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IN THE CIRCUIT COURT
OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 502009CA008637XXXXMB

EVERHOME MORTGAGE COMPANY

Plaintiff,

vs.

NOEL VELEZ

Defendant.

_____ /

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: AUGUST 30, 2010
TIME: 1:40 P.M. - 2:44 P.M.
PLACE: PALM BEACH COUNTY COURTHOUSE
205 N. DIXIE HIGHWAY, 6J
WEST PALM BEACH, FL 33401
BEFORE: THE HONORABLE ROGER COLTON

This cause came to be heard at the time and
place aforesaid, when and where the following proceedings
were reported by:

RAQUEL ROBINSON, REGISTERED PROFESSIONAL REPORTER
FLORIDA PROFESSIONAL REPORTER
ROBINSON REPORTING, INC.
680 S. MILITARY TRAIL, SUITE 211
WEST PALM BEACH, FL 33415

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APPEARANCES FOR THE PLAINTIFFS:

Laura B. Fernandez, Esq.
SHAPIRO AND FISHMAN
2424 N. Federal Highway, Ste. 360
Boca Raton, Fl 33431

APPEARANCES FOR THE DEFENDANTS:

Loretta Bangor, Esq.
LAW OFFICE OF LORETTA BANGOR
433 Plaza Real, Suite 275
Boca Raton, Fl 33432

1 (Judge Roger Colton enters the room at 1:40
2 p.m.)

3 THE COURT: Good afternoon, folks. Please
4 have a seat. Bear with me for about the next five or
5 eight minutes, folks, before the fire marshall gets
6 after me. Please spread that way so I can talk to
7 these people.

8 Anyway, folks, bear with me for about the
9 next five minutes, if you will, 'cause I'm going to
10 try to give you a real hurried up what we're going to
11 do today. Don't be nervous when you see all these
12 files here, but that's what I have to do this
13 afternoon. So how does that affect you?

14 How are you doing there, son? You doing all
15 right? Okay. I'm going to keep my eye on you. If I
16 say something that's not right, will you let me know?

17 Okay. Folks, my name is Colton. I'm what's
18 referred to as a senior judge. Four years ago I hit
19 that magical age under the Florida constitution and
20 they said, "Don't let the door hit you on the way
21 out." So, I didn't. Then they called me back and
22 they said, "Judge Colton, would you be able to come in
23 and handle foreclosure division five days a week,
24 through December, 2011?" I said, "No, no, I can only
25 be here maybe on Mondays and Tuesday." So if I'm

1 here, it's got to be a Monday or a Tuesday. So what's
2 today? Is it Monday or Tuesday? Tuesday, Thank you.

3 Now, what can I do for you? Well, as you
4 notice, we've got a lot of people here today, and so
5 there's going to be, when I get through here, some of
6 you will be going outside to talk to some of the
7 lawyers. The lawyers will remain in here to talk to
8 the other lawyers. And this morning we had about the
9 same amount, and it took about an hour and a half. So
10 this afternoon we've got a lot more. So just give me
11 some time and I guarantee you, you will each have an
12 opportunity to talk to me.

13 But there are certain things that I already
14 know that I want to share with you. And that is:
15 I've heard every reason why we, and I say we, are in
16 the predicament that we are in today. I know all
17 about the Chinese drywall problems. I know all about
18 sickness. I know all about divorce. I know all about
19 anything else as to why we find ourselves in this
20 position today.

21 And the biggest problem that I have come
22 across is that: How you do expect anyone to be able
23 to continue mortgage payments when 12.2 percent of the
24 people in Palm Beach County are unemployed? There are
25 no jobs.

1 So consequently, what are we going to do
2 about it? So what can I do about it? And, honestly
3 folks, there's not much I can do about it. But I'm
4 willing to see what can be of some assistance to you.

5 Now, number one, when people come before me,
6 they're usually looking for one thing, time, time --
7 and believe me time does not cure all -- but time to
8 be able to say, see if the lender will take a deed in
9 lieu of foreclosure, so that you folks can get out of
10 here and not have a foreclosure. Okay. I haven't
11 found that too successful.

12 Two, to be able to modify your loan. In
13 other words, to get lower monthly payments. And
14 three, you need more time because the property is up
15 for sale and you have what we call a short sale and
16 you're waiting for the bank to give you an answer.

17 Now, a lot of that, I've been hearing, the
18 bank never calls us back. I've sent information to
19 the bank, the bank never calls me back. I've sent it
20 two or three times, they lose the information. I
21 don't know who I'm talking to. I'm aware of all of
22 that. So, but I'm handcuffed to a certain extent as
23 to what I can do for you. But I'm trying my best to
24 be able to resolve some of the problems by the
25 following options that you will have here today:

1 As I mentioned to you, time seems to be the
2 cure all. Sometimes it is, sometimes it isn't.
3 However, the statute provides that once I sign a
4 summary judgment, then the property should be sold
5 between 20 to 35 days.

6 Folks, there's no way that this can be
7 accomplished, because when I sign all of this
8 paperwork and it goes down to what we call the clerk's
9 office, I refer to it as the black hole, 'cause I
10 don't know what happens to it after it goes down to
11 the clerk's office.

12 And, but I will do this, and I can do this:
13 One, remember what I told you, 20 to 35 days, I can
14 give you 45 days, 60 days, 90 days, 120 days and if
15 you have really a good reason why, I might even give
16 you 150 days. That's five months, five months before
17 the property will be set for sale.

18 Now, in addition, I will give you an extra
19 piece of paper that is an order. And that's an order
20 that will order the bank, not you so much, but the
21 bank to be in contact with you for either a mediation
22 or a conciliation.

23 Now, what's the difference? A mediation
24 means you're going to have a live human being present
25 there as an intermediary as a mediator between you and

1 the lender. The lender is going to appear by phone,
2 because the Florida Supreme Court says they can appear
3 by phone. Hopefully, somebody on the other end of the
4 line will have authority to resolve and give you an
5 answer.

6 A conciliation is when there's just a phone
7 conference. There's no fee for a conciliation. For a
8 mediation, if the property is Homestead property, if
9 you're living in the property, then there is no fee to
10 you, the homeowner, it's capped off at \$750.00, the
11 lender will pay. However, if it is investment
12 property and you're renting the property, then you
13 will each be responsible for 50 percent of the cost of
14 the mediator. Most of the mediators are charging
15 about \$250.00 an hour lasting two hours. I'd say like
16 five hundred dollars.

17 Now the bad news. The bad news is that I've
18 been advised that only about 25 to 30 percent of
19 mediations end successfully, or that there is really a
20 resolution. Most of them, like 70 percent, are ending
21 in what they refer to as an impasse. There will be no
22 resolution.

23 So, if I give you, let's say, 120 days,
24 that's four months, have the mediation within 60 days,
25 you have to have the mediation within 60 days, and it

1 still doesn't get resolved, remember, there's only 60
2 more days before the property is going to be sold or
3 it's supposed to be sold.

4 Now, a lot of people are saying -- now, if
5 you're asking for a short sale, to give you some idea
6 about short sales, just very, very briefly. I have
7 found, whatever the balance of your mortgage payment
8 is, let's say it's \$300,000.00, for example, that
9 about one-third of what your mortgage payment is is
10 what short sales are usually going for. So if you
11 have a \$300,000.00 balance on your mortgage, you can
12 look for a short sale, maybe, offer of anywhere from
13 ninety to a hundred thousand dollars. That's just
14 what I have found over the past months when I asked
15 about that. So that gives you some idea about the
16 short sale.

17 I can't force the bank to do anything. I
18 can't force the bank to say to you, like a lady asked
19 me the other day, she said, "Judge Colton, I have a
20 three hundred thousand dollar mortgage on my house. I
21 can't sell my house for a hundred thousand dollars.
22 Tell the bank to reduce my mortgage to a hundred
23 thousand dollars." I can't do that. Plus I wouldn't
24 do that. And it wouldn't be fair to a lot of other
25 people.

1 So, lastly, I wanted to let you know that
2 these people, Shapiro and Fishman, right? Where are
3 my lawyers? Raise your hand. Okay. All of these
4 young ladies are Shapiro and Fishman. And I presume
5 your notice of hearing shows 1:30 p.m., and the law
6 firm that sent you the notice is Shapiro and Fishman.
7 These are the lawyers for the lender. Now, folks,
8 I'll guarantee you, I can almost guarantee you, now,
9 there might be some exceptions, I can almost guarantee
10 you the banks don't want your property. They've got
11 more property now than they know what to do with. And
12 we are stacked up down in our clerk's office.

13 When I came in a few months ago, I don't
14 know, it seems like a few, it's probably six months
15 ago, we had fifty-five thousand pending foreclosure
16 matters. Now, I understand it's less than forty-five
17 thousand. Now, I came from a little town in Illinois.
18 We only had five thousand people in the entire town.
19 And now we've got over forty-five thousand still
20 pending foreclosure matters.

21 Now, these lawyers are under my instructions
22 to talk to you. They're not trying to pry into your
23 business or anything else. They're under my
24 instructions to talk to you. They are not your
25 lawyer. They are not giving you legal advice, the

1 same way I'm not giving you legal advice, because I
2 can't do that. But they're under my instructions to
3 talk to you, because, to refresh what I have tried to
4 tell you in the last five minutes or so, to just go
5 over that with you.

6 Now, how many lawyers are here? Raise your
7 hand. All right. For you lawyers, now the lawyers,
8 I'm going to ask these lawyers to talk to the lawyers
9 first. Now, as I mentioned to you, the fire marshall
10 is about ready to come in any time. And I don't want
11 to get in trouble. So I'm going to ask a lot of the
12 people who are not represented by lawyers to just step
13 outside, if you can find some room. Not yet, not yet.
14 Don't go out yet. And then we'll call you as soon as
15 possible. 'Cause I have to get rid of the lawyers
16 first.

17 Now, for you lawyers, if I deny a motion for
18 summary judgment, and that's usually what the lawyers
19 want, "Judge, deny it because I don't have the proper
20 standing." "I don't know who the owner of it is."
21 "Who's got the note." I've heard all of that. "They
22 don't have, the affidavits aren't correct, or they
23 don't have all the information attached to the
24 affidavit." I've heard all of that.

25 If you want me to deny a motion for summary

1 judgment, fine. I may or I may not. But if you want
2 me to deny a motion for summary judgment, you will get
3 a trial date within 30 days. Now, that doesn't mean
4 you're going to go to trial within 30 days. It means
5 you will get a trial date in front of Judge Garrison
6 within 30 days. I'm willing to give up to 120, 150
7 days with a mediation thrown in. So you have to make
8 up your mind as to what you really, really want to do.

9 So folks, please bear with me. Be patient.
10 I guarantee you will all have the opportunity to talk
11 to me. As soon as we get more room in here, we'll
12 have a new group come in. So at this point in time,
13 what I'm going to do, the lawyers who are here will be
14 talking to the lawyers from Fishman and Shapiro. For
15 you pro se litigants without lawyers, I'm just going
16 to ask that you wait outside for a minute. We have a
17 question...

18 UNIDENTIFIED MALE: Yeah, you just mentioned
19 that you're going to require mediation, for the bank
20 to contact the homeowner within 60 days?

21 THE COURT: I hope they're going to contact
22 you within six days or so. And you have the mediation
23 over and done with within sixty days.

24 UNIDENTIFIED MALE: What if they don't contact
25 me?

1 THE COURT: What if they don't? Come back and
2 I'll hold them in contempt of court. We can do that.
3 They'll contact you. We've got a regular procedure.
4 The main thing about if you're going through
5 mediation, folks it's so important that you have all
6 your financial data, W-2 forms, Income tax returns,
7 everything else, sent to the lender and to the
8 mediator at least 14 days in advance. I've been
9 advised one of the reasons why there's so many
10 impasses on mediation is that the mediator and the
11 lender, they don't seem to have enough financial
12 information.

13 Thank you for your attention. I'm going to
14 ask that --

15 MS. FERNANDEZ: With regards to mediation,
16 since a lot of you guys are pro se, and we may not
17 have your telephone numbers on record, either provide
18 it to us when we speak to you, or if you've not
19 received a phone call in a month, in four weeks,
20 please contact our office and you can speak directly
21 to our mediation department and they will get
22 everything set up.

23 THE COURT: We'll make sure, I'll make sure
24 that there's a phone number for you to be contacted.
25 So I'm going to excuse myself at this time. We'll be

1 in recess. And I'll come back whenever my bailiff
2 tells me you're ready.

3 (Judge exits the room at 1:53 P.M.)

4 (Proceedings are reconvened at 2:06 p.m.)

5 THE BAILIFF: Come to order, court is back in
6 session. Okay. Everybody kind of get to a seat just
7 so that we can kind of have some order here.

8 THE COURT: First case...

9 * * * * *

10 THE COURT: Okay. This is Velez?

11 MS. FERNANDEZ: Correct.

12 THE COURT: And what are we doing with Velez?

13 MS. BANGOR: Your Honor, I would, I move for,
14 to deny the summary judgment, the affidavit filed in
15 support is grossly deficient. It doesn't verify the
16 documents that were attached to the complaint, which
17 is the mortgage and the note. The mortgage that was
18 actually attached to the complaint was off the public
19 record, with the "not a certified copy" across it.
20 The note that was attached to the complaint is
21 different than the one that she just showed me. The
22 note attached to the complaint has no endorsement on
23 it.

24 THE COURT: How can it be different?

25 MS. FERNANDEZ: Your Honor, I'm unsure.

1 THE COURT: Are you talking about the back of
2 the note might be different?

3 MS. BANGOR: No, the last page, the signature
4 page.

5 MS. FERNANDEZ: There's an allonge to the
6 note.

7 THE COURT: There is?

8 MS. FERNANDEZ: Yes.

9 MS. BANGOR: There was no allonge attached to
10 the complaint.

11 MS. FERNANDEZ: Your Honor, opposing counsel
12 came in at the last minute. She did file the
13 affidavit in opposition. The affidavit goes beyond
14 the answer and affirmative defenses raised within the
15 case. And there are no affirmative defenses at this
16 point in time, that I was aware of, that would prevent
17 the entry of summary judgment.

18 THE COURT: You're looking for an allonge,
19 right?

20 MS. BANGOR: Your Honor, there actually are
21 affirmative defenses, the defendant was pro se and she
22 filed a motion challenging the authenticity of the
23 documents that were attached. And, to this
24 endorsement, an allonge was never provided. And,
25 again, this not the original mortgage. My client,

1 specifically in her answer said on the original she
2 initialed every page. This, the copies weren't
3 initialed that she received with the complaint.
4 They're not initialed here.

5 She also raised the defense of, she raised
6 several defenses, maybe inartfully because she was pro
7 se, but she said that the legal description is
8 incorrect. She denied ever giving a note or mortgage
9 to the plaintiff in this case. And we don't --

10 THE COURT: She denied what?

11 MS. FERNANDEZ: Giving a mortgage to the
12 plaintiff in this case because it was a different
13 name --

14 MS. BANGOR: And never having the allonge, it
15 wasn't attached to the complaint that my client
16 received.

17 MS. FERNANDEZ: She's not entitled to the
18 allonge.

19 MS. BANGOR: Well, we're entitled to know who
20 has the right to enforce the note.

21 MS. FERNANDEZ: No, you're not. Pursuant to
22 the mortgage, there are terms that state that the
23 mortgage, when it gets transfer, the owner, we're not
24 required to let you know who that transfer happened
25 to. However, we are required to let you know who the

1 current servicer is, because that's where your payment
2 should be made.

3 MS. BANGOR: You're required, when you file
4 the lawsuit, to show that you have standing. And
5 without attaching that allonge, then the question of
6 standing was not satisfied till this moment. And I
7 haven't had time to review that allonge to check its
8 authenticity, anything. I mean, I'm just seeing it
9 for the first time right now. And --

10 MS. FERNANDEZ: Being that you came into the
11 case about three days ago. But it would have been
12 enough time.

13 MS. BANGOR: Notwithstanding, my client is
14 challenging the validity of the affidavit in support,
15 not only the validity, but the fact that the affiant
16 never even said that she reviewed any of the records
17 that she is attesting to, nor did she attach any of
18 the records. Nor did she say that the allegations of
19 the complaint were true and correct.

20 THE COURT: Okay. I'm going to sign the final
21 summary judgment. 120 days?

22 MS. BANGOR: Your Honor, I would ask, then, to
23 give me a trial date.

24 THE COURT: Well, I've already signed it. So
25 I've denied your objections. My question was: Do you

1 want 120 days?

2 MS. BANGOR: Your Honor, I want a trial. My
3 client is entitled to a trial.

4 THE COURT: Ma'am, I just denied your request.
5 I signed the final judgment.

6 MS. BANGOR: Okay. I want 120 days, Your
7 Honor.

8 THE COURT: You got it.

9 (Hearing on Velez concluded at 2:44 p.m.)

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1 THE STATE OF FLORIDA)

2 COUNTY OF PALM BEACH)

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5 I, Raquel Robinson, RPR, FPR certify that I was
6 authorized to and did stenographically report the
7 foregoing proceedings and that the transcript is a true
8 and complete record of my stenographic notes.

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12 Dated this _____ day of _____, 2010.

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Raquel Robinson, RPR, FPR

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