

could be heard, but the administrative judge refused to hear the motion to continue, instead deferring the motion to the trial judge.²³ The trial judge, in turn, refused the requested continuances,²⁴ and denied the motions to quash without taking evidence on the service issues, relying on the Trial Order’s admonition that all pre-trial motions “shall have been completed” 15 days prior to trial.²⁵ The trial court also precipitously rebuffed any attempts to argue TERRENCE KELSEY’s motion to vacate the default based on excusable neglect.²⁶ The trial court even refused to grant the KELSEY’s counsel a brief recess to file a Notice of Appeal on the denial of the motion to quash.²⁷ Instead, the case immediately proceeded to trial.

C. The faulty trial.

The plaintiff’s only witness, Lauren Gergeceff (“GERGECEFF”), was employed as a “mediation litigation specialist” by the current servicer, NATIONSTAR.²⁸ GERGECEFF testified that her only knowledge of the KELSEYS’ file was from “reviewing the business records they [NATIONSTAR]

²³ R. 116; 117; Tr. at 10:12-22.

²⁴ R. 116; 117.

²⁵ Tr. at 10:1-7; R. 124.

²⁶ *Id.* at 6:9-12; 9:23-12:22. R. 124.

²⁷ Tr. at 19:15-24.

²⁸ Tr. at 8; 20.

have kept in the course of business.”²⁹ She testified that she had seen the Note for the first time on the day of trial, and had only become familiar with the mortgage file when she learned the case was being tried.³⁰ The Note presented at trial bore an endorsement in blank, although the Note attached to the original complaint did not have any endorsement.³¹ GERGECEFF testified that she had no idea how or when the endorsement came to be placed on the Note, and did not even know that the Note contradicted the attachment to the Complaint.³² GERGECEFF had no knowledge of how or where the Note had been stored by SUNTRUST or FANNIE MAE.³³

Despite the KELSEYS’ objection that GERGECEFF lacked the foundation to authenticate the original Note and Mortgage, the court accepted the proffered documents into evidence.³⁴ The KELSEYS also objected that GERGECEFF’s purported knowledge was all based on out-of-court documents that had not been

²⁹ Tr. at 20:13-16.

³⁰ Tr. at 23-24.

³¹ Compare R. 128 to R. 29-31; see also Tr. at 25-26.

³² Tr. 25-27.

³³ Tr. 27-29.

³⁴ Tr. at 20-24; R. 126-128 (Note); Tr. 31-34; R. 129-145 (Mortgage). On a cold reading of the transcript, it is unclear whether the documents are actually admitted into evidence at all. However, the court clerk recorded that the documents were admitted. R. 125 (clerk’s trial exhibit list).

made available for inspection, and was therefore hearsay.³⁵ The Court nonetheless allowed her testimony and admitted the documents.³⁶

GERGECEFF next testified that SUNTRUST—an entity she had never worked for—had sent a letter to the KELSEYS notifying them of SUNTRUST’s intent to accelerate the Note.³⁷ GERGECEFF had no knowledge of how the letter was prepared, how or whether it had been sent, or whether it was a true copy of what was sent.³⁸ The Court allowed the letter into evidence over objection to these fatal deficiencies.³⁹

As to the amounts due under the Note, GERGECEFF never testified as to any amounts or the bases for such amounts.⁴⁰ Instead, she testified, over objection, that the figures on a proposed final judgment—which is not in the record⁴¹—“accurately reflect the four alleged damages in this case.”⁴² When questioned

³⁵ Tr. at 30.

³⁶ Tr. at 20-24; Tr. 31-34.

³⁷ Tr. 35-44.

³⁸ Tr. 43:16-44:14.

³⁹ *Id.*

⁴⁰ Tr. at 1-91.

⁴¹ As a result, there is nothing in the court record that can be reviewed by this Court to determine whether the proposed judgment and the Final Judgment are the same document, and therefore, whether the figures are the same.

⁴² Tr. 45:6-47:10.

about how the figures in the proposed final judgment were reached, GERGECEFF testified that she did not have the records she used to come up with the figures with her in court, had not reviewed the complaint prior to preparing the figures, and had not reviewed any invoices for taxes and insurance payments.⁴³ On questioning by the KELSEYS' counsel, GERGECEFF admitted the payment history to which she had access only goes back to the moment when NATIONSTAR took over as the servicer, and that her knowledge was solely based upon reviewing summaries for purposes of litigation.⁴⁴ She never actually testified as to the judgment figures, and the proposed judgment was not admitted into evidence.⁴⁵

The KELSEYS moved for involuntary dismissal, arguing that the BANK failed to put forth sufficient evidence to make its case,⁴⁶ and that the complaint failed to state a claim because the allegations lacked the required verification.⁴⁷

D. The KELSEYS file their interlocutory appeal prior to the entry of judgment.

Despite the trial court's refusal to allow a continuance so that the KELSEYS could appeal the denial of the motion to quash, the KELSEYS were still able to file

⁴³ Tr. 47:11-51:7.

⁴⁴ Tr. 53:4-21; Tr. 49-50.

⁴⁵ Tr. 44-51; See also R. 125 (clerk's list of admitted exhibits).

⁴⁶ Tr. 61-63.

⁴⁷ Tr. 81:25-82:12.

a notice of appeal prior to the entry of the final judgment.⁴⁸ The trial court nonetheless entered final judgment against the KELSEYS the next day.⁴⁹ That judgment awarded the BANK judgment on the following amounts:⁵⁰

1. Amounts Due and Owing. Plaintiff is due:	
Principal due on the note secured by the mortgage foreclosed:	\$ <u>449,699.28</u>
Interest on the note and mortgage from 6/1/2009 to 10/17/2012	\$ <u>97,976.40</u>
Title Search Expenses	\$ <u>200.00</u>
Escrow Advance:	\$ <u>55,463.05</u>
Taxes for the year(s) of 2011- \$4,140.23	
Taxes for the year(s) of 2010- \$4,256.15	
Flood Insurance for the year(s) of 2012- \$994.00	
Flood Insurance for the year(s) of 2010- \$1,766.00	
Hazard Premiums for the year(s) of 2012- \$2,991.00	
Hazard Premiums for the year(s) of 2011- \$7,363.63	
Hazard Premiums for the year(s) of 2010- \$7,365.94	
Mortgage Insurance for the year(s) of 2012- \$7,748.10	
Mortgage Insurance for the year(s) of 2011- \$4,304.50	
Mortgage Insurance for the year(s) of 2010- \$14,533.50	
<u>Court Costs, Now Taxed:</u>	
Filing Fee	\$ <u>1,960.00</u>
Service of Process	\$ <u>275.00</u>
SUBTOTAL	\$ <u>605,573.73</u>
<u>Additional Cost</u>	
Inspections	\$ <u>51.75</u>
GRAND TOTAL	\$ <u>605,625.48</u>

Not a single one of these figures had ever been uttered by the BANK's only witness, GERGECEFF, nor do they appear in any document in evidence.⁵¹

⁴⁸ R. 232-240. That appeal is pending in this court, captioned *Kelsey v. Suntrust Mortgage Inc.*, No. 3D12-2723.

⁴⁹ R. 245-249.

⁵⁰ R. 245-246 (Final Judgment).

⁵¹ Tr. 1-91.

The KELSEYS filed an emergency motion to strike the entry of judgment, or in the alternative to stay execution of the judgment pending review.⁵² Stating that the trial court did not have the power to remove the judgment from the docket, the trial court denied the request to strike the entry of judgment, but granted a stay pending resolution of the appeals.⁵³

This timely appeal follows.⁵⁴

⁵² R. 204-213 (Defendants' Emergency Motion to Stay).

⁵³ R. 214-216 (Order on Defendants' Emergency Motion to Stay).

⁵⁴ R. 232-240.