

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - PASSAIC COUNTY

DOCKET NO. F-51852-09

WELLS FARGO BANK, NATIONAL
ASSOCIATION AS TRUSTEE FOR
SECURITIZED ASSET BACKED
RECEIVABLES LLC 2006-OPI
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES
2006-OPI,

Plaintiff,

Vs.

HARRY G. BARONE, JR., ET AL,

Defendant.

ORIGINAL

CIVIL ACTION
Telephonic
Deposition of:
JOSE COLON
July 8, 2011

SCHULMAN, WIEGMANN & ASSOCIATES

CERTIFIED COURT REPORTERS

216 STELTON ROAD

SUITE C-1

PISCATAWAY, NEW JERSEY 08854

(732) - 752 - 7800

T R A N S C R I P T of the

stenographic notes of the proceedings in the
above-entitled matter as taken by and before
TRACEY R. SZCZUBELEK, a Certified Court Reporter
and Notary Public of the State of New Jersey,
held at the office of SCURA, MEALEY, WIGFIELD &
HEYER, ESQS., 109 10th Street, Hoboken, New
Jersey 07030, on Friday, July 8, 2011,
commencing at approximately 1:15 in the
afternoon, pursuant to notice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 A P P E A R A N C E S:

2

3 (Via telephone)

4 ZUCKER, GOLDBERG & ACKERMAN, ESQS.

5 Attorneys for the Plaintiff

6 200 Sheffield Street

7 Mountainside, New Jersey 07092

8 BY: ROBERT D. BAILEY, ESQ.

9 DOUGLAS J. McDONOUGH, ESQ.

10

11 SCURA, MEALEY, WIGFIELD & HEYER, ESQS.

12 Attorneys for the Defendant

13 109 10th Street

14 Hoboken, New Jersey 07030

15 BY: JOHN J. SCURA, III, ESQ.

16

17

18

19

20

21

22

23

24

25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS DIRECT CROSS REDIRECT RECROSS

(Via Telephone)

JOSE COLON

By: Mr. Scura 5

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
D-1	Certified copy of original note	10
D-2	Linda Green assignment	21
D-3	Joseph Kaminski assignment	21
D-4	PSA	28

*All exhibits retained by counsel

DISCOVERY PRODUCTION REQUESTS

PAGE DESCRIPTION

(No requests.)

1 J O S E C O L O N, residing at 4875 Belmore
2 Road, Jacksonville, Florida, is duly sworn
3 by a Notary Public of the State of New
4 Jersey and testifies under oath as follows:

5 DIRECT EXAMINATION BY MR. SCURA:

6 Q Mr. Colon, my name is John Scura;
7 and I am the attorney for Defendant Harry Barone
8 in this foreclosure action brought by Wells
9 Fargo Bank. I am going to be asking you a
10 series of questions; and the court reporter will
11 be taking down those questions, along with the
12 answers you give. It will be transcribed into a
13 booklet-type format.

14 I am going to give you some
15 instructions in connection with the deposition.
16 I assume that you've had your deposition taken
17 many times?

18 A Yes, I have.

19 Q So you understand the procedure?

20 A Yes, I do.

21 Q And you know although you're
22 sitting where you are and your attorney is
23 remote and I am in New Jersey also, you're sworn
24 to tell the truth just like you're in a court of
25 law? Do you understand that?

1 A Yes, I do.

2 Q All right. And, again, I just
3 need you to speak as clear and reasonably loud
4 as possible, so we can pick -- the court
5 reporter can pick up what you're saying.

6 Try to wait for my -- the end of my
7 questions before you answer, or it will be extra
8 hard in this setting for the court reporter to
9 take down what you're -- what I'm saying and
10 you're saying. Do you understand that
11 instruction?

12 A Yes, I do.

13 Q And if you don't understand a
14 question as I phrased it, please tell us that;
15 or, otherwise, it will be assumed you understood
16 my question and your answer will be taken
17 according -- accordingly. Do you understand
18 that?

19 A Yes, I do.

20 Q Okay.

21 MR. BAILEY: Doug got on real
22 quick.

23 MR. SCURA: Doug, you're on?

24 MR. McDONOUGH: Yeah, I just --
25 since I'm involved in the case. I'm just

1 listening in.

2 BY MR. SCURA:

3 Q Okay. Mr. Colon, can you tell me
4 your present employment or position?

5 A I'm -- I'm sorry. I am foreclosure
6 special assets specialist.

7 Q And what are your duties in
8 connection with that position?

9 A When the files become litigated, they are
10 transferred to our department. We get
11 familiarized with the file, review the file
12 details on the file and mortgage notes.

13 Q Now, where do you work presently,
14 what company?

15 A American Home Mortgage Servicing, Inc.

16 Q Okay. How long have you been
17 there in that position?

18 A I'm sorry?

19 Q How long have you been there at
20 that position?

21 A March 2009.

22 Q Where were you before that?

23 A I was unemployed from July of 2008 until
24 March of 2009. Prior to that I was working with
25 Fidelity.

1 Q Fidelity?

2 A Fidelity.

3 Q And what was your position there?

4 A Quality control for tax payments.

5 Q When did you become involved with
6 this complaint that is the subject of this
7 mortgage with Harry Barone?

8 A His file was transferred to me around
9 November of 2010.

10 Q Now, did you assist counsel in
11 responding to discovery in this case?

12 A No, I have not.

13 Q Okay. Who would have assisted
14 counsel, if you know, in responding to discovery
15 in this case?

16 A Usually they -- with their discovery they
17 will get with our company to get information.
18 If something is needed specific, then they'll
19 contact me. Otherwise, they will get the
20 information from -- usually we use LPS to
21 provide information to counsel.

22 Q Is that LPS?

23 A Correct.

24 Q What does LPS stand for?

25 A I believe it's Lender Process Server.

1 Q Okay. Have you looked at the
2 discovery that has been produced by counsel in
3 this action?

4 A No, I have not.

5 Q Okay. Have you looked at the note
6 or notes that are the subject of this action?
7 And before you answer that I'm just going to --
8 I'm going to refer to these, the note mortgage
9 as the Barone mortgage and this being the Barone
10 action, if that's okay. Do you understand that?

11 A That will be fine.

12 Q Okay. Did you look at the Barone
13 note in this action?

14 A Yes, I did.

15 Q Okay. The note that was produced
16 in discovery to me is, I'll represent to you,
17 two-page note that is stamped certified copy of
18 the original with no alonge to it. Have you
19 seen that note?

20 A Yes, I have.

21 Q Okay. Is there a reason why there
22 are two different notes?

23 MR. BAILEY: Objection.

24 Jose, you can answer.

25 A I was not aware that there was two of

1 them. The copy that I have has alonges in the
2 back.

3 Q Have you seen a copy that says,
4 "certified copy of original"?

5 A Yes, I have.

6 Q Okay. Do you have that with you
7 also?

8 A Yes, I do.

9 Q Okay. I'm going to -- I'm going
10 to mark here as Defendant's Exhibit 1 the
11 certified copy of original, that version of the
12 note.

13 (Whereupon, certified copy of
14 original note is received and marked as
15 Defendant's Exhibit D-1 for
16 Identification.)

17 Q Now, referring to D-1, can you
18 tell me why that's different from the --

19 A Okay. Wait. Wait. Wait. Wait. Hold
20 on one second because the copy that I'm looking
21 at -- yeah, I'm sorry. I had a copy, and I
22 grabbed the wrong one. So I'm looking at the
23 correct one now.

24 Q What one are you looking at?

25 A I'm looking now at the -- the loan notes.

1 MR. BAILEY: If I may -- this is
2 Robert Bailey.

3 Jose, is the copy that you're
4 looking at that's stamped "certified copy of
5 original" in the top right corner of the -- of
6 the note?

7 THE WITNESS: Not the one I'm
8 looking at.

9 MR. BAILEY: Okay. I just
10 e-mailed you a copy of what John is referring
11 to. It was the copy of the note that was in our
12 file before we had the original in our
13 possession.

14 THE WITNESS: Okay.

15 MR. BAILEY: Two pages without the
16 alonge. That's what he's referring to.

17 THE WITNESS: Okay.

18 MR. BAILEY: As soon as you
19 receive that, John, you can proceed to question
20 him on it.

21 BY MR. SCURA:

22 Q Did you receive it yet, Mr. Colon?

23 A I'm sorry?

24 Q Did you receive it yet?

25 A Say it again.

1 MR. BAILEY: Okay. So you have it
2 or no?

3 THE WITNESS: Yes, I do have it.

4 BY MR. SCURA:

5 Q Okay.

6 MR. BAILEY: Go ahead, John.

7 Q Do you know why there is this
8 certified copy of original which doesn't have
9 any alonge on it and then another copy that
10 you've testified you do have in front of you
11 that does have the alonge? Do you know why
12 there are two different versions?

13 MR. BAILEY: Objection to form.

14 You can answer, Jose.

15 A The copy that I have in front of me that
16 was just forwarded to me, certified copy of
17 original, that is a two-page copy of the note.
18 It does not have any alonges.

19 Q Okay. Do you know why it doesn't
20 have an alonge?

21 A That I would not know.

22 Q Now, did you have the original
23 note with the alonge in your possession at one
24 point?

25 A We did have the original that was sent to

1 counsel.

2 Q So you forwarded that original
3 with the alonge to counsel; is that correct?

4 A That is correct.

5 Q And when did you forward that to
6 counsel?

7 A Around May of 2011.

8 Q And when I say, "you" -- so AHMSI
9 had possession of that original note with the
10 alonge up until May 2011; is that correct?

11 A That's correct.

12 Q Do you also hold a position at
13 Sand Canyon Corporation?

14 A Do I hold a position with Sand Canyon?

15 Q Yes.

16 A No, I do not hold a position with Sand
17 Canyon. I have --

18 Q You have what?

19 A No, I don't hold a position with Sand
20 Canyon.

21 Q What is the relationship between
22 Sand Canyon and AHMSI?

23 A Okay. Sand Canyon, if -- I'm not too
24 familiar with -- the way I understand it is that
25 they actually -- they actually own us.

1 Q Sand Canyon owns AHMSI?

2 A That's correct.

3 Q Okay. Do you know who Dale
4 Sugimoto is?

5 A What was the name again?

6 Q Dale Sugimoto. It's
7 S-u-g-i-m-o-t-o.

8 A No, I do not.

9 Q Do you know him to be the
10 president of Sand Canyon Corporation?

11 A That I would not know.

12 Q So you have no idea one way or
13 another?

14 A No, I do not.

15 Q I understand that AHMSI had
16 possession of the original note until May 2011,
17 so it -- and it -- when did it obtain possession
18 of that original note?

19 A AHM -- American Home Mortgage Servicing,
20 Inc.?

21 Q Yes.

22 A That would have been April 2008.

23 Q And what is the significance of
24 that date, or how do you know that you got
25 possession of it then?

1 A That's when we acquired Option One.

2 Q That's when AHMSI acquired Option
3 One Mortgage?

4 A Not Mortgage, their loans. We
5 acquired -- we just acquired their loans.

6 Q So AHMSI bought Option One's
7 loans?

8 A We -- we took over their loans.

9 Q So AHMSI as of April 2008 now owns
10 the mortgage loans of Option One; is that
11 correct?

12 A We service their loans.

13 Q So you only service their loans?

14 A We are still servicing their loans.

15 Q Okay. And what is the
16 interrelationship of Sand Canyon and Option One?

17 A The way I understand it -- the way I
18 understand it, Sand Canyon -- two companies
19 merged, American Home Mortgage and Option One.
20 They merged under one and became American Home
21 Mortgage Servicing, Inc. As far as I know, we
22 do work for Sand Canyon.

23 Q So Option One and American Home
24 Servicing, Inc. are one company now?

25 A No, American -- American Home Mortgage

1 and Option One, they merged and became American
2 Home Mortgage Servicing, Inc.

3 Q Okay. And you do work for Sand
4 Canyon?

5 A No, I work for American Home Mortgage
6 Servicing, Inc.

7 Q But I think you said that American
8 Home Servicing, Inc. does work for Sand Canyon;
9 is that correct?

10 A That's correct.

11 Q Okay. Does Joseph Kaminski work
12 with you at American Home Servicing -- American
13 Home Mortgage Servicing, Inc.?

14 A Yes, he does.

15 Q What is his position there?

16 A He has the same position as I do.

17 Q And what is that?

18 A Foreclosure special assets -- I'm sorry,
19 foreclosure special assets specialist.

20 Q With respect to the Barone
21 mortgage there was an assignment dated
22 September 23rd, 2009 executed by Linda Green on
23 behalf of American Home Mortgage Servicing, Inc.
24 Are you familiar with that assignment?

25 A Yes, I have seen that assignment.

1 Q With respect to this Barone
2 mortgage?

3 A That's correct.

4 Q Does Linda Green work for American
5 Home Servicing -- American Home Mortgage
6 Servicing, Inc.?

7 A Not that I'm aware of.

8 Q So she has never worked there to
9 your knowledge?

10 A I don't know if she ever worked there;
11 but as of right now I do not believe she works
12 here, no.

13 Q Okay. Was she ever vice president
14 of American Home Mortgage Servicing, Inc.?

15 A That I would not know.

16 Q Why did you do a -- why was a
17 corrective assignment done in this case, if you
18 know?

19 A We were aware that there was some issues
20 with the previous assignment; and when we find
21 if there were some issues with the previous
22 assignment, we usually do a corrective
23 assignment. And that's what we did.

24 Q What were the issues with Linda
25 Green in November 23rd, 2009 assignment?

1 A That I would not know.

2 Q Do you know that Linda Green, for
3 lack of a better term, is a famous robo-signer
4 and she has been in the news? Do you know that?

5 A No, I do not.

6 Q What is that?

7 MR. BAILEY: Objection to the
8 form. This is Robert Bailey.

9 But, Jose, you can answer, if you
10 know.

11 A No, I do not.

12 Q So you had no idea that there is
13 any problems with -- with Linda Green and her
14 signing any assignments; is that correct?

15 MR. BAILEY: Objection to form.

16 Jose, you can answer.

17 A That's correct.

18 Q All right. Have you heard of her
19 name before?

20 A Yes, I have seen her name before.

21 Q And I believe you said before that
22 there were issues. What were those issues that
23 are discussed surrounding Linda Green?

24 A I don't know the issues for Linda Green.
25 They were possibly issues with the assignment.

1 Initially, as a company, we notice that there is
2 issues with an assignment, we do a corrective
3 assignment.

4 Q Okay. What were the issues with
5 this assignment?

6 A That I would not know.

7 Q You have no idea what the problems
8 were with this assignment?

9 MR. BAILEY: Objection.

10 John, this has been asked and
11 answered. I will let him answer again, but I am
12 not going to let you keep going on this vein.
13 He doesn't know.

14 MR. SCURA: If he says, "I have no
15 idea what was wrong with this assignment,"
16 that's fine.

17 BY MR. SCURA:

18 Q Do you have any idea what was
19 wrong with this assignment, the Linda Green
20 assignment?

21 A No, I do not know there was any problem
22 with that assignment other than with the company
23 there was a problem with it, they made a
24 correction. With that specific assignment --

25 Q But you're handling the Barone

1 file, correct?

2 A That's correct.

3 Q To your knowledge there was a
4 second assignment done February 24th, 2011. Do
5 you -- are you familiar with that assignment?
6 It was signed by Joseph Kaminski.

7 A Yes, I have seen that assignment.

8 Q Okay. What did this assignment
9 correct?

10 MR. BAILEY: Objection to form.

11 Jose, you can answer.

12 A According to the assignments that I'm
13 looking at, it looks like one of them went from
14 American Home Mortgage Servicing
15 successor-in-interest to Option One to Wells
16 Fargo.

17 Q Okay.

18 A The second one goes from Sand Canyon,
19 Option One to Wells Fargo. So I would not know
20 what exactly is wrong with one or the other one.

21 Q So your testimony is you do not
22 know why the corrective assignment of

23 Mr. Kaminski was done, dated February 24th,
24 2011; is that correct?

25 A That's correct.

1 Q All right. And just for the
2 record, I'm going to mark as D-2 the Linda Green
3 assignment and D-3, the corrective assignment of
4 Kaminski. And you have those in front of you,
5 right, Mr. Colon?

6 A I'm sorry?

7 Q You have those assignments in
8 front of you, correct?

9 A The two assignments yes, I do.

10 (Whereupon, Linda Green assignment
11 and Joseph Kaminski assignment are
12 received and marked as Defendant's
13 Exhibits D-2 and D-3 for Identification.)

14 Q Do you have the foreclosure
15 complaint in front of you?

16 A No, I do not.

17 MR. BAILEY: I'll get it in front
18 of him --

19 MR. SCURA: Okay.

20 MR. BAILEY: -- within a few
21 seconds.

22 Okay. I've sent that over.

23 BY MR. SCURA:

24 Q While we're waiting for it, a few
25 questions.

1 Were there any memos, intercompany or
2 anything, concerning Linda Green and her signing
3 any assignments within AHMSI?

4 A No.

5 Q Were there ever any discussions
6 intercompany with respect to assignments signed
7 by Linda Green?

8 MR. BAILEY: Objection to form.

9 You can answer, Jose, as long as
10 you know.

11 A I do not know.

12 Q Then what were the issues as you
13 testified earlier to with respect to Miss Green?

14 MR. BAILEY: Objection to form. I
15 don't believe he testified that there were
16 issues. He testified --

17 MR. SCURA: All right.

18 Mr. Bailey, Mr. Bailey, you can't -- let me just
19 tell you something about the rules. You can't
20 give speaking objections. You want to object to
21 the form, you object to the form. But feeding
22 him the answer is no good, so just -- you stick
23 to objection to the form. All right?

24 MR. BAILEY: John, if you are
25 mischaracterizing his prior testimony, I'll

1 object to that.

2 BY MR. SCURA:

3 Q Did you say there were issues with
4 Miss Green's assignments?

5 A Not that I'm aware of.

6 Q Okay. So you're not aware of any
7 issues with respect to the Miss Green
8 assignments; is that correct?

9 A That's correct.

10 Q Did your company write a letter to
11 "60 Minutes"? Did you ever see a copy of that
12 letter that was written to "60 Minutes" by
13 AHMSI?

14 A No, I do not.

15 MR. BAILEY: I am just going to
16 object to the form of that; I don't see the
17 relevance. But I'll let you ask it.

18 Q In our discovery we produced a
19 letter that AHMSI had sent to "60 Minutes,"
20 responding to questions. Have you seen that
21 letter?

22 A No, I have not.

23 Q Okay. I'm going to e-mail it to
24 you or counsel, and then he can send it to you.

25 MR. SCURA: Robert, what e-mail

1 address do you want me to use?

2 MR. BAILEY: Why don't you just
3 send it to me, RBailey -- B-a-i-l-e-y --
4 @ZuckerGoldberg.com. And I'll forward it to
5 Doug and Jose.

6 BY MR. SCURA:

7 Q While we're doing that, did you
8 get a copy of the complaint, Mr. Colon?

9 A Yes, I did.

10 Q Okay.

11 A Yes, I did.

12 Q Okay. The complaint you have in
13 front of you, it's the Barone complaint?

14 A Yes, it is.

15 Q Okay. Is it a filed copy of the
16 complaint?

17 A Yes, it is.

18 Q All right. The filed copy of the
19 complaint of September 29th, 2009. I assume you
20 have the same one?

21 A Yes, I do.

22 Q In paragraph 4 of that complaint
23 it says, "The note and mortgage have been
24 assigned as follows." And in 4A it says, "By
25 assignment of mortgage, dated 9/23/2009."

1 A Okay. I'm sorry, where is this you're
2 reading at?

3 Q Paragraph 4 of the complaint. And
4 I went to paragraph 4A. So it's on -- it's on
5 the fourth page in or maybe fifth.

6 A Okay.

7 Q So paragraph 4 says, "The note and
8 mortgage have been assigned as follows."

9 4A, "By assignment of mortgage, dated
10 9/23/2009."

11 And then it cites to the Linda Green
12 assignment, I'll call it.

13 Now, so is that the date that the note
14 and mortgage were assigned to Wells Fargo, the
15 first date?

16 A No, it's not.

17 Q Okay. When was the first date?

18 A What was that?

19 Q The date the note and mortgage
20 were first assigned to Wells Fargo?

21 A That was January of 2006.

22 Q And how do you know that?

23 A When I reviewed the business records.

24 Q Okay. What did you review that
25 would indicate that January 1st, 2006 was when

1 that --

2 A All of our systems we got -- that we have
3 would tell us when the loan was assigned to the
4 investor.

5 Q And when you say, "system," you
6 mean computer system?

7 A Oh, yes.

8 Q Okay. Is there an actual signed
9 assignment, or just what you can see on your
10 computer system?

11 A Just what I can see on my computer
12 system.

13 Q Okay. I can represent to you that
14 there has been nothing produced in discovery
15 that would indicate that date. Is it only what
16 would be on your computer system?

17 A That I would not know -- I don't have --
18 if it's not on our system, where this
19 information would be in.

20 Q But you're sure it's January 1st,
21 2006? And what does that system tell you about
22 the Barone loan that that's when you know it was
23 assigned on that date, the note and mortgage?

24 A I'm not understanding your question.

25 Q How do you know from your system

1 that the note and mortgage were assigned on that
2 date?

3 A When I reviewed the system, it told me
4 that the loan was assigned to that investor.

5 Q And AHMSI continues to hold the
6 original note and mortgage, though; is that
7 correct?

8 A I'm sorry?

9 Q As of that date AHMSI or its
10 predecessors would hold the original note and
11 mortgage; is that correct?

12 A That's correct.

13 Q Now, as to the trust agreement --
14 the trust agreement or the pool and servicing
15 agreement, can you pull that out in front of
16 you, Mr. Colon?

17 A Pool and servicing agreement --

18 Q Right.

19 A -- is that what you're referring to?

20 Q Yes. Do you have it in front of
21 you?

22 A Yes, I do. You're talking about the pool
23 and servicing agreement?

24 Q Correct.

25 A Okay. Yes, I do.

1 Q All right. I am going to mark it
2 as D-4. And I have a copy of the one that was
3 produced in discovery. I assume it's the same
4 one.

5 MR. SCURA: Counsel, can you -- is
6 there any different one than the one I have?

7 MR. BAILEY: No. I just e-mailed
8 him the same one that was sent to you.

9 MR. SCURA: Okay. So D-4.

10 (Whereupon, PSA is received and
11 marked as Defendant's Exhibit D-4 for
12 Identification.)

13 BY MR. SCURA:

14 Q Are you familiar with this pool
15 and servicing agreement, Mr. Colon?

16 A Yes, I am.

17 Q Can we agree that the cutoff date
18 of that pool and servicing agreement is
19 January 1st, 2006?

20 A That's correct.

21 Q And can we agree that the closing
22 date is January 26, 2006?

23 A That's correct.

24 Q All right. Can you show me in
25 that pool and servicing agreement the reference

1 to the Barone loan?

2 A That I would not know.

3 Q So can you look through it for me
4 and tell me where the Barone loan is identified
5 in that pool and servicing agreement?

6 A It's 234 pages. There is no way I can do
7 that.

8 Q Okay. Have you ever seen his loan
9 identified in this pool and servicing agreement?

10 A This specific pool and servicing
11 agreement, no. I have not reviewed in detail
12 the pool and servicing agreement; I just kind of
13 glanced at it.

14 Q Okay. So the only way you know
15 that -- or believe that Barone's loan was
16 assigned to Wells Fargo is what's on,
17 quote/unquote, your system; is that correct?

18 A That's correct.

19 MR. BAILEY: If I may, the loan
20 servicing -- the loan -- schedule of loans, I
21 believe, was also provided to you in -- in
22 discovery.

23 MR. SCURA: Okay. I don't -- I
24 don't have a schedule of loans that -- I
25 believe. You want to direct your client to it,

1 that's fine. I mean, it's not a trick question.
2 I'm trying to identify the Barone loan in this
3 agreement.

4 MR. BAILEY: It's a separate --
5 it's a separate document.

6 MR. SCURA: Okay. I don't --

7 MR. BAILEY: I'm just looking at
8 the discovery to make sure that it was.

9 BY MR. SCURA:

10 Q Mr. Colon, was there any written
11 assignment of the note and mortgage done on
12 January 1st, 2006 that you know of?

13 A Not that I'm aware of.

14 Q Okay.

15 MR. BAILEY: As far as I know,
16 that schedule of loans went out. I can e-mail
17 it to everybody right now, if that's what you
18 would like me to do. It is identified as a
19 trial exhibit.

20 THE WITNESS: I don't have that.

21 MR. SCURA: Yeah, I do not have
22 it. You know, I'm going to object to any of
23 this stuff that hasn't been produced in
24 discovery; but --

25 BY MR. SCURA:

1 Q I'm going to ask you to turn to
2 Article 2 of the pool -- of D-4, which is the
3 pool and servicing agreement, Mr. Colon.

4 A Article 2?

5 Q Article 2.

6 A Conveyance of mortgage loans,
7 representation and warranties?

8 Q Right, right.

9 A Okay.

10 Q You're going to have to bear with
11 me because it's not numbered, so -- the pages
12 aren't numbered, so --

13 A What I'm looking at is within the first
14 one or two pages -- it's in the first page.

15 Q The first page of the PSA?

16 A Correct.

17 Q Okay. I want you to go -- I want
18 you to go into the body of it. And there is an
19 Article 2 that says, "Conveyance of mortgage
20 loans representations and warranties."

21 A Okay. I have them by page. I am at page
22 60, and I don't see it.

23 Q Yeah, it's further than that. The
24 one I have is not numbered, so it's probably,
25 you know, 30 pages into it or so. It's past the

1 definitions section. Well, let me just ask you
2 a couple questions.

3 A Okay.

4 Q Was any written assignment ever
5 delivered to Wells Fargo to your knowledge
6 within 30 days of the closing date of this PSA?

7 A That I would not know.

8 Q Okay. Was there any recorded
9 assignment delivered to Wells Fargo within 180
10 days of the closing under this PSA?

11 A That I would not know.

12 Q Did you understand that New York
13 law governed the terms of this PSA?

14 A No, I'm not very familiar with the New
15 York laws.

16 Q Is it fair to say you're not very
17 familiar with the PSA?

18 A I'm sorry?

19 Q Is it fair to say that you're not
20 very familiar with this PSA, pool and servicing
21 agreement, with the terms?

22 MR. BAILEY: Objection.

23 Q You can answer it.

24 A The PSA I usually just -- as far as the
25 PSA, I know there is one; and I may glance

1 through it. But as far as going into details in
2 this PSA, no, I did not do that.

3 Q Did you ever see -- did you ever
4 seen an initial certification that was required
5 to be signed by Wells Fargo as to the Barone
6 mortgage executed in connection with this PSA?

7 MR. BAILEY: Objection to form.

8 You can answer.

9 A That I do not know.

10 Q Did you ever see anything written
11 from Wells Fargo at all that's -- that --
12 whether it be letter or otherwise, that stated
13 that they were -- had received the Barone
14 mortgage note and mortgage?

15 MR. BAILEY: Objection to form.

16 Q You can answer it.

17 A No, I have not.

18 Q Do you have anything in your files
19 signed by Wells Fargo that acknowledged that it
20 was in receipt of the Barone note and mortgage?

21 A No, I have not seen that.

22 Q And do you know if there were any
23 other documents in connection with this loan
24 other than what's been produced in discovery in
25 this case to your knowledge?

1 A Any other document?

2 Q Any other documents in connection
3 with the Barone loan?

4 A No.

5 Q To your knowledge does Sand Canyon
6 Corporation still own residential mortgages?

7 MR. BAILEY: Objection to form.

8 A That I'm not sure.

9 Q To your knowledge is Sand Canyon
10 no longer engaged in the servicing of
11 residential mortgage loans?

12 MR. BAILEY: Objection to form and
13 relevance.

14 A That I do not know.

15 Q Sand Canyon -- and I'll refer you
16 back to D-3, the Kaminski corrective assignment.
17 Sand Canyon assigned the note and mortgage to
18 Wells Fargo; is that correct?

19 A According to that assignment, yes.

20 Q So as of February 24th, 2011 Sand
21 Canyon must have still been involved in the
22 servicing of mortgage loans; is that correct?

23 MR. BAILEY: Objection to form,
24 but he can answer. I don't think he knows.

25 A I don't. I don't know.

1 Q All right. They assigned the
2 rights in the note and mortgage to Wells Fargo
3 on February 24th, 2011, according to the
4 Kaminski corrective assignment; is that correct?

5 A Yes.

6 Q So as of that date can we agree
7 that Sand Canyon was servicing mortgage loans,
8 residential mortgage loans?

9 MR. BAILEY: Objection to form.

10 Q You can answer.

11 A I don't agree to that.

12 Q Okay. Why not?

13 A Because I don't really think Canyon was a
14 servicing company, and we were servicing the
15 loan. We received the loan on February 24th,
16 2011.

17 Q When you say, "we," who is "we"?

18 A American Home Mortgage Servicing, Inc.

19 Q So as of that date AHMSI was
20 servicing the loan?

21 A That's correct.

22 Q And when did they start -- when
23 did they start servicing the loan?

24 A I'm sorry?

25 Q When did AHMSI start servicing the

1 loan?

2 A 2008.

3 Q As a result of the merger with
4 Option One?

5 A That's correct.

6 Q Aren't Sand Canyon and Option One
7 the same entity?

8 A According to the assignment of mortgage,
9 Sand Canyon Corporation, formerly known as
10 Option One.

11 Q Okay. Do you know as you sit here
12 today whether they are two separate companies or
13 the same company?

14 A Sand Canyon and Option One?

15 Q Yes.

16 A No, they're not two different companies.

17 Q They're one company? Are they one
18 company, Mr. Colon?

19 A As far as I know, yes.

20 Q Okay. Nobody is giving you
21 answers right now, right, Mr. Colon? You are
22 just answering this stuff on your own knowledge?

23 A I'm answering this information from my
24 review of the business records.

25 Q Is anybody giving you any answers

1 right now is my question?

2 A No, nobody is giving me any answers right
3 now.

4 Q If on February 24th, 2011 AHMSI
5 was servicing the loan, why did Sand Canyon
6 assign -- assign it to Wells Fargo on
7 February 24th, 2011?

8 A That I would not know.

9 Q So would you agree with me that
10 AHMSI should have been the one assigning it to
11 Wells Fargo on February 24th, 2011?

12 A No, because we're only the servicing
13 agent.

14 Q And what was -- oh. And so Sand
15 Canyon -- so how was Sand Canyon different from
16 AHMSI?

17 A When you service them -- I don't believe
18 Sand Canyon serviced loans.

19 Q So Sand Canyon owned the loan at
20 that time?

21 A That I would not know.

22 Q So you would not know as of
23 February 24th, 2011 whether Sand Canyon owned
24 the Barone loan; is that correct?

25 A That's correct.

1 Q And this complaint was filed in
2 September of 2009; is that correct?

3 A That's correct.

4 Q I am going to e-mail you -- we --
5 I'm going to e-mail counsel -- I guess --

6 MR. SCURA: Robert, I have to
7 e-mail this to you, right?

8 MR. BAILEY: Yeah.

9 MR. SCURA: It's RBailey -- I got
10 it. I got it.

11 MR. BAILEY: Okay. I received it.
12 I'm forwarding it along.

13 BY MR. SCURA:

14 A Okay. I got it.

15 Q You see the letterhead; it's
16 "AHMSI"? And it's a letter to "60 Minutes"?

17 A Okay.

18 Q Philippa Brown, do you know who
19 that is?

20 A I'm sorry?

21 Q Do you know who Philippa Brown --
22 that's who authored the letter. Do you know who
23 Philippa Brown is?

24 A No, I do not.

25 Q All right. Is says, "AVP

1 Corporate Communications, American Home Mortgage
2 Servicing, Inc."; but you don't know her?

3 A No, I do not.

4 Q All right. On the second page of
5 that letter -- it's number three -- it says,
6 "Was Linda Green of Cumming, Georgia a vice
7 president of America Homes Servicing or Option
8 One?"

9 And the answer, purported to come from
10 Miss Brown, is, "No, Linda Green is not and
11 never has been an employee of AHMSI or of Option
12 One Mortgage Corporation."

13 Is that your understanding also,
14 Mr. Colon?

15 A I have never seen this letter before, so
16 this has not been given to us. So if that's
17 what it states on there, then I would have to go
18 with that.

19 MR. BAILEY: Let me just add to
20 that. This is a written document; it speaks for
21 itself, John. This witness has been provided to
22 you to answer questions regarding the Barone
23 file and those documents.

24 MR. SCURA: Okay.

25 MR. BAILEY: I'm not sure what

1 light he can shed on this document that he
2 didn't author and has never seen before, but go
3 ahead.

4 BY MR. SCURA:

5 Q You don't work at Wells Fargo, and
6 you have never worked at Wells Fargo; is that
7 correct?

8 A That's correct.

9 Q Would you acknowledge or agree
10 with me that the Linda Green assignment that we
11 marked was not a valid assignment?

12 MR. BAILEY: I would object to
13 that and direct him not to answer. You are
14 asking him for a legal opinion.

15 Q Okay. What I'm asking is do you
16 feel in your opinion, as a litigation specialist
17 and understanding the procedures, whether that
18 was a good assignment to convey title to Wells
19 Fargo?

20 MR. BAILEY: And I have objected
21 to the form of the question.

22 MR. SCURA: You can't direct him
23 not to answer.

24 MR. BAILEY: Non-lawyer for a
25 legal opinion.

1 MR. SCURA: You can't direct him
2 not to answer. You can object to the form,
3 perfectly proper. You can't -- there is no
4 privilege here. You can't direct him not to
5 answer.

6 MR. BAILEY: You want to go to the
7 court, you can go to the court.

8 MR. SCURA: You guys -- you guys
9 put -- let me just tell you something. You guys
10 put me in a position of the Friday before trial
11 of having to take this deposition. I noticed
12 the deposition. Was just ignored. I sent
13 letters. It was ignored. It was not until I
14 wrote a letter to the judge, then you guys
15 agreed to provide me depositions of him and --
16 and Kaminski. And then you -- and then the day
17 before Kaminski's, when I write a letter to
18 confirm, I'm told he is not going to be
19 produced.

20 I mean, you guys, you got to play
21 fair here. Now you are going to tell me on the
22 Friday before the Monday that he is not -- you
23 are going to direct him not to answer perfectly
24 proper question?

25 MR. BAILEY: It's not a perfectly

1 proper question --

2 MR. SCURA: Of course it is.

3 MR. BAILEY: -- or I would let him
4 answer. But I can guarantee you he is not a
5 lawyer --

6 MR. SCURA: If you don't think the
7 question is proper -- I am just going to tell
8 you the rules -- you say, "Objection to the
9 form." There is no privilege here. There is
10 nothing secret that -- why he shouldn't have to
11 answer this question. There is no privilege
12 here you're asserting, I assume. So you object
13 to the form because you think he is not a
14 lawyer. You have held him out to be the
15 litigation specialist. I think he can answer.
16 It's not that difficult a question.

17 BY MR. SCURA:

18 Q So tell me --

19 MR. BAILEY: I am telling you he
20 is not going to know the answer. You can make
21 your legal arguments to the court as to whether
22 or not this is a valid assignment. You are not
23 going to get that answer.

24 MR. SCURA: I am asking him his
25 opinion as a litigation specialist handling this

1 foreclosure. You're bringing him in as your
2 only witness.

3 BY MR. SCURA:

4 Q Do you understand whether this
5 assignment is valid or not?

6 MR. BAILEY: Objection to form.
7 He can answer.

8 A Do I understand that assignment of
9 mortgage that Linda Green signed is valid?

10 Q Whether it was valid or not.

11 A Yeah, I would say it was valid.

12 Q You would say it was valid?

13 A Yeah, I would say it was valid.

14 Q Okay. She wasn't an employee of
15 AHMSI at the time she executed that assignment;
16 is that correct?

17 A I'm sorry?

18 Q She was not an employee at the
19 time she executed that assignment for AH --
20 AHMSI; is that correct?

21 A According to this document, yes, that is
22 correct.

23 Q So if she wasn't an employee for
24 AHMSI, she did not have authority to execute
25 that assignment, would you agree with that

1 statement?

2 MR. BAILEY: Objection.

3 A According to this document, she had
4 limited purpose.

5 Q And what was that purpose?

6 A That I would not know. I am going off
7 what this document states.

8 Q Do you have any documents that
9 would show that she had some authority to sign
10 such a assignment?

11 A No, I do not.

12 Q Well, can you tell me again what
13 the relationship of this -- between AHMSI at
14 this point and Sand Canyon? I'm talking about
15 today's date. What is the relationship now?

16 A That I'm not too familiar with.

17 Q Does Joseph Kaminski also work at
18 Sand Canyon?

19 A No.

20 Q He does not? He does not work at
21 Sand Canyon; is that what you're saying?

22 A That is correct.

23 Q He only works at AHMSI?

24 A That's correct.

25 Q Counsel said he was forwarding a

1 loan schedule. Have you gotten that yet?

2 MR. BAILEY: Yeah, I forwarded
3 that to him.

4 A I already have the loan schedule.

5 Q You what?

6 A I already have the loan schedule.

7 MR. SCURA: Okay. Can you send it
8 to me, Robert. I don't have any such loan
9 schedule.

10 MR. BAILEY: Doug is going to send
11 that over, the redacted loan schedule, which has
12 been attached as a trial exhibit.

13 MR. SCURA: What did you say,
14 Robert? There is a redacted loan schedule?

15 MR. BAILEY: Yeah, Doug is sending
16 it over. I don't know; I just got another
17 e-mail from you that has two blank pages.

18 MR. SCURA: It's a mistake.

19 MR. BAILEY: It came through as
20 spam. The document title is, "0062_0001." It's
21 a PDF, and it's just blank.

22 MR. SCURA: Did you send this,
23 Robert, yet?

24 Robert, what is this from?

25 Robert, can you hear me?

1 MR. BAILEY: Doug, I don't know if
2 you can answer that.

3 MR. McDONOUGH: What was the
4 question?

5 MR. SCURA: What is this?

6 MR. McDONOUGH: What are you
7 talking about?

8 MR. SCURA: What is this
9 highlighted thing that says -- it has Harry
10 Barone. It's --

11 MR. McDONOUGH: Right.

12 MR. SCURA: -- laterally --

13 MR. McDONOUGH: That is a schedule
14 that accompanied the PSA. Due to privacy
15 concerns --

16 MR. SCURA: We're -- just hold on
17 a second. You guys, wait. She is trying to get
18 it down, but just -- we will go off the record.

19 (Whereupon, a discussion is held
20 off the record.)

21 BY MR. SCURA:

22 Q Mr. Colon, this document that was
23 just e-mailed, this Barone -- the reference to
24 the Barone loan, have you seen the complete loan
25 schedule attached to this PSA?

1 A Yes, I have.

2 Q Is that a yes?

3 A Yes, I have seen it.

4 Q Have you seen this document
5 before, before right now?

6 A I have seen this loan schedule before.

7 Q Did you know that Option One and
8 Sand Canyon are two separate California
9 corporations? Did you know that, Mr. Colon?

10 A No, I was not aware of that.

11 Q And did you know that Sand Canyon
12 stopped servicing residential mortgage loans at
13 least as of March 18th, 2009?

14 A No, I was not aware of that.

15 Q And you have no written documents
16 from Wells Fargo in your file; is that correct?

17 A No, I do not.

18 Q You don't have any signatures or
19 letters or anything from Wells Fargo in your
20 file at all in connection with the Barone loan;
21 is that correct?

22 A Not that I'm aware of, no.

23 Q And you've never worked at Wells
24 Fargo, correct?

25 A That's correct.

1 Q Does Mr. Kaminski, who signed the
2 second corrective assignment, does he have
3 different positions at both AHMSI and Sand
4 Canyon?

5 A It is my understanding that he has
6 signing authority for Sand Canyon.

7 Q You said you have the same, I
8 guess, title as Mr. Kaminski; is that correct?

9 A Yes, yes, we have the same title. He
10 just transferred to our department, I would say,
11 probably couple of months ago.

12 Q Do you also have signing authority
13 for Sand Canyon?

14 A For certain documents, yes.

15 Q For what, Mr. Colon?

16 A For certain documents, yes.

17 Q Okay. So to that extent, you're
18 an employee of Sand Canyon, right?

19 A I'm not employed at Sand Canyon. I'm an
20 employee of American Home Mortgage Servicing
21 group.

22 Q Okay. That's fair. But you --
23 you do work for Sand Canyon; is that correct?

24 A Not that I'm aware of. We do servicing,
25 but not that I'm aware of.

1 Q I assume you've worked with
2 Mr. Kaminski before; is that correct, Mr. --

3 A I'm sorry, I didn't hear your question.

4 Q I assume you worked with
5 Mr. Kaminski before; is that fair to say?

6 A Yes.

7 Q In the same department, correct?

8 A That's correct.

9 Q And Miss Green, you've never seen
10 her, right?

11 A Who?

12 Q Miss Linda Green, you've never
13 seen her, right?

14 A That's correct.

15 Q And I know I asked a different
16 version of this, but you're not sure why the
17 corrective assignment was done by Mr. Kaminski;
18 is that correct?

19 A That's correct.

20 Q All right. I have nothing
21 further.

22 MR. SCURA: All right. You guys
23 have any questions, or are we done?

24 MR. BAILEY: I have nothing.

25 John, just for clarity's sake, I

1 don't want you to think anyone is trying to be
2 evasive here; but when Jose -- I don't want to
3 speak for Jose; I will let him correct me. But
4 when he says he doesn't work for Sand Canyon --
5 I understand the relationships. Sand Canyon and
6 any other lender or holder of notes would hire
7 AHMSI to be their servicer. Then they would
8 enter into agreements with AHMSI and say, "Okay.
9 AHMSI Employees, you can execute documents on
10 our behalf."

11 So Jose never worked for Sand
12 Canyon. He always worked for AHMSI for all
13 times relevant to this discussion. And as
14 his -- as his role of employee at AHMSI, Sand
15 Canyon has delegated to AHMSI to sign certain
16 documents. So he never worked for Sand Canyon.

17 That's my understanding of the
18 way the relationships work.

19 MR. SCURA: So let me ask him a
20 couple follow-up questions about that, then.

21 BY MR. SCURA:

22 Q So, Mr. Colon, you're appointed as
23 an officer of Sand Canyon for the limited
24 purpose of signing documents; that fair to say?

25 A Limited document -- certain documents,

1 not all of the documents.

2 Q But you're appointed as an officer
3 of Sand Canyon for the limited purposes of
4 signing certain documents?

5 A That's correct.

6 Q All right. And what is your --
7 what office or title did you hold at Sand Canyon
8 to sign those certain documents?

9 A I believe it's assistant vice president.

10 Q Assistant vice president. Okay.
11 I have nothing further.

12 MR. BAILEY: We have nothing
13 further.

14 (Whereupon, the witness is
15 excused.)

16 (Whereupon, the proceeding is
17 concluded at 2:35 p.m.)

18

19

20

21

22

23

24

25

