. That was applied from what period of time? Until  
18 when did it stop? When was the first late fee you  
19 charged?

20 A. The late fees? Well, it's safe to say at least  
21 from August 1st of 2008.

22 Q. When did they stop?

23 A. It's difficult to give you an exact number  
24 without having the payment history because I don't know  
25 which payments were made within the month but made after

1 the 15th.

2 MR. KORTE: Can I mark this as 4 then.

3 (Defendant's Exhibit No. 4 marked for identification.)

4 BY MR. KORTE:

5 Q. Sir, do you recognize the document you were just  
6 handed as Defendant's 4?

7 A. Yes.

8 Q. It's, in fact, a compound or a multi-page  
9 document. It contains two, as I understand. One to be  
10 the payment history and one to be the demand letter. Do  
11 you see both those documents there?

12 A. Okay.

13 Q. Do you see both those documents there?

14 A. Looks to be three independent documents.

15 Q. What are the three documents, sir?

16 A. I'm sorry. Correction. Two documents.

17 Q. Can you tell me what the two documents are?

18 A. First document is a complete payment history.  
19 The second document is what I refer to as the breach  
20 letter.

21 Q. Let's start with the first document. Is this the  
22 payment history you were requesting in your prior  
23 testimony to give me an accurate answer as to when we  
24 calculated late charges?

25 A. Yes.

1 Q. Can you tell me when you started calculating late  
2 charges?

3 A. There would have been a late fee -- or late  
4 charge assessed in May of '07.

5 Q. Is that part of the calculation for damages you  
6 used in this particular case, sir?

7 A. I would have to check my system to see  
8 specifically what was used in that calculation.

9 Q. As you sit here today with the pay history, you  
10 can't tell me what was used in the calculation, given  
11 the pay history?

12 A. No, no. What I'm saying is I can reconstruct the  
13 late fees. But I don't know what was -- what was used  
14 in this. I didn't participate in the preparation of  
15 this affidavit. I can only testify to what I see on the  
16 paper here.

17 Q. Did you calculate late charges before you came  
18 here today, personally?

19 A. Not personally, no.

20 Q. Someone else calculated it for you?

21 A. Insofar as the indebtedness affidavit.

22 Q. Then let me go back. Were you asked to come here  
23 today as the person with the most knowledge on the  
24 affidavit of the -- of the amount due and owing?

25 A. Yes.



1 Q. Is that the affidavit of the amounts due and  
2 owing, the affidavit we talked about as, I believe, 3,  
3 correct? Defendant's 3?

4 MR. MANCILLA: Object to the form. It  
5 wasn't attached to the notice of deposition. I don't  
6 know what affidavit you're referring to.

7 MR. KORTE: Okay.

8 BY MR. KORTE:

9 Q. Defendant's 3, is that the affidavit of amounts  
10 due and owing that's filed in this case?

11 A. I'm not sure.

12 Q. Are you aware of any others that were filed in  
13 this case?

14 A. Not specifically.

15 Q. As you sit here today, can you give me the exact  
16 calculations that's done under any of those line items?

17 A. Yes.

18 Q. Which ones, specifically?

19 A. Specifically, principle, interest, per diem,  
20 property inspection, escrow.

21 Q. Anything else?

22 A. No.

23 Q. Let's go back to the interest discussion which we  
24 had a few minutes ago. Can you tell me what was  
25 included in the interest calculation contained in

1 Defendant's 3, exactly how was it calculated?

2 A. It's my understanding it's based on principle  
3 amount of one hundred thirty-eight thousand three  
4 hundred fifty-three dollars and thirty-six cents.

5 Q. What about it?

6 A. Well, you multiply that by the interest rate and  
7 divide it by three hundred and sixty; and that's your  
8 per diem.

9 Q. Why do you divide by three-sixty?

10 A. Three hundred and sixty-five. I'm sorry.

11 Q. Is it a three-hundred-and-sixty-five-day year, or  
12 three-hundred-sixty-day year or three-hundred-fifty-day  
13 year?

14 A. It was a three-hundred-and-sixty-five-day year.

15 Q. How was the per diem calculated?

16 A. That's how we calculate the per diem.

17 Q. You're sure?

18 A. I believe so.

19 Q. Did you do the calculation yourself?

20 A. Yes, I did. Well, I did the per diem calculation  
21 myself, yes.

22 Q. What per diem calculation did you come up with?

23 A. Twenty-two seventy-four.

24 Q. Using a three-hundred-and-sixty-five-day year?

25 A. Yes.

1 Q. Do you know what the note calls for? Is it a  
2 three-sixty year or three-sixty-five or three-fifty, if  
3 you know?

4 A. I don't know.

5 Q. How can you do a per diem calculation if you  
6 don't know how many days are supposed to be calculated  
7 in the year?

8 A. There are three hundred and sixty-five days in  
9 the year.

10 Q. That's not my question. My question was: How  
11 can you calculate a per diem amount if you don't know  
12 which calculation you're supposed to use; three hundred  
13 and sixty, three-fifty or three-sixty-five?

14 A. I'm not certain how that determination is made.

15 Q. Let's go to the second page -- the second set of  
16 documents contained in that composite exhibit, if you  
17 would. That's the demand letter. Composite Exhibit 4,  
18 I believe. There's also one that's been produced to us  
19 in Defendant's 1 attached to the complaint. If you  
20 would do me a favor and turn to Composite Exhibit 1 and  
21 compare the two. On Composite Exhibit 4, can you tell  
22 me the day that letter was mailed out?

23 A. January 15, 2009.

24 Q. Do you know who mailed it out?

25 A. Not specifically.

1 Q. Can you tell me what company mailed it out?

2 A. GMAC Mortgage.

3 Q. How do you know GMAC Mortgage mailed it out?

4 A. I recognize this letter as a default letter we  
5 produce.

6 Q. Can you me show me on this letter where it says  
7 GMAC Mortgage?

8 A. I don't see that on the letter.

9 Q. How would anybody receiving this letter  
10 understand it's from GMAC?

11 A. Because we've been servicing the loan since July  
12 of 2005.

13 Q. Anybody who opened this letter up in the mail, if  
14 they actually got it, how would they know this is from  
15 GMAC?

16 A. Well, by the account number.

17 Q. Is that the only way?

18 A. By the property address.

19 Q. Any other way?

20 A. I'm not sure what was sent with this letter.

21 But--

22 Q. Well, let me ask you. Does GMAC normally send  
23 documents without their name on them out to borrowers?

24 A. Well, I would anticipate there's more included in  
25 the envelope that we mailed than just this letter alone.

1 Q. As you sit here today, do you have any personal  
2 knowledge that more than this document, Composite  
3 Exhibit 4, was mailed to the homeowner?

4 A. No.

5 Q. Is it GMAC's business practice, if you know, to  
6 mail documents without a GMAC header on them?

7 A. I'm not sure.

8 Q. Did you review this document in anticipation of  
9 coming here today?

10 A. I believe I glanced at it, yes.

11 Q. Is this document kept in the ordinary course and  
12 scope of the business?

13 A. Yes.

14 Q. Is this the only document that's sent out as a  
15 breach letter that you're aware of?

16 A. I don't recall if there were additional breaches.  
17 This is the only one that I'm aware of right now.

18 Q. Well, then let me ask a different question and  
19 see if maybe we can get to the bottom of this thing. Do  
20 you know who mailed this letter out?

21 A. Well, generally, GMAC Mortgage did.

22 Q. I'm going to look for some very specific answers.  
23 Do you know who actually -- the person's name who mailed  
24 the letter?

25 A. No.

1 Q. Do you know which department would have mailed  
2 this letter?

3 A. It would be generated in our foreclosure  
4 department. I think they refer to them as default.

5 Q. Foreclosure department would have generated the  
6 letter. Is there any indication as to how this letter  
7 was actually sent out? Was it sent out certified mail  
8 or by Fedex or something?

9 A. Well, I don't see a designation on the letter  
10 itself.

11 Q. Did you see one at your office before you came  
12 here today?

13 A. No, I didn't.

14 Q. Do you have any personal knowledge whether this  
15 letter was actually mailed or if it was just produced  
16 and never mailed?

17 A. The process of mailing the letter is almost  
18 automatic with the generation of the letter.

19 Q. Have you ever seen a document generated at GMAC  
20 that doesn't have GMAC's letterhead on it?

21 A. Yes.

22 Q. Have you ever seen a document that was designed  
23 to go out to a client or borrower that doesn't bare  
24 GMAC's header on a GMAC-serviced loan?

25 A. Yes.

1 Q. Is that the ordinary course and scope of the  
2 business?

3 A. We send out many letters. I'm not sure which  
4 ones would have the letterhead and which ones would not  
5 have the letterhead.

6 Q. In and around January 15, 2009, was it the custom  
7 of GMAC Mortgage, LLC, to send out letters to borrowers  
8 that didn't contain their name or letterhead?

9 A. Yes.

10 Q. Yes, it was a custom to send out letters without  
11 letterhead?

12 A. Well, let me just clarify by saying that I  
13 recognize this document as a breach letter.

14 Q. This is a standard business letter that goes out  
15 with no letterhead, no name on it?

16 A. Yes.

17 Q. Okay.

18 THE WITNESS: Can we take a break?

19 MR. KORTE: Sure.

20 (Recess)

21 BY MR. KORTE:

22 Q. We're back on. I'm going to ask you to turn to  
23 Defendant's 1, again, which is the complaint composite  
24 exhibit. There's a letter attached to that complaint.  
25 Have you ever seen this letter before?

1 A. I don't think I read this.

2 Q. Have you seen it before, though?

3 A. I don't recall. It didn't make an impression, if  
4 I did.

5 Q. Sir, do you know who MERS is? M-E-R-S.

6 A. Yes.

7 Q. Who are they?

8 A. A company called Mortgage Electronic Registration  
9 Services -- or Systems. I'm sorry.

10 Q. Do you know if they have any relationship to GMAC  
11 as far as this litigation is concerned?

12 A. I'm not sure.

13 Q. Did GMAC get an assignment of mortgage in this  
14 particular case, if you're aware?

15 A. I don't recall, specifically.

16 Q. Do you recall reviewing one at anytime?

17 A. Yes.

18 Q. Do you know who received the mortgage, the  
19 assignment?

20 A. I don't recall, specifically.

21 Q. Do you know who gave the assignment?

22 A. Not specifically.

23 Q. Do you know if anybody at GMAC asked MERS to make  
24 an assignment of mortgage to GMAC from any third party  
25 in regards to this case?



1           A. I can't recall seeing a request from GMAC  
2 Mortgage to MERS.

3                   MR. KORTE: We'll mark this as 5.

4           (Defendant's Exhibit No. 5 marked for identification.)

5 BY MR. KORTE:

6           Q. Sir, I'm going to ask you to turn to this  
7 composite exhibit and if you can locate the assignment  
8 of mortgage contained in it?

9           A. Okay.

10          Q. Do you recognize this document, sir?

11          A. Yes.

12          Q. Does this refresh your recollection if anybody at  
13 GMAC asked anybody at MERS to prepare a mortgage?

14          A. Still, I don't recall seeing anywhere where we  
15 specifically requested a document.

16          Q. Well, then let me ask it a different way. How  
17 did GMAC Mortgage come into possession of this  
18 assignment of mortgage, if you know?

19          A. I don't know.

20          Q. Can you tell me the date the document was  
21 executed?

22          A. I believe that's July 23rd of 2009.

23          Q. I believe you testified earlier that this loan  
24 was boarded to your system on or around July 18, 2005;  
25 is that correct?

1 A. Yes.

2 Q. Can you tell me why GMAC waited four years to get  
3 an assignment for a mortgage?

4 A. I'm not sure.

5 Q. Is the general business practice of GMAC to wait  
6 four years to receive assignments of mortgage?

7 A. I'm not sure if it is or not.

8 Q. I'd like to draw your attention to the first  
9 paragraph of this assignment of mortgage document. Can  
10 you read just the bold word section out loud?

11 A. Four value received on or before February 20,  
12 2009, the undersigned, Mortgage Electronic Registration  
13 Systems, Incorporated, as nominee for GMAC Mortgage,  
14 LLC.

15 Q. That's fine. Do you know when Mortgage  
16 Electronic Registration Systems became a nominee for  
17 GMAC Mortgage, LLC?

18 A. Not specifically.

19 Q. Do you have any knowledge whatsoever whether they  
20 are the nominee for GMAC Mortgage, LLC?

21 A. Well, based on the assignment, it would lead me  
22 to believe that they are the nominee for GMAC Mortgage,  
23 LLC.

24 Q. Then can you tell me why GMAC Mortgage, LLC,  
25 through its nominee transferred the mortgage to GMAC

1 Mortgage, LLC?

2 A. It does appear to be an assignment from one  
3 company to another, so...

4 Q. From which company is it coming from, sir,  
5 according to you?

6 A. MERS.

7 Q. It's coming from MERS to?

8 A. GMAC Mortgage, LLC.

9 Q. Do you see where it says MERS as nominee for GMAC  
10 Mortgage, LLC?

11 A. Yes.

12 Q. Is there any indication in your system that  
13 you've seen before coming here today or any documents  
14 that you've had so far that MERS was ever a nominee for  
15 GMAC Mortgage?

16 A. I can't recall.

17 Q. Do you know when GMAC became the nominee for this  
18 mortgage?

19 A. We boarded the loan on July 18, 2005.

20 Q. I'm asking you when GMAC -- if you know, when  
21 they elected MERS to become their nominee for this  
22 mortgage?

23 A. I don't specifically know.

24 Q. I'm going to take you back to Defendant's 2, if  
25 you would, please. That's the note. Do you have it,

1 sir?

2 A. Yes.

3 Q. Is that a substantial copy of the note that  
4 you've seen in your system?

5 A. I believe it's very similar.

6 Q. What's different about the one you've seen and  
7 the one I've given you?

8 A. Well, I'd want to compare the copy that I  
9 referred to this before I started testifying to  
10 differences.

11 Q. That's fair enough. Let me ask you, have you  
12 seen the original note ever?

13 A. I've seen a copy of the original note.

14 Q. Have you ever seen the original?

15 A. No.

16 Q. When was the first time you saw a copy of the  
17 original?

18 A. Yesterday.

19 Q. Do you know why GMAC chose to attach a separate  
20 sheet of paper to affix endorsements instead of just  
21 stamping on the front of the note?

22 A. No, I don't.

23 Q. Would you agree with me that, on page four of the  
24 note, there's plenty of room to affix endorsements?

25 A. I would guess you could place an endorsement on

1 there if you were inclined to.

2 Q. To your knowledge, do you know if this note was  
3 ever misplaced or lost?

4 A. No.

5 Q. Where is the original note normally kept?

6 A. With the note custodian.

7 Q. Who is the note custodian, if you know?

8 A. I don't know.

9 Q. Do you know where they are?

10 A. Not specifically.

11 Q. Do you know who I could talk to to find out who  
12 they are or where they are?

13 A. Yes.

14 Q. Who would I talk to?

15 A. Person's name is Judy Faber.

16 Q. Where does she work?

17 A. GMAC Mortgage.

18 Q. Do you know what branch or office she works at?

19 A. Not specifically.

20 Q. If I sent you a request through your lawyer,  
21 would you be able to identify -- give me a phone number  
22 or address for this person?

23 A. Yes.

24 Q. One last line of questioning, and we're going to  
25 break for lunch. I think we're done with the

1 deposition.

2           You, personally, as far as your servicing of this  
3 loan, do you service this loan yourself?

4           A. Collectively.

5           Q. Let me back up. Do you, personally? Are you  
6 involved with the posting of payments?

7           A. No, I'm not.

8           Q. Are you involved with the disbursements of  
9 escrows?

10          A. No.

11          Q. Are you involved in the day-to-day movement of  
12 this loan through the system other than litigation?

13          A. I don't think so.

14          Q. Would it be fair to say that your involvement in  
15 this particular loan began at the time that the  
16 litigation was filed or thereafter?

17          A. Yes.

18          Q. Would it be fair to say that your entire  
19 involvement in almost any notes at GMAC that you touch  
20 are involved in litigation?

21          A. Yes.

22          Q. Would it be fair to say that you only deal in  
23 contested matters?

24          A. Yes.

25          Q. Essentially, your job is to testify in contested

1 matters or assist counsel in contested matters?

2 A. Yes.

3 Q. Do you prepare interrogatory answers?

4 A. With assistance of counsel.

5 Q. Did you prepare the interrogatory answers in this  
6 case?

7 A. I don't think so.

8 Q. Did you assist in the response to the request for  
9 production in this case?

10 A. I don't think so.

11 Q. Is that something you would normally do in a  
12 case?

13 A. More or less.

14 Q. You're a lawyer. Ultimately, you're dealing with  
15 the litigation department?

16 A. Yeah. I work in a support function.

17 Q. In litigation?

18 A. Right, yes.

19 Q. That's why they hired you? You're a lawyer?

20 A. Possibly.

21 Q. What I'm getting at is that you're really not  
22 part of the servicing arm? You're really part of the  
23 litigation arm; is that accurate?

24 A. I think that's accurate.

25 MR. KORTE: I have nothing further.

1 MR. MANCILLA: No questions.

2 MS. WULFF: I just have, like, two I want to  
3 ask.

4 CROSS EXAMINATION

5 BY MS. WULFF:

6 Q. This kind of goes on what we were just ending on.  
7 Are you given training on how to read the business  
8 records of GMAC Mortgage?

9 A. Yes.

10 Q. You're familiar with the servicing process of  
11 GMAC Mortgage and how the servicing is done?

12 A. Yes.

13 Q. In regards to the -- I think it's Exhibit 3.  
14 It's the composite one with the demand letter. In the  
15 upper left-hand corner, do you see where it says DPLX?

16 A. Yes.

17 Q. Any idea what that is?

18 A. I believe it's just the tag that is placed on the  
19 duplicate copy from our system.

20 Q. It's possible that this particular specific  
21 document is a duplicate copy?

22 MR. KORTE: Form.

23 THE WITNESS: Yes, it is.

24 BY MS. WULFF:

25 Q. The one that went out to the borrower may have



1 had something there?

2 MR. KORTE: Form.

3 THE WITNESS: Yes.

4 BY MS. WULFF:

5 Q. Of course, you're pulling this document from some  
6 kind of imaging system, correct?

7 MR. KORTE: Form.

8 THE WITNESS: That's correct.

9 BY MS. WULFF:

10 Q. Let me refer you to -- I think it's No. 2 with  
11 the note. I realize that that is a copy of the original  
12 note. As you look at the copy -- and that's showing as  
13 page four -- it's not -- at the bottom of the page, you  
14 don't see any declamation that it's page four of four or  
15 anything like that, right?

16 A. Not on my copy.

17 Q. It's possible that it's not a separate page but  
18 it's the back of page three?

19 MR. KORTE: Form.

20 THE WITNESS: That's possible.

21 BY MR. WULFF:

22 Q. Obviously, if you had the original in front of  
23 you, you would be able to discern that?

24 A. Yes.

25 MS. WULFF: I don't have anymore questions.

1                   MR. KORTE:  Sir, you have the opportunity to  
2 read or waive this deposition.  If you read it -- if  
3 it's typed up, you will be given an opportunity to  
4 create an errata sheet which will clarify mistakes the  
5 usually the court reporter made.  Or you may waive that  
6 right or have her type it up and submit it.  Would you  
7 prefer to read or waive?

8                   THE WITNESS:  Read.

9                   (Proceedings concluded at 11:43 o'clock a.m.)  
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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Rachele L. Cibula, the undersigned authority,  
certify that MARLIN KNAPP personally appeared before me  
and was duly sworn.

Witness my hand and official seal this 1st day of  
March, 2011.

---

RACHELE CIBULA  
Notary Public, State of Florida  
My Commission #DD  
Expires: December 3, 2011

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C E R T I F I C A T E

THE STATE OF FLORIDA)  
COUNTY OF PALM BEACH)

I, Rachele Lynn Cibula, Notary Public, State of  
Florida at Large,

DO HEREBY CERTIFY that I was authorized to and did  
stenographically report the foregoing deposition; and  
that the transcript is a true and correct transcription  
of the testimony given by the witness.

I FURTHER CERTIFY that I am not a relative, employee,  
attorney or counsel connected with the action, nor am I  
financially interested in the action.

Dated this 1st day of March, 2011.

\_\_\_\_\_  
RACHELE LYNN CIBULA, NOTARY PUBLIC

1 RULE 1.310 FLORIDA RULES OF CIVIL PROCEDURE PROVIDES

2

3 (E) ANY CHANGES IN THE FORM OR SUBSTANCE WHICH THE  
4 WITNESS DESIRES TO MAKE SHALL BE ENTERED UPON THE  
5 DEPOSITION BY THE OFFICER WITH A STATEMENT OF THE  
6 REASONS GIVEN BY THE WITNESS FOR MAKING THEM.

7

8 PAGE LINE CHANGE REASON

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