



1 APPEARANCES (Continued):

2 For America's Servicing Co., Finkel Law Firm, LLC  
3 as servicer for US Bank BY: JANET B. HAIGLER, ESQ.  
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1                                   P R O C E E D I N G S

2                   THE COURT: 07-5024, Patricia Ann Woodberry is the  
3 debtor. We are here on the motion for relief from stay by  
4 American Servicing.

5                   If the parties would come forward.

6                   Ms. Haigler, I stated that I thought this was  
7 contested. Given the number of people here, I assume that I'm  
8 correct.

9                   MS. HAIGLER: Well, I suppose, Your Honor. It's --  
10 we're here to show what the Court requested us to in its prior  
11 order, is ownership of the note.

12                  THE COURT: All right.

13                  Let's get appearances for the record.

14                  MS. HAIGLER: Your Honor, Janet Haigler on behalf of  
15 ASC. And I have with me today Erin Hirzel with Wells Fargo.

16                  MR. CANTRELL: Your Honor, John Cantrell, co-counsel  
17 for the debtor.

18                  MS. INGLES: And Susan Ingles, co-counsel for the  
19 debtor.

20                  THE COURT: All right. Who's going to primarily speak  
21 for the debtor?

22                  MR. CANTRELL: I'm going to do --

23                  MS. INGLES: Mr. Cantrell.

24                  MR. CANTRELL: -- the main argument, Your Honor.

25                  THE COURT: All right.

1           MR. CANTRELL:  If possible, Ms. Ingles would probably  
2 handle cross examinations.

3           THE COURT:  All right.  I'm -- I'm not a great fan of  
4 tag-team lawyering, but, if you've separated the duties, I  
5 understand that.

6           What I don't want to do is have both of you speaking  
7 on any particular point.  That makes things a little bit more  
8 complicated.  I certainly don't mind if you've divided the  
9 responsibilities, but I don't think -- I don't think you both  
10 need to jump in on the same point, all right?

11          MR. CANTRELL:  Very well, Your Honor.

12          THE COURT:  Mr. Cantrell, you filed a notice of  
13 appearance in the past week, along with two motions to dismiss,  
14 and I, I have reviewed your motions to dismiss and I will, I  
15 will hear you, if you wish, but I'll just say, to begin with,  
16 that this is an issue that I think I and the bar, creditor and  
17 debtor, would like us to get to the crux to so that we get some  
18 resolution of this.

19          The first part -- the first of your motions to dismiss  
20 asked me to dismiss because of a failure to comply with the  
21 Local Rules in completing the certification of facts form and I  
22 understand your arguments and Ms. Haigler indicated that this  
23 was a Chapter 7 case.  You think that's not sufficient.  I  
24 assume she does.

25          And I don't know that we need to spend very much time

1 arguing that matter. I will -- I'm going to sort of pass over  
2 that and I think that what I need to hear will be heard in the  
3 courtroom today and we'll -- I'll handle that motion as part of  
4 my ruling in the case.

5 If you have anything specifically you'd like me to  
6 consider, I'll hear you now, but I think your papers adequately  
7 address the points that you've made.

8 MR. CANTRELL: I think it does, Your Honor. I just  
9 want to point out the specific language I'm referring to in the  
10 Local Rule is the preamble to 4001-1, which reads, "This rule  
11 applies to motions for relief from the automatic stay of 11  
12 U.S.C. 362(a), motions to extend or impose the automatic stay,"  
13 and such. It doesn't say anything about limitations to various  
14 chapters.

15 So I believe that Ms. Haigler has, has presumed that  
16 it only applies in Chapter 13, but the Rule does not say that  
17 anywhere in there. I think there's no basis in the Rule itself  
18 for that.

19 So I believe it's a per se violation of the Rule not  
20 to apply it in Chapter 7 and as I indicated in the motion, I  
21 believe in this particular case the defendant was prejudiced by  
22 that because they weren't able to respond to her payment  
23 history, which she didn't attach that as --

24 THE COURT: All right.

25 MR. CANTRELL: So that's, that's the only thing I want

1 to point out in regards to that motion. I do consider this  
2 motion secondary to my standing motion and I'm happy that the  
3 Court chooses to consider it as a secondary, something that  
4 you'll address in your ruling.

5 THE COURT: All right.

6 The -- the only precedent in this District on this is  
7 the Hall case, which is not my opinion, meaning it's not my  
8 order, not that I don't concur in it.

9 MR. CANTRELL: I understand.

10 THE COURT: I've not had the -- I've not ruled on it,  
11 but, you know, Hall does say that if there's a failure to  
12 comply with the Rules, that the Court may, may dismiss the  
13 motion. It's certain -- I don't believe Judge Waites believes  
14 it to be mandatory for his courtroom. I think he chose "may"  
15 and he certainly didn't intend for it to be mandatory in my  
16 courtroom.

17 So I appreciate the -- I appreciate the motion and  
18 I'll deal with it.

19 On your --

20 Ms. Haigler, is there anything directly on that that  
21 you need --

22 MS. HAIGLER: No, sir. And I won't -- I won't belabor  
23 the point.

24 I did want to respond to a few points, is that,  
25 obviously, the Court -- this is a concern about certification

1 of facts and we've all taken it to heart and I believe since  
2 the entry of the Hall case and since the entry of the Court's  
3 notice we have really sat down and looked to determine what the  
4 Court really wants.

5           There has -- in the past -- and there -- and I have  
6 always considered a Chapter 7 different. Because when you look  
7 at Paragraph 8 -- and we have guidance there. I think it, it  
8 helps us and I think that's what the Court has done -- it says  
9 the month and year when the post-petition payment starts. In a  
10 Chapter 7, you don't have a true post-petition payment because  
11 there is no plan and it says is it applicable. In this case,  
12 we said it wasn't applicable.

13           And so, you know, I don't think there was any -- the  
14 information on here would be exactly the same because she still  
15 was due for September and the point there is that at our last  
16 hearing Mrs. Ingles admitted for the debtor that she was due  
17 for September 2007. And in looking and referencing our --

18           MR. CANTRELL: Objection, Your Honor. I'm not certain  
19 of that. That -- I wasn't here, but co-counsel indicates she's  
20 not sure that that was actually admitted by the debtor. I  
21 understand there was no testimony, so I'm not certain that that  
22 point is, is, is resolved.

23           THE COURT: All right.

24           MS. HAIGLER: It's -- and it is a part of, I think,  
25 the Court's order.

1           But even saying, we've talked about this Local Rule  
2 that governs this. That Local Rule also governs that when you  
3 object to a 362 you're also required to submit your own  
4 certification of facts and the Rules says if you do not do that  
5 you have deemed the information that the movant has provided is  
6 true and correct.

7           There is no corresponding certificate of facts filed  
8 in this case; therefore, my certificate of facts have been  
9 deemed to be correct and true. And so I think that's important  
10 for the Court.

11           And the other thing that, just in a general practice,  
12 that I would like to bring to the Court's attention -- nothing  
13 to do with this case -- but when we're looking at how all  
14 parties should respond to these certification of facts and how  
15 that we should deal with them, one thing I have noticed in my  
16 practice is that when a certificate of facts is filed by a  
17 debtor in response with an objection there is no response to  
18 9(b), which is for the objecting party to put forth their,  
19 their payment history.

20           So that's not routinely done. It wasn't done in this  
21 case 'cause there was no certificate of facts filed. I think  
22 my certificate of facts has, has been deemed to be the correct  
23 one before the Court and I feel like in the last hearing we  
24 dealt with this issue. The Court has ruled on that issue. The  
25 Court has us here today to deal with the standing issue.

1           THE COURT: All right. And I, I take that as the  
2 sauce for the goose is sauce for the gander argument and, and  
3 I'll deal with that.

4           MS. HAIGLER: Yes, sir.

5           (Court handles another case)

6           THE COURT: If the parties will excuse me, let me go  
7 back to the previous case.

8           (Court handles another case)

9           THE COURT: And I apologize to the parties. I just  
10 didn't want Mr. Workman to have to sit here until we, we got  
11 finished with what may be a more protracted hearing. All  
12 right.

13           Mr. Cantrell, your, your other motion is to dismiss  
14 for, on jurisdictional and standing grounds, which I, I've read  
15 your motion and it basically gets to the crux of why we're here  
16 today.

17           So I'm, I'm not going to hear you separately on that  
18 motion, even though it's a motion to dismiss a pleading,  
19 because the findings that I make with respect, on the motion  
20 for relief from stay determine whether or not you get your  
21 relief. If -- if -- if the lender can't make its showing, you,  
22 you either win because they didn't make their showing or  
23 because of your motion. I don't expect it matters too much to  
24 you why you win.

25           So let's just jump straight into, into the pot.

1 MR. CANTRELL: Your Honor, just to let you know, we  
2 merely did that motion so the Court would have a grounds other  
3 than this *sua sponte* order that you gave last time in case you  
4 wanted independent grounds.

5 But we understand that it's basically the same as what  
6 you've already required them to do in your order.

7 THE COURT: All right. Thank you, sir. I appreciate  
8 it.

9 Is there anything else preliminarily that we need to  
10 address?

11 (No response)

12 THE COURT: All right. We'll then move on to the  
13 motion for relief from stay.

14 Ms. Haigler?

15 MS. HAIGLER: Your Honor, I didn't know if you wanted  
16 opening arguments at all, or just go right into the testimony?

17 THE COURT: I'm going to let you close, so let's just  
18 go straight to testimony.

19 MS. HAIGLER: Okay. Thank you.

20 I'm -- I'll call Mrs. Erin Hirzel.

21 Sorry for butchering your name.

22 THE COURT: Ms. Hirzel, if you would step forward,  
23 Ms. Miller will administer the oath to you on this (indicating)  
24 side of the courtroom and then if you'll go to the witness  
25 stand.

1 ERIN HIRZEL, MOVANT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MS. HAIGLER:

4 Q Ms. Hirzel, if you'll state your name for the record.

5 A Erin Hirzel. Last spelled -- the last name is spelled  
6 H-I-R-Z-E-L.

7 Q All right. Ms. Hirzel, who are you employed by?

8 A Wells Fargo Bank, N.A.

9 Q Okay. And what do you do for the Bank?

10 A I am a default litigation specialist.

11 Q Okay. And how is Wells Fargo associated with ASC?

12 A ASC is a d/b/a for Wells Fargo.

13 Q Okay. You know we're here today on Ms. Woodberry's loan?

14 A Yes.

15 Q Can you tell me, do you have access to Ms. Woodberry's  
16 account information?

17 A Yes, I do.

18 Q Okay. And describe for me what type of information, how  
19 you have access.

20 A We have an internal system that provides us with payment  
21 histories, general account information, investor information on  
22 a loan, pretty much the entire loan system, and it also  
23 contains copies of any origination documents that we have.

24 Q Okay. Have -- is Ms. Woodberry's loan on that system?

25 A Yes, it is.

1 Q Have you had a chance to look at that computer system?

2 A Yes, I have.

3 Q Okay. You understand today that I represent ASC?

4 A Yes, ma'am.

5 Q And that I brought a motion for relief in Ms. Woodberry's  
6 bankruptcy case?

7 A Uh-huh. (Indicating an affirmative response)

8 Q And you understand that I brought that in the name of  
9 American Servicing Company, as servicer for US Bank National  
10 Association, as Trustee for the Structured Asset Investment  
11 Loan Trust, 2005-8 --

12 A Yes, ma'am.

13 Q -- its successors and assigns, I should add.

14 And you understand why we're here today is the Court wants  
15 for ASC to show that the Structured Asset Investment Loan Trust  
16 is the owner of this loan?

17 A Yes, ma'am.

18 Q Okay. And understanding that, did you look at  
19 Ms. Woodberry's account to help me make that determination and  
20 provide it to the Court today?

21 A Yes, ma'am.

22 Q Okay. And I'll stop here and ask: Is ASC the owner of the  
23 loan?

24 A No. We are the servicer.

25 Q Okay. And as servicer, are you in possession of any of the

1 loan documents?

2 A Yes.

3 Q Okay. Do you have possession, as -- for -- as ASC,  
4 possession of the original note?

5 A I have it with me here today.

6 Q Okay. May I see it?

7 A It is in the folder sitting right beside you.

8 Q Oh, I'm sorry.

9 (Counsel hands folder to the witness)

10 THE WITNESS: Thank you.

11 BY MS. HAIGLER:

12 Q If you'll pull that out.

13 A (Witness complies)

14 Q Can you tell me who that note is from?

15 A The lender listed on the note is SouthStar Funding, LLC.

16 Q And who is the borrower?

17 A Borrower listed as a Patricia Woodberry.

18 Q Does it have original signatures on it?

19 A Yes, it does.

20 Q Okay. What is the date of that?

21 MR. CANTRELL: Excuse me. Do you have a copy of it,  
22 Janet?

23 MS. HAIGLER: It's the original.

24 MR. CANTRELL: I haven't seen one that's attached.

25 MS. HAIGLER: You can look at it and see that it, if

1 it is, it is.

2 MR. CANTRELL: All right.

3 (Pause)

4 MR. CANTRELL: Okay.

5 BY MS. HAIGLER:

6 Q What was the date on that note?

7 A June 21, 2005.

8 Q Okay. Is there an allonge, allonge attached to the note?

9 A Yes, there is.

10 Q Okay. Does it -- does it indicate that SouthStar is  
11 transferring its interest in that note?

12 A Yes, it does.

13 Q And who does it, is it transferring that note to?

14 A That information is left blank.

15 Q All right.

16 MR. CANTRELL: I'm sorry. Could you repeat that,  
17 please?

18 THE WITNESS: The information is not contained on the  
19 allonge of who it was transferring to.

20 BY MS. HAIGLER:

21 Q All right. For whose benefit -- as servicer, for whose  
22 benefit do you hold that note?

23 A US Bank, as Trustee for the Structured Asset -- I'm sorry.  
24 I don't have the full name right on the top of it.

25 Q Okay.

1 A Structured Asset Lending Trust, Series 2005 through 8.

2 I -- if I'm slightly off on that, I'm sorry.

3 Q All right. Now that you have the --

4 MS. HAIGLER: Your Honor, I'm in a difficult situation  
5 because I do want the Court to recognize -- and I can pass it  
6 up -- that this is the original note and I'd like to have it  
7 entered into evidence, but I'd have to have it back because it  
8 is an original document.

9 THE COURT: Is there any objection to substituting a  
10 copy for the original?

11 MS. INGLES: No, sir.

12 THE COURT: All right.

13 MR. CANTRELL: We'll -- we'll stipulate that the copy  
14 attached to her motion is correct.

15 MS. HAIGLER: Is one and the same?

16 MR. CANTRELL: Yes.

17 MS. HAIGLER: Do you want a copy of the note, Your  
18 Honor --

19 MR. CANTRELL: You have it in the --

20 MS. HAIGLER: -- for, to enter?

21 MR. CANTRELL: -- motion, unless you want it separate.

22 THE COURT: I think it is, although I'm not --

23 MS. HAIGLER: It --

24 THE COURT: -- sure that the -- well, I'm sorry. The  
25 allonge is attached. For some reason, I had not noted that

1 before.

2 So that, that's fine.

3 MS. HAIGLER: So there's no need to have it entered  
4 into evidence because it is part of my --

5 THE COURT: Do you stipulate it?

6 MR. CANTRELL: We do stipulate.

7 THE COURT: Okay.

8 MS. HAIGLER: Okay. All right.

9 BY MS. HAIGLER:

10 Q What I'd like to do now is work our way back and you tell  
11 me, now that you have that note, what information you have on  
12 your system that shows where that note was acquired from.

13 So how would -- what would you look at on your computer  
14 system?

15 A First, I would pull up the computer system and then pull up  
16 by our loan number Ms. Woodberry's loan. Within our computer  
17 system there are certain master screens that contain pertinent  
18 loan information, the original principal balance, the  
19 origination date of the loan, who the servicers are, who the  
20 investor of the loan is, and that investor screen is where I  
21 went to to try to determine who held interest in this.

22 From that screen there is an investor key number that I  
23 then took to an internal website, which would contain sub-  
24 servicing contracts on.

25 Using that number, I then pull up the sub-servicing

1 contract for this loan and that indicated to me that in that  
2 contract -- I believe it was dated 9/1 of '05 -- that Wells  
3 Fargo was -- as -- is sub-servicer for Aurora and that the  
4 owner of the note at that time was the US Bank, as Trustee for  
5 the Structured Asset, etcetera, etcetera. And excuse me if I  
6 don't have that full terminology.

7 Q Let me stop you there because you've just given me a lot of  
8 information and it started with that you went into the computer  
9 and pulled up this screen.

10 Do you have that screen with you?

11 A I do have a copy of that screen print with me and --

12 Q Here you go. (Counsel hands document to the witness.)

13 A Thank you.

14 Q I see several screen prints. So I want to make sure that  
15 this appears to be the same screen print that you --

16 A Yes, it is.

17 Q -- just identified.

18 MS. HAIGLER: Your Honor, unfortunately, I only have  
19 one other copy, so I'm going to give it to --

20 THE WITNESS: Thank you.

21 BY MS. HAIGLER:

22 Q I wanted you to look at that and --

23 THE COURT: Well, let -- let me let counsel take a  
24 look --

25 MS. HAIGLER: Yeah, look at it.

1 THE COURT: -- at that for a moment.

2 (Ms. Haigler shows document to Ms. Ingles and Mr. Cantrell)

3 THE WITNESS: That's fine.

4 THE COURT: -- if they haven't seen it before. And if  
5 we need to, I can send somebody out and make, make some copies.

6 MS. HAIGLER: Would it be difficult to ask for two  
7 copies?

8 THE COURT: No.

9 MS. INGLES: Your Honor, we would object to this being  
10 entered if it's being entered as a substitution for the actual  
11 documents that this witness is testifying about as far as the  
12 chain of ownership.

13 THE COURT: Well, I take her testimony to be that  
14 there isn't an actual document. There's an electronic blip in  
15 a computer system that is this information.

16 MS. INGLES: But it refers to an actual document that,  
17 that outlines the rights and duties --

18 THE COURT: I don't know if --

19 MS. INGLES: -- of all the parties.

20 THE COURT: I don't know if it, it refers to a  
21 document.

22 Does it?

23 MS. HAIGLER: Your Honor, we're not there, yet.

24 And --

25 THE COURT: Okay.

1 MS. HAIGLER: -- so I have another document that I'll  
2 enter, but this is showing how they know to go from a screen,  
3 or computer about Mrs. Woodberry's loan and get from one space  
4 to the other space in Wells Fargo to pull up documents that all  
5 make sense how we get to the ownership.

6 THE COURT: All right.

7 So -- so her testimony was that she looked on the  
8 computer screen and in amongst a number of screens there was a  
9 screen that had an investor number on it and she, with her  
10 eyes, saw that number --

11 MS. HAIGLER: Uh-huh. (Indicating an affirmative  
12 response)

13 THE COURT: -- and based on that number she then went  
14 to a list --

15 MS. HAIGLER: Another website.

16 THE COURT: -- that, that showed her what that meant,  
17 who the owner was according to that key number?

18 MS. HAIGLER: And I think that's where I was going  
19 with the testimony, was that I think for this Court and  
20 everybody to logically understand how we're going to get  
21 through this is that she is the custodian. They are the  
22 servicer for this loan and they service hundreds of thousands  
23 of different loans for different investors.

24 And so if I am to link and show to the Court that the  
25 original note that she has in her possession is owned by

1 Structured Asset, then I want to show the Court how we got  
2 there.

3 THE COURT: Right.

4 MS. HAIGLER: And it is through her going to these  
5 screens, finding out, seeing numbers, finding codes that link  
6 her into some other web, secured website to pull down a  
7 document that I do have that I do not intend to enter into  
8 evidence and cannot enter into evidence, but I can provide and  
9 -- and if -- for the purposes of today we'd have to seek a  
10 protective order. Because it deals with rights of other  
11 parties who are not to this action and, and it is confidential  
12 information, involves trade secrets. So --

13 THE COURT: Well, we'll -- we'll --

14 MS. HAIGLER: -- that's where we're going.

15 THE COURT: We'll get there.

16 MS. HAIGLER: I know it.

17 THE COURT: We'll get there. Let -- let's start with  
18 that one --

19 MS. HAIGLER: But I'll start --

20 THE COURT: -- piece of paper first and work our way  
21 through that trail to that and, and if, if we get there --

22 MS. HAIGLER: Uh-huh. (Indicating an affirmative  
23 response)

24 THE COURT: -- I'll let you make your motion --

25 MS. HAIGLER: Okay.

1 THE COURT: -- to, to protect that document --

2 MS. HAIGLER: Thank you.

3 THE COURT: -- under the Rule.

4 So let me -- Ms. Ingles, you, you object to the  
5 introduction of that document?

6 MS. INGLES: Yes.

7 THE COURT: Is that correct?

8 MS. INGLES: That's correct.

9 THE COURT: And I'm going to overrule that. I think  
10 that the -- I think that the document in and of itself isn't  
11 the chain of title. It's just reflective of her process as she  
12 went through determining ownership of this loan and it's a  
13 report of an electronic blip and I'm going to let it in for  
14 that purpose.

15 So if somebody'll hand that back and we'll get a  
16 couple of copies of that made.

17 MS. INGLES: Your Honor, if I could follow up, though,  
18 I would ask the Court to require that a foundation be laid with  
19 this witness as to where that data comes from and who enters  
20 it --

21 THE COURT: Okay.

22 MS. INGLES: -- if -- if we're going to -- if she  
23 relied on it to ultimately go to the agreement that --

24 THE COURT: I'll let you cross examine her about that.  
25 Because, I mean, I think she's laid enough of a foundation to

1 get in that information. She -- she's testified that, that  
2 part of her job is being the custodian of records and that this  
3 is a record that she relied on in making that.

4 So I'll let -- I'm going to overrule your objection  
5 and I'll let you cross examine on those points.

6 MS. INGLES: Thank you, Your Honor.

7 THE COURT: And, and if you'll just give me a second.

8 Are there other documents that we're going to need to  
9 make copies of? If there are, I'd like to just stop at this  
10 point and get those made and if you can gather those, we can  
11 step back into Chambers and I'll let y'all do that.

12 MS. HAIGLER: I think that was probably the only one  
13 that I didn't have, previously.

14 THE COURT: Okay. Now if we get to this main  
15 document, I'm assuming that's the only copy of it that you  
16 have?

17 MS. HAIGLER: No, sir. I --

18 THE COURT: You have copies of it?

19 MS. HAIGLER: I have copies of it.

20 THE COURT: Okay.

21 Well, if everybody'll just stand at ease for a moment.

22 (Pause)

23 THE COURT: Ms. Haigler, if -- I'll -- I'm going to  
24 put these up here. This is the -- this (indicating) is the  
25 original piece of paper that you handed up and these

1 (indicating) are the two copies that were made.

2 MS. HAIGLER: Thank you.

3 BY MS. HAIGLER:

4 Q Do you still have your copy?

5 A Yes, I do. Thank you.

6 Q Okay.

7 All right. We all have this screen print, is what you  
8 called it --

9 A Yes, ma'am.

10 Q -- in front of us.

11 What type of screen print is it? Is there a reference on  
12 here to tell you where it came from?

13 A Well, if you allow me a moment, I will start at the top and  
14 work my way down and hopefully, be able to explain what is here  
15 and also, where it, where I derived the information.

16 At the very top you'll see Page 1; Document Name, Erin  
17 Hirzel. That indicates that I was the one that actually  
18 printed this document.

19 The next line you'll see MAS-1, Loan and then a bunch of  
20 numbers.

21 MS. HAIGLER: I'm sorry.

22 THE COURT: You want to mark this for --

23 MS. INGLES: I was going to ask what number of exhibit  
24 that's going to be.

25 MS. HAIGLER: Yeah. We didn't mark the exhibit.

1 THE COURT: Yeah.

2 THE COURTROOM DEPUTY: That's okay. It's Movant's  
3 No. 1. Movant's No. 1.

4 THE COURT: All right.

5 MS. HAIGLER: Let me switch with you.

6 THE COURT: All right.

7 BY MS. HAIGLER:

8 Q All right.

9 A Okay.

10 MAS-1 and then Loan and then a bunch of numbers. The bunch  
11 of numbers is, is the loan number specifically designated to  
12 Ms. Woodberry's case. MAS-1 indicates that it is a screen of  
13 the master base of our system.

14 The next line, if you start on the left-hand side, Name:  
15 P. Woodberry. That would be the borrower in this case. If you  
16 continue down a little bit, it says "INV-1," a few spaces,  
17 Investor/Service Fees. It's a sub-screen of the master screen  
18 that indicates the investors on a loan.

19 And then the next line is Headings: Investor Category,  
20 Investor Loan Number, etcetera. And then it goes on to explain  
21 more of the investor information. At the very bottom it has a  
22 date and a time of when this document was printed by me.

23 Q All right. All right.

24 And so we have established that you have the original note  
25 and we're trying to get to Structured Asset and you stated that

1 this was an investor-owned loan?

2 A Not owned by -- owned by Asset, Structured Asset --

3 Q Okay.

4 A -- etcetera. The investor, as listed here, is our internal  
5 notations of how to find out where to go.

6 Q And so how did you find out where to go? Which of these  
7 numbers tell you where to go and look?

8 A The INV at the -- about four spaces down it says "K-34."

9 Q Uh-huh. (Indicating an affirmative response)

10 A That number is what I would have keyed into our web-based  
11 system to pull up the sub-servicing agreement for this specific  
12 loan.

13 Q All right. So -- and did you do that?

14 A Yes, I did.

15 Q Okay. And where did you -- how were you able to do that?  
16 You went into some system for Wells Fargo?

17 A There is an internal web-based system that contains all of  
18 our sub-servicing agreements for Wells Fargo and ASC, and I  
19 entered that system, gave it the search code of that investor  
20 number, and it pulled up a specific document.

21 Q And what did you find?

22 A A hundred and eighty some odd page sub-servicing agreement  
23 between Wells, Lehman Brothers, Aurora Servicing, and  
24 Structured Asset.

25 Q Is this the agreement that you're referring to? (Counsel

1 shows document to the witness.)

2 A Yes, ma'am.

3 Q Okay. And what was the date of that agreement?

4 A September 1, 2005.

5 Q Okay. And you listed Wells Fargo was part of the  
6 agreement. And how were they part of the agreement?

7 A As a servicer.

8 Q Okay. And you indicated Lehman was part of the agreement?

9 A They were the seller.

10 Q Okay. And then, also, Aurora?

11 A Master servicer.

12 MR. CANTRELL: Objection, Your Honor. Are we going to  
13 get a copy of this agreement? It seems to be material to this  
14 chain of title and to their relationship to these various  
15 parties.

16 I think under the Maisel case we're entitled to proof  
17 that they're an authorized servicer and if this is what  
18 establishes that, this contract, we're entitled to a copy of  
19 that. Because we don't know what their rights or  
20 responsibilities are without it. We don't even know that they  
21 are who they say they are. We're entitled to proof that they  
22 have authority for the Trust and if this document sets it out,  
23 we want it.

24 THE COURT: Well, I understand where you're headed.  
25 Now in your client's papers that were filed with the bankruptcy

1 court your client contends that ASC is its creditor and it does  
2 so without dispute at all. And that's in the schedules that  
3 were filed in the bankruptcy court.

4 So are you estopped from raising that argument?

5 MR. CANTRELL: I don't think so, Your Honor. The  
6 client was billed by ASC. They're the servicer. As you've  
7 noted in your order, as they've admitted, they don't own this.  
8 They are not the creditor. The schedules are obviously wrong.

9 Because very few of us can even know whether or not a  
10 loan is in trust. You'll remember a year and a half ago in the  
11 Anderson case. I thought that loan was in trust and filed  
12 pleadings because of it. Ms. Haigler proved that it wasn't.

13 We can't always know that a loan is in trust. These  
14 things aren't public record. We can't go out and always find  
15 them, always. However, we, we listed them because that's the  
16 people we were getting bills from, but that doesn't mean that  
17 they have standing here today. It doesn't mean that they are  
18 the authorized representative of the Trust. They still have to  
19 prove that, regardless of what we said in our schedules. All  
20 that we indicated there was who we were sending the payments  
21 to. That doesn't mean that they have authority to act on  
22 behalf of this Trust and as you said in your order, that's the  
23 important issue.

24 And this document is what defines those rights and  
25 responsibilities. If they don't have the right under this

1 document to do that, we -- we dispute -- we dispute that and we  
2 want proof of it and we believe we're entitled to it under In  
3 re Maisel and the foreclosure cases.

4 THE COURT: All right. I'm going to -- I'm going to  
5 hold my ruling on the objection in abeyance because I want to  
6 hear all of this. I want to hear where they go with it and so  
7 I'll, I'll rule on your objection as part of this order.

8 MR. CANTRELL: And we are going to be prejudiced by  
9 not having that document ahead of time so that we can verify it  
10 for ourselves their rights and responsibilities --

11 THE COURT: Well, I'm not --

12 MR. CANTRELL: -- and relationships?

13 THE COURT: I'm not so sure that you're not going to  
14 have it.

15 Because what I'm -- where I'm going next with this is  
16 that if you, if you need to put that information in, which  
17 you're doing through testimony, I think they're entitled to the  
18 balance of it, but I think you're also probably entitled under  
19 108 to a protective order.

20 If you'll tell me what you think --

21 MS. HAIGLER: Yes.

22 THE COURT: -- that protective order needs to say --  
23 because if there are -- if there are trade secrets, if there is  
24 confidential information concerning non-parties --

25 MS. HAIGLER: Uh-huh. (Indicating an affirmative

1 response)

2 THE COURT: -- then I think that, that all that's  
3 protectable under 108.

4 So if you can tell me what you think you need, I'm  
5 going to try to fashion a protective order, including  
6 restricting the parties from using this document in, in any  
7 other matter for anyone else if, unless they're able to secure  
8 this document in a different proceeding for the benefit of some  
9 other party.

10 MS. HAIGLER: Your Honor, it is a very difficult  
11 situation that my client is in.

12 ASC has come here today and she is willing to testify  
13 and is capable of testifying that she is the custodian for an  
14 investor-held loans and that is for -- and that they service  
15 these loans on behalf of US National Bank, as the Trustee for  
16 this secured asset.

17 And as -- in that capacity and as that custodian, she  
18 has brought the note, the original note, which in this case is  
19 a bearer instrument and because it's a bearer instrument she  
20 has possession as custodian and therefore, for her, as agent  
21 for her client, her, the owner. We've shown ownership and we  
22 should be able to stop there. But I'm uncertain and I'm  
23 worried. Because I've never been in this situation today.

24 What I -- how far do I have to go to prove ownership.  
25 Because I don't want to leave here today with any uncertainty,

1 but I think the argument can stop there. Because she has shown  
2 that just by looking at these screens she's able to pick stuff  
3 up. She knows who she's the servicer for and nobody else would  
4 hold the original note, except for ASC as, for the servicer.

5 But what she did find in these documents was this  
6 securitization sub-servicing agreement with parties who are not  
7 parties to this and we're not concerned about servicing  
8 agreements in the sense that, like you said, what, how is ASC  
9 managing her account. We know by this agreement that she is  
10 the custodian of their records and has brought the most  
11 important record here today.

12 And so I do have an agreement. And on the front of it  
13 it shows a flow and shows how we get to this secured asset and  
14 then I have some pages that talk about where this loan came  
15 through and who the next person it was sold to and how it  
16 became a part of a servicing agreement and a trust agreement.

17 And that is very helpful. It made me understand  
18 immediately the chain so that I could come up with a chart to  
19 see why we're the owner, but the problem, Your Honor, is that  
20 these are very delicate commercial transactions. ASC has a  
21 majority of its loans with Lehman Brothers. They cannot,  
22 cannot allow this document in today and jeopardize that  
23 relationship with Lehman Brothers.

24 So when we talk about a protective order, I mean, I'll  
25 have to refer to Ms. Hirzel, but, if I allow him to see it,

1 then I get it back today. He doesn't get to copy anything. He  
2 doesn't get to, you know, to take it out of here. It can't  
3 become a part of the record. Because I've been told I can't.

4           And what I have is a custodian and I can have her  
5 testify and she has the note. And maybe the argument stops  
6 there, but I'm saying, well, let's go a little bit further, but  
7 I can't, I can't allow this in.

8           And so the protective order is, yes, y'all can look at  
9 it in the court, in the confines of this courtroom, got to have  
10 the copies back, and I've been told that the front page of the  
11 agreement is sufficient to be allowed to be marked as into  
12 evidence.

13           THE COURT: Well, here's -- I mean, here's the problem  
14 -- and I don't want to try your case for you -- but, but you've  
15 got to make the decision about what you want to put into  
16 evidence.

17           MS. HAIGLER: Uh-huh. (Indicating an affirmative  
18 response)

19           THE COURT: And it may be at the end of the day that  
20 I'll decide, "Ms. Haigler was right. We could have stopped  
21 there at that early stage."

22           MS. HAIGLER: Right.

23           THE COURT: "That was enough." It may be that after  
24 reflection and doing some research and after hearing the debtor  
25 that I'll say, "That wasn't nearly far enough," and I'll deny

1 your motion.

2 MS. HAIGLER: Right.

3 THE COURT: So you've got to decide where you want to  
4 go. I, I think based on what I've heard and without seeing the  
5 document that, that you've made a fairly good case for a  
6 protective order. Now exactly what that protective order needs  
7 to say, I'm still not sure I -- I'm -- I know at this point,  
8 but I do know that I'm not going to let the debtor's attorneys  
9 and other lawyers who might somehow get their hands on this use  
10 it for any purpose. Its purpose is restricted for why we're  
11 here today, which is to show ownership of, of this loan and the  
12 ability of this party to bring this motion.

13 At some point down the line there's likely to be a  
14 state court foreclosure proceeding because either I'm going to  
15 give you relief from stay today, or in a week or two the  
16 debtor's going to be discharged and there's not going to be a  
17 stay to slow you down, anyway. And I know you know that and I  
18 know you could have just said, "This is too much trouble. I'm  
19 going to wait two weeks and we can go to state court and  
20 foreclose," but you didn't do that. And the reason you didn't  
21 do that is 'cause you need to get this precedent set and get  
22 this issue settled. Because it's not just an issue here. It's  
23 an issue all across the country.

24 So I -- the -- and again, I've not seen the document  
25 at this point, but, but the request -- you've heard

1 Mr. Cantrell -- is that you get to see the document, but  
2 your -- the -- the -- the document comes in and you don't get  
3 to keep it and walk away from here with it today. And if you  
4 need some time, I'm going to give you some time to look at it  
5 and do whatever you need to do with it today.

6 Now tell me if that's fair, if you can live with that  
7 constraint, or do you want to argue that that's too great a  
8 constraint and you ought to be able to do something different.

9 MR. CANTRELL: Your Honor, with all due respect,  
10 there's no physical way possible I could review a hundred and  
11 eighty pages of legalese in a few minutes. I certainly  
12 couldn't do a very competent job of it. I, I don't know any  
13 attorney in this room that could. So --

14 THE COURT: I get called on all the time to review a  
15 hundred and eighty pages that I hadn't seen before.

16 MR. CANTRELL: My briefs aren't that long, Your Honor,  
17 and you had it yesterday. So I've got -- I'm in a little worse  
18 position, but I, I understand what you're saying.

19 I want to make -- I want it to be very clear exactly  
20 why she believes this information should be under a protective  
21 order. I want it very clear. I want testimony under oath  
22 about if this document is confidential and, and why it's  
23 confidential. I want -- I want her client to testify to that.  
24 I want her to be bound by her duty of candor to the Court under  
25 that and -- and we'll -- and we'll go from there, Your Honor.

1           But if she wants this, this document protected, I've  
2 got to know exactly why it needs to be protected. I don't want  
3 any vague statements. I want statements on the record that are  
4 binding.

5           THE COURT: Okay. Well, I think that's fair enough.

6           So, Ms. Haigler, let's --

7           MS. HAIGLER: All right.

8           THE COURT: Let's walk through the foundation for all  
9 this and then we'll, we'll get to it.

10          MS. HAIGLER: All right.

11 BY MS. HAIGLER:

12 Q We discussed that when you went into the system you found  
13 this sub-servicing agreement, is that correct?

14 A Yes.

15 Q And we talked about that it has multiple parties to this  
16 agreement, is that correct?

17 A Yes, ma'am.

18 Q Is Lehman Brothers one of the parties?

19 A Yes, ma'am.

20 Q Are they a, one of the sellers or investors that ASC  
21 typically deals with?

22 A Yes, ma'am.

23 Q Okay. This morning we were discussing whether or not we  
24 would be able to enter this document into evidence and you told  
25 me, no. And tell me why that is.

1 A Well, there are parties listed in this document that are  
2 not part of this proceeding. There are trade secrets contained  
3 within this document and to be honest, I have not even read  
4 through the entire 180 some odd pages.

5 So I guarantee you somewhere in here it tells me I'm not  
6 allowed to. I've also been told by my superiors that this  
7 document is considered highly confidential within Wells Fargo  
8 and as such, I, I feel that this is considered a confidential  
9 document.

10 Q Is -- does ASC stand to be in jeopardy if the document were  
11 to be included into evidence and potentially hurt some of your  
12 clients?

13 A Our clients, our investors, other servicers. The  
14 repercussions could be endless.

15 Q Okay.

16 MS. HAIGLER: I think that's all I have to that issue,  
17 Your Honor.

18 MR. CANTRELL: Just -- how are we going -- what are we  
19 going to call this document for reference purposes?

20 MS. HAIGLER: I call it the sub-servicing agreement.

21 MR. CANTRELL: Is this the same as the pooling and  
22 servicing agreement?

23 MS. HAIGLER: I don't think it is, no.

24 MR. CANTRELL: Sub-servicing agreement.

25 MS. INGLES: And it's between Aurora --

1 MS. HAIGLER: Wells Fargo --

2 MS. INGLES: Okay.

3 MS. HAIGLER: -- Lehman, and Aurora.

4 MR. CANTRELL: Are you -- are you making the witness  
5 available for cross examination?

6 MS. HAIGLER: Yes. I thought -- I'm sorry.

7 MR. CANTRELL: Okay. I'm, I'm sorry.

8 THE COURT: If you want to -- if you want to, it's  
9 probably appropriate.

10 MS. INGLES: Okay. Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MS. INGLES:

13 Q So you have not actually read this agreement, yourself?

14 A I have read parts of it that I felt pertained to the issue  
15 in regards to this case at this time.

16 Q Okay. And on the part that you have read what trade  
17 secrets are contained in the agreement?

18 A Well, that would be asking me to reveal confidential  
19 information.

20 Q Okay. So are you saying there are trade secrets contained  
21 in the agreement?

22 A That is what I have indicated, yes.

23 Q Okay. And you said that there are parties to the agreement  
24 that are not parties to this action and they might be  
25 prejudiced?

1 A Yes.

2 Q How would they be prejudiced?

3 A Well, it contains information in regards to how they  
4 handled this transaction and since they are not here to give  
5 their blessing in regards to this document that could be  
6 adversely affecting them.

7 Q And is it your position, then, that the debtor is not  
8 entitled to know how that agreement works, if that's the  
9 agreement that is governing her loan at this time, which is  
10 what --

11 A That is not what we have indicated. What we have indicated  
12 is that this document is secure and it can be witnessed by  
13 people within this courtroom at this time, but that we ask that  
14 it be protected.

15 Q Okay. And you said that others might be hurt, that there  
16 might be repercussions if a protective order was not entered to  
17 protect the secrecy of this document.

18 What repercussions are you talking about?

19 A Well, because it directly lists exactly how master  
20 servicing, servicing, etcetera, works there are -- how to put  
21 it exactly -- well, it tells us how we operate our business,  
22 how Wells is supposed to do what we do. If that information  
23 was to become public, then other companies would have the  
24 information to know how to handle the business the exact same  
25 way Wells did and then Wells would not be able to do our

1 business the way we do.

2 Q And so it's your position that the debtor today is entitled  
3 to look at this agreement in this courtroom, but not to be able  
4 to have a copy of it to review, or anything like that? Our  
5 review of the agreement would only be in this courtroom today  
6 and it couldn't --the document, you're saying, couldn't be  
7 copied and --

8 A That is the request that I am making, yes.

9 Q That's the request that you're making.

10 Now what about prior to today? I mean, was the debtor  
11 entitled to know who owned her loan prior to today?

12 A The debtor should have had that information prior to today.

13 Q How would she have had it?

14 A At any point she could have sent a written letter to any  
15 servicer and requested that information. There are also  
16 letters that are sent out by investors indicating that  
17 information.

18 Q When you say "any servicer," you mean --

19 A In this case it would have been -- she could have sent a  
20 letter to ASC requesting that information.

21 Q Okay. And -- so anybody in this agreement she could have  
22 sent a letter to and gotten the information?

23 A Yes, ma'am.

24 Q Okay. So Lehman Brothers, Wells Fargo, Aurora?

25 A Well, Lehman Brothers aren't the servicer of this.

1 Q Okay. Aurora is the master servicer, is that right?

2 A Yes, ma'am.

3 Q Okay. And what's their role?

4 A They act as an administrator of the servicers. Wells Fargo  
5 is not the only servicer of loans out there.

6 Q Uh-huh. (Indicating an affirmative response)

7 A They act as an administrator to make sure that we comply  
8 with the rules as set out in the sub-servicing agreements,  
9 transfer that information back to the investor or the note  
10 holders. Pretty much, they're our checks and balances.

11 Q Okay. Now Lehman Brothers, they're the investor?

12 A They are the seller.

13 Q The seller of the certificates?

14 A Of the mortgages, notes, loans, etcetera, that transferred  
15 into the Structured Asset Investment Loan Trust, Certificate  
16 Series 2005 through 2008.

17 Q Okay. Does the agreement that you are talking about right  
18 now list the loan from SouthStar Funding to Patricia Woodberry  
19 as one of the loans that it services?

20 A It is included in an Attachment A that we did not include  
21 with the document here.

22 Q Okay. Where would Attachment A be located?

23 A Within the confines of our system.

24 Q Okay. And so what you've brought today we don't have any  
25 document that lists the loan from SouthStar to Patricia

1 Woodberry as being serviced under the agreement that you're  
2 looking at?

3 A Yes. That would be the print screen that you have already  
4 been provided.

5 Q Okay. The print screen doesn't list particular loans, does  
6 it?

7 A It indicates that this loan is included in this service  
8 contract and therefore, this service contract rules this loan.

9 Q Well, where -- where do you keep that service contract?

10 A I believe that's already been testified to.

11 Q Well, could you repeat it for me where you keep that  
12 particular document in your records?

13 A It's contained in an internal web-based system.

14 Q But I'm talking about the original document. Where is  
15 that?

16 A I believe that would be held in our Des Moines, Iowa  
17 address headquarters, but as for this particular document, I am  
18 not exactly sure where the original is held.

19 Q Okay. And where would the original Attachment A be?

20 A Wherever the original document is held.

21 Q Okay. And when attach -- do you know when Attachment A was  
22 attached to the agreement?

23 A At the time the agreement was created.

24 Q And that was September 1st of 2005?

25 A As indicated on the front page, yes, ma'am.

1 Q Okay. Now is this agreement required to be registered and  
2 recorded with the SEC?

3 A I do not know, ma'am.

4 Q Okay. I mean, you've said that it's a secret agreement,  
5 but, I mean, can't you, like, Google the Structured Asset  
6 Investment and find this agreement that you're looking at?

7 A I do not know, ma'am.

8 Q Okay.

9 MS. INGLES: That's all I have.

10 THE COURT: All right.

11 Let me ask you a question.

12 BY THE COURT:

13 Q This Attachment A that you've made reference to, how  
14 voluminous a document is that? Is it --

15 A It contains every --

16 Q -- thousands of loans?

17 A -- single loan and its loan number and personal information  
18 in regards to that loan that would have been contained under  
19 this document.

20 Q Okay. So it's just a listing of all of the loans that are  
21 transferred by, from various lenders to Lehman and, and now  
22 Lehman is transferring into this Trust.

23 And as I understand your testimony, Aurora is the master  
24 servicer for all of the loans under this agreement listed on  
25 the exhibits and ASC is one of the sub-servicers that is

1 handling some of the loans listed in the exhibits and  
2 specifically is the servicer of the loan that's at issue here?

3 A Yes, sir.

4 Q Okay. So that, that correctly summarizes your testimony?

5 A Yes, sir.

6 Q All right. Can you tell me how Lehman got this loan? And  
7 maybe the answer is no. I'm not trying to trick you. I'm just  
8 -- I want to ask you that question.

9 How did Lehman get this?

10 A I believe there is an assignment, but that's going off of  
11 something I believe I read in the system, but I do not have  
12 information with me at this particular second to verify that.

13 Q All right.

14 MS. INGLES: Your Honor --

15 THE COURT: Anything else?

16 MS. INGLES: -- one other thing.

17 BY MS. INGLES:

18 Q So you're -- you're holding the note that's the subject of  
19 this motion under that agreement, the sub-servicing agreement  
20 that you've just talked about?

21 A Yes.

22 Q And have you held that from the time that it was signed by  
23 Ms. Woodberry until today?

24 A No. We show that we received the note -- and if you'll  
25 hold on a second I can reference a document that I have -- that

1 we acquired the loan on 9/1 of '05 as a servicing transfer.

2 So at that point we would have received the note.

3 Q On 9/1/2005?

4 A Yes, ma'am.

5 Q And that's what your files reflect as when you received it?

6 A Yes, ma'am.

7 Q And you've had it from then up until today?

8 A Yes, ma'am.

9 Q Okay. And there's nothing in this agreement that you're  
10 referring to in your testimony that requires that original to  
11 go anywhere else --

12 A Not to my knowledge.

13 Q -- in this process? Okay.

14 And you said that ASC is a d/b/a of Wells Fargo?

15 A Yes, ma'am.

16 Q Now tell me what you mean by that when you say that.

17 A Doing business as.

18 Q Okay. So Wells Fargo owns ASC? Well --

19 A I'm not sure.

20 Q -- if you don't know, say so. That's okay.

21 A I'm not sure "owns" is, is the appropriate legal  
22 terminology for how a d/b/a works. I do not have knowledge in  
23 regards to exactly how d/b/a's operate.

24 Q So you don't know the relationship between Wells Fargo and  
25 ASC, actually?

1 A They're doing business as, so I'm assuming --

2 Q But you don't know what that means?

3 A Well, I'm saying that "owns" might not be the appropriate  
4 legal terminology for that. Wells --

5 THE COURT: I think she's answered your question.

6 BY MS. INGLES:

7 Q So you don't know what the appropriate legal terminology is  
8 for the relationship between Wells Fargo and ASC?

9 A No, I do not. As -- to the best of my knowledge, Wells and  
10 ASC operate under the same restrictions and -- I do ASC loans.  
11 I do Wells Fargo's loans. I handle both loans equally under  
12 the same guidelines and the same parameters.

13 Q Who are you employed by?

14 A Wells Fargo.

15 Q Okay. Is anybody employed by ASC?

16 A There are a few people in our office that are designated as  
17 ASC employees, but they handle the same functionality that I do  
18 in handling both ASC and Wells Fargo loans.

19 Q Okay. Now is -- does Anita Antonelli (phonetic), does she  
20 work for Wells Fargo or ASC?

21 A I'm not sure exactly which denomination she is put under,  
22 but I know she is a custodian of our documents.

23 Q So she's in your office?

24 A No, she is not.

25 Q Where is she located?

1 A I believe she's out of our Fort Mill office.

2 Q Okay. And you're out of which office?

3 A Frederick, Maryland office.

4 Q Is she an employee of MERS?

5 A It is -- I --

6 Q You don't know?

7 A I do not know.

8 Q If you don't know, that's fine.

9 A I do not know.

10 Q Okay. So when she signed the assignment of mortgage that's  
11 been provided to us as assistant secretary of MERS, as nominee  
12 for SouthStar Funding, she was an employee of either ASC or  
13 Wells Fargo?

14 A Well, it is possible that she has a power of attorney for  
15 MERS, yes.

16 Q Okay. But you don't know whether she does or not?

17 A I do not know.

18 Q Okay.

19 MS. INGLES: That's all I have, Your Honor.

20 THE COURT: Okay. Thank you.

21 I am -- I am inclined to allow the agreement in with a  
22 protective order protecting the parties from disclosure of  
23 information that's contained in the sub-servicing agreement,  
24 what we've referred to as the sub-servicing agreement. Because  
25 I believe that it contains commercial information or trade

1 secrets of the parties with respect to the way they conduct  
2 their financial transactions and I believe under Section  
3 107(b)(1) of the Bankruptcy Code that I have authority to  
4 protect the entity and the entities that are parties to this  
5 agreement.

6 MR. CANTRELL: Your Honor, may I speak to that?

7 THE COURT: Well, no.

8 MR. CANTRELL: Okay. I -- I just --

9 THE COURT: Because I'm not finished.

10 MR. CANTRELL: We haven't had a chance to respond yet  
11 on the protective order question. I just want to make sure we  
12 get a chance, Your Honor.

13 THE COURT: And it would -- it would seem to me that  
14 there probably in a hundred and eighty-eight page document that  
15 also has some exhibits that are not even here today that there  
16 is information that is extraneous to the purpose for why we are  
17 here today. I cannot imagine that there's a hundred and  
18 eighty-eight pages that are, that are directly relevant to this  
19 particular transaction.

20 So I -- to the extent that you think that it's  
21 necessary to get this document into the record, I'm, I'm  
22 inclined to enter into, to enter a protective order that will  
23 protect this other information and to preclude its use for  
24 purposes other than what we may be doing today.

25 And I realize -- I recognize that I'm treading into an

1 area that, that the courts have a great deal of, of concern  
2 over. Because car companies, banks, and lots of other people  
3 have tried to make sure that information is protected so that  
4 it doesn't get out into the mainstream and in some instances in  
5 the past it's been information that was, that should be of  
6 great concern to the public. I don't know if that's involved  
7 here, or not.

8           When it comes to loan servicing, I don't know whether  
9 that falls into the category of, of poorly designed vehicles  
10 that, that, that cause people problems, but I do know that this  
11 is an area that's ripe for, that is of a great concern to lots  
12 and lots of parties.

13           So I -- again, I'm inclined to do that, but now I  
14 don't know if you want to get the information in. I'm assuming  
15 that, that the Bank's not suggesting that I can't look at any  
16 of this. Of course, I can't unless you give it to me, but, if  
17 you give it to me, then I'm going to look at it.

18           MS. HAIGLER: Your Honor, the ideal world, I guess,  
19 would be to -- and, Ms. Hirzel, you can tell me if I'm  
20 incorrect -- that we share this information today, have,  
21 everybody have a copy, and, you know, have her testify as to  
22 how we came down to the secured asset being the owner --

23           THE COURT: Right.

24           MS. HAIGLER: -- but we take those documents back and  
25 it -- if it has to main, the copy has to be maintained by the

1 Court, that it be sealed.

2 THE COURT: Well, I -- and I think one does have to be  
3 maintained by the Court.

4 MS. HAIGLER: Uh-huh. (Indicating an affirmative  
5 response)

6 THE COURT: Because, I mean, if there's an appeal or  
7 something here, that's got to be -- that's got to be available  
8 for somebody that wants to look over my shoulder about this,  
9 although, frankly, I mean, I'm not sure how effected any appeal  
10 is. Because the case is -- the debtor's going to get  
11 discharged, the stay's going to be gone in a couple or three  
12 weeks, and I don't know if that moots out any appeal or not, by  
13 either side. But --

14 MS. HAIGLER: And the only other thing I'll comment  
15 about this agreement, it is a sub-servicing agreement and it is  
16 a contract and it's regarding servicing of loan pools between  
17 these parties -- and, of course, that's going to affect how  
18 servicing would be for Ms. Woodberry's loan, ultimately -- but  
19 servicing isn't an issue for Ms. Woodberry's loan today. It's  
20 ownership. And what this document does is it is a contract.

21 So at the beginning of the contract -- and that's the  
22 only thing this is relevant or shows besides the front page  
23 where it says Structured Assets -- and it shows that it flows  
24 from her having custodial records and coming and finding this  
25 document, which relates exactly to what I put on my motion.

1 There is a flow on these two pages of who, where the loans came  
2 from. It went to one person; it went to the next; so the trust  
3 agreement was created, you know.

4 And so that is it, these, these two pages, and then  
5 the rest of this deals with these parties' agreements on how  
6 they are going to work together to service these pools. They  
7 reference, describe what they are.

8 THE COURT: Okay. I -- I -- I -- I think I understand  
9 -- I think I understand the point you're making.

10 Mr. Cantrell, I'm going to hear you on, on the issue  
11 of a protective order.

12 MR. CANTRELL: Thank you, Your Honor.

13 Your Honor, we believe what the Court has heard today  
14 is perjury. We believe that what is actually --

15 THE COURT: Well, now, wait a minute, okay?

16 MR. CANTRELL: Okay. Let me -- let me back up.

17 THE COURT: Let's, let's be real careful before --

18 MR. CANTRELL: Let me -- okay. Let -- let me --

19 THE COURT: -- we start going down that road.

20 MR. CANTRELL: -- back up a moment.

21 We haven't seen the agreement 'cause the Court hasn't  
22 permitted us to see it yet --

23 THE COURT: Right.

24 MR. CANTRELL: -- because they've claimed  
25 confidentiality.

1 So we can't know this beyond any doubt, but --

2 THE COURT: You can't know it at all, can you?

3 MR. CANTRELL: I think we can, Your Honor.

4 THE COURT: You -- you -- you think without --

5 MR. CANTRELL: I think it --

6 THE COURT: -- seeing the document that you can stand  
7 in open court and claim somebody's perjured themselves on the  
8 stand?

9 MR. CANTRELL: Let me clarify, Your Honor, so that you  
10 will understand.

11 THE COURT: Well, I think you better because I --

12 MR. CANTRELL: Yes, Your Honor.

13 THE COURT: -- I think that's a dangerous place to go.

14 MR. CANTRELL: Very well, Your Honor, but we're --  
15 we're at a disadvantage 'cause this hasn't been provided to us  
16 ahead of time.

17 THE COURT: Well, but there are lots of things in life  
18 I haven't seen either, but I don't go around calling people a  
19 liar.

20 MR. CANTRELL: Well, let's, let's talk about how, how  
21 these trusts are, are regulated, Your Honor.

22 As you know, trusts are regulated instruments and  
23 they're regulated in this country by the Securities and  
24 Exchange Commission. What I believe they're trying to  
25 introduce into evidence, what they're calling a sub-servicing

1 agreement, I believe, is either actually the pooling and  
2 servicing agreement or a subdivision of the pooling and  
3 servicing agreement.

4           The pooling and servicing agreement is the contract  
5 that established the relationships of all the parties to the  
6 trust instrument. Since these trusts are regulated securities,  
7 these documents have to be filed with the Securities and  
8 Exchange Commission in a, in a disclosure called a Form 8-K.  
9 We believe -- and, Your Honor, if, if Your Honor will give us  
10 access to the Internet on your computer, I believe we can very  
11 possibly pull up this very same agreement in front of you,  
12 which they're claiming contains trade secrets, is confidential,  
13 and can't be disclosed. We --

14           THE COURT: All right. Well, okay. I --

15           MR. CANTRELL: Okay.

16           THE COURT: Fair enough.

17           Now Ms. Ingles asked her that exact question, did she  
18 know if that was, in fact, filed, and her answer was, "I don't  
19 know."

20           MR. CANTRELL: That's correct.

21           THE COURT: So unless, unless she does know and was  
22 lying about that, I don't know where you get the perjury.

23           MR. CANTRELL: They -- they -- she's claimed that it  
24 was confidential.

25           THE COURT: Well, but -- but -- but --

1 MR. CANTRELL: If it's available on the Internet --

2 THE COURT: But I -- I -- I --

3 MR. CANTRELL: -- it's not confidential.

4 THE COURT: Now I'm going to -- I'm going to let you  
5 have some access. There's a wireless system here in the  
6 courtroom and if you've got your computer --

7 MR. CANTRELL: Unfortunately, I don't have one with  
8 me. I don't know if you --

9 THE COURT: -- you can go look on the Internet. I'm  
10 going -- we're going to take a recess and I'm going to give you  
11 some time to do that. If you need to, I'll make a, an Internet  
12 connection available to you and a computer and you can go look.

13 But I'm telling you, I, I'm real concerned when  
14 officers of this Court get up and start making allegations of  
15 perjury and, you know, maybe that's -- maybe you can show that,  
16 but I don't know if you want to go there.

17 MR. CANTRELL: Well, Your Honor, I don't, I don't,  
18 obviously, have the information in front of me. I believe that  
19 those documents are public records. Let me put it that way --

20 THE COURT: Oh, okay.

21 MR. CANTRELL: -- and if that's true, then it  
22 contra -- it does make her testimony perjury because she  
23 testified they were confidential. You don't put trade secrets  
24 on the Internet and if they're on the Internet, they're public  
25 knowledge. They're not confidential and the whole case is

1 based on, for the protective order, is based on  
2 confidentiality.

3 THE COURT: Well, all right.

4 Since you -- since you have not been given this  
5 information in advance, I think it's fair for me to give you an  
6 opportunity to go see if this is public information. Even if  
7 it is public information, I don't think that makes her a liar.  
8 She may not understand something. She may not do a lot of  
9 things. She may have -- have -- have been led by her employer  
10 to think it's something else. But if -- and she said she  
11 didn't know if it's on the, on the public record or not.

12 So obviously, her testimony is fairly limited, but,  
13 but you have a good point. If, if they have filed this where  
14 everybody in the world can look at it, I'm not going to give  
15 them a protective order because I can go on the Internet and  
16 look at it.

17 MR. CANTRELL: You should do more than not give them a  
18 protective order. Their whole case for confidentiality is  
19 based on this --

20 THE COURT: Well, let's, let's wait and see --

21 MR. CANTRELL: -- if that's the case.

22 THE COURT: -- whether you can find it, first.

23 MR. CANTRELL: Exactly, Your Honor, but that's why I  
24 feel it's so important.

25 THE COURT: I, I understand. All right.

1           Now how much time do you think it's going to take for  
2 you to, to look for this information?

3           MR. CANTRELL: Your Honor, we've located the pooling  
4 and servicing agreement on the Internet, already. I believe --

5           MS. INGLES: I think we could do it in 10 or 15  
6 minutes.

7           MR. CANTRELL: Yes, Your Honor.

8           THE COURT: All right. I --

9           MS. INGLES: Downloading it and printing it might be  
10 another issue.

11          THE COURT: We've got high speed printers --

12          MS. INGLES: Great.

13          THE COURT: -- around here.

14          MS. INGLES: Okay.

15          THE COURT: So I'm going to take a break and I'm going  
16 to make sure that you've got some access. And I don't know  
17 where the best place to do that is.

18                 Do you have -- 'cause not everybody has Internet  
19 access.

20                 (Court confers with staff)

21          THE COURT: Let's -- let's see if our IT staff can get  
22 you a location that's accessible to you and that has a, an  
23 Internet connection that isn't filtered, or whatever else.  
24 Because not everybody in this building has Internet access. I,  
25 I have it in my Chambers and as an ultimate -- as -- in the

1 end, if that's what we need to do, I'll give you access to  
2 Chambers, but I, I'd prefer that the parties be in a more  
3 public area, rather than in Chambers.

4 So I'm going to take a recess until 10:45. That'll  
5 give you --

6 MR. CANTRELL: Your Honor, we need the document, too.

7 THE COURT: -- 30 minutes.

8 You need that document.

9 Can, can we have the cover of that document?

10 MS. HAIGLER: Yes.

11 MR. CANTRELL: Your Honor, I need the whole document.

12 I need to know if this document is --

13 THE COURT: Well --

14 MR. CANTRELL: -- on the public record.

15 THE COURT: -- if -- if you get the, the cover and can  
16 match that up, that at least lets you know whether you need to  
17 see the rest of it. I'm not going to give you the whole  
18 document.

19 MR. CANTRELL: If they haven't created this cover,  
20 Your Honor. I don't know if this cover's just been created --

21 THE COURT: Wait, wait a minute. What'd you say?

22 MR. CANTRELL: If the cover --

23 THE COURT: If they haven't what?

24 MR. CANTRELL: If the cover hasn't been, you know, it  
25 hasn't been attached to the top of whatever this document is.

1 I don't know if this cover -- I mean, she said 180 pages.

2 MS. INGLES: Well, I think -- I think that's going --  
3 I think --

4 MR. CANTRELL: You think that'll be sufficient?

5 MS. INGLES: We can use this to at least get a start  
6 and then go from there.

7 THE COURT: Okay.

8 MS. INGLES: I think that's fair. Just --

9 THE COURT: Because I haven't decided whether you're  
10 going to get to see the whole document.

11 So I'm not going to hand it to you and say "Here it  
12 is" before I decide whether you're going to get to see it, or  
13 not.

14 MR. CANTRELL: Even though it contains the contract.

15 THE COURT: Because I haven't ruled on that, yet.

16 MS. INGLES: Right.

17 MR. CANTRELL: Okay. Okay, Your Honor.

18 THE COURT: We, we hadn't gotten that far, yet. I'm  
19 trying to give you some time to go see if this information's  
20 out on the Internet and if it is --

21 MS. HAIGLER: And if it is, it makes my job easy.

22 THE COURT: It sure does. And mine, too.

23 All right. So we're going to stand in recess for  
24 about 30 minutes. If you need a little bit more time, if you  
25 would let the Marshal know and he'll -- he'll -- if you get

1 finished early, he can come get me early. If you need a little  
2 bit more time, he can come and let me know that you're going to  
3 take a little bit more time.

4 'Cause, again, you've not seen this. You should not  
5 be unfairly surprised and you ought to have an opportunity to  
6 react to the information and that's why I want you to have the  
7 time now to go out and see if you can find this, okay?

8 All right. Thank you.

9 MS. INGLES: Thank you, Your Honor.

10 MR. CANTRELL: Thank you, Your Honor.

11 THE COURT: We're -- we're in recess for about 30  
12 minutes, or so.

13 THE COURTROOM DEPUTY: Yes, sir.

14 All rise, please.

15 THE COURT: Thank you.

16 (Recess from 10:18 a.m., until 10:51 a.m.)

17 THE COURTROOM DEPUTY: Court is again in session.

18 THE COURT: You may be seated.

19 Well, I trust that the time was helpful.

20 MS. INGLES: Yes, sir.

21 MR. CANTRELL: It was, Your Honor.

22 We found that confidential document on the public  
23 Internet --

24 THE COURT: All right.

25 MR. CANTRELL: -- lo and behold. We have printed out

1 the whole 60 something pages and it's here.

2 So we now have access to all their trade secrets and  
3 if anybody's hurt by disclosure, it's their fault 'cause  
4 they're the ones that put it there.

5 MS. HAIGLER: May I see that document?

6 MR. CANTRELL: Certainly.

7 (Mr. Cantrell shows document to Ms. Haigler)

8 THE COURT: I -- I -- I thought she testified it was  
9 188 pages.

10 MR. CANTRELL: I don't know. This is what we found.  
11 It matches -- we only had one cover sheet you gave us, Your  
12 Honor, and they match exactly. So --

13 THE COURT: All right. Well, let's -- let Ms. Haigler  
14 take a look at it and we'll see.

15 MR. CANTRELL: I wonder if we can publish their trade  
16 secrets and make any money off of it. I guess not.

17 (Pause)

18 MS. HAIGLER: Can I show this to the client?

19 THE COURT: Yes. Yes, ma'am.

20 MS. HAIGLER: Thank you.

21 You can come down off the stand.

22 (The witness, Ms. Hirzel, steps down from the witness  
23 stand)

24 (Pause)

25 MS. HAIGLER: Your Honor, as far as we can tell, it

1 appears to be the same agreement. There are -- there are  
2 variations just in italicize and underlining, but, without  
3 reading the whole agreement, I have to assume that it appears  
4 to be the same agreement.

5 THE COURT: Okay.

6 MR. CANTRELL: Will -- will you stipulate that the  
7 cover page is exactly the same as what you handed us earlier?

8 MS. HAIGLER: Let's see.

9 (Pause)

10 MS. HAIGLER: It is, with, with the underlining and  
11 that sort of thing. That's just not the same, but it is the  
12 same words.

13 MR. CANTRELL: Your Honor, we have a problem.

14 THE COURT: Well, I -- do -- do I correctly recall  
15 that I, that the testimony was that this document that you had  
16 is a hundred and eighty some pages?

17 MS. HAIGLER: That is her testimony, correct.

18 THE COURT: All right.

19 THE WITNESS: And if I may?

20 THE COURT: Yes, ma'am.

21 THE WITNESS: I -- I did notice in just looking at the  
22 two versions that the font size, etcetera, is different.

23 So that may account for at least some of the page  
24 differential.

25 THE COURT: Okay.

1 MS. HAIGLER: And the only other part, I don't know  
2 if --

3 MS. INGLES: This is large font.

4 MR. CANTRELL: Go ahead. Go ahead. We were just --  
5 I'm sorry.

6 MS. HAIGLER: -- was -- I don't know if in that  
7 hundred and eighty pages that she refers to would be Exhibit A.  
8 I don't know if that's part of it, but --

9 THE COURT: All right.

10 MS. HAIGLER: -- it's not included here today.

11 THE COURT: Okay.

12 So if that document's on the Internet I presume --

13 MS. HAIGLER: It does make it -- it makes it hard for  
14 my client. Of course, it makes it easy for me today, but it --  
15 the only thing I can tell you in talking with Ms. Hirzel about  
16 that is -- and I don't know how that document's on the  
17 Internet. There were some references to Fannie Mae, so maybe  
18 that's how it got on the Internet, or it's possible that this  
19 issue's been brought before a judge like yourself before and  
20 they lost that issue and it got in the hands of other parties  
21 and was posted on the Internet.

22 MR. CANTRELL: We can --

23 MS. HAIGLER: But I don't know how it was.

24 MR. CANTRELL: We can --

25 THE COURT: But it's --

1 MS. HAIGLER: But it -- it --

2 THE COURT: -- it's there.

3 MS. HAIGLER: It's there. And they have independent  
4 access to it.

5 MS. INGLES: It's -- Your Honor, if I can just for  
6 information, [www.secinfo.com](http://www.secinfo.com) is what the Google search took me  
7 to.

8 MR. CANTRELL: Would you like to pull it up on your  
9 computer?

10 THE COURT: [secinfo.com](http://secinfo.com)?

11 MS. INGLES: [info.com](http://info.com). I just went to --

12 THE COURT: Now that's not the Government's site.  
13 'Cause it -- 'cause the SEC Government site is [sec.gov](http://sec.gov), I  
14 think.

15 MS. INGLES: Uh-huh. (Indicating an affirmative  
16 response)

17 THE COURT: Unless -- of course, maybe they're --  
18 maybe they do something different, but, if you'll indulge me,  
19 I'm going to --

20 MR. CANTRELL: Let's -- let's give him --

21 THE COURT: -- I'm going to take a look.

22 MR. CANTRELL: Your Honor, may, may we give you the  
23 exact URL page?

24 THE COURT: Well --

25 MS. INGLES: If you Google --

1 MR. CANTRELL: I've got an extended URL, if you'd  
2 like.

3 MS. INGLES: -- Structured Asset Investment, is what I  
4 did.

5 THE COURT: Bring, bring it on up, Mr. Cantrell.

6 MR. CANTRELL: Okay, Your Honor. It'll just make it  
7 easier for you.

8 THE COURT: I'm trying --

9 MR. CANTRELL: This is the exact URL.

10 THE COURT: Anything that makes things easier for me  
11 is a good thing.

12 MR. CANTRELL: 'Cause these SEC filings are very  
13 complicated; so complicated some people don't know they exist.

14 (Pause while Court accesses the Internet)

15 MR. CANTRELL: If you need any help finding it, let us  
16 know. Ms. Ingles is the one that found it, Your Honor.

17 MS. INGLES: Here's -- you might want to give him  
18 this. This is what I Googled right here.

19 MR. CANTRELL: I think he's pulling it up by the URL,  
20 the exact URL.

21 MS. INGLES: Oh, okay.

22 MR. CANTRELL: Hopefully, he can go right to that page  
23 quicker.

24 THE COURT: All right. I -- I've gone on the Internet  
25 and it's brought up for me a Structured Asset Investment Loan

1 2005-8.8K for 9/30/05 and --

2 MS. INGLES: This one was Exhibit 99.7, Your Honor, if  
3 you'll look at the list of exhibits.

4 THE COURT: 99.7.

5 MS. INGLES: There are multiple securitization sub-  
6 servicing agreements there.

7 THE COURT: All right. This is an exhibit, Wells  
8 Fargo Bank, as servicer, and Lehman Brothers Holding, as  
9 seller, and Aurora Loan Service, Services, as master servicer  
10 dated September 1, 2005, a securitization sub-servicing  
11 agreement for mortgage pass-through Certificate Series 2005-8.

12 Is that the document that, that you asked for a  
13 protective order on?

14 MS. HAIGLER: That is correct.

15 THE COURT: I'm going to deny your motion for a  
16 protective order.

17 MS. HAIGLER: Okay. Thank you, Your Honor.

18 And I do want to remark for the Court because  
19 Mr. Cantrell seems to be, act as if Mrs. Hirzel's testimony was  
20 disingenuous and actually said she lied -- and I appreciate the  
21 Court's comments on that -- and I don't want to walk away from  
22 him with the belief that that ever occurred here. She's been  
23 instructed and told that this is a proprietary document and it  
24 does contain trade secrets information 'cause it contains  
25 pricing modules that Wells Fargo has with its clients.

1 THE COURT: Well --

2 MS. HAIGLER: But be it said, it makes my job --

3 THE COURT: Mr. Cantrell -- Mr. Cantrell doesn't have  
4 a poker face. He -- he had a pretty broad --

5 MR. CANTRELL: I do not, Your Honor.

6 THE COURT: -- a pretty broad smile on his face --

7 MR. CANTRELL: I'd be a bad judge.

8 THE COURT: -- -- when, when he won that.

9 So I don't -- I don't know that we need to, to go  
10 there.

11 Do you want to introduce that document --

12 MS. HAIGLER: Yes.

13 THE COURT: -- into evidence?

14 MS. HAIGLER: I --

15 THE COURT: Is there any objection --

16 MS. HAIGLER: None, Your Honor.

17 THE COURT: -- to -- is there --

18 MS. HAIGLER: 'Cause we -- with the understanding that  
19 -- in fact, why don't we introduce the document that came off  
20 the Internet.

21 THE COURT: Do you have any objection to that?

22 MR. CANTRELL: We'd like to keep our copy, if you  
23 don't mind. She has her copy. Let her introduce it.

24 MS. HAIGLER: That's fine. We can mark theirs and let  
25 them hold on to it.

1 MS. INGLES: That's fine.

2 THE COURT: Is that all right?

3 MS. INGLES: That's fine with me.

4 THE COURT: All right. We'll -- we'll --

5 MS. HAIGLER: Thank you.

6 THE COURT: That'll be Lender's 2 --

7 MS. HAIGLER: 2.

8 MS. INGLES: And, Your Honor, I'd ask that --

9 THE COURT: -- is that right?

10 THE COURTROOM DEPUTY: Movant's.

11 THE COURT: Movant's 2.

12 THE COURTROOM DEPUTY: But --

13 MS. INGLES: I'd ask that the copy that she have (sic)  
14 be entered as well for the comparison purposes. I can't -- we  
15 can't stipulate that that's the same document --

16 MR. CANTRELL: Is she willing to stipulate?

17 MS. INGLES: -- because we haven't looked at it.

18 MR. CANTRELL: Are they willing to stipulate it's the  
19 same?

20 MS. HAIGLER: I haven't read it and that's why I  
21 can't. I think it's one and the same and I'm willing to talk  
22 about that agreement because I think the verbiage and the  
23 language -- and I will, you know, stick to that agreement, I  
24 mean, to the language that's in that document.

25 THE COURT: Well, she's saying that's her document.

1 MS. INGLES: Well, then I think the one that she  
2 brought with her --

3 MS. HAIGLER: I'm going to use this one --

4 MS. INGLES: -- that's the one they're operating from.

5 MS. HAIGLER: -- to reference from. I'll use this one  
6 to reference from and I think the verbiage -- we'll -- we'll  
7 find out if the verbiage is the same. It should be.

8 (Court confers with staff)

9 MS. INGLES: The reason --

10 THE COURT: Yeah. We're going to need this back. We  
11 can make you a copy of this, but, if I mark this as an exhibit,  
12 it's going to have to stay with the Court's records.

13 Is that all right with you?

14 MS. INGLES: Yes.

15 MR. CANTRELL: We can make our own copy.

16 THE COURT: Okay. I -- I assume -- I assume you trust  
17 us to hold on to it.

18 MR. CANTRELL: Your Honor, we --

19 MS. INGLES: Yes, sir.

20 MR. CANTRELL: It's public record. You can do  
21 whatever -- you can sell it on the Internet, if you want, Your  
22 Honor.

23 THE COURT: I don't think I can get a lot for it.

24 MR. CANTRELL: I don't think so, either, Your Honor.

25 THE COURT: All right. It's Exhibit 2. All right.

1 MS. HAIGLER: Your Honor, I'm just protecting myself,  
2 is for the same reason I said. Because how, how it got on the  
3 Internet, I don't know --

4 THE COURT: I --

5 MS. HAIGLER: -- but we're going to use this document.

6 THE COURT: I understand.

7 MR. CANTRELL: Well, maybe we need to talk about that,  
8 Your Honor. 'Cause we found it on the Internet and they would  
9 need to tell you how it, how it got there.

10 MS. HAIGLER: I'm willing to stip, to say that we are  
11 going to use it as evidence today, that document. I don't mean  
12 to make it difficult. I really don't.

13 THE COURT: All right. So I've denied your motion --

14 MS. HAIGLER: Yes.

15 THE COURT: -- for a protective order. Exhibit 2's in  
16 the record.

17 It's your turn, Ms. Haigler.

18 MS. HAIGLER: Okay. All right.

19 MS. INGLES: So is she going to be referring to  
20 Exhibit 2 --

21 THE COURT: Yes.

22 MS. INGLES: -- or is she going to be -- she's  
23 referring to another copy?

24 THE COURT: Exhibit 2 is what --

25 MS. HAIGLER: Exhibit 2, and I will refer to

1 Exhibit 2. She's just got a copy of it in front of her, unless  
2 you want to, you know.

3 MS. INGLES: I just -- she's -- I'm just concerned  
4 because Ms. Haigler is saying, "Well, we'll find out as we go  
5 along if it's the same document."

6 So I'm thinking if we're entering Exhibit 2 --

7 THE COURT: Well, if you want -- if you want me to --  
8 if you want me to stop and make copies --

9 MS. HAIGLER: A copy.

10 THE COURT: -- of that for everybody, I will.

11 MS. INGLES: I think that -- I would feel more  
12 comfortable with that, Your Honor.

13 THE COURT: All right. Let's --

14 MS. INGLES: I hate to ask that, but --

15 THE COURT: Let's, let's go do that.

16 THE COURTROOM DEPUTY: Okay.

17 THE COURT: I -- I -- I don't want to -- I don't want  
18 to prejudice anybody and, on these matters. I know --

19 We'll -- we'll stand at ease. And I assume everyone  
20 had the opportunity to take a break while we were on recess, so  
21 we'll just wait.

22 COURT STAFF PERSON: How many copies you want?

23 THE COURT: 1, 2, 3, 4.

24 COURT STAFF PERSON: Four copies.

25 THE COURT: Yeah. You might have to bring up some

1 more paper.

2 I guess I could just use the one that's on the  
3 Internet.

4 (Pause)

5 THE COURT: All right, Ms. Haigler.

6 MS. HAIGLER: All right, Your Honor.

7 MS. INGLES: Your Honor, before she goes further with  
8 the direct testimony and this is entered into evidence, I'd  
9 like to question, just to bring -- you know, she's already  
10 testified about that agreement, or this agreement that we're  
11 marking as Exhibit 2, and I'd like to ask some questions  
12 relative to the testimony that she's already given, does that  
13 hold true for what we've entered as Exhibit 2?

14 THE COURT: You -- you want to ask her if her previous  
15 testimony applies to this document that is Exhibit 2?

16 MS. INGLES: Correct.

17 THE COURT: Ms. Haigler, do you mind if I ask her that  
18 question?

19 MS. HAIGLER: That's fine.

20 THE COURT: All right.

21 BY THE COURT:

22 Q Does your previous testimony apply to Exhibit 2?

23 A In the brief review of Exhibit 2, it appears to be one and  
24 the same secured sub-servicing agreement as to my previous  
25 testimony.

1 Q And based on the fact that it appears to be the same  
2 document, your testimony would be the same?

3 A Yes.

4 THE COURT: Is that satisfactory?

5 MS. INGLES: Thank you, Your Honor. Yes, sir.

6 MS. HAIGLER: Yes, Your Honor. Because I think we'd  
7 only gotten to the first page, basically.

8 THE COURT: If it takes this long with each page,  
9 we'll be here for a while.

10 MS. HAIGLER: I know, Your Honor. This is detailed,  
11 and I'm going to try to move it along, as best I can --

12 THE COURT: All right.

13 MS. HAIGLER: -- and keep everybody with me.

14 THE COURT: I -- I -- I'll give you a little bit of a  
15 hard time, but I -- it's -- that doesn't diminish the issue  
16 that's before the Court.

17 CONTINUATION OF DIRECT EXAMINATION

18 BY MS. HAIGLER:

19 Q And I want to refer back, Ms. Hirzel, first to Exhibit 1  
20 that we had. Because that's -- what I understood from your  
21 testimony, you were able to pull up this master screen print  
22 and from that there was some investor codes there that led you  
23 to this agreement, is that correct?

24 A Yes. And to further that, I'd also like to show on that  
25 screen print: If you look under the Investor, it shows Lehman

1 sub-sale 2005/2008, which would be pretty much the same  
2 information contained on that cover sheet, Lehman sub-agreement  
3 to the Securities 2005 through 2008.

4 Q Okay. So you went to -- with that code you went to this  
5 website and you were able to, the secured website within Wells,  
6 and you were able to pull up the agreement, which you have in  
7 front of you, No. 2, Exhibit No. 2.

8 And on the front page of that we have, just to bring us  
9 back up to speed, we said the parties to this sub-servicing  
10 agreement is Wells Fargo, as servicer; Lehman, as seller; and  
11 Aurora, as master servicer?

12 A I believe that the copies made for Movant's Exhibit 2 are  
13 missing part of the front page.

14 MR. CANTRELL: We don't --

15 MS. INGLES: Your Honor, I think you have -- we handed  
16 you the front page so that you could look it up on the  
17 Internet.

18 THE COURT: Is that this (indicating)?

19 MS. INGLES: Yes.

20 MR. CANTRELL: Right.

21 THE COURT: All right.

22 MS. INGLES: And that has all the rest of the names.

23 THE COURT: All right.

24 MR. CANTRELL: It's half of the front page at the  
25 bottom. The top half is the SEC information.

1 BY MS. HAIGLER:

2 Q If you'd briefly look at that, you would agree?

3 A I can, in two seconds of a glance.

4 Yes.

5 THE COURT: All right. Now we've affixed the exhibit  
6 tag to Page 2 of 66 and there's actually a Page 1 of 66 that,  
7 that I consider to be a part of this. So -- all right.

8 MS. INGLES: Thank you, Your Honor.

9 BY MS. HAIGLER:

10 Q All right. And then below the, where it lists the parties,  
11 master servicer -- and I believe you have that part in front of  
12 you --

13 A Yes, ma'am.

14 Q -- it describes it as Structured Asset Securities  
15 Corporation?

16 A Yes, ma'am.

17 Q What do you believe that to be?

18 A The holder of the note.

19 Q Okay. And again, it says, it describes this as a sub-  
20 servicing agreement. And what is --

21 A Yes, ma'am.

22 Q And the date?

23 A September 1, 2005.

24 Q All right. Now I'm going to have you flip over a couple of  
25 pages to we get to this, the securitization sub-servicing

1 agreement language. And I think it's 6 of 66.

2 A Yes, ma'am.

3 Q All right. You have that?

4 What I'd like to do is to --

5 MR. CANTRELL: Which one, again? Sorry, Janet. Which  
6 page?

7 MS. HAIGLER: Page 6.

8 MR. CANTRELL: 6.

9 MS. INGLES: Can you say what section you're looking  
10 at?

11 MS. HAIGLER: It's the first paragraph.

12 BY MS. HAIGLER:

13 Q And what I'd like to do is -- if I recall, your previous  
14 testimony was that you are the servicer for US Bank?

15 A Yes, ma'am.

16 Q Okay. And I'd like to walk through several of these  
17 clauses so that we can come up to speed as to how you are the  
18 servicer for US Bank.

19 A Okay.

20 Q All right?

21 And so in looking at that first paragraph, again, it  
22 restates the date of September 1st, is that correct?

23 A Yes, ma'am.

24 Q All right. Who is -- who, again, does it list that this  
25 agreement is between?

1 A Lehman Brothers Holdings, Inc., seller; Wells Fargo Bank,  
2 N.A., servicer; Aurora Loan Servicings, LLC, master servicer;  
3 and acknowledged by US Bank National Association, as Trustee  
4 under the trust agreement defined herein.

5 Q Okay. So in this first paragraph there's already a  
6 relationship being created by this document between Wells  
7 Fargo, as servicer, and US Bank, as Trustee?

8 A Yes, ma'am.

9 Q Okay. And then I want to move down through the rest of  
10 some of these paragraphs.

11 The first paragraph under the subtitle Witness, if you  
12 could look at that and can you tell me if Lehman's Brother  
13 (sic), who's described as Bank, had any type of relationship  
14 with Wells Fargo?

15 A There was a prior sub-servicing agreement dated  
16 December 1st of 2003 between Lehman Brothers Bank and Wells  
17 Fargo.

18 Q What did that mean? What does that mean?

19 A That Wells Fargo had already been servicing some loans on  
20 behalf of Lehman Brothers.

21 Q Okay. As of December 1st, there was some agreement between  
22 Lehman Brothers Bank and Wells Fargo for Wells Fargo to service  
23 some loans?

24 A Yes, ma'am.

25 Q Which is called the Bank here?

1 A Yes.

2 Q Okay. And does that paragraph refer to what loans are  
3 being serviced as part of that agreement?

4 A Identified in Exhibit A hereto.

5 Q Okay. And it describes them as mortgage loans?

6 A Yes, ma'am.

7 Q Okay. Go on to the next paragraph.

8 A (Witness complies)

9 Q And if you can read that, read it to yourself for a second  
10 and then I'll ask you.

11 A (Witness complies)

12 Q Is -- now we know that one of the parties to this agreement  
13 is the seller, being Lehman Brothers Holder -- Holdings?

14 Excuse me.

15 A Yes, ma'am.

16 Q And they're described as the seller?

17 A Yes, ma'am.

18 Q Okay. And reading that paragraph can you tell what is  
19 occurring, what is the next thing they're talking about?

20 A The seller is taking over all of the Bank's interests in  
21 regards to the mortgage loans and is continuing with the  
22 servicing already set up in the prior servicing agreement.

23 Q Okay. The prior servicing agreement with Wells Fargo?

24 A Yes, ma'am.

25 Q Okay. So based on this paragraph, as of September 1, 2005

1 there appears to be mortgage loans that the seller, being  
2 Lehman Holdings, is acquiring from the Bank, is that correct?

3 A Yes, ma'am.

4 Q And those are loans that at that point you are, Wells Fargo  
5 is already servicing for the Bank?

6 A Appears to be that way from that paragraph, yes, ma'am.

7 Q All right. Let's go to the next paragraph and if you'll  
8 read that for a second.

9 A (Witness complies)

10 Q This paragraph is also talking about a transaction that  
11 took on September the 1st. And can you tell me what has  
12 occurred, what is being referenced here?

13 A The seller is then conveying the mortgage loans to  
14 Structured Assets Security Corporation --

15 Q Okay.

16 A -- and maintaining -- I'm sorry -- which, in turn, conveys  
17 the loans to a trustee under a trust agreement dated the same  
18 date as this agreement, which would have Wells Fargo as a sub-  
19 servicer.

20 Q Okay. So in looking at that paragraph, it's stating that  
21 the sellers, which is a part of this agreement, the seller  
22 being Lehman Holdings, now has transferred the loans it's  
23 received from the Bank and now they've transferred them to  
24 Structured Asset Securities Corporation, is that correct?

25 A Yes, ma'am.

1 Q And in doing that, it retained the servicing rights. Is  
2 that what this document means? In that first sentence.

3 A Yes, ma'am.

4 Q Okay. And then we've got another transaction in this same  
5 paragraph from Structured Assets on to the Trustee?

6 A Yes, ma'am.

7 Q All right. And the Trustee has been identified in this  
8 agreement as US Bank National Association?

9 A Yes.

10 Q All right. And this transaction that occurred -- the  
11 transactions where we are at this point have occurred as of  
12 September 1, 2005?

13 A Yes, ma'am.

14 Q Can you get the original note and tell me the date of that  
15 note?

16 A June 21, 2005.

17 Q Okay. So that note is prior to September 1, 2005?

18 A Yes, ma'am.

19 Q Okay. And is it correct that Ms. Woodberry's loan is a  
20 part of Exhibit A that's referenced in this document?

21 MR. CANTRELL: Objection. She's previously testified  
22 that she didn't have Exhibit A and that she didn't know where  
23 it was. The best evidence of what's on Exhibit A is Exhibit A.  
24 If they don't have Exhibit A -- it needs to be produced. If it  
25 isn't produced, frankly, this whole document is irrelevant.

1 Because it doesn't relate to our loan.

2           So we object under the best evidence rule that what's  
3 on Exhibit A is best shown by the, by the submission of  
4 Exhibit A.

5           THE COURT: All right. I'm going to reserve ruling on  
6 your objection and permit the witness to answer the question.

7           THE WITNESS: I was actually going to say if you would  
8 reference back to the screen print that has already been  
9 provided to the Court it also shows the connection between this  
10 loan, this note, and this servicing agreement.

11 BY MS. HAIGLER:

12 Q And how's that?

13 A Because it indicates the investor on sub-sales. It shows  
14 this loan, specifically.

15 Q All right. So as custodian of these records pursuant to  
16 this agreement it's your testimony that Ms. Woodberry's loan is  
17 a part of the mortgage loans?

18 A Yes, ma'am.

19           MR. CANTRELL: Continue to object, Your Honor.

20           MS. INGLES: Your Honor, I object because her  
21 testimony about the print screen was that, that that was just  
22 her way of finding who might be connected, not that it equals  
23 an actual connection.

24           THE COURT: All right. And I'll -- and I'll rule on  
25 the objection.

1 MS. INGLES: Yes, sir.

2 THE COURT: Thank you.

3 BY MS. HAIGLER:

4 Q All right. Go to the last paragraph on this page.

5 A (Witness complies)

6 Q Can you tell me what in that, reading that first sentence,  
7 what the desire is of the seller and the Trustee?

8 A On --

9 Q On the last paragraph.

10 A "The seller and the servicer agree that the provisions of  
11 the flow servicing," is that the --

12 Q The -- I'm sorry. The last paragraph on Page -- well, I  
13 should refer to your document. It's the next-to-last page --  
14 excuse me -- the next-to-last paragraph on Page 6.

15 In reading that sentence, can you tell me what the,  
16 pursuant to this agreement, the desire was of the seller and  
17 the Trustee as to the servicer here?

18 A The seller asks that we service the loans and in agreeing  
19 to do so subject to their rights and obligations at any time.  
20 For us to service them.

21 Q Okay. So, in effect, they wanted you -- they wanted Wells  
22 Fargo to service the loans?

23 A Yes, ma'am.

24 Q Which they refer to as the mortgage loans?

25 A Yes, ma'am.

1 Q Has Wells Fargo been servicing the loan of Ms. Woodberry?

2 A Yes, ma'am.

3 Q Can you tell how long you've been servicing the loan of  
4 Ms. Woodberry?

5 A Our systems indicate that we acquired through the servicing  
6 transfer this loan on 9/1 of '05 with a principal balance of  
7 \$68,360.64 at the time.

8 Q Okay. And what do you have there that tells you that?

9 A It's our acquisition screen. It shows -- it is implemented  
10 at the time that we receive any loan and it shows date,  
11 principal amount, an old loan number if an old loan number  
12 existed, acquisition I.D. number so that we can refer back to  
13 any specific acquisition at the time, and the type of  
14 acquisition that it was.

15 Q Can I stop you there? And I want to show you what I have a  
16 copy of. (Counsel shows document to the witness.)

17 Is that the same thing that you're speaking of?

18 A Yes, ma'am.

19 Q Okay.

20 MS. INGLES: Can I look at the one that she's got and  
21 just compare?

22 MS. HAIGLER: Oh, yeah.

23 (Ms. Haigler shows documents to Ms. Ingles)

24 THE WITNESS: If she would like my version to be put  
25 into evidence, that's fine.

1 MS. HAIGLER: Oh. Because it is a little bit  
2 different.

3 MS. INGLES: Yeah. This is a little different. The  
4 time is different, not that -- it's two minutes. I don't care  
5 about that.

6 MS. HAIGLER: It's just the format.

7 MS. INGLES: Yeah.

8 MS. HAIGLER: Because one came through --

9 MS. INGLES: Right.

10 MS. HAIGLER: -- the Internet.

11 MS. INGLES: Printing out.

12 MS. HAIGLER: Uh-huh. (Indicating an affirmative  
13 response)

14 MS. INGLES: Okay.

15 MS. HAIGLER: But I -- she said she could put this one  
16 in.

17 MS. INGLES: Okay.

18 MS. HAIGLER: It'll be easier to read.

19 THE WITNESS: If you would prefer that, ma'am.

20 MS. HAIGLER: You want to keep that one?

21 MS. INGLES: Okay.

22 BY MS. HAIGLER:

23 Q All right. And you said this is off your acquisition  
24 screen --

25 A Yes, ma'am.

1 Q -- that you maintain?

2 A Yes, ma'am.

3 Q All right.

4 MS. HAIGLER: We would like to move to have this  
5 marked as Exhibit 3, I think it is.

6 THE COURT: Is there any objection?

7 MS. INGLES: Your Honor, I object if it's for the  
8 purpose of evidence that this loan was actually acquired.  
9 Because I think the evidence that's contained in the note and  
10 mortgage and the assignments thereof would actually be the  
11 evidence of that.

12 If she is, again, just offering this for the purpose  
13 of how she does her job, looking at the screens and figuring  
14 out who she needs to call and that sort of thing, I don't have  
15 any objection to it.

16 MS. HAIGLER: Your Honor, the --

17 MS. INGLES: But if it's to evidence some kind of  
18 acquisition or ownership, I don't think it's sufficient.

19 MS. HAIGLER: I asked her as servicer how long that  
20 they had, they serviced the loan.

21 THE COURT: All right.

22 MS. HAIGLER: And she was able --

23 THE COURT: And this is the evidence of how long they  
24 serviced the loan. And I think you asked her what the, what  
25 the amount was?

1 MS. HAIGLER: She offered that information --

2 THE COURT: Okay.

3 MS. HAIGLER: -- of -- and I would like to go back to  
4 that, but, but, yes, that's what I am offering, is to, as part  
5 of their screens and provides information to ASC about this  
6 loan.

7 THE COURT: As to how long they've been servicing the  
8 loan. It'll be admitted for that purpose. The exhibit is  
9 Lender's 3.

10 THE COURTROOM DEPUTY: Yes, sir.

11 THE COURT: Or Movant's 3.

12 THE COURTROOM DEPUTY: Movant's 3, yes, sir.

13 MS. INGLES: Do you have a copy?

14 MS. HAIGLER: Yes.

15 And, Your Honor, I did want to touch on what she said,  
16 is that this screen did provide her additional information.

17 BY MS. HAIGLER:

18 Q It -- it -- what I understood in asking her is that it told  
19 you how long you had, how long ASC had serviced this loan?

20 A When we -- what we consider an acquisition, which is either  
21 we originated the loan, we purchased the loan from somebody  
22 else, or it was service transferred into Wells Fargo, that's  
23 indicated under -- the acquisition type listed here is No. 3,  
24 which shows just below there that it's servicing transfer.

25 And then if you go slightly farther up from that, it shows

1 from acquisition date, which is 9/1 of '05, which would be the  
2 date that we would have started the acquisition or, in this  
3 case, servicing of this loan.

4 Q All right. And it also provided you the principal balance?

5 A Yes, ma'am.

6 Q Was that the principal balance of the note, or is it how  
7 much was owed on the -- what would that mean to you?

8 A It -- it would have been the outstanding principal balance  
9 at the time the acquisition transferred to us, what was  
10 provided to us by the lender, the owner. Whoever transferred  
11 it to us would have provided us with that information.

12 Q And what was the principal balance?

13 A \$68,360.64.

14 Q And going back to the original note that you have  
15 possession of, what is the principal balance, or -- excuse me.

16 What was the, the note amount?

17 A The original note amount was for \$60,400, even.

18 Q All right. Which is just a tad bit more than what's listed  
19 here?

20 A Yes, ma'am.

21 Q All right. And then there is an acquisition I.D. number.  
22 What does -- does that number tell you anything, just by  
23 looking at it right there?

24 A Just from use of knowledge, LBB is our abbreviation for  
25 Lehman Brothers --

1 Q Okay.

2 A -- Bank.

3 Q All right. I now want you to go back to the sub-servicing  
4 agreement.

5 A (Witness complies)

6 Q And I think what we, you have testified to is that Wells  
7 Fargo is servicing mortgage pools pursuant to this agreement?

8 A Yes.

9 Q Okay. And we have talked about who the parties are and  
10 you're doing that on behalf of the seller and the Trustee?

11 A Yes.

12 Q I'd like you to go to --

13 MS. HAIGLER: Just one minute, Your Honor.

14 (Pause)

15 BY MS. HAIGLER:

16 Q -- is Page 17 of 66. It's under Article 2.

17 A (Witness complies)

18 MS. HAIGLER: Do you have that?

19 MS. INGLES: Could you name that --

20 MS. HAIGLER: We're on Page 17. Page 17 of 66.

21 MS. INGLES: Okay.

22 BY MS. HAIGLER:

23 Q We've got Article 2, Seller's Engagement of Servicer to  
24 Perform Servicing Responsibilities.

25 And we've got Section 2.01, and I want to pull out some

1 language and discuss about that. And I'd like you to go to --  
2 you know, if you can just briefly read through some of this and  
3 then when you start getting at Paragraph 2, if you could read  
4 that, read that to yourself and then we'll talk about it. I  
5 should say Paragraph 2 and -- I'm saying "paragraph" --  
6 Sentence 2 and Sentence 3.

7 A (Witness complies)

8 Q All right. In looking at Sentence 2 and 3, as part of this  
9 contract is Wells Fargo as -- excuse me -- as the seller,  
10 Lehman's Holding, going to provide to Wells Fargo, as servicer,  
11 all of the servicing files associated with the mortgage loans?

12 A Yes, ma'am.

13 Q Okay. And who, on into Paragraph 3, who's going to  
14 maintain those servicing files?

15 A The servicer is to maintain those files on, in trust for  
16 the benefit of the Trustee.

17 Q The Trustee being US Bank?

18 A Yes, ma'am.

19 Q All right. All right.

20 Going -- in that same paragraph, I need you to go to the  
21 11th line down, starting with the word "custodial capacity."

22 MS. INGLES: What section number are you referring to?

23 MS. HAIGLER: We're still in Section 2.01.

24 MS. INGLES: You're still in first --

25 MS. HAIGLER: I'm sorry. Section 2.01 on the 11th

1 line down --

2 MS. INGLES: Thank you.

3 MS. HAIGLER: -- starting with "custodial" --

4 MS. INGLES: Thank you.

5 MS. HAIGLER: -- "capacity." And then the sentence  
6 begins, "The ownership."

7 BY MS. HAIGLER:

8 Q Have you found it --

9 MS. INGLES: Yes.

10 BY MS. HAIGLER:

11 Q -- yourself, Ms. Hirzel?

12 A Yes.

13 Q Okay. In reading that sentence, can you tell me who -- who  
14 holds the -- does -- is the servicer the owner of the note?

15 A No. It says -- and actually, one sentence before that  
16 helps relate it -- it says that, "The servicer will hold the  
17 mortgage documents," and then continues to say:

18 "The ownership of each note, mortgage, and the  
19 containance of this servicing file shall be vested in  
20 the Trustee and the ownership of all records and  
21 documents with respect to the related mortgage loan  
22 prepared by or which come through possession of this  
23 servicer shall immediately vest in the Trustee and  
24 shall be retained and maintained in the Trust by the  
25 servicer and will of the Trustee in such custodial

1 capacity only."

2 Q All right. So you hold these documents for this mortgage  
3 loan, Ms. Woodberry's loan, as a custodian for the Trustee?

4 A Yes.

5 Q I need you to go to Article 3, which is on Page 18 of 66,  
6 Section 3.01.

7 A (Witness complies)

8 Q And I need you to read through that very long first  
9 sentence and tell me if as servicer do you have the power to  
10 utilize third parties to assist in the connection with that  
11 loan?

12 A (Witness reading document)

13 Yes.

14 Q For example, this loan went into bankruptcy. Would you  
15 have the power under this agreement to assist the Trustee in  
16 protecting its rights in the bankruptcy setting?

17 A Yes.

18 Q Pursuant to this agreement?

19 A Pursuant to this agreement.

20 Q As a servicer?

21 A Yes.

22 MR. CANTRELL: Objection. Where does it say that?

23 THE WITNESS: The --

24 THE COURT: What's the objection? Or do you want to  
25 just cross examine her on what it says?

1 MR. CANTRELL: That's fine, Your Honor.

2 THE COURT: All right.

3 MS. HAIGLER: Thank you, Your Honor.

4 BY MS. HAIGLER:

5 Q Okay. Now if you'll go to Page 19 of 66.

6 A (Witness complies)

7 Q And the third paragraph down, starting, "The servicer shall  
8 not without."

9 A Uh-huh. (Indicating an affirmative response)

10 Q In reading this, is it correct that the servicer will not  
11 bring any action in any court proceeding in its name solely?  
12 How is it to bring actions, I guess is a better word to ask.

13 MS. INGLES: Your Honor, if she's going to -- I object  
14 to her recharacterizing the various paragraphs of this. If --  
15 I mean, if we're going to refer to the agreement as to what  
16 their rights and duties are I think the agreement speaks for  
17 itself.

18 THE COURT: The agreement does speak for itself and  
19 overrides any characterization of the agreement, although it's  
20 helpful with a 66-page document to allow some testimony about  
21 where in the document those provisions are. And that's -- you  
22 know, since we don't have a jury, that's how I see the, that  
23 being characterized, is just, is just walking me through the  
24 document and showing me where various provisions are.

25 What -- what the witness may think the provision means

1 isn't particularly relevant for the purposes of the hearing  
2 today.

3 MS. INGLES: Yes, sir. So if it says here that they  
4 have to have written consent, I don't think it says that the,  
5 that ASC has the power to bring an action in their name.

6 THE COURT: Right.

7 MS. INGLES: Okay.

8 BY MS. HAIGLER:

9 Q This action that you brought before the bankruptcy court,  
10 was it initiated in Wells Fargo's name only?

11 A Not to my knowledge.

12 Q Do you recall, was it listed as servicer for US Bank?

13 A I believe that's how it -- it was actually listed as ASC,  
14 as servicer for.

15 Q ASC, that's correct.

16 Go to 50 of 66.

17 A (Witness complies)

18 Q And Section 9.3, Protection of Confidential Information.

19 What is the servicer required to do here under that  
20 subsection?

21 A To try to maintain the confidentiality of the mortgage  
22 loans in question under the servicing agreement.

23 Q And it specifically says, "Pertaining to mortgage loans or  
24 any borrower thereunder"?

25 A Yes, ma'am.

1 Q Okay. Exhibit A, is Ms. Woodberry's the only loan listed  
2 on Exhibit A?

3 MS. INGLES: Your Honor, I object because she doesn't  
4 have Exhibit A. She can't testify to that.

5 THE COURT: She may know of her own knowledge if there  
6 are other loans --

7 MS. INGLES: She's already said she has no personal  
8 knowledge of what Attachment A has on it. She's looking at a  
9 computer screen.

10 BY THE COURT:

11 Q Do you have any knowledge of what's on Exhibit A?

12 A No.

13 THE COURT: Sustained.

14 MS. HAIGLER: All right.

15 BY MS. HAIGLER:

16 Q Again, on Page 58 of 66, this references a custodial  
17 account that will be set up.

18 Are you familiar with how that account is used?

19 A I'm not sure I understand your question.

20 Q Well, I guess there -- what it appears -- was there an  
21 account set up specific to this agreement?

22 A Per this agreement, there was one to be set up, yes.

23 Q Okay.

24 MR. CANTRELL: Objection, Your Honor. This -- this  
25 agreement's blank. It's not signed by anybody. She's

1 testifying off this agreement. Where did she get that from?

2 THE COURT: All right. You're going to --

3 MS. HAIGLER: They're all blank, Your Honor.

4 THE COURT: -- have to lay the foundation.

5 MS. HAIGLER: They're all -- okay.

6 BY MS. HAIGLER:

7 Q Earlier, you testified that you went to your screen print  
8 and you were able to pull up this document, is that correct?

9 A I went to the screen print and found a reference code that  
10 then directed me to this document.

11 Q Okay. And when you pulled that document up do you know if  
12 it was signed or not?

13 A It was maintained, just this. You received it with blanks.

14 Q Okay. And the document that you have in front of you off  
15 of the Internet, is it also in blank?

16 A Yes.

17 Q Okay. Going back to Exhibit B, the title on the account,  
18 whose name is going to be on that account?

19 A Exhibit B was the investor screen?

20 Q No. Exhibit B is Page 58 of 66.

21 A Oh, I'm sorry.

22 Title of account, Wells Fargo Bank, in trust for US Bank  
23 National Association, as Trustee for Structured Asset  
24 Investment Loan Trust 2005 through 2008.

25 Q All right. This is a sub-servicing agreement, correct?

1 A Yes, ma'am.

2 Q Okay. And just to paraphrase in a way what we talked  
3 about, am I correct in saying that this is an agreement with  
4 Wells Fargo, US Bank, Aurora, as master servicer, and Lehman  
5 Brothers, as the seller, where -- and there's -- and there's,  
6 you know, several pages we haven't discussed here -- whereby  
7 Wells Fargo will service the mortgage loans?

8 A Yes.

9 Q All right. And you have custodial, or you have brought  
10 with you one of the loan documents, being the note?

11 A Yes.

12 Q And this document refers that you are going to receive the  
13 servicer file, correct?

14 A Yes.

15 Q All right. And you as custodian, you have maintained the  
16 information regarding this loan on your computer websites?

17 A Yes.

18 Q In the ordinary course of business?

19 A Yes.

20 Q And did you find this document on your computer website?

21 A Yes.

22 Q And is there anything that you have told me regarding this  
23 document that doesn't match up with your screen prints that you  
24 have which have been entered into evidence?

25 A Not within the review of this action.

1 Q Okay. Despite this document not being signed, there's --  
2 you have -- Wells Fargo/ASC has serviced this loan since 2005?

3 A Yes.

4 Q Since September 1, 2005. Okay.

5 MS. HAIGLER: I think that's all I have right now,  
6 Your Honor.

7 THE COURT: Counsel, I think my order on, that led to  
8 us being here today focused primarily on the ownership of the  
9 loan documents.

10 One of the objections that was filed by the debtor  
11 also related to the payments.

12 Is that issue still in play, or by the absence of your  
13 certification of facts do you concede that there's a, a default  
14 in payments?

15 MS. INGLES: I don't think we can concede that there's  
16 a default in payments not having an appropriate payment history  
17 from an appropriate party, which we're still trying to figure  
18 out who that is.

19 THE COURT: All right.

20 MS. INGLES: I don't think there's been any -- any --

21 MS. HAIGLER: And, Your Honor, I would disagree with  
22 that. I would -- I would --

23 THE COURT: You think that --

24 MS. HAIGLER: I -- I don't have the transcript, but I  
25 recall myself that we dealt with the issue of payment. I made

1 an opening statement to the Court and told them that there had  
2 been an issue of payment, payment history, that it had been  
3 resolved, that the debtor agreed they were two months down, and  
4 we didn't have to go into that issue. And I thought that you  
5 asked Ms. Ingles that very question and she agreed and on --  
6 and then going to the fact that the payment history shows on my  
7 certification of facts that the debtor was down September 2005  
8 (sic) forward. And there's no evidence before the Court that  
9 says different.

10 MS. INGLES: I think --

11 THE COURT: Now that -- that's sort of my  
12 recollection, Ms. Ingles. I, although I didn't go back and  
13 listen to, to the transcript -- and I thought that's why I  
14 focused my attention on the ownership -- but I wanted to make  
15 sure. Because in preparation for today I did go back and look  
16 at the motion, your objection, the two motions to dismiss, and  
17 I noted, noted that that was out there.

18 But you did not file a certification of facts form  
19 that has any different information from that that's on the  
20 certification of fact form that's filed by the mortgagor.

21 MS. INGLES: Well, the certification of facts --

22 THE COURT: The mortgagee. I'm sorry.

23 MS. INGLES: -- that was filed did not detail the  
24 payment history.

25 THE COURT: Right.

1 MS. INGLES: And so it was, you know --

2 THE COURT: It just --

3 MS. INGLES: -- difficult to --

4 THE COURT: It just said they --

5 MS. INGLES: -- respond to.

6 THE COURT: It just said they were in default from  
7 September forward.

8 MS. INGLES: Uh-huh. (Indicating an affirmative  
9 response) And I think both of us --

10 THE COURT: And your response was that the payments  
11 were, were drafted from your client's account --

12 MS. INGLES: Uh-huh. (Indicating an affirmative  
13 response)

14 THE COURT: -- and that that September payment  
15 bounced.

16 MS. INGLES: No. It was --

17 THE COURT: And --

18 MS. INGLES: It was actually drafted and did not  
19 bounce.

20 THE COURT: All right. It was NSF and then you --

21 MS. INGLES: No.

22 THE COURT: They tried to -- well, let's go back and  
23 take a look --

24 MS. INGLES: It was October --

25 THE COURT: -- at that because --

1 MS. INGLES: -- I think.

2 THE COURT: Okay. It's the October payment. I'm  
3 sorry.

4 The -- the October payment was attempted on  
5 October 2nd, was returned NSF, then your client offered cash,  
6 but ASC refused payment and told her to talk to her lawyer.

7 So I -- I mean, that's -- at this point the October  
8 and subsequent payments haven't been made. There may be some  
9 reason they weren't made, but, but that's the fact.

10 MS. INGLES: Well, I think that -- first of all, they  
11 refused payment. This motion was filed and then at that point  
12 I think we've got to determine what is actually due and who  
13 we're supposed to pay it to.

14 THE COURT: Okay.

15 MS. INGLES: And I don't think that's been proven. I  
16 don't think we can, you know, back door into the issue of  
17 standing by, you know, addressing --

18 THE COURT: Well --

19 MS. INGLES: -- the issue --

20 THE COURT: -- I -- I don't -- I'm not trying to get  
21 the standing through that issue.

22 MS. INGLES: Right.

23 THE COURT: I'm trying to see if that's a real issue.

24 MS. INGLES: Uh-huh. (Indicating an affirmative  
25 response)

1 THE COURT: And --

2 MS. HAIGLER: And I don't see it as a real issue. I  
3 find it remarkable today that we're discussing that. Because I  
4 think it was clearly decided not by a certification/Local Rule  
5 issue, but by testimony. And the Court wouldn't have written  
6 this order based on his knowledge of what was in the courtroom  
7 saying that the debtor does not dispute the fact that she  
8 missed at least some payments. I mean --

9 THE COURT: Yeah.

10 And your response indicates that there's, there are  
11 payments that are missed. I mean, she, she bounced a payment.

12 MS. INGLES: In October.

13 THE COURT: Right. The October payment was returned  
14 for non-sufficient funds.

15 MS. INGLES: But that -- yes.

16 THE COURT: Okay. All right. So --

17 MS. INGLES: But there was not testimony to that  
18 effect, Your Honor.

19 So, I mean, I think this was a discussion before the  
20 Court in regards to the motion and the response that I was  
21 making to the 362 and in fact, the Court asked me did I want to  
22 put up any testimony on that issue and I said no, because I  
23 think we've got to resolve this other issue, first.

24 THE COURT: Uh-huh. (Indicating an affirmative  
25 response)

1 MS. HAIGLER: You know, I don't remember that. I -- I  
2 mean, of course, we -- we deal with --

3 MS. INGLES: We can -- I mean --

4 MS. HAIGLER: We -- we deal with each other, you know,  
5 prior to coming to the hearing.

6 THE COURT: Sure.

7 MS. HAIGLER: We had -- we continued this hearing, as  
8 the Court remembered.

9 THE COURT: I remember that.

10 MS. HAIGLER: And the reason we continued the hearing  
11 was to resolve a payment history issue. The issue was the  
12 debtor believes that she is making an October payment, which  
13 goes NSF, but, in effect, that would have been a September  
14 payment, if it had been good. It's because in July there was  
15 no payment.

16 And that's what we had to resolve, that month, that we  
17 were waiting for the next hearing. That's why we came in here  
18 that day and said, "We don't have a payment history issue  
19 because we all agree she was two months down." Because she had  
20 missed a prior payment and she NSF'd another payment. That  
21 makes her two months down.

22 That's where we were and that's why I think the Court  
23 talks about today we're going to talk about standing and  
24 ownership --

25 THE COURT: Okay.

1 MS. HAIGLER: -- not about payment history.

2 THE COURT: All right.

3 MS. INGLES: Your Honor, let -- if I -- yeah. We're  
4 talking about the problems with -- and I -- I -- Ms. Haigler  
5 has been in, good to work with, so I'm, I'm not saying that  
6 that's not the case.

7 But I think one of the problems that we have on these  
8 kind of cases is that we take the word of the attorney as to  
9 what payment history they have 'cause it's not on the  
10 certification of facts and they verbally tell us, well, this or  
11 that payment was missed, but I think my client is entitled to  
12 what actual records they do have so that she can compare that  
13 with her records.

14 THE COURT: Well, I -- I mean, your -- your --

15 MS. INGLES: And, you know, we've got to level the  
16 playing field, I think, to a degree between my client and all  
17 these servicers and depositors and trustees. I mean, we don't  
18 even have a copy of the trust agreement on Exhibit D, which  
19 this --

20 THE COURT: Right.

21 MS. INGLES: -- refers to, you know, quite a bit. And  
22 I think, you know, she's entitled to something more than on a  
23 short notice having to respond to a certification of facts that  
24 does not contain a payment history saying which payments they  
25 acknowledge receiving and which ones they don't.

1 THE COURT: Well, I mean, the procedure is set up so  
2 that the movant has to provide some information in their  
3 motion, and they've done that. They said she's two months  
4 behind and your client concedes an NSF and doesn't file a  
5 contesting certification of facts.

6 And the reason all this process moved so fast isn't,  
7 isn't because I want it to. It's because Congress said it's  
8 got to move that fast. They gave me 30 days to hold a hearing  
9 and 60 days to make a decision.

10 So, I mean, that's just where we are.

11 MS. INGLES: Well, I -- I --

12 THE COURT: None, none of us, you know, it's -- none  
13 of us would design the system this way if it were up to us to  
14 do so, but we don't get to write the laws. We just apply them.

15 So I understand where we are and --

16 MS. INGLES: Judge, I want to make sure, you know,  
17 you're saying my client concedes, you know, issues about  
18 payment and, and I don't agree with that --

19 THE COURT: Well --

20 MS. INGLES: -- you know.

21 THE COURT: -- I mean, she said that, "Debtor would  
22 show that the payment noted as delinquent on the motion was  
23 automatically drafted from her account on September 11, 2007."  
24 That -- that's the September payment that's at issue.

25 "Debtor would show that when she found out that the

1           automatic draft of the October payment attempted on  
2           October 2nd was returned NSF ...."

3           So, I mean, she's saying that a payment from her  
4           account was returned because there weren't sufficient funds in  
5           the account to make the payment.

6           MS. INGLES: Yeah. That was post, after the filing of  
7           the bankruptcy petition.

8           THE COURT: Right. But it was before the motion for  
9           relief was filed.

10          MS. INGLES: No. The --

11          MS. HAIGLER: Yes.

12          THE COURT: Because the motion for relief --

13          MS. HAIGLER: Yes.

14          THE COURT: -- was filed --

15          MS. HAIGLER: On October 25th.

16          MR. CANTRELL: Yes.

17          THE COURT: Right. After that payment -- October 25th  
18          is the date of it. I don't know when it was filed.

19          So, okay. And I'll go back and listen to the prior  
20          transcript with respect to this July payment, too.

21          Ms. Haigler, anything else?

22          MS. HAIGLER: Not at this time, Your Honor.

23          THE COURT: All right.

24          It's noon. I assume there's cross examination and any  
25          idea how long that will take?

1 MR. CANTRELL: I believe --

2 MS. INGLES: I would say maybe an hour.

3 THE COURT: All right.

4 We're going to -- we're going to break for lunch and  
5 we will come back at 1:30, all right?

6 The -- if the parties would like to leave some of  
7 their documents here -- I know, especially counsel that's doing  
8 cross examination, may want to take some things -- but whatever  
9 you would like to leave here, we're going to lock the courtroom  
10 and the courtroom will be secure.

11 So you may feel free to leave things here, if you  
12 choose to do so.

13 All right. We'll -- we'll -- we'll recess until 1:30.

14 THE COURTROOM DEPUTY: All rise, please.

15 THE COURT: Thank you.

16 (Lunch recess from 12:03 p.m., until 1:32 p.m.)

17 THE COURTROOM DEPUTY: All rise, please.

18 Court is again in session, the Honorable David R.  
19 Duncan.

20 THE COURT: Please be seated.

21 During the lunch recess, we listened to the, the  
22 electronic recording of the previous hearing and it, it appears  
23 that the debtor indicated through counsel that the July payment  
24 had been -- had -- had not been tendered, although subsequent  
25 payments had been applied to that. But beginning with the July

1 payment, there was one payment that the debtor was behind on  
2 with the mortgage. And there was a concession on the debtor's  
3 part that the November payment had been returned -- or was it  
4 the October payment -- for non-sufficient funds.

5 So at the time of the motion for relief from stay at a  
6 prior hearing the debtor had conceded being two payments  
7 behind, although the debtor was still unsure as to exactly how  
8 that had occurred and thought that the July payment should have  
9 been drafted, but had no proof that it had been drafted and had  
10 no evidence to offer that was contrary to the certificate, to  
11 the certification of facts that was filed in, in the case.

12 So I wanted to make the parties aware that we had  
13 listened to the prior hearing.

14 I believe that we're ready for cross examination now,  
15 Ms. Ingles. The debtor (sic) is, remains under oath.

16 Ms. Ingles, if you want to proceed.

17 MS. INGLES: You -- you said "the debtor." You mean  
18 the witness?

19 THE COURT: I'm sorry. The witness.

20 CROSS EXAMINATION

21 BY MS. INGLES:

22 Q Ms. Hirzel, you said you're a default litigation  
23 specialist?

24 A Yes, ma'am.

25 Q And what does that entail?

1 A When a loan becomes contested in the courts due to  
2 bankruptcy or litigation, the loan's in default and -- let's  
3 see -- a response under the foreclosure or an adversary is  
4 filed under bankruptcy, it becomes litigated in the eyes of  
5 Wells Fargo and, therefore, gets special handling by my  
6 department and which we completely review the loan, analyze the  
7 issues, what the opposing side is claiming, what we see on the  
8 records, and process the loan with our, assistance of our  
9 attorneys to whatever resolution may come thereof.

10 Q How long have you been doing that?

11 A Just shy of two years.

12 Q Okay. And prior to that what did you do?

13 A Prior to that, I had been working as a paralegal for  
14 multiple law firms in the area, most of the law firms dealing  
15 with mortgage banking.

16 Q When you say "the area," you mean in Maryland?

17 A Yes, ma'am.

18 Q Okay. So you handle, then, loans that are in litigation  
19 all over the country?

20 A Yes, ma'am.

21 Q Okay. And as part of those duties do you travel around the  
22 country to testify --

23 A Yes, I --

24 Q -- like this?

25 A Yes, I do.

1 Q Okay. How often do you do that?

2 A Travel?

3 Q Uh-huh. (Indicating an affirmative response) Or how often  
4 do you testify?

5 A In -- in regards to testifying specifically on the stand,  
6 about once a month. And that's an average. Sometimes it's a  
7 couple of times a month; sometimes it'll go about one.

8 My duties also entail depositions, mediations, and any  
9 other requested appearance by Wells Fargo.

10 Q Okay. And so you do depositions about these things?

11 A Yes, ma'am.

12 Q How often do you do that?

13 A I'd guess, on average, about three times a year.

14 Q Okay. So in the last, let's say, six months, how many  
15 times have you testified about the matters such as what you're  
16 testifying about today?

17 A Well, testifying in regards to loans, I'd say about four  
18 times in the past six months I've been on the stand --

19 Q Okay.

20 A -- and at least one deposition in the past six months and  
21 about two mediations.

22 Q Okay. So you are the agent of Wells Fargo?

23 A Yes, ma'am.

24 Q And through -- you said that, in your testimony, that your  
25 superiors, I guess, had instructed that there were certain

1 things you couldn't testify about, or certain things you  
2 couldn't put in the record, such as the, the sub-servicing  
3 agreement?

4 A Certain things that they felt were confidential.

5 Q Okay. Aside from that agreement, was there anything else  
6 that they said you should not testify about or produce that  
7 they felt were confidential?

8 A In regards to this specific loan, or in regards to any  
9 loan, ever?

10 Q Well, in regards to your testimony on matters such as  
11 these.

12 A Well, there are other servicing agreements, other  
13 agreements out there between other parties that, given the  
14 circumstances in which the testimony has, would be deemed as  
15 confidential, as well.

16 Q Okay. So do you normally raise this confidentiality thing  
17 when you testify?

18 A When a document that we plan to produce or use in testimony  
19 has any question of possibly being confidential or have any  
20 trade practices or anything that we may feel is confidential --

21 Q Uh-huh. (Indicating an affirmative response)

22 A -- I verify with my supervisors what they feel is my stance  
23 on that.

24 Q Uh-huh. (Indicating an affirmative response)

25 A And that is what I go by.

1 Q Okay. Did you do that specifically about this particular  
2 agreement, or is that just sort of a standing instruction?

3 A In regards to, to servicing agreements, that's a standing  
4 instruction.

5 Q Okay. Are there any other standing instructions besides  
6 that one?

7 A I'm sorry. Your question's a little vague --

8 Q Well --

9 A -- to me.

10 Q Well --

11 A I have lots of instructions --

12 Q Uh-huh. (Indicating an affirmative response) Well,  
13 let's -- let me ask you this.

14 A -- from the time I started. So --

15 Q Okay. Who -- who is your supervisor that gives you the  
16 instructions about --

17 A My direct supervisor is Mark Klein.

18 Q Who?

19 A Mark Klein.

20 Q Okay. And that's who gives you these sort of instructions  
21 about confidentiality and so forth?

22 A He is one of the people that it comes down through, yes.

23 Q All right. Who else might that be besides Mark Klein?

24 A There are numerous supervisors, VP's, presidents, etcetera,  
25 that issue memos and other instructions to people that could

1 fall under what you are asking.

2 Q Okay.

3 A I'm sorry. It's such a broad term.

4 Q Uh-huh. (Indicating an affirmative response)

5 A Wells Fargo has many, many employees and I -- to narrow  
6 that list would be difficult.

7 Q In your duties as default litigation specialist -- I  
8 presume you're not the only one --

9 A No.

10 Q -- that has that job?

11 A No, I am not.

12 Q So you have certain loans or agreements that you work  
13 under, certain pools of loans?

14 A No, not specifically. As the loans become in litigation,  
15 they are assigned out to the reps within my group. How they  
16 are assigned is simply pretty much first come first served.  
17 The rep that has the least amount of caseload at that time gets  
18 that loan.

19 Q Okay.

20 A In the case of being a, a witness or something like this,  
21 it is who is available at that time. In this case, I was the  
22 person available.

23 Q Now you talked about -- well, let me -- is Mark Klein,  
24 though, being your supervisor, that's the person you normally  
25 talk to for any kind of instructions?

1 A For the most part, yes.

2 Q Okay. And he would be the one that you talked to about  
3 this?

4 A Yes.

5 Q Now you mentioned that you -- you've been talking about the  
6 screens that you have on your computer and the information that  
7 they have?

8 A Yes.

9 Q And you've -- we've entered, I think, two different  
10 exhibits of screens on your computer. One was an acquisition  
11 screen?

12 A Yes.

13 Q And then I think Exhibit 1 was another kind of screen.  
14 What was that called?

15 A Investor.

16 Q Investor screen.

17 How many screens would be available to you for information  
18 on this loan, approximately? I know it's more than two.

19 A Yes. And to be honest, I don't know that I could give you  
20 a number. Because I'm not sure that I know that every, of  
21 every screen that this system carries.

22 Q Okay. The screens that you have access to that you  
23 typically use in a case like this, how many of those are there?

24 I mean, let's say when you get the loan, or the -- the --  
25 when you get assigned this particular case --

1 A Uh-huh. (Indicating an affirmative response)

2 Q -- and you go to your screens, how many screens do you look  
3 through?

4 A Well, because every screen has sub-screens that I would  
5 also look at, it could be hundreds.

6 Q Okay. How long, approximately, does that take you to  
7 assess exactly what you're dealing with and who's who?

8 A Well, usually I take some information from my attorneys in  
9 regards to what is the issue at stake --

10 Q Uh-huh. (Indicating an affirmative response)

11 A -- or in the complaint. And in regards to a litigation  
12 matter, I would take the complaint that was filed by the  
13 borrower or the adversary that was filed by whoever and read  
14 through it to determine what issues they were concerned about.

15 And then I would go through the loan based on those issues  
16 and try to determine if there was any validity or any  
17 contradictory information that I could pull up.

18 Q Who's in charge of putting the information in, you know,  
19 the input of the information that results in the screens that  
20 you look at?

21 A People within the Wells Fargo franchise.

22 Q Okay. And who all would be in the Wells Fargo franchise?

23 A Anybody employed by Wells Fargo that has access to input  
24 that information in those screens.

25 Q Okay. So do you, other than sort of a general statement

1 like that, do you know how that process is done, how that  
2 information gets into those screens?

3 A Well, certain people have certain job responsibilities in  
4 which they manage, or input certain information in certain  
5 screens.

6 So depending on what screen you are specifically  
7 questioning depends on what department would be responsible for  
8 inputting that information in there.

9 Q Okay. So when you look at all the different screens, it's  
10 information from different sources, really, within this whole  
11 trust arrangement and servicing arrangement?

12 A Yes. It's -- it's pretty much each screen consists of part  
13 of a file that makes up our servicing file.

14 Q Okay. So when this loan got assigned to you -- you said  
15 this one was assigned to you and that you had had the note  
16 since September 1st of '05. Where was that note being kept,  
17 that original note?

18 A With our document custodians.

19 Q Which is who?

20 A Which is a group of people.

21 Q Is that document custodian listed in this sub-servicing  
22 agreement?

23 A It doesn't -- are you asking, like, is a specific person  
24 within Wells Fargo listed?

25 Q No. Whoever's the document custodian. You said it's a

1 number of people?

2 A Well, it -- individual people contained within Wells Fargo  
3 franchise, yes.

4 Q Okay. So when you went to get this original note, where  
5 did you go?

6 A I went to our Fort Mill office.

7 Q Okay. And that's where it had been since September 1st of  
8 2005?

9 A I do not know.

10 Q Okay. So when was that --

11 A You mean --

12 Q -- that you got it from the Fort Mill office?

13 A Just prior to coming here.

14 Q Okay. And that's the Fort Mill office of Wells Fargo?

15 A Yes.

16 Q And that note still has a blank endorsement on it from,  
17 which it had at the time that Ms. Woodberry signed it?

18 A The allonge, you mean?

19 Q Yeah, the allonge.

20 A Yes.

21 Q Okay. So that has not been assigned or endorsed over, or  
22 has it?

23 A Do you mean has anybody filled in the blank on that  
24 allonge? No.

25 Q Okay.

1 A That would be editing a document that's already there.

2 Q So it's whoever holds that document?

3 A Would be the note holder.

4 Q Okay. Now your file is a servicing file, I believe?

5 A Yes, ma'am.

6 Q Okay. Who has the original mortgage file?

7 A You mean -- "original mortgage file," what do you mean?

8 Q The file that has the original loan documents from the loan  
9 closing that Ms. Woodberry would have attended.

10 A As per a sub-servicing agreement, we hold that on behalf of  
11 the note holder.

12 Q Okay. So is that also in your Fort Mill office?

13 A I can assume that it would be with, where we received this  
14 note, however, I did not look at that entire file.

15 So I don't know that the entire contents are there in the  
16 Fort Mill office.

17 Q Okay. But that's where what's, what you would refer to as  
18 the original mortgage file is located?

19 A Yes.

20 Q It's not anywhere else in this chain of people --

21 A Not to my knowledge.

22 Q -- or entities? Okay.

23 What is the relationship between Aurora and Wells Fargo?

24 A Wells Fargo is servicing. Aurora is master servicer.

25 Master servicer is an administrator making sure that Wells

1 Fargo complies with the sub-servicing and servicing agreements.

2 Q So there's a master servicing agreement between Wells Fargo  
3 and Aurora?

4 A No. That's all listed out in the sub-servicing agreement  
5 that we've already discussed.

6 Q Okay. So there's not a separate master servicing  
7 agreement?

8 A Not to my knowledge.

9 Q I'm going to refer you -- is the exhibit still there --

10 A Yes, I have them.

11 Q -- the agreement? Okay.

12 Referring to Exhibit, Movant's Exhibit 2, you referred to  
13 the flow servicing agreement and that was the original  
14 agreement that Wells Fargo had to be a servicer, is that right?

15 A To be a servicer for Lehman Brothers.

16 Q Okay. And where is that agreement?

17 A I do not know.

18 Q Okay. Do you ever look at that agreement in determining  
19 what your duties are, or the duties of Wells Fargo?

20 A I personally don't.

21 Q Okay. But you look at this agreement, Exhibit 2?

22 A I have, yes.

23 Q Do you ever -- when you say you had, do you ever refer to  
24 it as part of your job?

25 A When the case calls for it.

1 Q Okay. And you referred to the paragraph that says, "The  
2 seller conveyed the mortgage loans on a servicing-retained  
3 basis to Structured Asset Securities Corporation," which is not  
4 the Trust, right?

5 A Ummm --

6 Q And they, then, conveyed the mortgage loans to the Trustee?

7 A Yes.

8 Q Okay.

9 A It's how that reads.

10 Q And the seller is Lehman Brothers Holdings, Inc.?

11 A Yes.

12 Q But then you also have Lehman Brothers Bank, FSB, which is  
13 the Bank I think you referred to?

14 A Yes.

15 Q And that's the Bank under this agreement?

16 A Yes.

17 Q Okay. So what does "conveying the mortgage loans on a  
18 servicing-retained basis" mean?

19 A Well, they -- the seller is conveying the loans, or  
20 transferring their loans to Structured Asset Securities  
21 Corporation, however, they are maintaining whatever servicing  
22 they had in place on those loans at that time.

23 Q Okay. So that would be the seller, Lehman Brothers  
24 Holding, Inc.?

25 A Yes.

1 Q So is that ultimately who Wells Fargo answers to?

2 A No.

3 Q Okay. Even though they've retained the servicing portion  
4 of the loans?

5 A If you keep reading, it indicates that we report to the  
6 master servicer --

7 Q Aurora?

8 A -- Aurora, who then administrates the loans on behalf of  
9 the Trustee.

10 At, at this point with this document it is my understanding  
11 that Lehman is no longer, has any interest in these loans.

12 Q Okay. So when did their interest cease?

13 A Upon completion of this document.

14 Q Okay. And the mortgage loans are listed on Attachment A,  
15 but we don't have that, right? Okay.

16 All right. And then you testified about Article 2,  
17 Section 2.01?

18 A Would you please let me know what page that's on?

19 Q That's Page 17.

20 A Thank you.

21 Yes, ma'am.

22 Q All right. The seller, Lehman Brothers Holdings, Inc.,  
23 contracts with the servicer as an independent contractor for  
24 the servicing of the mortgage loans.

25 So is that servicer Wells Fargo Bank, according to the

1 first paragraph?

2 A Yes.

3 Q Okay. So how -- why is Lehman Brothers out of it after  
4 this agreement is signed if they're contracting with Wells  
5 Fargo to service the mortgage loans?

6 A 'Cause we had already contracted with them.

7 Q Under the --

8 A They are --

9 Q -- flow servicing agreement?

10 A And they are continuing that contract into this contract.

11 Q So how are they still connected with these loans? You're  
12 saying they're not connected at all with these loans anymore?

13 A Not to my knowledge.

14 Q Okay. And I think you also, farther down in that  
15 paragraph, testified that you are the custodian of the mortgage  
16 loan?

17 A Yes.

18 Q Okay. So although you hold the note, Wells Fargo holds the  
19 note, they're really only the custodian of the records --

20 A Yes.

21 Q -- for the purpose of servicing?

22 A For the purpose of servicing, as listed out in this  
23 agreement, for the Trust.

24 Q Okay. And under the Article 3, Servicing of the Mortgage  
25 Loans, have you obtained any written consent of the master

1 servicer?

2 A What page, ma'am?

3 Q I'm sorry. Page 18, Article 3, the second paragraph.

4 A You said Page 18?

5 Q Uh-huh. (Indicating an affirmative response) 18 of 66.

6 Have y'all requested a power of attorney from the Trustee?

7 A It is possible that Wells Fargo has one. I am not aware of  
8 it at this point in time.

9 Q Okay. Where would that be located?

10 A I do not know.

11 Q Who would sign that, do you know?

12 A Whoever has the power of attorney.

13 Q But you don't know who that is?

14 A No, I don't.

15 Q Okay. And do you know if under -- let's see -- Page 19 --  
16 let me refer you to that -- 19 of 66, still on Exhibit 2.

17 A Okay.

18 Q The second full paragraph says that:

19 "The servicer shall not without the Trustee's written  
20 consent initiate any action, suit, or proceedings  
21 solely under the Trustee's name without indicating the  
22 servicer's representative capacity, or take any action  
23 with the intent to cause and which actually does cause  
24 the Trustee to be registered to do business in any  
25 state."

1 So the Trustee, being US Bank --

2 A Uh-huh. (Indicating an affirmative response)

3 Q -- N.A., they don't want this, their name to be on the  
4 suit because that might mean they were doing business in this  
5 state on that loan?

6 A Their name solely on the suit.

7 Q Uh-huh. (Indicating an affirmative response)

8 A It says that we must identify them as a trustee, as well as  
9 us as the servicer.

10 Q Okay. But I think the agreement also requires that that be  
11 in compliance with the laws of the state that you're doing it  
12 in, doesn't it?

13 A It is possible.

14 Q And I think we've pretty much established this is a blank  
15 agreement that we're referring to --

16 A Yes.

17 Q -- correct?

18 And you are not aware of where the original with signatures  
19 on it would be?

20 A No, I'm not.

21 Q And as far as Exhibit D, which refers to the actual trust  
22 agreement --

23 MS. HAIGLER: What page are you referring to?

24 MS. INGLES: Oh, I'm sorry. 60 of 66 --

25 MS. HAIGLER: Thank you.

1 MS. INGLES: -- Exhibit D. It's blank.

2 MS. HAIGLER: Thank you.

3 MS. INGLES: Yeah.

4 BY MS. INGLES:

5 Q And SAIL stands for what? Servicing agreement?

6 A To be honest, I do not know.

7 Q Okay. But this sub-servicing agreement refers to that  
8 trust agreement, which is Structured Asset Securities  
9 Corporation -- excuse me -- Structured Asset Investment Loan  
10 Trust 2005-8?

11 A Yes.

12 Q So isn't that, I mean, part and parcel of this sub-  
13 servicing agreement? In other words, ultimately, your  
14 responsibilities are under that trust agreement?

15 A Well, our responsibilities, actually, would fall under the  
16 flow servicing agreement as servicer. The Trust's  
17 responsibilities would fall under the trust agreement.

18 Q When this sub-servicing agreement refers to the trust  
19 document, though, you have to go to the trust document to  
20 determine what it's talking about, don't you?

21 A Well, the trust document isn't the only document that this  
22 sub-servicing agreement refers to.

23 Q Okay. Well, what else does it refer to that you have to  
24 look at to determine your duties?

25 A As I stated already, the flow servicing agreement, the

1 assignment agreement. There are a few other agreements listed  
2 in here.

3 Q Okay. And do we have a copy of the assignment agreement?

4 A I don't know.

5 Q Well, it's not in here. Do you have a copy of it?

6 A I personally do not.

7 Q Okay. Do you know where -- who would -- where that would  
8 be?

9 A I do not.

10 Q Now have you done -- as part of your duties of default  
11 litigation specialist, have you been involved in foreclosure  
12 lawsuits in South Carolina?

13 A Yes.

14 Q Okay. And have you been involved in those specifically  
15 under this Exhibit 2, securitization sub-servicing agreement,  
16 do you know, other than this case?

17 A Unfortunately, I have dealt with hundreds of loans in my  
18 service under Wells.

19 Q Uh-huh. (Indicating an affirmative response)

20 A To be able to determine whether any specific one of those  
21 fell within that without going back through them, I cannot say.

22 Q Okay. Well, let's say that you did pursue a foreclosure  
23 and ultimately, the property is foreclosed.

24 And who bids the property on behalf of Wells Fargo,  
25 typically --

1 A What do mean --

2 Q -- at the sale?

3 A -- "who bids"? Like --

4 Q At the foreclosure sale.

5 A Bidding instructions are sent to our attorney at that time.

6 Q Okay. And so your attorney would be Ms. Haigler in this  
7 particular case?

8 A In the imaginary case that you are referring to as if this  
9 was a foreclosure at this time --

10 Q Uh-huh. (Indicating an affirmative response)

11 A -- and in this imaginary, yes, Ms. Haigler would have been  
12 the one to receive those instructions.

13 Q Okay. And at the foreclosure sale, once a foreclosure deed  
14 is issued, that would not go into the name of Wells Fargo,  
15 would it?

16 A It would go into the name of US Bank, as Trustee for  
17 Structured Asset Investment Loan Trust, Certificate Series 2005  
18 through 2008 --

19 Q Okay.

20 A -- should they be the winning bid at the sale.

21 Q All right. Who does Wells Fargo report to as far as their  
22 actions under the sub-servicing agreement?

23 A Aurora Loan Servicing.

24 Q Beg your pardon?

25 A Aurora Loan Servicing --

1 Q Aurora?

2 A -- the master servicer.

3 Q Okay. And how often do y'all report to them?

4 A I do not know.

5 Q Okay. Is there a screen that you have on your, that you  
6 have access to on your computer where you input information  
7 about your duties as default litigation specialist?

8 A Notes screen.

9 Q Beg your pardon?

10 A The notes section.

11 Q Okay. Do you input anywhere else in the system?

12 A It depends on what information I am trying to enter on  
13 whether any other screen would be affected.

14 Q Well, I guess what I'm asking is which screens do you have  
15 the authority to input -- you said different people enter on  
16 different screens?

17 A Uh-huh. (Indicating an affirmative response)

18 Q What are the ones that you have the authority to input  
19 information into --

20 A I have --

21 Q -- as part of your job?

22 A -- the ability to waive certain fees on accounts in an  
23 effort to effectuate settlements. I have the ability to put  
24 stops on the accounts, credit stops, call stops, letter stops  
25 should the issue be that we were contacting them when we

1 shouldn't have, or not contacting them when we should have. I  
2 have the ability to create a task for somebody else to do  
3 something within the system.

4 I'm sorry. I'm trying --

5 Q Uh-huh. (Indicating an affirmative response)

6 A -- to think through a day --

7 Q Sure. Take your time.

8 A -- and what other screens I might access at any given time.

9 There are certain screens that are set up for timelines for  
10 our investors: Jennie Mae, Freddie Mac. Some of them have  
11 specific timelines that we are to meet. I have the ability to  
12 add steps, take away steps, or complete steps within those  
13 timelines.

14 I'm sorry. That's all I can think of right now. I'm sure  
15 there are probably more that I'm just not thinking of.

16 Q Okay. Any others that you would have accessed at this  
17 point on a loan like the one that we're here about today that  
18 you haven't mentioned already?

19 A Well, there are a lot of screens that I have access to that  
20 I don't have the ability to edit.

21 Q Okay.

22 A Payment screens that would show me what monies were  
23 received, when were they received, how were they applied to the  
24 loan fees that, that we felt were not recoverable by the  
25 borrower that either Wells or the investor would have taken

1 care of; late fee screens; notes from both bankruptcy -- notes  
2 from any of the departments within our system I have access to  
3 read and peruse; and certain --

4 THE COURT: Ms. Ingles, I'm a big believer in letting  
5 lawyers try their cases, but I'm not sure what this has to do  
6 with the ownership of the loan that we're here today about.

7 So if you could sort of head toward that issue, I'd  
8 appreciate it.

9 BY MS. INGLES:

10 Q Well, my next follow-up question to the screens you just  
11 mentioned was going to be, who inputs that information that you  
12 were just referring to as far as payments and charges?

13 A That would be our cash department in Des Moines.

14 Q Cash department --

15 A They --

16 Q -- of Wells Fargo?

17 A Yes. They -- they receive -- when they receive funds, if  
18 the loan is in bankruptcy they ask the bankruptcy department  
19 how the funds are to be applied and then they apply them and  
20 note the system dually for those applications.

21 Q So do you have any way of knowing from documentation  
22 whether or not the loan of Patricia Woodberry that we're here  
23 about today is still subject to the provisions of this  
24 agreement or the trust agreement?

25 A I have nothing to contest that fact.

1 Q So you don't know?

2 A To the best of my records and knowledge, it still falls  
3 under that agreement.

4 Q Okay. But you real -- those records are not records that  
5 you really have access to?

6 A I have access to view them, but I don't have access to edit  
7 them.

8 Q Okay. Now let's talk about MERS just for a minute who has  
9 the mortgage assigned to them?

10 A Not to my knowledge.

11 Q Okay. Who's it assigned to?

12 A I believe it is assigned to the US Bank, as Trustee to the  
13 Structured Asset, etcetera, etcetera.

14 Q To -- okay. When was that done?

15 A I believe the assignment was done recently.

16 Q So that was to US Bank from who?

17 A I believe it was -- I'm sorry. I -- I don't have a copy of  
18 it in front of me and --

19 Q Okay.

20 A -- I'm having trouble recollecting.

21 Q All right. Let me show you this assignment of mortgage,  
22 which is a copy that was provided to us.

23 A Okay. Thank you.

24 Q And just ask you do you recognize that? (Counsel shows  
25 document to the witness).

1 A It appears to be the same assignment that I had looked at  
2 for this case.

3 Q Okay. Could you tell me the process by which that was  
4 done?

5 A By which the assignment came about?

6 Q Uh-huh. (Indicating an affirmative response)

7 A To be a hundred percent honest, I don't know.

8 Q Okay. You weren't involved at all in obtaining that  
9 assignment?

10 A No.

11 Q Okay. But you know the lady who assigned it, correct?

12 A I have had dealings with her.

13 Q And she works in the Fort Mill office of Wells Fargo, is  
14 that correct?

15 A To the best of my knowledge, yes.

16 Q Okay. Now this document says she's the assistant secretary  
17 of MERS?

18 A That's possible.

19 Q Tell me how that works, how she becomes the assistant  
20 secretary of MERS --

21 A She probably --

22 Q -- in order to assign an assignment for them.

23 A She probably, most logically, would have a power of  
24 attorney to sign as such.

25 Q And would you normally record that with the assignment?

1 A The power of attorney?

2 Q Uh-huh. (Indicating an affirmative response) To show the  
3 authority?

4 A I do not know.

5 Q Okay.

6 MR. CANTRELL: Can we admit that as an exhibit?

7 MS. INGLES: Yeah. I was going to ask this be marked  
8 as a debtor's exhibit.

9 MS. HAIGLER: No objection.

10 THE COURTROOM DEPUTY: Debtor's Exhibit --

11 THE COURT: Have you seen it? No objection. All  
12 right.

13 THE COURTROOM DEPUTY: Debtor's Exhibit --

14 THE COURT: Without objection --

15 THE COURTROOM DEPUTY: -- A.

16 THE COURT: Without objection, Debtor's A.

17 THE COURTROOM DEPUTY: Yes, sir.

18 Do you have an extra copy for -- for --

19 MS. INGLES: No.

20 THE COURTROOM DEPUTY: Okay.

21 MR. CANTRELL: Do you -- Janet, do you have an extra  
22 copy --

23 MS. HAIGLER: What? I'm sorry. Ask me.

24 MR. CANTRELL: -- of the assignment? She's asking for  
25 an extra copy of the assignment.

1 MS. HAIGLER: Oh. I think I do.

2 MR. CANTRELL: I think we may have one. I may have  
3 two.

4 MS. HAIGLER: I got another one.

5 MR. CANTRELL: I may have two, but I may not.

6 MS. HAIGLER: Here's two.

7 THE COURTROOM DEPUTY: I'm going to give the original  
8 to the Judge.

9 MS. INGLES: Okay. That's fine.

10 I'll hand it back to you.

11 BY MS. INGLES:

12 Q So do you, in your position with Wells Fargo, do you have  
13 any reason to know why this would not have been done at the  
14 time of September 1st of 2005?

15 A Quite often, assignments are not done at the exact time of  
16 filing a service agreement. There are sometimes thousands of  
17 loans, hundreds of thousands, that are being transferred or  
18 moved about at any given time.

19 Q So is it --

20 A So I do not know why this specific loan was not done at  
21 that specific time.

22 Q Okay. Once a lawsuit is going to be initiated, do you  
23 typically generate that document at that time?

24 A Well, personally, if I had researched the loan and  
25 determined that there was not one already of record, then I

1 would make sure that there was a correct chain of title before  
2 they continued.

3 Q Okay. And on that assignment of this mortgage it's an  
4 assignment from SouthStar Funding, LLC?

5 A Appears to be, yes.

6 Q Okay.

7 MS. INGLES: Your Honor, could I have just a moment?  
8 I think I'm --

9 (Pause)

10 MS. INGLES: I just had one other question and then  
11 I'll be done, Your Honor.

12 BY MS. INGLES:

13 Q You mentioned in the beginning your, the Wells Fargo  
14 franchise. And who all does that include?

15 A When I speak of the Wells Fargo franchise, I am referring  
16 specifically to Wells Fargo Bank, N.A. and all the divisions  
17 and d/b/a's there of, including Wells Fargo Home Mortgage and  
18 ASC.

19 Q Okay. And Wells Fargo in this trust agreement that this  
20 sub-servicing agreement refers to is not only a servicer, such  
21 as what you've been testifying about today, but also the  
22 securities administrator, is that right?

23 A By what do you mean "securities administrator"?

24 Q Well, the administer (sic) of the securities that that  
25 trust represents.

1 A I believe that per that agreement, yes, it is the case.

2 Q Okay. So Wells Fargo has two connections to this  
3 particular Trust?

4 A Yes.

5 Q Okay.

6 MS. INGLES: That's all I have, Your Honor.

7 THE COURT: Thank you.

8 MS. HAIGLER: I don't have anything, Your Honor.

9 THE COURT: Ms. Haigler, anything further?

10 MS. HAIGLER: No, sir.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Anything else from the movant?

14 MS. HAIGLER: No, sir.

15 THE COURT: Anything from debtor?

16 MR. CANTRELL: Yes, Your Honor.

17 THE COURT: Any -- any -- any testimony or evidence?

18 MR. CANTRELL: Some exhibits that we would like to  
19 offer, Your Honor.

20 MS. HAIGLER: I don't know what exhibits would be  
21 offered.

22 MR. CANTRELL: Well --

23 MS. HAIGLER: Through what witness?

24 MR. CANTRELL: -- I would be more than happy to  
25 provide you with a copy of them. These are some excerpts from

1 the South Carolina Code of Laws.

2 THE COURT: Well, you don't need --

3 MS. HAIGLER: Is it just legal argument?

4 THE COURT: -- to introduce that into evidence.

5 MR. CANTRELL: No. No.

6 THE COURT: I mean, I can --

7 MR. CANTRELL: No, I just want to hand that up to you,  
8 like a case.

9 THE COURT: Oh, okay.

10 MR. CANTRELL: Like a case.

11 THE COURT: All right. I mean, that's not a factual  
12 exhibit, or a matter of fact that you want me to consider.

13 MR. CANTRELL: It's a matter of law.

14 THE COURT: It's the law in the case?

15 MR. CANTRELL: That's correct.

16 THE COURT: Okay.

17 MR. CANTRELL: That's correct.

18 THE COURT: Well, I mean, I'm, I'm going to let you do  
19 that in connection with your closing.

20 MR. CANTRELL: Okay.

21 THE COURT: Do you have any, any evidence that you  
22 want to offer at this point in time?

23 MR. CANTRELL: Let me double check.

24 Do we? I don't think we have anything. I think it's  
25 all legal.

1           No, Your Honor. I believe all of my information is --  
2 well, actually -- actually, I may wish to introduce this  
3 (indicating) as an exhibit, Your Honor.

4           It's a MERS guideline.

5           MS. HAIGLER: I object, Your Honor. I mean, we have  
6 no witness to introduce. If he wants to make a legal argument  
7 and, you know, but not have it admitted into evidence.

8           THE COURT: I --

9           MS. HAIGLER: I wouldn't have needed my witness today  
10 if I could have done that.

11          THE COURT: Right.

12          MR. CANTRELL: It's, it's right off the MERS, Inc.  
13 website.

14          THE COURT: Right. But, I mean, you, you're limited  
15 in what you can introduce into evidence without, without a  
16 witness. And you can, for example, introduce a certified copy  
17 of a public document without a witness. Because there's some  
18 authenticity of that document that -- that -- that forms the  
19 foundation for its introduction into evidence in a court of  
20 law, but without, without a witness to identify and tell me  
21 what a particular document is I don't know how you get a  
22 document into evidence.

23                 Now if that's -- if that is something that's a matter  
24 of law or regulation, you can argue that as the law in the  
25 case, but otherwise, I'm going to have to sustain Mr.,

1 Mrs. Haigler's objection.

2 MS. HAIGLER: Thank you.

3 MR. CANTRELL: And we will -- we will hold that, Your  
4 Honor, and not submit it. We'll -- we'll pass on that. So --

5 THE COURT: So no evidence?

6 MR. CANTRELL: No. No, Your Honor, no evidence; just  
7 legal arguments and then some case information to hand up.

8 THE COURT: All right.

9 Ms. Haigler, closing?

10 MS. HAIGLER: Yes. Thank you, Your Honor.

11 The Court was kind enough to allow us to have this  
12 additional hearing after our first hearing and in fact, this  
13 hearing, in order to prepare for it, I took heart to what the  
14 Court had read, or had put in his order. You had asked ASC to  
15 come here today to provide standing, or to show that we, our  
16 client was a party in interest.

17 You said, on Page 5, that we needed to prove ownership  
18 and the only evidence before the Court was the note and  
19 mortgage. There was no assignment, no evidence, no, electronic  
20 or otherwise, showing that the mortgage was transferred to the  
21 Trust. And on the final page where you were saying "It is  
22 ordered," you asked ASC to provide adequate documentation which  
23 shows that Structured Asset Investment Loan Trust 2005-8 is  
24 owned by the debtor's mortgage as of the date the motion was  
25 filed. And that's October the 25th.

1           We do have an assignment, which is one of the  
2 references here that you mentioned that could prove ownership,  
3 but that assignment isn't as of the day I filed that motion.  
4 So to me, it's not going to be adequate proof to the Court  
5 today.

6           And so although we got it, we completed the record,  
7 and have that now, I'm not offering that today as evidence of  
8 ownership. I think it shows that it can be completed and that  
9 step has been done.

10           But what I did bring to offer was Ms. Hirzel, who is  
11 with Wells Fargo and ASC, who's the servicing arm of Wells  
12 Fargo, and they're not the owner, but they're the servicer.  
13 And as the servicer for the US Bank, Trustee, which is the  
14 Trustee for this secured structured asset, she's testified that  
15 she has, is the custodian of those records, which include all  
16 of the information that has been uploaded into Wells Fargo's  
17 system, what she testified was done when the transaction  
18 occurred. She stated as servicer that they were to maintain  
19 the original books and records and as servicer, she has brought  
20 here today the original note and mortgage. She has been  
21 able -- and I could stop, I think, stop the argument there.  
22 Because I have ASC who has, I think we've established, is the  
23 servicer for this Trust and she has the possession as the  
24 servicer and custodian for the Trust of the original note and  
25 mortgage. And that is a bearer instrument because we have

1 SouthStar. It says "Pay to the Order" and it's an open  
2 instrument and we perfect that ownership by possession.

3 And so she's here today with that original note on  
4 behalf of her client, US Bank, as Trustee for Structured Asset.  
5 And that should be enough. That should be enough. That should  
6 establish ownership, but I under -- but I'm concerned, worried,  
7 want to make sure that I fully put it all out there for the  
8 Court.

9 So, unfortunately, I thought, well, you know, we got  
10 to go through this and show these relationships and can I  
11 provide in this today's world -- it's not where years ago I  
12 could have gone down the street and brought my banker in and  
13 have him come in here and bring his file that was in his file  
14 room with all the information. We don't live in that world and  
15 the Court stated that in its order. We live in this electronic  
16 world and come to find out, my most confidential agreement that  
17 my client here thinks I can't give is sitting on the Internet.

18 And so -- but what I can't provide today, which I  
19 don't think I need to provide today, is absolute, undefiable  
20 proof in a sense that Ms. Woodberry's loan, you know, is, is  
21 somehow -- I don't know what I need to give, you know. There's  
22 this Exhibit A, but it's full of everybody else's loans. And  
23 so there's some confidentiality concerns about that.

24 But the Court wants adequate information and I read  
25 that and I tried to think what can I provide and I think I've

1 done that. Because I've walked through each of these  
2 paragraphs and we have -- she's talked about she can go into  
3 the computer system. It talks about this is an investor loan.  
4 She's immediately able to go to some document and lo and  
5 behold, that document, when you pull it up and on its face, it  
6 has the exact words that we did put in our motion as movant.  
7 And it refers to Wells Fargo/ASC as being a servicer and it  
8 talks about US Bank being a trustee and it talks about they're  
9 the Trustee for the structured asset. And it all makes sense.

10 And I think I am provided, I have provided the Court  
11 the adequate information for them to show that at the time this  
12 motion was filed in October that AS -- that -- that Structured  
13 Asset owned this note.

14 And in preparing for this I did come across a case  
15 that I thought was interesting and helpful and it's a case by  
16 Judge Bishop back in 1988 called the Cambridge case. And I --

17 MR. CANTRELL: Sorry. Do -- can --

18 MS. HAIGLER: Yeah, let me give you a copy.

19 MR. CANTRELL: Thank you.

20 MS. HAIGLER: Here's two, so --

21 MR. CANTRELL: Oh, oh. Thank you.

22 MS. INGLES: Thanks.

23 MS. HAIGLER: Your Honor, what's good about that case  
24 is that this sorta kinda issue was discussed there. You had --  
25 the debtor is actually a mortgage company, but -- and they were

1 servicing the loan for another mortgage company and there was  
2 an account that was held by the debtor that the Chapter 7  
3 Trustee said, "That's, you know, estate money and I get to keep  
4 it." And this mortgage company came in and said, "No, that is  
5 our money," and they were the servicer of the debtor and, "They  
6 were just holding those funds in trust for us."

7           So it was a whole issue about ownership and the  
8 Trustee was demanding strict proof from this mortgage company  
9 that they owned these funds. And, you know, what, what it came  
10 down to was Judge Bishop decided that:

11           "The holder of the original note is clearly the owner  
12           and the holder of legal title to the note and mortgage  
13           and is entitled to the payment of the funds."

14           And it went on to say, "The holder" -- I'm sorry.  
15 This is on Page 6 of the document you have in front of you. I  
16 think it's actually on Page 149 of the cited case, which is  
17 right before it says 150. It goes up and it says, "The holder  
18 of a mortgage-secured note is entitled to payment thereon, even  
19 if the mortgage of record is another person."

20           And that's sort of where we are today. And the Court  
21 ended up saying, "This mortgage company, they have the original  
22 note. They're the owner of the document." Because of, I  
23 think, undisputed fact that a negotiable instrument is governed  
24 by the, you know, the Uniform Commercial Code and it's a bearer  
25 instrument and if you have possession, you're the owner.

1           And so that's what we have. You follow Judge Bishop's  
2 case. That's where we are. We do have a mortgage that has  
3 SouthStar on it, you know, and it's recorded. We don't -- we  
4 didn't have an assignment at the time, but, you know, there is  
5 a 1918 case that's still good law in South Carolina that says  
6 an assignment, that "There's no law in this state that requires  
7 assignments of mortgage to be recorded."

8           I don't think that does away with our ownership  
9 interest.

10           THE COURT: What's the cite on that case?

11           MS. HAIGLER: Of this old case? It is 110 S.C. 99.

12           MS. INGLES: What's the name of it?

13           MS. HAIGLER: Oh, I'm sorry. Union National Bank of  
14 Columbia. And I'm sorry. I may have a copy of it.

15           Yes, I do. Here's one.

16           MR. CANTRELL: Oh. Thank you.

17           MS. HAIGLER: That's old law, but it's still out  
18 there.

19           And it was recently cited again as of October 2007 in  
20 Greentree Servicing, which is Opinion 4311 of the Court of  
21 Appeals, but, Your Honor, it was, it was cited for other  
22 reasons, not for that issue, but I think what I'm telling the  
23 Court is they didn't say this wasn't good law anymore. They're  
24 still citing law in that case.

25           So as far as I know, that is still the law of this

1 state.

2 Assignments provide notice to the world, and that's  
3 what we're talking about here, but today, you know -- and  
4 that's -- that would have been -- in a perfect world that would  
5 have been great. We would have never had the standing issue,  
6 but we're beyond that and we're here to prove ownership. And I  
7 think we've done that. And I think Judge Bishop's case on  
8 that, on that issue is helpful.

9 You know, I guess, you know, you can sit here and say  
10 there's, you know, you got blank documents or, you know, what  
11 is their servicing rights and all that, but I went through the  
12 document. It talks about what they're supposed to do. I think  
13 if you had to read all of that you'd understand what they're  
14 required to do. ASC's got the note. Nobody else has come  
15 forward. The debtor files their bankruptcy, says ASC is listed  
16 as a creditor. Because, obviously, they're sending payments.

17 I'm, I'm hopeful that we win the issue just on, alone,  
18 by coming to the Court as custodian for US Bank, as Trustee for  
19 Structured Assets, presenting the original note. That, in  
20 itself, is a bearer instrument and therefore, we have  
21 possession and ownership. There is no one else coming forward.  
22 There's nothing else to say that we don't have ownership of it.  
23 I don't think I've had any, heard any evidence that says we  
24 don't have ownership of it.

25 I guess that's what I have, Your Honor.

1           THE COURT: Okay. And -- and you're correct, I mean,  
2 my order does talk about ownership and that's because after a  
3 very brief hearing that, that seemed to be the crux of the  
4 parties' dispute. The debtor was saying, basically, "We don't  
5 know who these people are. We haven't" -- "we paid ASC, but  
6 who, who is this that's seeking relief from stay?"

7           So I was trying to get the parties to focus on that.  
8 I mean, the, the Bankruptcy Code and the section on relief from  
9 stay, 362(d), doesn't talk about the owner or the creditor. It  
10 talks about a party in interest may seek.

11           So while I -- while I directed you to the issue of  
12 ownership, that, that's not, I don't think, the, the fulcrum on  
13 which everything turns. It's where I wanted you to get to  
14 because I thought that was the dispute.

15           And, you know, we've, we've taken a lot of time today  
16 because this is an important issue for the creditors' bar and  
17 the debtors' bar because anytime I'm in court and these issues  
18 are raised and when I hear these issues discussed at seminars  
19 and when lawyers just talk about these issues, not about a  
20 particular case, but they talk about their great frustration  
21 with the Bankruptcy Reform Act and the modern world that we  
22 live in where everything's done electronically, people  
23 constantly complain that there isn't evidence that a debtor's  
24 lawyer can track to know how to protect their client's rights  
25 and creditors often, unfortunately, just say, "Well, gee,

1 you're making this too complicated. This ought to be an easy  
2 process."

3           And both sides have some good points to make with  
4 respect to that, but I think we needed to flesh through all of  
5 this today and I appreciate your having done that.

6           Now, Mr. Cantrell or Ms. Ingles, I want to hear you in  
7 closing.

8           MR. CANTRELL: Thank you, Your Honor.

9           Your Honor, I think, you know, it's, it's interesting  
10 to hear about how, how their internal procedures work, but, as  
11 you indicated, the transfer of mortgages and assignment of  
12 mortgages needs to be transparent. It needs to be something  
13 everybody has access to. And everybody doesn't have access to  
14 their internal documents there at Wells Fargo.

15           Under South Carolina law, there are procedures for the  
16 transfer of mortgages. Under the statute of frauds, which I'll  
17 be glad to hand you a copy of as part of some of the laws here,  
18 transfers of interests in real estate have to be in writing.

19           In addition, in order for those assignments to be  
20 valid against third parties, subsequent purchasers for value,  
21 lien creditors, there has to be recording. We can't comply  
22 with that with electronic entries on Wells Fargo's system.  
23 Those -- in order -- in order to provide that notice, the South  
24 Carolina procedure has to be followed. South Carolina hasn't  
25 said that transfers within Wells Fargo's system are sufficient.

1 They haven't said, even, that transfers within the MERS system  
2 are sufficient.

3           What is -- what is sufficient is these written  
4 assignments. As a matter of fact, if you go back to  
5 Ms. Hirzel's testimony when she was asked on cross examination  
6 why the mortgage hadn't been assigned earlier since they've  
7 held it since 9/1/2005 and it wasn't assigned per that document  
8 until January 9th of this year, she said it should have been  
9 done earlier. She admitted in her testimony that this is the  
10 way it should have been done. And she said it was important  
11 because it was necessary to have the correct chain of title.

12           So they've admitted, Your Honor, in my opinion, under  
13 testimony that they didn't do it properly. More importantly,  
14 even beyond that is, if they didn't do it properly according to  
15 South Carolina law, then it doesn't matter what MERS is trying  
16 to accomplish unless South Carolina has adopted the MERS  
17 system, which they haven't.

18           I mean, we didn't get into testimony about the MERS  
19 system. There was no testimony that people could get on there  
20 and find these documents. Everything was being testified about  
21 was confidential and, and it can't be seen. Well, that's no  
22 way -- that's no way to, to provide notice to people, Your  
23 Honor. That certainly doesn't accomplish the purpose of the  
24 legislature in requiring recordation to -- to make it -- to  
25 give notice to everyone.

1 So I think that's an issue. Now --

2 THE COURT: Before --

3 MR. CANTRELL: Go ahead.

4 THE COURT: -- we leave that --

5 MR. CANTRELL: Yes, sir.

6 THE COURT: -- the statute of frauds protects who?

7 MR. CANTRELL: Well --

8 THE COURT: I mean, for a transfer of -- for a writing  
9 to be effective, it has to be reported. As to what other  
10 parties?

11 MR. CANTRELL: Well, you're talking --

12 THE COURT: It's -- to subsequent purchasers?

13 MR. CANTRELL: -- about recordation? I'm sorry.

14 Subsequent purchasers.

15 THE COURT: Okay. Now your client's not a subsequent  
16 purchaser.

17 MR. CANTRELL: Or subsequent lien creditors.

18 THE COURT: Okay. Which your client is not.

19 MR. CANTRELL: Trustee is. He has the status of --

20 THE COURT: But the Trustee's not in here. Trustee  
21 doesn't care about this case --

22 MR. CANTRELL: He may when he learns --

23 THE COURT: -- anymore.

24 MR. CANTRELL: -- that their interest is unsecured.

25 THE COURT: He did care at one time. He doesn't --

1 MR. CANTRELL: Your Honor --

2 THE COURT: -- anymore.

3 MR. CANTRELL: Your Honor, they're unsecured.

4 THE COURT: Who?

5 MR. CANTRELL: Wells Fargo is unsecured. What's  
6 happened --

7 THE COURT: Well, no. Tell -- tell me what category  
8 your client falls into that's protected under the statute of  
9 frauds --

10 MR. CANTRELL: Your Honor --

11 THE COURT: -- today.

12 MR. CANTRELL: I don't -- I don't know that it says.  
13 Let's look at the statute of frauds.

14 THE COURT: That's where I, where I'm trying to go.

15 MR. CANTRELL: Yeah. I mean, let's look at the, the  
16 statute of frauds, itself. "Agreements required to be in  
17 writing and signed." Under South Carolina Code of Laws  
18 Section 32-3-10:

19 "No action shall be brought whereby:

20 To charge any person upon any contract or sale of  
21 lands, tenements or hereditaments or any interest in  
22 or concerning them."

23 You know, it doesn't say who it's for.

24 I think it's to protect the people of South Carolina.  
25 I think this is a, a system just like with personal property

1 that's worth over \$500. I think every citizen of South  
2 Carolina gets this protection, Your Honor. It doesn't actually  
3 say. I don't think we can limit the legislature on that point.  
4 I think it's necessary for the effective administration, at  
5 least in the opinion of Congress, of our legislature, effective  
6 for the proper administration of interests in real estate and  
7 certain other types of interests in property.

8 THE COURT: So -- so you think it's there to protect  
9 debtors that, that signed the original loan agreements?

10 MR. CANTRELL: I believe it does protect debtors, Your  
11 Honor.

12 THE COURT: Okay. Well, that's --

13 MR. CANTRELL: I believe it protects all parties.

14 THE COURT: -- that's -- that's in -- that's  
15 inconsistent with a prior holding of mine that debtors are  
16 bound by that, by the terms of, of loan agreements, regardless  
17 of compliance with formality.

18 Now maybe I was wrong in that case, but, but I've held  
19 at least, on at least two occasions that not, not the statute  
20 of frauds directly, but that, generally, recording statutes are  
21 designed to protect others, not the parties to the document.

22 But now, you're, you're telling me that, that you  
23 think -- and I'm going to look at this because it's an  
24 interesting issue -- but, I mean, the -- you think the statute  
25 of frauds has a general public policy, a prophylactic effect to

1 protect general public policy that would include the debtor?

2 MR. CANTRELL: That's correct, Your Honor.

3 THE COURT: Okay. I just want to make sure I, I  
4 understand your argument.

5 MR. CANTRELL: And I'll hand up the copies of some of  
6 the Code sections, which I provided opposing counsel with. All  
7 of them don't necessarily apply, unfortunately, because there  
8 were some other issues I expect to come up regarding MERS that  
9 didn't. So -- but the statute of frauds is in there. There's  
10 also some other stuff about recording assignments.

11 So it'll be helpful to have the South Carolina law.  
12 Because although the procedure here is governed, obviously, by  
13 federal law, any substantive law issues would be South Carolina  
14 law, regardless of, of the mortgagor's internal policies or  
15 other, or other procedures of theirs. They would be bound by  
16 South Carolina law in this case.

17 THE COURT: Well, I mean, you raised the issue of MERS  
18 -- and I'm not trying to sidetrack you -- but if you go back  
19 and look at the mortgage, I mean, the mortgage itself says that  
20 MERS, which is an abbreviation for Mortgage Electronic  
21 Registration System, Inc., it says that that entity is the  
22 mortgagee.

23 MR. CANTRELL: And that's -- that's an issue, too,  
24 Your Honor, especially under the South Carolina laws I gave  
25 you. If you'll look, it says something about mortgagees.

1 Let's look near the end of the pages that I gave you. On --  
2 29-3-10 -- I think it's the second-to-last page -- under Title  
3 29 of the South Carolina Code, Mortgages and Other Liens. It  
4 talks about the rights of the mortgagor and the mortgagee. It  
5 says down there that --

6 MS. HAIGLER: I'm sorry. Tell me right where you are.

7 MR. CANTRELL: I'm sorry. We're right -- we're right  
8 here on --

9 THE COURT: 29-3-10?

10 MR. CANTRELL: -- on this one.

11 Yeah, the very top of that page under the first part  
12 of Title 29. If you'll look at that very first paragraph,  
13 "Rights and title of mortgagor."

14 MS. HIRZEL: 29-3-10.

15 MR. CANTRELL: It's the second-to-last page.

16 MS. HAIGLER: Thank you.

17 MR. CANTRELL: There you go.

18 MS. HAIGLER: Uh-huh. (Indicating an affirmative  
19 response)

20 MR. CANTRELL: It talks about -- it talks about  
21 mortgagees being the owner of the money that's lent or due.  
22 There's, you know, there's -- there -- MERS -- MERS -- MERS --  
23 Your Honor, MERS doesn't -- doesn't -- doesn't get money.  
24 They're -- they're an electronic registration system, yet  
25 they're called the mortgagee.

1           We think under South Carolina law they're not. We  
2 don't think -- we don't even know if this assignment is valid  
3 because of that. Because it says here that mortgagees are  
4 people to whom money is, is due. And those people have the  
5 entitlement to recover satisfaction by foreclosure and if they  
6 don't have the right to foreclose, Your Honor, they certainly  
7 don't have the right to relief from stay.

8           And actually, there's a -- there's -- there's --  
9 there's a lot bigger issue there in regard, in regards to that  
10 because if you look at that assignment, which I believe we've  
11 given you our last copy of so I'll have to do this from memory,  
12 but I do want you to reference the assignment, if you will.

13           It says that the mortgagee, MERS, is the owner and  
14 holder of the note and mortgage and that they're transferring  
15 it. However, we've consistently heard today from Ms. Hirzel  
16 that Wells Fargo has been the owner and holder continuously of  
17 that mortgage since 9/1/2005. We asked her that very  
18 specifically and she testified to that on numerous occasions.

19           Now how can MERS transfer that mortgage on 1/8/2007 if  
20 -- if -- how can they be the holder of the note? It says  
21 they're the holder of the note, but Ms. Hirzel says they've  
22 been holding that, that Wells Fargo's been holding that note  
23 ever since 9/1/05. Your Honor, these, these claims are  
24 inconsistent and either the allegations in the assignment are  
25 wrong, or Ms. Hirzel hasn't really been holding the note and

1 under their argument if they don't hold the note, they don't  
2 have title. So if they don't have title, they definitely don't  
3 have standing.

4           So I think, I think they've got a problem with the  
5 documents they've created. The fact that this assignment has  
6 sat out there and not, not been done until just recently when  
7 in their own admission it's necessary for the chain of title  
8 for that to be done, I think that puts us squarely within  
9 Maisel, the bankruptcy case, the only one that's addressed this  
10 issue on a national level, recorded it. A public recorded  
11 decision is In re Maisel from Massachusetts, which has been  
12 cited in my brief and I want to say, briefly, a few things from  
13 there. Because this is the only -- well, this'll -- this'll be  
14 the second national case, Your Honor -- but currently, this is  
15 the only one that's applied to In re Foreclosures in a motion  
16 for relief from stay setting.

17           Notice that Maisel was also a Chapter 7 case. Some  
18 people are saying, "Well, why are you fighting about this in a  
19 Chapter 7 case?" Well, Maisel, Maisel makes a point of saying  
20 why. It says that it is the -- it is -- "It is this court's  
21 responsibility to ensure that these debtors receive the full  
22 protection of the Bankruptcy Code, including the benefit of the  
23 automatic stay for as long as they're entitled to it."

24           Your Honor in its previous order questioned, you know,  
25 why is the debtor doing this if there's some dispute about

1 payments? Why is the debtor -- is the debtor entitled to rely  
2 on its rights, or is that bad faith? It's never bad faith to  
3 rely on rights granted by the United States Congress, Your  
4 Honor. And -- and the Judge, Rosenthal, I believe it was, up  
5 in Massachusetts agreed with that.

6 We're entitled to protection of the automatic stay, I  
7 believe, for two months from the date of the first meeting. So  
8 that would have been a month to a month and a half after this  
9 motion for relief from stay was filed.

10 Why are they even bothering filing for relief from  
11 stay, anyway? This is a Chapter 7 case, Your Honor. Like you  
12 said, eventually the debtor gets discharged.

13 So why not get -- a motion for relief from stay is  
14 extraordinary relief. The most fundamental part of the  
15 Bankruptcy Code for debtors is the automatic stay. I don't  
16 think that can be questioned. And, and here they're trying to  
17 take it away, I believe, without, without just cause. The  
18 debtor is always entitled to defend a motion for relief from  
19 stay, regardless of the merits of the act. He's always  
20 entitled to require someone to come in and prove that they're  
21 entitled to get relief from stay.

22 The Judge in Maisel says, "It's the court's  
23 responsibility to ensure compliance with both the substantive  
24 and the procedural requirements of the Bankruptcy Code." He  
25 says, "The most basic element required to obtain relief from

1 stay is that a movant have standing to bring and prosecute a  
2 motion."

3 Now it does --

4 THE COURT: All right. Now let me stop you there.

5 MR. CANTRELL: Okay.

6 THE COURT: The -- to get relief from stay in a  
7 Chapter 7 case --

8 MR. CANTRELL: Yes.

9 THE COURT: -- most creditors rely on (d)(2),  
10 362(d)(2).

11 MR. CANTRELL: Yes, sir, I understand.

12 THE COURT: And at least historically in this  
13 District, that's been a cakewalk, if we can use the term.  
14 Because what you have to show is that there's no equity in the  
15 property. Well, in this case the certification of facts shows  
16 no equity and there's no contrary certification of facts. So  
17 they've got (d), (d)(1) -- no. Excuse me -- (d)(2), the first  
18 clause.

19 And secondly, that it's not -- the property is not  
20 necessary for an effective reorganization. Well, Chapter 7's  
21 not a reorganization. So they've got that.

22 So it seems to me that, that they get both prongs of  
23 (d)(2) easily, here. Because there's no contest over no  
24 equity. She used the debtor's numbers and wasn't contested by  
25 the debtor. And it's not a reorganization.

1           So the only issue is standing and the standing to get  
2 relief from stay is that it has to be a party in interest that  
3 requests it. It doesn't have to be the owner. Certainly, the  
4 owner would be a party in interest, I think, but -- so is that  
5 really what we're fighting over, is, is whether or not ASC is a  
6 party in interest? Is that the crux of this?

7           MR. CANTRELL: That -- that's -- that's a huge issue,  
8 Your Honor, for, for two reasons.

9           THE COURT: All right.

10          MR. CANTRELL: Notice throughout the creditor's  
11 testimony, Ms. Hirzel continued to refer to the servicer as  
12 Wells Fargo.

13          THE COURT: Right. And she said Wells Fargo -- she  
14 said ASC is a d/b/a of Wells Fargo. So --

15          MR. CANTRELL: She -- she -- when questioned about  
16 that, she didn't really know their relationship. She didn't  
17 know how they were connected and she's offered no proof of  
18 that.

19          Now Ms. Haigler has constantly in her argument stated  
20 ASC and Wells Fargo, ASC and Wells Fargo, but that's not  
21 what -- the documents that they submitted to prove their claim  
22 don't say anything at all about ASC. There's actually -- and  
23 the motion for relief from stay is in the name of ASC.

24          So there's a very valid argument that based on the  
25 documents they submitted ASC is not a party in interest.

1 They've made -- they've offered no proof that ASC has any  
2 authority to act on behalf of Wells Fargo.

3 THE COURT: Why isn't the debtor estopped from  
4 asserting that ASC isn't a party in interest by virtue of the  
5 fact that under oath they listed ASC as their mortgage  
6 creditor?

7 MR. CANTRELL: Because this is a standing issue, Your  
8 Honor. This is a jurisdictional issue. The parties can't  
9 waive jurisdiction. Even if we all agreed that, to get the  
10 Court to rule on it, even if we all agreed that, that we had  
11 jurisdiction but Your Honor was aware of some reason why we  
12 were not, Your Honor has the duty *sua sponte* to raise that.

13 So even if we admitted in the certification of facts  
14 or by making these payments -- and I think the payments were  
15 just made because that's where they got the bills -- that's not  
16 an admission of the legal status of who owns this note.  
17 Technically, I guess we should have put in there US Bank, if US  
18 Bank has this loan.

19 Now remember, they failed to put Exhibit A in there  
20 and she's admitted she's never seen Exhibit A and she doesn't  
21 know this loan is in there.

22 So really, we have no -- they haven't proven that this  
23 loan is, is owned by this Trustee. They really haven't done it  
24 and if they have, they've proven that Wells Fargo's the  
25 servicer, not the person that brought this motion for relief

1 from stay.

2           And if you look in their own document which they  
3 talked about -- I want to -- I want to -- I want to bring your  
4 attention again to Page 19 of 66 of that sub-servicing  
5 agreement -- it said they're required to put the servicer's  
6 name on an action. That's their contractual responsibility.  
7 That servicer's name, according to that agreement, is Wells  
8 Fargo. They failed to do it. ASC lacks standing.

9           THE COURT: Okay. I -- I'm going to go back and  
10 listen to that. I -- my -- at this point my recollection of  
11 the testimony is that, that Wells Fargo does business as ASC.  
12 I think -- I think that was her direct testimony and if that  
13 was, in fact, her testimony, then any time she says Well Fargo  
14 she's also saying ASC.

15           MR. CANTRELL: There's got to be -- there's got to be  
16 -- if there's a document -- if there's a document showing that  
17 relationship.

18           THE COURT: No. No. If -- if -- my name's David  
19 Duncan and if I have David's Small Engine Repair --and it's not  
20 a corporation. It's not an LLC. It's not a partnership. It's  
21 not anything -- then David Duncan and David's Small Engine  
22 Repair are the same thing.

23           MR. CANTRELL: Exactly. For --

24           THE COURT: Okay.

25           MR. CANTRELL: -- sole proprietors.

1 THE COURT: So -- so --

2 MR. CANTRELL: But ASC can't be a sole proprietorship,  
3 Your Honor. This is a huge --

4 THE COURT: You -- you're telling --

5 MR. CANTRELL: -- corporation.

6 THE COURT: You're telling me that a corporation can't  
7 do business under another name?

8 MR. CANTRELL: They could, but she never testified to  
9 that. We asked her specifically --

10 THE COURT: No. That's exactly what she testified to.

11 MR. CANTRELL: -- were they incorporated and she  
12 didn't, she didn't know their relationship. And the easiest  
13 way to prove that relationship would be some written agreement.  
14 We've got written agreements that say Wells Fargo is the  
15 servicer.

16 THE COURT: Well, I --

17 MR. CANTRELL: We don't have anything saying ASC is.

18 THE COURT: You -- you're correct that she didn't  
19 produce any written agreement, but my, my recollection of her  
20 testimony is different from yours.

21 But, okay. Go ahead.

22 MR. CANTRELL: But I would, I would recommend that you  
23 check that part of the testimony because --

24 THE COURT: I will.

25 MR. CANTRELL: -- I was listening to that extra

1 careful. But I, I would suggest, even if she did testify to  
2 that, that the, that ASC to show a relationship would have to  
3 have some written, just like we have this whole -- I mean,  
4 this, this had to be in writing. That should be in writing,  
5 too, but anyway.

6 So I believe that they -- they -- they didn't put the  
7 correct servicer's name on this motion and I believe that's,  
8 that's a violation of their sub-servicing agreement, itself.  
9 Okay.

10 So -- there's the standing issue under Maisel. And  
11 they clearly say in there that they've got to prove that they  
12 had the claim at the time the motion for relief was filed. So  
13 we got the January 9th assignment, which if that, that is  
14 correct -- and she's already authenticated it. It's already  
15 been admitted into evidence -- they didn't receive the assigned  
16 mortgage until the 9th. And -- and -- and there's no way we  
17 could have recorded anything other than the assignment.

18 So there's no way to put anybody on notice. I mean,  
19 if you -- if Your Honor adopts this position that they can just  
20 maintain these secret records that nobody's entitled to get  
21 other than them as opposed to this -- I mean, if South Carolina  
22 wanted to adopt that system, the legislature could have done  
23 it. I don't think they did it.

24 So I think that's - that's -- that's a great concern.

25 You'll also note that it said in that assignment, it

1 said "for valuable consideration." What consideration? They  
2 never said anything. As a matter of fact, that case cited by  
3 Ms. Haigler, the Judge Bishop case, Cambridge Mortgage  
4 Corporation, says, at the top of Page 6 on the left-hand  
5 column, it says, "Id. 1160." It says that, "Delivery of, for  
6 value of an endorsed note to a holder." All that it says in  
7 that assignment is that they transferred it. They didn't say  
8 what the value was. They -- there was no testimony at all that  
9 it was transferred for value -- and I think the chances are  
10 there wasn't, but I don't know -- but I'm saying they didn't  
11 prove it was and that's necessary, I think, to reach the  
12 decision under, under this case. Okay.

13 THE COURT: All right. Let -- let -- well, before you  
14 go to your next point --

15 MR. CANTRELL: Yes, sir.

16 THE COURT: -- let -- let me -- let me make sure I'm  
17 following you on everything.

18 You're, you're referring to Maisel and one of the, the  
19 bases of Maisel are these Ohio foreclosure cases. And I think  
20 there are three judges in the district court in Ohio who have  
21 thrown out a number of foreclosure actions because of issues of  
22 the ownership of the loans that were being foreclosed.

23 Is there a difference between what, what a judge does  
24 in a foreclosure action and what a judge ought to do in a  
25 motion for relief from stay?

1 MR. CANTRELL: Not from the standing perspective, Your  
2 Honor.

3 And that's exactly what Maisel says. It says those  
4 apply in motions for relief from stay. Understand that  
5 standing is, is a broad concept that underlies all federal  
6 court jurisdiction.

7 THE COURT: I, I understand.

8 MR. CANTRELL: So it doesn't matter whether it's, it's  
9 relief from stay or -- or -- or -- or --

10 THE COURT: But there's a difference in what you have  
11 to prove at foreclosure than what you have to prove at a relief  
12 from stay. Because a party in interest can get -- there's --  
13 there may be a difference between a party in interest and in a  
14 foreclosure procedure having only the owner as the plaintiff.

15 Is that right?

16 MR. CANTRELL: Say that one more time, Your Honor.

17 THE COURT: Is there not a difference between a motion  
18 for relief from stay, which can be brought by a party in  
19 interest -- and that's a, that term can mean a lot of different  
20 things -- and in a foreclosure action you have to have a party  
21 -- the plaintiff has to be the real party in interest to adopt  
22 a different term. It has to be the owner. It has to be the  
23 mortgage company. It has to be whoever currently holds the  
24 mortgage and has a right to proceed under it.

25 So what -- what I'm - what I'm -- what I'm trying to

1 see is, is there a difference between the two procedures in  
2 terms of what you have to prove and does that lead to a  
3 different result, maybe, at, at the motion for relief from stay  
4 stage because that requirement of ownership isn't what's really  
5 important?

6 MR. CANTRELL: Not from a constitutional jurisdiction  
7 standard. Because what underlies both, both real party in  
8 interest and ownership that entitles you to foreclose is the  
9 elements of standing, as set out by the Supreme Court in the  
10 justiciability cases.

11 Primarily in this case, what we're talking about is  
12 personal stake. If you don't have personal stake, you're not a  
13 real party in interest.

14 THE COURT: Can, can an agent have a personal stake?

15 MR. CANTRELL: An agent can't sue in his own name.  
16 Agent can't even bring a suit in his own name. As a matter of  
17 fact, I think if you look at their, their agreement, you'll --  
18 you'll -- you'll see that the Trustee has got to be listed  
19 along with them --

20 THE COURT: Right.

21 MR. CANTRELL: -- but under, under contract law an  
22 agent can't sue or be sued in his own name as long as he's  
23 acting on behalf of his principal. He's just an attorney-in-  
24 fact --

25 THE COURT: All right.

1 MR. CANTRELL: -- which is really probably what that  
2 means by nominee in MERS and stuff, probably just an attorney-  
3 in-fact.

4 THE COURT: Is -- is -- is party in interest broad  
5 enough to, to sweep up that additional category of parties that  
6 under the statute have standing to bring an action? I'm just  
7 asking you the question.

8 MR. CANTRELL: Run that by me one more time to make  
9 sure I understand your question, Your Honor.

10 THE COURT: Is party in interest broad enough to sweep  
11 into the, that additional category of persons that under 362  
12 have standing to seek relief from stay?

13 MR. CANTRELL: Persons like?

14 THE COURT: I'm just asking you a question.

15 MR. CANTRELL: I know, but I'm trying -- I'm trying to  
16 put -- I'm trying to make it concrete enough so I can  
17 understand and answer.

18 I think -- I think a party in interest has to have a  
19 personal stake for constitutional standing. I think an owner  
20 of a mortgage has to have a personal stake in order to  
21 foreclose.

22 I think the element here is not necessarily whether  
23 the terms are the same, but whether the underlying  
24 constitutional concerns are the same. And I think they are. I  
25 think we always get back to does whoever this person is,

1 whatever they're called, have a personal stake? Is there  
2 redressability, all, all of those issues, and if, you know, if,  
3 if ASC here isn't, isn't the proper party bringing this motion  
4 and they brought this motion, then they shouldn't get relief  
5 from stay. Because if they do, the real party can come back  
6 later and get it, assuming the stay's still there, obviously.  
7 But we've got to assume that because we can't use hindsight and  
8 say, well, we won't have the stay in two weeks. But the issue  
9 is did they have it at the time and I --

10 THE COURT: Okay.

11 MR. CANTRELL: -- and I -- I --

12 THE COURT: I, I understand. I, I just want to make  
13 sure I've got, I've got the parameters of your argument --

14 MR. CANTRELL: Okay.

15 THE COURT: -- in hand, okay?

16 MR. CANTRELL: Okay. I'm --

17 THE COURT: So -- so --

18 MR. CANTRELL: -- just trying to say that underlies  
19 everything, and I really think we need to start with  
20 jurisdiction.

21 Obviously, if the standing -- if there's no standing,  
22 then there's no subject matter jurisdiction.

23 THE COURT: Okay.

24 MR. CANTRELL: Obviously, the Court has personal  
25 jurisdiction over the debtor and over ASC 'cause, and over

1 Wells Fargo because they've submitted themselves to the  
2 jurisdiction of the Court, but that doesn't mean the Court can  
3 actually rule on this. Because ASC doesn't have any rights  
4 that are going to be effected under, under this agreement, we  
5 believe, and --

6 THE COURT: So it's really a justiciability issue for  
7 you?

8 MR. CANTRELL: It's -- it's a -- it is justiciability,  
9 and it underlies everything. I've always felt a concern that  
10 the bankruptcy courts sometimes ignore authority issues like  
11 that 'cause they always want to assume they've got authority  
12 and it's always nice to assume that, but, you know, appellate  
13 courts are a lot quicker to dismiss you for lack of  
14 jurisdiction, as you well know. 'Cause they dismissed me last  
15 year. They'll do it in an instant.

16 And so it, it is important to them and it needs to be  
17 important to us 'cause all federal courts, even bankruptcy  
18 courts are under there.

19 There was a time prior to Northern Pipeline when some  
20 decisions came down saying bankruptcy courts are Article 1  
21 courts and they aren't subject to Article 3 cases and  
22 controversies. That's totally bogus, especially now that  
23 Northern Pipeline's come out and we know that bankruptcy courts  
24 are subdivisions of the district courts. Anything that binds  
25 them binds us. We'll all federal courts.

1           And so we're all bound by those same concerns and I  
2 think sometimes we overlook those concerns and we shouldn't.  
3 It's more than just procedure. Jurisdiction is way more than  
4 just procedure. It's a constitutional mandate.

5           Now on the procedural side, let's go back to the Local  
6 Rules. The In re Hall case has said that in situations where  
7 you've got violations of Local Rules it's, it's proper to deny  
8 a motion for relief from stay.

9           Your Honor, why would you want anybody in your  
10 courtroom to file a hundred motions for relief from stay a  
11 month that can't get it right? Why would you want to encourage  
12 that kind of practice and procedure? When you allow motions  
13 for relief from stay to be granted, even conditionally, a year  
14 or two down the road they've got, you know, they're still back  
15 in front of you putting out stuff that's, that's not up to, up  
16 to standard. It's not -- it's not what it should be. There --  
17 there -- there should be -- there should be things in there.

18           Like in this one there should have been an allegation  
19 about how they arrived at their valuation. Even if you  
20 overlook the payment history thing in 7, that form was wrong  
21 attached to the certification of facts. There should have been  
22 a spot on there that says where that source of value. It says  
23 clearly, list the source of value.

24           Now who completed that? A paralegal, probably, but  
25 who reviewed it? Well, hopefully, the attorney. I mean,

1 some --

2 MS. HAIGLER: I take great offense to that and think  
3 that I'm not reviewing my work.

4 MR. CANTRELL: Okay.

5 Well, okay. So she reviewed it and missed that.

6 THE COURT: All right.

7 MR. CANTRELL: Missed that omission.

8 And -- and -- and do we want to encourage that?

9 So compliance with the Local Rules is important. I  
10 mean, if -- if -- if the debtor doesn't comply, Your Honor, if  
11 he doesn't get that pre-petition counseling, do you think twice  
12 about kicking his case out? If -- if -- if he doesn't comply  
13 with the consent order and an affidavit of default is filed, do  
14 you think twice about granting relief from stay? If a case --  
15 if a debtor doesn't complete his post-discharge education and  
16 the case is closed without a discharge, do you think twice  
17 about charging him to reopen and -- and -- and paying his  
18 attorney to reopen?

19 Debtors don't get those kind of breaks, Your Honor.  
20 Neither should creditors. Creditors -- creditors file a whole  
21 lot more motions and actions in this Court than I do. They're  
22 the professionals.

23 Just like the difference between a professional truck  
24 driver and somebody, you know, some college kid that's been  
25 driving for a couple of years. You expect higher standards

1 from those people and if they can't get it right, if the  
2 bankruptcy specialists can't get it right, how can bankruptcy  
3 peons like myself ever hope to get it right?

4           The Court needs to raise the bar and these rules  
5 should apply equally to all people. We think the certification  
6 of facts form is very clear. We think Local Rule 4001-1-(e) is  
7 very clear. It says if you don't properly complete the  
8 certification of facts forms, the Court may deny your motion.  
9 And the Court's website posting, I believe December 27th of  
10 this year, says the Court will. It says that that's what the  
11 Mortgage Services Committee recommended, which includes members  
12 of the mortgage community, you know.

13           It's like being an attorney. You don't want the  
14 people out there not doing it right to be getting the business.  
15 You want to have a high standard so that those people that are  
16 doing it wrong get weeded out of this system.

17           The mortgage community wants the same thing. They can  
18 do it right, Your Honor. They just need a reason to and if we  
19 let these things slide for them we're not going to give them  
20 that proper incentive and I believe Judge Waites did the right  
21 thing in Hall and I think Your Honor ought to -- ought to --  
22 ought to take that, take that tact, too.

23           So that's -- first, I think we have the jurisdictional  
24 issue. If they don't get past that gate, they're out of luck.

25           And remember in Boyko's In re Foreclosures case, he

1 said that the federal courts are the gatekeepers of the federal  
2 system and he, he suggested that we keep that bar high. I  
3 think Your Honor needs to keep that bar high.

4           So if they get past the jurisdictional bar, then  
5 they've got to get past the procedural bar under the Local  
6 Rules.

7           And if they get to that and we get to merits, well,  
8 you know, Your Honor's heard the last hearing and merits is  
9 obviously an issue in this case, but it's only an issue if they  
10 get past the jurisdictional and the other bars.

11           Please don't lower the bar for these people. The  
12 people that do the most work in this Court need to do it the  
13 best. If they can't do it the best, there's other people that  
14 can. We need it to be done right every single time and  
15 debtors' attorneys and debtors themselves, most importantly,  
16 don't need to be the only ones that get kicked out of  
17 bankruptcy or lose cases because of procedural issues, not even  
18 jurisdictional issues. For them, mostly, it's just procedural  
19 problems they have. If that happens to pro se debtors, then  
20 what standards should we hold bankruptcy specialists to, Your  
21 Honor? That's what it's all about.

22           THE COURT: Well, anything else?

23           I -- I -- I thought you were at the end.

24           MR. CANTRELL: I think I'm finished, Your Honor.

25           THE COURT: Okay.

1 MR. CANTRELL: I appreciate -- I appreciate your time.

2 THE COURT: Well, I -- I -- I appreciate it.

3 MS. INGLES: Your Honor, there was one thing regarding  
4 the testimony on one -- to make -- you reserved your ruling on  
5 our objection about Attachment A.

6 THE COURT: Yes.

7 MS. INGLES: And --

8 THE COURT: And -- and I'll rule in -- in -- I'll rule  
9 on that if, if it's germane to the order that I issue.

10 MS. INGLES: Okay.

11 THE COURT: I'm not going to rule from the bench, but  
12 I have a note --

13 MS. INGLES: Okay.

14 THE COURT: -- that I've got that under advisement.

15 MS. INGLES: Thank you.

16 THE COURT: I, I appreciate the parties' interest. I  
17 mean, you cite the Maisel case for the Court's gate-keeping  
18 function and, and the right of debtors in Chapter 7 cases to  
19 have benefit of a stay throughout, throughout the term of the  
20 case unless someone proves entitlement to relief from stay.  
21 And I think on -- and, and that's true.

22 And on a more practical level, I think this issue gets  
23 argued in a Chapter 7 case, rather than a Chapter 13 case  
24 because of the nature of what we're doing here. If this were a  
25 Chapter 13, the debtor probably couldn't afford to raise these

1 issues because not only would they pay counsel, if you had  
2 retained counsel -- I understand Ms. Ingles is, is with Legal  
3 Services --

4 MS. INGLES: Yes, sir.

5 THE COURT: -- so that's sort of a different  
6 relationship and Legal Services raises issues in cases where  
7 you don't see them raised often by compensated counsel because  
8 they have a different focus -- but you see this in a Chapter 7  
9 case because the debtor had less to lose by making the  
10 arguments in a Chapter 7. If it's a Chapter 13, not only does  
11 the debtor pay debtor's counsel the debtor, if they're going to  
12 retain the property, is going to pay creditor's counsel, as  
13 well.

14 And in this instance, assuming things go the worst for  
15 the debtor, the debtor gets to walk away and doesn't have to  
16 worry about paying anybody, perhaps. Because this is a  
17 Chapter 7 case. Nonetheless, despite the context that it's  
18 raised in, it's an important issue and it's one that there is a  
19 fair uproar over around the country now and I'm, I'm mindful of  
20 the fact that there are competing interests from the creditors  
21 and the debtors here and very different views of what should be  
22 done.

23 So I take seriously the responsibility to resolve the  
24 issue before me and I, I appreciate the, the parties doing a  
25 good job of, of presenting the case today. I think it's

1 properly framed and ready to be decided. It's helpful when we  
2 actually have testimony and evidence in court. Because it --  
3 it -- it leads the Judge to see what the issues really are and  
4 what the effect on the parties really is.

5           So we'll, we'll try to move as quickly as we can.  
6 I -- I'm very mindful of the fact that a discharge is likely to  
7 be entered at some point in the fairly near future and all of  
8 this may be for naught. And I'm not inclined to issue advisory  
9 opinions and as I sat here and spent the better part of five  
10 hours today listening to this, I, it's occurred to me that I  
11 might be spending all this time for no reason, but --

12           MR. CANTRELL: Your Honor, will you, will you clarify  
13 whether or not you will hold the stay open as long, until,  
14 until you render your decision? How will we determine when  
15 discharge will occur at this point?

16           THE COURT: Well, I mean, the clerk's office issues  
17 the discharge in the ordinary course, and I don't have anything  
18 to do with that.

19           MR. CANTRELL: But you extended the stay until today.  
20 Normally, the discharge would have already have occurred.  
21 So --

22           THE COURT: I -- I extended the stay because otherwise  
23 relief from stay would have been granted because we are well  
24 outside the 60 days.

25           So the stay continues until I rule, or until the

1 debtor gets a discharge. And if the discharge got entered this  
2 morning, I'm going to be very mad.

3 MR. CANTRELL: Could, could Your Honor -- you  
4 authorized the extension of stay obviously past the 60 days for  
5 this hearing. Can Your Honor authorize that until your  
6 decision comes out so that you don't be very, so that you won't  
7 be very mad, Your Honor?

8 THE COURT: Well, I'll think about doing that.

9 MR. CANTRELL: Thank you, Your Honor. We would like  
10 to know, you know, the resolution at, at that time and not have  
11 you undercut by this, either.

12 THE COURT: Yeah. Sometimes, sometimes, though, I  
13 think it would be easier if that were the case.

14 Any, anything from anybody else that you want me to  
15 take into consideration?

16 MS. HAIGLER: No, sir.

17 THE COURT: Thank you.

18 We will --- we'll stand adjourned for the day, and I  
19 will try to get to the matter fairly quickly, although I have a  
20 couple of other things under advisement at this time.

21 So thank you very much.

22 MS. INGLES: Thank you, Your Honor.

23 MR. CANTRELL: Thank you, Your Honor.

24 MS. HAIGLER: Thank you.

25 MS. HIRZEL: Thank you.

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THE COURTROOM DEPUTY: All rise, please.  
(Proceedings concluded at 3:12 p.m.)

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell

February 5, 2008

Janice Russell, Transcriber

Date