

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION - HUDSON COUNTY  
DOCKET NO. F-18446-08

U.S. BANK NATIONAL ASSOCIATION, AS  
TRUSTEE FOR CSAB MORTGAGE-BACKED  
PASS-THROUGH CERTIFICATES SERIES  
2006-1,

Plaintiff,

v.

XAVIER SINCEGARCIA,

Defendant.

TRANSCRIPT  
of  
HEARING

PLACE: Hudson County Courthouse  
583 Newark Avenue  
Jersey City, NJ 07306  
DATE: May 27, 2009

BEFORE:

THE HONORABLE THOMAS P. OLIVIERI, P.J. CH.

TRANSCRIPT ORDERED BY:

MARGARET LAMBE JUROW, ESQ.  
LEGAL SERVICES OF NEW JERSEY

APPEARANCES:

FRANCIS S. HALLINAN, ESQ.  
BRIAN YODER, ESQ.  
(PHELAN, HALLINAN & SCHMIEG, LLP)  
Attorney for Plaintiffs

DANIEL S. BERNHEIM, 3D., ESQ.  
(WILENTZ GOLDMAN & SPITZER, P.A.)  
Attorney for Plaintiffs

XAVIER SINCEGARCIA  
Pro Se

CAREYANN SHAFTAN, CSR, RPR  
OFFICIAL COURT REPORTER  
HUDSON COUNTY COURTHOUSE  
583 NEWARK AVENUE  
JERSEY CITY, NEW JERSEY 07306

## I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
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Xavier Sinchegarcia

BY MR. YODER 41

## E X H I B I T S

NUMBER	DESCRIPTION	FOR ID	IN EVID.
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D-1	Affidavit of Service	26	72
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P-1	Notice of Intent	42	72
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P-2	Letter dated January 12, 2009	49	72
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P-3	Letter dated January 27, 2009	51	72
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P-4	Notice of Entry of Default,		72
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And Notice pursuant to Section

6 of the Fair Foreclosure Act 60

1 THE COURT: This is in the matter of U.S. Bank  
2 National Association v. Sinchegarcia, F-18446-08.

3 Your appearances please, counsel.

4 MR. BERNHEIM: Good morning, your Honor. Dan  
5 Bernheim from Wilentz, Goldman & Spitzer on behalf of U.S.  
6 Bank National Association, as trustee. I appear at this  
7 time pro hac vice.

8 THE COURT: Gentlemen?

9 MR. YODER: Brian Yoder from Phelan, Hallinan &  
10 Schmieg on behalf of Plaintiff, U.S. Bank.

11 THE COURT: Thank you.

12 MR. HALLINAN: Frank Hallinan, Phelan Hallinan &  
13 Schmieg for U.S. Bank.

14 THE COURT: Good morning, gentlemen.

15 And your name, sir?

16 MR. SINCHEGARCIA: My name is Xavier  
17 Sinchegarcia.

18 THE COURT: Thank you. A housekeeping matter  
19 for me. I understand as a result of a letter that was sent  
20 to Judge Todd --

21 MR. BERNHEIM: Yes.

22 THE COURT: -- by Mr. Phelan regarding these  
23 notaries, that the notaries have been, quote unquote,  
24 redone?

25 MR. YODER: What occurred, your Honor --

1 THE COURT: Just help me out.

2 MR. HALLINAN: That is correct. I am familiar  
3 with the letter, and I am familiar with exactly what  
4 happened when the issue arose before Judge Todd.

5 While the law firm believes that nothing  
6 improper has occurred, it took Judge Todd's concerns for  
7 which he did an extensive search and determined that there  
8 were approximately 4,000 assignments which had been  
9 executed by Mr. Strain.

10 THE COURT: Three thousand in the letter. It  
11 was four?

12 MR. HALLINAN: It was three.

13 MR. BERNHEIM: I may be misstating what was in  
14 the letter. What the law firm then did, it decided to have  
15 all of the assignments re-executed so that there would be  
16 no question about the issues of having, you know, the  
17 notaries acknowledged in the fashion that Judge Todd raised  
18 as a concern.

19 THE COURT: Does it include this one?

20 MR. HALLINAN: It includes this one. We have  
21 here for your Honor a copy of the corrected assignment.

22 THE COURT: Can we make a copy not only for me,  
23 but for the defendant, as well?

24 MR. HALLINAN: We have one of those, as well. I  
25 will hand one over.

1 THE COURT: And you have one for me?

2 MR. HALLINAN: Yes, I do, your Honor.

3 (Handing to Court Officer)

4 MR. HALLINAN: This corrected assignment was  
5 executed by Michelle Bradford, who is also a partner in the  
6 law firm, was authorized as well by MERS to execute the  
7 assignments. And we have an affidavit of certification as  
8 to the manner she went through the execution of this  
9 assignment which, if I could hand this up to the Court as  
10 well, I would appreciate that, and I have a copy for the  
11 defendant.

12 THE COURT: Thank you.

13 MR. HALLINAN: And the thought process was try  
14 to eliminate any concerns, whether we agree or disagree  
15 with them. We were aware that Judge Todd had notified  
16 members of the bench of the issues that had been before  
17 him, and of his concerns.

18 So the effort was made and considerable time and  
19 out-of-pocket expense by the law firm to do this.

20 THE COURT: I read in the letter that the  
21 expense at least was significant.

22 MR. HALLINAN: Yes.

23 THE COURT: Okay. I just wanted to make sure I  
24 referenced that letter and to make sure that this was one  
25 of the assignments that I assumed it was, but until I

1 received the corrective assignment and the attorney  
2 certification I wasn't sure. Give me a minute, let me just  
3 --

4 MR. HALLINAN: Certainly.

5 THE COURT: -- address the defendant.

6 The reason, if you remember, sir, for the  
7 Court's scheduling this hearing was the concern that it had  
8 regarding the assignment that had been executed in this  
9 matter and notarized, and the concern that the Court had  
10 was that the notarization, I infer, did not take place when  
11 the actual signature was placed on the document.

12 As a result of what I just heard from counsel,  
13 that issue no longer technically is on the table, so to  
14 speak, since the assignment now has been executed albeit  
15 certainly after the Complaint was filed. But so I just  
16 wanted to let you know that.

17 If you remember, I gave you certain documents  
18 when you were last here so you could review them. I was  
19 unaware at that time that the law firm was taking this type  
20 of corrective action.

21 The letter that was sent to Judge Todd was dated  
22 April, was dated April 29, received by the Court, meaning  
23 Judge Todd, on May 4, according to his stamp.

24 So I mean from where I sit, quite frankly, I am  
25 not as concerned now about the assignment as I was when we

1 were last here.

2 Now, I would like to hear your thoughts on that,  
3 though, since you have a right to be heard regarding this  
4 matter.

5 First of all, you understand the documents that  
6 were just handed to you? Do you understand what they are?

7 MR. SINCEGARCIA: Yes, sir.

8 THE COURT: I want to make sure you understand  
9 what the documents are.

10 MR. SINCEGARCIA: It is, I am trying to -- I  
11 have lawyers against myself and forgive me if I am not  
12 correct.

13 THE COURT: That is okay. That's why I want to  
14 make sure I asked you if you understand the documents you  
15 were given because you are representing yourself.

16 MR. SINCEGARCIA: I understand the only reason  
17 that they took these corrective actions was because it was  
18 brought up.

19 THE COURT: Because of what?

20 MR. SINCEGARCIA: Because it was brought up as  
21 a question. I have other questions. When I filed it  
22 first, who is say they don't have other -- they are not  
23 correct, the other things they claim to be correcting.

24 THE COURT: For example?

25 MR. SINCEGARCIA: For example, I just received

1 -- maybe not just, I did not bring it with me -- paperwork  
2 in a large envelope saying that I received it personally or  
3 that I signed for it.

4 THE COURT: When you say "it," what do you mean?

5 MR. SINCEGARCIA: Just that paperwork, the last  
6 envelope they sent it. They always send letters to me that  
7 I received it or signed it personally, and I didn't.  
8 That's one of the questions that I bring up.

9 THE COURT: Let me focus on the issue that  
10 caused me to schedule the hearing, first, and then we can  
11 talk about some of these other matters in a minute.

12 MR. SINCEGARCIA: Yes, sir.

13 THE COURT: But I just want to focus now on the  
14 hearing, and the record should reflect it was the Court  
15 that raised the issue and scheduled a hearing and asked Mr.  
16 Hallinan to be here.

17 MR. SINCEGARCIA: Yes, sir.

18 THE COURT: Now that the corrective assignment  
19 of mortgage has been executed by Ms. Bradford presumably in  
20 the presence of the notary, Angela McFadden, I am  
21 suggesting to you that this Court is not as concerned about  
22 -- we can discuss whether or not it is a substantive or  
23 procedural problem, but I am not as concerned about having  
24 Mr. Hallinan testify about how he executed the original  
25 assignment of mortgage.

1           Now, if you want to raise other issues apart  
2 from this, that is fine, but I am kind of asking you about  
3 this issue. This is the reason we are all here today and  
4 the reason why I scheduled the hearing.

5           So I am asking you about that.

6           MR. SINCHEGARCIA: I understand your question,  
7 your Honor. I don't have anything.

8           THE COURT: I am sorry?

9           MR. SINCHEGARCIA: There is nothing that I could  
10 ask. Nothing that I can add to that.

11           THE COURT: I am trying to be fair. That is  
12 what my job is, that is what my job is, and I have to say  
13 this, yeah, I mean different people who are involved in the  
14 foreclosure process, and what I mean by that, I am talking  
15 about attorneys, nonattorneys, members of the bench, other  
16 members of the bar, could debate on whether or not failure  
17 to have the notary personally notarize the execution of the  
18 assignment is fatal to a foreclosure matter.

19           I don't necessarily need to get there today  
20 because I am satisfied that in this matter, A, there has  
21 been a corrective assignment that I am told was notarized  
22 properly and I don't need to ask Mr. Hallinan any questions  
23 about that. But I want to say something a little bit more.

24           I don't -- obviously I don't know what is going  
25 to happen with Judge Todd's matter. I understand it was

1 moved --

2 MR. HALLINAN: That's correct, your Honor.

3 THE COURT: -- to Federal court and whatever  
4 happens, happens there. Not that it is not a concern to  
5 me, but it is not before me. This case is.

6 I feel very strongly that regarding the  
7 foreclosure process, sometimes there are actions taken  
8 simply to move the matter along more quickly, and this  
9 might be one of those, might be one of those processes  
10 whereby instead of doing it properly the first time, for  
11 the purpose of expediency it wasn't done properly and don't  
12 think anyone -- I don't think we can disagree or should  
13 disagree that having someone notarize a document saying  
14 that it was done in the presence, the signing was done in  
15 the presence, is done -- is improper for the purpose of  
16 notarization. And some might argue, and I know some have,  
17 certainly from the plaintiff's bar it is form over  
18 substance and should not affect the foreclosure.

19 I don't need to get there today in this case for  
20 the reasons I have said. It was corrected.

21 And I am satisfied that I don't need to pursue  
22 that in this case. It is only one case.

23 I don't speak for my other brothers and sisters  
24 throughout the state, I can only speak for me in this case.  
25 But I don't think I would be doing my job if I didn't say,

1 and again this is just Judge Olivieri, I don't think  
 2 although I am a Chair in the Conference of General Equity  
 3 judges, I am not speaking as Chair of the Conference, I am  
 4 speaking as the General Equity judge in the Hudson  
 5 vicinage, that sometimes for the purposes of expediency and  
 6 moving the matter along certain formalities are overlooked  
 7 or shunned or disregarded, and they may be simple  
 8 informalities, but they are important formalities.

9 I think it is important that when a notary  
 10 indicates that he or she saw the person, or the person was  
 11 in his or her presence and signed the assignment, that that  
 12 be accurate and not be something that is inaccurate.  
 13 Something that didn't happen.

14 So I just want to say that going forward I hope  
 15 and trust that when other formalities -- that when  
 16 plaintiff's bar or the plaintiffs are faced with other  
 17 formalities in the execution of documents regarding  
 18 assignments, that these formalities aren't overlooked.

19 We have spent a fair amount of time. You have,  
 20 your firm.

21 Honestly, the judges have spent a lot of time on  
 22 this issue and it is unnecessary and the only reason why we  
 23 are spending all this time is because a formality was  
 24 overlooked or disregarded.

25 For me, the formality is important because I

1 think when we overlook or shun or disregard formalities  
2 such as these notarizations, and if the Bench countenances  
3 overlooking those types of formalities, it is a slippery  
4 slope that we start to climb, overlooking perhaps other  
5 more substantive formalities, and this is too important of  
6 a process, meaning the foreclosure process, to overlook  
7 those types of formalities.

8 I am not speaking for the defendants, I am  
9 speaking for this General Equity Judge. Again, not as the  
10 Chair of the Conference. So I just ask going forward that  
11 when faced with doing it the correct way as opposed to the  
12 expedient way, that you choose the former rather than the  
13 latter, or else -- and again only speaking for myself, we  
14 are going to be in the same position, and I don't know what  
15 formality might be overlooked and I, quite frankly, Don't  
16 know what action this particular judge will take.

17 I can only tell you that based upon the letter  
18 that was sent to Judge Todd which I obviously have a copy  
19 of, and the actions taken by your firm to correct  
20 overlooking the formality, I am satisfied that I don't need  
21 to question anyone.

22 I am inferring that it won't happen again. And  
23 when I say again, I am talking about inappropriate  
24 notarizations and other like formalities.

25 Can't get sloppy. It is too important. And it

1 really sends, it sends an inappropriate message to the  
2 public that the Bar and the Bench would overlook those  
3 types of formalities.

4 Again, honestly, if this corrective assignment  
5 of mortgage hadn't been executed properly, I infer we would  
6 have had a preliminary hearing today and I don't know what  
7 would happen today. I am not in the habit of giving  
8 advisory rulings.

9 It was a concern to me when it was first raised  
10 in the matter before Judge Todd and when I realized I had a  
11 similar matter before me.

12 So that is all I wanted to say. I think it is  
13 important that we --

14 MR. HALLINAN: May I just very briefly?

15 THE COURT: -- honor those formalities. Yes.

16 MR. HALLINAN: Your Honor, I came here and I  
17 stated today that I represent U.S. Bank National  
18 Association as trustee in this matter.

19 I have also for a number of years had what I  
20 state sincerely as the privilege of serving as counsel to  
21 the law firm of Phelan, Hallinan & Schmieg, and represented  
22 them in a number of different varieties and have found that  
23 the folks there take to heart what it is that they are  
24 doing and recognize at the end of the day they may be  
25 depriving or -- not depriving, but somebody may lose their

1 home and they never lose sight of that and, in my  
2 experience, never had and it is a result of that  
3 recognition that they went through this process to do the  
4 corrective assignments because I agree with your Honor, one  
5 could make the argument not only is it form over substance  
6 because there is not only one assignment that Mr. Strain  
7 notarized that does not have Mr. Hallinan's signature.

8 THE COURT: No one was suggesting that there was  
9 forgery at all. Never been the issue here.

10 MR. HALLINAN: So the actual acknowledgement  
11 itself does indicate this is the signature of the person  
12 who signed it, the person who signed it had authority to  
13 execute those assignments, but it was in recognition of the  
14 comment that you made that it indicates they are in the  
15 presence of, and we could state because you know a group of  
16 them were, and a group of them were not. But we couldn't  
17 tell you on any given assignment which was and which  
18 wasn't. It was almost like asking the short order cook do  
19 you recall flipping which hamburger on which day.

20 In recognition of that and the possibility that  
21 there was not a technical accuracy, they went through what  
22 was a significant out-of-pocket expense on their own.

23 In addition to the form over substance debate is  
24 the legal issue that the actual assignment already occurred  
25 through the PSA and that is done --

1 THE COURT: I don't need to get there.

2 MR. HALLINAN: And I recognize that. The only  
3 reason that I point that out is not to taste whether the  
4 wine is good, or how the grapes are stomped, but I wanted  
5 the Court, given its comments, to understand that the law  
6 firm as well as the clients that they have represented that  
7 have been involved in these matters including MERS, have  
8 taken to heart what the issue is and said look, we need to  
9 be more than technically correct given what is going on in  
10 the world today, especially with all of the foreclosures  
11 and in the world of securitized mortgagees, that we realize  
12 nobody understands how these processes work all that well,  
13 to make sure we have done it properly for the integrity not  
14 only of the system, but in fairness to all of the  
15 defendants involved, the investors that are involved, and  
16 everyone else.

17 So the effort was made, and again it was -- as  
18 time consuming as it was, expensive as it was, in  
19 recognition of that, so that your Honor and anybody else  
20 who sits in a similar situation would not have to deal with  
21 this issue and take the time and expense for everybody  
22 involved.

23 THE COURT: I can speak for the Conference in  
24 this regard. I don't want to have to deal with this type  
25 of issue again. That, I am confident that I speak for the

1 Conference in that.

2 MR. HALLINAN: Equal confidence. Either do we.  
3 And I know as a fact that the firm has taken a look at its  
4 own processes and procedures and on a regular basis,  
5 notwithstanding this, tries to make sure that it complies  
6 with all of the rules as they exist and to advance what  
7 they are doing because it is not only counterproductive for  
8 the Court and the defendants, but also for their clients.

9 So there is a lot of different motivators that  
10 are out there to make sure that neither this or anything  
11 similar occurs.

12 THE COURT: I appreciate it and I hope, I think  
13 you do, I am sure the firm does, appreciates the Court's  
14 comments about these types of formalities. They are not  
15 just formalities in my opinion. They go beyond that  
16 because these formalities sometimes are the underpinning of  
17 the process that we go through, and if we don't adhere to  
18 them, again, I think we start going up a slippery slope and  
19 what is just a formality, I think it impacts the process  
20 negatively.

21 So enough said, and I really do appreciate it.  
22 I can say when I read the letter that was subsequent to  
23 Judge Todd and it was passed out to every member of the  
24 Conference because the letter says please share this with  
25 the Conference, I was impressed that you spent, as the

1 letter says, 175, upwards of \$175,000 to correct the issue  
2 or the problem.

3 Again, I can only tell you how I am reacting in  
4 this case. I don't speak for any other judge in this  
5 regard, I only speak for this judge in this case. That is  
6 because that is the only thing that is before me, and after  
7 explaining it to the defendant as best as I could and  
8 asking the defendant if he had any questions on that issue,  
9 he claimed no.

10 I am done with that issue in this case. Okay.

11 MR. HALLINAN: Very well.

12 THE COURT: So you can stay if you would like, I  
13 don't intend to call you, I am satisfied that the message  
14 was sent and received.

15 MR. HALLINAN: Thank you, your Honor.

16 THE COURT: Thank you.

17 Now, I want to get back to the other issues that  
18 you raised because I am not sure I understand them. I  
19 understand the words, but I want to make sure I understand  
20 what you are saying regarding these documents which were  
21 sent to you which you say claim to have your signature on  
22 them and they are not.

23 Can you just tell me, when you were receiving  
24 these documents, was this in the context of discovery?  
25 Just help me out with that.

1 MR. SINCEGARCIA: Sure, your Honor. I had  
2 something served, I am aware I had to be served and I had  
3 to be served personally.

4 THE COURT: You are talking about with the  
5 summons and complaint?

6 MR. SINCEGARCIA: Yes, your Honor.

7 That amongst other things I have received in the  
8 mail which says that -- on the letter itself that I  
9 received it was served personally or certified. I don't  
10 believe I have that, those papers in front of me, but they  
11 were just mailed to me.

12 THE COURT: Hold on for a second because I want  
13 to check something of my own here. Hold on a second. I  
14 don't know if I have the entire file out here. One second.

15 And I don't. Help me out with this, either  
16 side. Have we had a case management conference in this  
17 case?

18 MR. BERNHEIM: No. This was before your Honor  
19 on a motion to vacate final judgment.

20 THE COURT: Okay. Since I don't have the file  
21 --

22 Now, so I understand where we are at in this  
23 case, one of the -- one of the issues that you are raising  
24 to vacate the final judgment is that you were not served  
25 originally with the summons and complaint?

1 MR. SINCEGARCIA: Yes, your Honor, that is one  
2 of the things that I am asking.

3 These formalities and procedures, that's all I  
4 have, your Honor.

5 THE COURT: Do you have your file with you in  
6 this? Do you have the underlying file?

7 MR. HALLINAN: Yes, I do, your Honor.

8 THE COURT: Would it be worth everybody's while  
9 for the defendant and one or both or all of you to go into  
10 my conference room and show the defendant what exists  
11 regarding this case? Because sometimes that type of  
12 communication goes a long way to resolving some of the  
13 issues.

14 MR. HALLINAN: We certainly can try so we can  
15 walk him through what was served when. I think one of the  
16 issues was that there was some certified mail that was  
17 delivered to the home and it has a signature with his name  
18 on it which he asserts it was not his name, somebody else  
19 might have signed it. Maybe we can flush out what the  
20 issues are.

21 THE COURT: As a threshold matter preliminarily,  
22 would it help you if you were to go into my conference room  
23 and be shown whatever documents you do not have? Again, I  
24 do not know.

25 MR. SINCEGARCIA: Your Honor, they have sent me

1 those documents that they had and I have them, I have them  
2 here.

3 THE COURT: Did you send a copy of your file to  
4 the defendant?

5 MR. YODER: In part.

6 THE COURT: It is not in your file regarding  
7 some of the issues that the defendant raises?

8 MR. YODER: The documents regarding the --

9 THE COURT: For example, service.

10 MR. YODER: The affidavit of service is included  
11 in the opposition.

12 THE COURT: In the packet of documents sent to  
13 the defendant?

14 MR. YODER: Correct.

15 THE COURT: Is there anything else in your file  
16 that might shed light on that issue regarding service? And  
17 I don't know, some other document from the process server?

18 MR. YODER: No, your Honor.

19 THE COURT: There is nothing else?

20 MR. YODER: It would be the affidavit of service  
21 from the process server certifying that he did serve, also  
22 listing the description of the individual who received that  
23 service.

24 THE COURT: I don't want to waste your time if  
25 there is nothing in there that is going to help. Sometimes

1 there is, sometimes there isn't. But if you have been sent  
 2 everything that there is, let's get some focus how we are  
 3 going to proceed rather than -- this is your motion to  
 4 vacate final judgment request, an informal request, and I  
 5 do this pretty much in every case wherein a defendant  
 6 attempts to vacate judgment on these types of issues,  
 7 defendants gets sworn, placed under oath, testifies as to  
 8 the reason why he thinks the, in this case service, was  
 9 defective.

10 He is cross-examined or she is cross-examined,  
 11 presents whatever other witnesses they want to present,  
 12 then the plaintiff can produce witnesses if he chooses to  
 13 who will testify about service or whatever is raised,  
 14 cross-examined by the defendant, and then I rule. That is  
 15 how it is done.

16 So if you want to testify before the Court on  
 17 the issue of service and, quite frankly, whatever else you  
 18 have raised in your motion to vacate final judgment that's  
 19 been filed, this would be your opportunity.

20 Do you wish to do that?

21 MR. SINCHEGARCIA: Yes, your Honor.

22 THE COURT: Why don't you come on up here to the  
 23 witness stand, and we do have your motion to vacate.

24 Come on up, Mr. Sinchegarcia. You will be  
 25 sworn, you can tell us why you think the judgment should be

1 vacated. Counsel can cross-examine if he chooses.

2 MR. SINCHEGARCIA: I am sorry, your Honor. Can  
3 I grab that?

4 THE COURT: Sure.

5 MR. SINCHEGARCIA: Okay.

6 X A V I E R S I N C H E G A R C I A, was duly sworn.

7 COURT OFFICER: Please state your name and spell  
8 it for the record.

9 MR. SINCHEGARCIA: Xavier Sinchegarcia.

10 X-A-V-I-E-R S-I-N-C-H-E-G-A-R-C-I-A.

11 THE COURT: Thank you, sir. You can have a  
12 seat. And again, refresh my memory. Has this gone to  
13 sheriff's sale?

14 MR. YODER: No, your Honor, a sheriff's sale has  
15 been requested and presently scheduled for June 11.

16 THE COURT: Mr. Sinchegarcia, let me just ask  
17 you a couple of questions. I may have asked you this  
18 before, and I apologize if I have.

19 MR. SINCHEGARCIA: Yes, sir.

20 THE COURT: The address of the property is what?

21 MR. SINCHEGARCIA: 110 62nd Street, West New  
22 York.

23 THE COURT: Where do you live now?

24 MR. SINCHEGARCIA: The same.

25 THE COURT: In the subject property?

1 MR. SINCEGARCIA: Yes.

2 THE COURT: How many units is that property,  
3 one-family or two-family?

4 MR. SINCEGARCIA: Two-family unit.

5 THE COURT: Would you agree that at least from a  
6 threshold perspective notwithstanding what I do with this  
7 motion, that this is a case that is eligible for the  
8 mediation program if all things are equal?

9 MR. YODER: Yes, your Honor.

10 THE COURT: And again I have to apologize if I  
11 have gone over this with you, stop me, and I am going to  
12 hear you on this motion. Regardless of what I do with the  
13 motion, even if I granted it and vacate the final judgment  
14 because you are an owner occupier of the property and  
15 because it is a two-family, you are eligible for the  
16 foreclosure mediation program.

17 I am going to take a minute to go over that with  
18 you. A foreclosure mediation program was announced on  
19 October the 16th, 2008, and it really went into effect on  
20 January 5th, 2009. It really deals with right now all  
21 foreclosure cases up to the sheriff's sale, so since you  
22 haven't gone to sheriff's sale yet, you are eligible for  
23 this program. I will give it to you and you don't have to  
24 fill out these forms if you don't want, but I strongly  
25 suggest that you do.

1           In the forms that I am going to give you there  
2 are two very important -- in fact, I will give you the  
3 forms right now.

4           You are going to see, Mr. Sinchegarcia, a phone  
5 number on the first page there. That is a toll free  
6 number. It is an 888 number. That is a number you can  
7 call and be steered to a housing counselor who will sit  
8 down with you -- in Hudson County who will sit down with  
9 you and go over with you whatever income you have and  
10 whatever other assets you may have. You may have to fill  
11 out a documentation in there called a financial worksheet.  
12 There is a document, it might be the last page, but it is  
13 captioned "financial worksheet." And the housing counselor  
14 will go over with you and assist you in filling out that  
15 financial worksheet and will mail it, if one is completed,  
16 down to Trenton. A copy of it will be sent to the lender,  
17 to the plaintiff here, and a mediation session will be  
18 scheduled and the hope in the mediation is that you can  
19 reach an agreement with the plaintiff to recast, modify,  
20 the loan so that you can stay in your home.

21           If you don't fill out the worksheet there is no  
22 mediation. That is a requirement for the program.

23           Regardless of what I do with this motion, if I  
24 grant it or deny it, you are still eligible for the  
25 program.

1           So my strong advice to you is when we are done  
2 here today, regardless of what I do with this motion, you  
3 call that number, steer it to a housing counselor, fill out  
4 the worksheet with the housing counselor and then I can  
5 tell you that as of -- I believe it is June 15th, I don't  
6 know if this has been announced yet, but I have become  
7 aware of it. Regarding mediations, they are going to  
8 require that all forms, meaning worksheets, be completed  
9 with the housing counsel and the reason for that has become  
10 apparent to us.

11           I am going to digresses for a minute, if you  
12 don't mind. There has been a problem with worksheets that  
13 have been completed solely by homeowners without the  
14 assistance of a housing counselor, that they don't include  
15 either enough information, correct information, and are  
16 not, is not supported by the appropriate documents. Tax  
17 returns, whatever, bank statements.

18           I believe as of June 15th there will be a  
19 requirement that these forms, these requests be completed  
20 with a housing counselor and at that time an actual request  
21 be made through the housing counselor for mediation.

22           That is a little bit of a heads up to you. I  
23 think there will be a formal announcement and it could  
24 change. This is a very fluid situation. We are trying to  
25 do the best we can with this program, but I believe you are

1 going to see that.

2 And it makes sense to me, and based upon our  
3 experience so far, five or six months into the program,  
4 that is one of the issues that is out there. So look for  
5 that announcement on the website near you.

6 MR. YODER: Thank you, your Honor.

7 THE COURT: So back to you.

8 So fill it out and avail yourself of the program  
9 because, quite frankly, even if I vacate the judgment, the  
10 foreclosure doesn't go away. There is still this issue  
11 regarding what is going to happen.

12 MR. SINCEGARCIA: I understand, your Honor.

13 Yes, sir.

14 THE COURT: So you have been notified. Tell us  
15 what it is -- strike that.

16 Tell us why this Court should vacate final  
17 judgment in this matter.

18 MR. SINCEGARCIA: I have a copy of the response  
19 paper they presented.

20 THE COURT: All right. And I assume that you  
21 have that, as well?

22 MR. YODER: Yes.

23 THE COURT: I think in order to make a record,  
24 Carey, we should start marking these documents. So if you  
25 would be kind enough, mark that D-1 for us, please.

1 (Affidavit of Service, was marked as Defendant  
2 Exhibit 1 for Identification.)

3 THE COURT: You can remain seated. For my  
4 benefit again, what is D-1?

5 MR. SINCEGARCIA: It is a copy that they  
6 presented to me, that they served me.

7 THE COURT: That is the Affidavit of Service?

8 MR. SINCEGARCIA: I don't --

9 THE COURT: Show it to me.

10 (Court perusing exhibit.)

11 THE COURT: Yes. It is the Affidavit of Service  
12 with the caption and the docket number in this case  
13 allegedly signed by Edward Smith -- I am not sure. I can't  
14 -- interestingly notarized by Thomas Strain.

15 MR. HALLINAN: Interestingly so notarized.

16 THE COURT: I am not going there with that one.  
17 Go ahead.

18 MR. SINCEGARCIA: Your Honor, besides the  
19 description which is not --

20 THE COURT: Tell me, what does it say there?

21 MR. SINCEGARCIA: Description says sex male,  
22 age 27, height 5-9, weight 170, skin color, it is  
23 illegible, and hair color brown.

24 THE COURT: All right. Who is -- who does it  
25 say was served, you?

1 MR. SINCEGARCIA: Yes.

2 THE COURT: And what is the date when you were  
3 allegedly served?

4 MR. SINCEGARCIA: March 17, 2008.

5 MR. YODER: Your Honor, I believe that is May  
6 17.

7 THE COURT: Well, you could tell by the notary  
8 at the bottom.

9 When was it notarized?

10 MR. SINCEGARCIA: 5-17.

11 THE COURT: There you go. So May 17. Does it  
12 give a time?

13 MR. SINCEGARCIA: 1:47 p.m.

14 THE COURT: When you were served?

15 MR. SINCEGARCIA: According to the paper, yes,  
16 sir. I don't remember ever signing anything, your Honor.

17 THE COURT: Well, on May 17, 2008, where were  
18 you living?

19 MR. SINCEGARCIA: I was living at the property.

20 THE COURT: And does the affidavit of service  
21 indicate that's where you were served, at the subject  
22 property?

23 MR. SINCEGARCIA: Yes.

24 THE COURT: If I can ask -- let me make some  
25 notes here. Were you working? Were you employed on May 17

1 somewhere?

2 MR. SINCEGARCIA: I was working. I don't know  
3 where on that specific date.

4 THE COURT: I understand. Where were you  
5 working generally at that time?

6 MR. SINCEGARCIA: March of 2008?

7 THE COURT: May.

8 MR. SINCEGARCIA: May of 2008? It is hard for  
9 me to recall specifically. I am a union electrician so I  
10 bounce from place to place.

11 THE COURT: So you are not sure?

12 MR. SINCEGARCIA: Right.

13 THE COURT: Who else was living at that property  
14 on that date?

15 MR. SINCEGARCIA: That is one of the -- I  
16 rented my rooms out to try to --

17 THE COURT: To generate income?

18 MR. SINCEGARCIA: Right.

19 THE COURT: Sure.

20 Help me out again, and I know you told me this.  
21 The subject property is one-family or two-family?

22 MR. SINCEGARCIA: Two-family.

23 THE COURT: What floor did you live on back  
24 then?

25 MR. SINCEGARCIA: On the second floor, your

1 color is obviously not brown like it says on the sheet.

2 THE COURT: Does the sheet say anything about  
3 facial hair?

4 MR. SINCHEGARCIA: No, your Honor.

5 THE COURT: Did you have any facial hair in May  
6 of '08?

7 MR. SINCHEGARCIA: This is as much facial hair  
8 as I would have, your Honor.

9 THE COURT: But specifically, and the record  
10 should reflect when the witness says "this," I should know  
11 what that is called but it is escaping me -- it is a very  
12 thin beard that goes from ear to ear under the chin.

13 MR. SINCHEGARCIA: Yes, your Honor.

14 THE COURT: But did you have that type of growth  
15 in May of '08?

16 MR. SINCHEGARCIA: Most likely yes, your Honor.  
17 I don't think I could be confused for my tenant's  
18 boyfriend.

19 THE COURT: Why is that?

20 MR. SINCHEGARCIA: He is black and he is much  
21 taller.

22 THE COURT: What about the other gentleman who  
23 was living in your apartment?

24 MR. SINCHEGARCIA: Others, yes. Easily. They  
25 are -- most of them were Spanish. But not that specific

1 MR. SINCEGARCIA: It is a female. Griselle.

2 THE COURT: Was she the only one living on the  
3 first floor?

4 MR. SINCEGARCIA: No. She has a, younger  
5 children, and she has her boyfriend with her.

6 THE COURT: And how old is the boyfriend?

7 MR. SINCEGARCIA: The boyfriend is somewhere  
8 around my age.

9 THE COURT: By the way, how old are you?

10 MR. SINCEGARCIA: I am 28.

11 THE COURT: Twenty-eight years old?

12 MR. SINCEGARCIA: Yes.

13 THE COURT: And how many children did that  
14 tenant have at that time?

15 MR. SINCEGARCIA: Three or four, I am not sure  
16 when the youngest --

17 THE COURT: If I can ask you, how tall are you?

18 MR. SINCEGARCIA: I am five foot ten.

19 THE COURT: What do you weigh or I should say  
20 what did you weight back in May of '08?

21 MR. SINCEGARCIA: I have been -- I am lighter  
22 now. I am on a diet. I am 197.

23 THE COURT: What was your weight around then?

24 MR. SINCEGARCIA: Two hundred. I haven't  
25 weighed 170 since my days in the Marine Corp. And my hair

1 Honor.

2 THE COURT: And on the second floor did anyone  
3 else live with you?

4 MR. SINCHEGARCIA: Yes, your Honor.

5 THE COURT: Who?

6 MR. SINCHEGARCIA: Your Honor, I have bounced  
7 through roommates.

8 THE COURT: You don't remember in the spring of  
9 '08 or summer of '08 who was living with you?

10 MR. SINCHEGARCIA: Not specifically. I could  
11 tell you a couple, one roommate that has been there the  
12 longest, but besides him I have bounced roommates in and  
13 out trying to generate income and I rearranged myself in  
14 the household so I can generate the most income to apply  
15 for loan modifications through the bank to maintain the  
16 property.

17 THE COURT: What about on the first floor? Who  
18 was living on the first floor at that time?

19 MR. SINCHEGARCIA: The first floor I have a  
20 tenant that has been there for a while.

21 THE COURT: All right. And who is that person?

22 MR. SINCHEGARCIA: Griselle DelaCruz.

23 THE COURT: Griselle?

24 MR. SINCHEGARCIA: Griselle is his first name?

25 THE COURT: It is a fellow?

1 gentleman, the one on the first floor. The only one that  
2 is remaining living there is that, the tenant that I spoke  
3 about.

4 THE COURT: On the first floor?

5 MR. SINCEGARCIA: No, my roommate. There had  
6 been others that I could be confused for.

7 THE COURT: Can you just hand me D-1 so I can  
8 see it?

9 MR. SINCEGARCIA: Yes, your Honor.

10 THE COURT: Thank you.

11 It mentions your skin color as light, right?

12 MR. SINCEGARCIA: I couldn't read what it says.

13 THE COURT: It seems to say LGT which I am  
14 assuming is light.

15 MR. YODER: I look at it as LAT, perhaps Latino.

16 THE COURT: It could be, it is difficult. LGT  
17 or LAT. Fair enough.

18 Let me continue to look at this.

19 MR. SINCEGARCIA: There were --

20 THE COURT: Go ahead.

21 MR. SINCEGARCIA: -- there were a couple of --  
22 most of the roommates that I had were Latino. There was  
23 another black kid and a couple European.

24 THE COURT: Now, when was the first time you are  
25 saying you saw the summons and complaint?

1 MR. SINCEGARCIA: I saw this (indicating).

2 THE COURT: No, not the Affidavit of Service,  
3 but the actual foreclosure complaint and the summons?

4 MR. SINCEGARCIA: I started receiving -- I was  
5 aware that I had to be served and I had 30 days to answer.

6 THE COURT: How were you aware? How did you  
7 become aware of that?

8 MR. SINCEGARCIA: Because I was late on my  
9 payments and I was making myself aware what was going on  
10 and I was trying to modify on my own with the bank so I was  
11 making myself aware as much as I could what needed to be  
12 happening, what my options were.

13 THE COURT: But how did you become aware  
14 specifically that you had to take some sort of action or  
15 something was going to happen regarding the property?

16 MR. SINCEGARCIA: Oh, I have -- I wouldn't say  
17 a friend, but, a lawyer, and the mortgage people that I  
18 talk to, and I called them and I asked them.

19 THE COURT: Before May 17th were you aware of  
20 this?

21 MR. SINCEGARCIA: Yes, your Honor.

22 THE COURT: Did you receive a notice from the  
23 plaintiff prior to May 17th regarding your being in default  
24 and the --

25 MR. SINCEGARCIA: From the plaintiff, no, your

1 Honor. From the mortgage companies, yes.

2 THE COURT: That's what I mean, and I apologize  
3 for that. You did receive a notice?

4 MR. SINCEGARCIA: From the mortgage company  
5 that I am late on my payments, that I need to pay.

6 THE COURT: Did you receive a notice of intent  
7 to foreclose? Do you remember receiving that type of  
8 document?

9 MR. SINCEGARCIA: I don't --

10 THE COURT: Before May 17th.

11 MR. SINCEGARCIA: I couldn't tell you, your  
12 Honor. I was waiting to be served. Then I received --

13 THE COURT: I am sorry for interrupting you, but  
14 you just said something that is interesting to me. You  
15 said you were waiting to be served.

16 What gave you the impression that you were going  
17 to be served with a summons and complaint?

18 MR. SINCEGARCIA: I am trying to modify my  
19 loan. I was trying to sell deed in lieu. I was trying to  
20 also do, when you sell the house, short sale.

21 THE COURT: Right.

22 MR. SINCEGARCIA: So I am making myself aware  
23 of all these things and they are telling me you are not  
24 under foreclosure yet, you will be soon. I am talking to  
25 the mortgage companies, I am talking to the lady, a friend

1 of mine that does mortgages, so I know -- I thought I was  
2 running out of time to when I could do all that.

3 THE COURT: Certainly. But when did you become  
4 aware that a complaint was filed?

5 MR. SINCHEGARCIA: The letters from them started  
6 receiving -- I got afterwards.

7 THE COURT: For example?

8 MR. SINCHEGARCIA: I couldn't tell you specific.  
9 I knew for sure that I was served when I went to Trenton  
10 myself.

11 THE COURT: Tell me about that. What caused you  
12 to go to Trenton?

13 MR. SINCHEGARCIA: I was advised to go to  
14 Trenton because I didn't know where I stood in the process.

15 THE COURT: But you are assuming I know perhaps  
16 more than I know. Who advised you to go to Trenton?

17 MR. SINCHEGARCIA: Because I received letters  
18 and -- even the mortgage company. I received letters,  
19 court dates and all this stuff that I wasn't sure what was  
20 going on and I called and said, you know, Hey, am I under  
21 foreclosure yet? All they tell you is no, there is no  
22 sheriff's sale yet.

23 So I went to Trenton because it is public  
24 property, you can get your file.

25 THE COURT: Right.

1 MR. SINCEGARCIA: And I was served, my 30 days,  
2 I was served, and my 30 days was passed.

3 THE COURT: When did you do that?

4 MR. SINCEGARCIA: In December.

5 THE COURT: December of '08?

6 MR. SINCEGARCIA: Yes.

7 THE COURT: So five months after May?

8 MR. SINCEGARCIA: Yeah.

9 THE COURT: And these notices about court dates  
10 and the like were sent?

11 MR. SINCEGARCIA: I think I received one  
12 letter. I don't know what specifically it said. I  
13 answered it shortly after. When I was aware what was going  
14 on, I started answering the plaintiffs.

15 THE COURT: And how did you know to go to  
16 Trenton?

17 MR. SINCEGARCIA: Like I said, your Honor --

18 THE COURT: Somebody told you?

19 MR. SINCEGARCIA: Yes, and it was public  
20 records.

21 I tried to educate myself as much as I can from  
22 the library. I am aware of foreclosures sales and  
23 sheriff's sales and I try to educate myself as much as  
24 possible.

25 THE COURT: Okay. Let me put the service issue

1 to the side for a moment and whether or not you were  
2 served. I want to go to your motion that you filed that  
3 brought us all here to begin with. And I am looking at  
4 your certification that was filed with the court on  
5 February the 20th, 2009.

6 What else besides service or your lack of  
7 service are you suggesting, arguing, why the Court should  
8 vacate this final judgment?

9 MR. SINCEGARCIA: I have my notes there, your  
10 Honor.

11 THE COURT: You want to get them? Sure.

12 Perhaps I can help and move this along a little  
13 bit. Are you alleging that the plaintiff failed to serve  
14 on you a notice of intent?

15 MR. SINCEGARCIA: Notice of intent to  
16 foreclosure?

17 THE COURT: Yes.

18 MR. SINCEGARCIA: Yes, your Honor.

19 THE COURT: Okay.

20 MR. SINCEGARCIA: That's what we were just  
21 going over?

22 THE COURT: Yes. I want to make sure, and it is  
23 helpful to counsel, as well, to know what to cross-examine  
24 you on. So?

25 MR. SINCEGARCIA: Yes.

1 THE COURT: We have failure to serve the notice  
2 of intent, failure to serve the summons and complaint.  
3 What else?

4 I take it there is a problem that you raise and,  
5 again, I am trying to help as I read your certification,  
6 that none of these -- and I am just quoting you, quoting  
7 you, Page 2 of your certification in bold type underlined  
8 in pertinent part, quote, none of the assignments show the  
9 named plaintiff to be the owner of the rights, title and  
10 interest under the date -- as of the date of foreclosure  
11 complaint.

12 Is that another --

13 MR. SINCHEGARCIA: Yes, your Honor. I didn't  
14 sign anything with U.S. Bank, and all the paperwork I got  
15 from the plaintiffs before today said U.S. Bank and I was  
16 questioning the assignments. I never received any copies.

17 THE COURT: This Court has held, and I should  
18 know this and I don't know if plaintiffs, plaintiff is  
19 aware of this, but this Court has held in prior cases that  
20 there are various ways to show standing in a foreclosure  
21 matter. Having a financial interest in the matter is  
22 sufficient in this Court's opinion. Very low threshold for  
23 standard in this state.

24 So the fact that the assignment was not executed  
25 prior to the filing of the Complaint, this Court has held

1 in prior cases is not fatal on the issue of standing  
2 because, A, it is such a low threshold in this state and,  
3 secondly, having a financial interest in the matter is  
4 enough in this Court's opinion to meet that threshold of  
5 standard.

6 So I am not -- you don't know me and I certainly  
7 don't know you and I am not trying to circumvent or short  
8 circuit any of your arguments, but I am a fairly direct  
9 person and I don't like there to be surprises, so I am  
10 letting you know and plaintiffs know that that issue, based  
11 upon prior rulings, has not been successful.

12 So let me know what else besides the assignment  
13 not showing that the plaintiff was the owner of the  
14 property as of the date of the foreclosure.

15 What else?

16 MR. SINCHEGARCIA: Well, maybe it is part of  
17 that, but the, the amount. The whole loan itself.

18 I don't have any paperwork, the assignment  
19 paperwork. Then they could technically change the amount,  
20 put a different amount.

21 THE COURT: Forgetting what they could have  
22 done, subsequent to May 17 of 2008, did you receive  
23 paperwork from the plaintiffs or the lenders indicating a  
24 final judgment was going to be entered and the amounts and  
25 all that?

1 MR. SINCEGARCIA: Final judgment was going to  
2 be entered.

3 THE COURT: Was going to be entered?

4 MR. SINCEGARCIA: Prior to May.

5 THE COURT: No, not prior. After May 17. Did  
6 you receive information from the lender regarding the  
7 amount due?

8 MR. SINCEGARCIA: Your Honor, what I do receive  
9 -- and I am not sure if it answers your question  
10 specifically, is the monthly bill.

11 THE COURT: I am not talking about that. In  
12 anticipation of obtaining a final judgment, the plaintiff  
13 would submit not only to the foreclosure unit but to the  
14 defendant, A, among other things, an affidavit of an amount  
15 due and how they came to that amount.

16 MR. SINCEGARCIA: I don't believe so, your  
17 Honor.

18 THE COURT: Okay. What is there besides the  
19 notice of intent? I have already dealt with the assignment  
20 issue and service. What would cause this Court to vacate  
21 the final judgment?

22 MR. SINCEGARCIA: That is all I have, your  
23 Honor.

24 THE COURT: I am not trying to short circuit  
25 your argument, but I am trying to focus and frame it so

1 that whichever counsel is going to cross-examine can focus  
2 on those issues.

3 MR. YODER: It will be me.

4 THE COURT: Whoever wishes to cross.

5 MR. HALLINAN: Only subject to my Monday morning  
6 quarterbacking.

7 THE COURT: My Monday morning quarterback is the  
8 Appellate Division, so we all have them.

9 And, by the way, I mean no disrespect to the  
10 Appellate Division by referring to them as that, let the  
11 record reflect.

12 Go ahead, Mr. Yoder.

13  
14 DIRECT EXAMINATION

15 BY MR. YODER:

16 Q. It is pronounced Sinchegarcia?

17 A. That is fine.

18 Q. Mr. Sinchegarcia, you stated that you are living  
19 at the mortgaged property 110 62nd Street?

20 A. Correct.

21 Q. And you do receive your mail there, apparently?

22 A. Correct.

23 Q. You had stated that you did receive notice from  
24 the bank prior to receiving any notice of foreclosure  
25 action?

1 A. Notification to what?

2 Q. You stated that you received notice that didn't  
3 come from my office, it came directly from the bank  
4 regarding late payments, that you were behind?

5 A. I received that I was late on my mortgage  
6 payment, yes.

7 Q. What date, do you remember?

8 A. The regular monthly statements from the mortgage  
9 companies.

10 Q. Did you receive a letter in March of 2008 that  
11 was entitled Notice of Intent to Foreclose?

12 A. No. I do not -- no. Because I wasn't aware of  
13 anything happening. You said March?

14 Q. It was sent in March, yes.

15 A. I was not aware of something happening in March?

16 THE COURT: Do you want to mark it P-1?

17 MR. YODER: Yes, your Honor.

18 THE COURT: Mark it P-1, please.

19 (Notice of Intent to Foreclose, was marked as  
20 Plaintiff's Exhibit 1 for Identification.)

21 MR. SINCHEGARCIA: Can I --

22 THE COURT: Let the document finish being  
23 marked.

24 He is trying to detach it. You may have a copy of it  
25 there, but even if you do, I want it marked.

1 Q. Do you have a copy of our opposition motion?

2 A. Yes.

3 Q. The document I am referencing is attached as  
4 Exhibit D for ID. D as in David.

5 MR. YODER: There are four pages.

6 THE COURT: Marked P-1.

7 MR. YODER: I don't know if Mr. Sinchegarcia has  
8 it.

9 May I approach?

10 THE COURT: Yes. You don't have to ask.

11 Q. I hand you what has been marked Plaintiff's  
12 Exhibit 1 for Identification. This was the letter that I  
13 referenced.

14 Can you please tell me what it is labeled at the  
15 top.

16 A. Notice of Intention to Foreclosure.

17 Q. And what was the address that it was sent to?

18 A. 110 62nd Street.

19 Q. And that is your address, correct?

20 A. Correct.

21 Q. And it is made -- it was sent to your attention?

22 A. Yes.

23 Q. And --

24 THE COURT: What is the date of it, sir?

25 MR. SINCHEGARCIA: March 17.

1 THE COURT: Of 2008, I assume?

2 MR. SINCHEGARCIA: 2008, yes, your Honor.

3 Q. And to your recollection, you don't remember  
4 receiving this?

5 A. No, I did not receive this.

6 THE COURT: Thank you. You can continue. Thank  
7 you.

8 If I may, Mr. Sinchegarcia?

9 MR. SINCHEGARCIA: Yes, your Honor.

10 THE COURT: Although you testified you didn't  
11 remember receiving the document, it does indicate that you  
12 are behind and, B, how much you owe, correct?

13 MR. SINCHEGARCIA: Yes, it does.

14 THE COURT: And you testified that you were  
15 aware as a result of receiving various communications, that  
16 you were behind and how much you owed, correct?

17 MR. SINCHEGARCIA: Communications with the  
18 mortgage company?

19 THE COURT: Yes.

20 MR. SINCHEGARCIA: Yes.

21 THE COURT: And I don't want to couch a question  
22 like could it have been one of the documents, but could  
23 this have been one of the documents that lead you to  
24 believe that, A, you were behind and, B, how much you owed  
25 since this tells you those things? This document tells you

1 you are behind and that you owe as of April 16th  
2 \$11,989.66?

3 MR. SINCHIEGARCIA: Your Honor, your question is  
4 could I confuse that with the one --

5 THE COURT: Yes.

6 MR. SINCHIEGARCIA: No.

7 THE COURT: Why?

8 MR. SINCHIEGARCIA: Because the statements, they  
9 are always the same. They always look the same. They are  
10 like a bill with a little stub on the end to pay and you  
11 miss so and so amounts and then late charge, and I received  
12 two of them. I have two mortgages.

13 THE COURT: This does indicate a late charge and  
14 does indicate a total delinquency and all that, at least.  
15 This doesn't have a stub or payment coupon.

16 MR. SINCHIEGARCIA: That is why I knew I didn't  
17 receive it because you can tell right away the difference  
18 in that bill, looking at the thing that I get every month,  
19 and that.

20 THE COURT: And the document, okay. Go ahead.

21 MR. SINCHIEGARCIA: And those bills don't say  
22 notice to foreclosure or anything like that.

23 THE COURT: Okay. By the way --

24 MR. YODER: If I may address that, as well.

25 THE COURT: Well, if I might, P-1 is actually a

1 two-page document. You just gave an extra copy. You said  
2 four pages.

3 MR. YODER: Four pages, your Honor. That's what  
4 I wanted to touch on, the NJ Fair Foreclosure Act required  
5 the notice be mailed certified mail and that is simply the  
6 requirement. Here the lender chose to mail it both  
7 certified mail and regular mail.

8 THE COURT: I understand that. You are not a  
9 witness, though. Do you have proof that that was done by  
10 virtue of these exhibits?

11 MR. YODER: Not by virtue of the exhibits. I  
12 can produce a certification.

13 THE COURT: Okay, you will have to do that,  
14 obviously.

15 Okay. Go ahead.

16 DIRECT EXAMINATION: (Continued)

17 Q. Mr. Sinchegarcia, you admitted -- you say that  
18 you were living at the property in May of 2008.

19 A. Yes.

20 Q. But you said that you were not the person served  
21 with the summons and complaint?

22 A. Correct.

23 Q. The summons and complaint states it was served  
24 on a male approximately age 27, height 5 foot 9, weight 170  
25 pounds, skin color light or Latino. Hair color brown.

1 In May of 2008, was there any other individual  
2 living at the property address that fits that description?

3 A. The only thing that I can tell you is that there  
4 were Hispanics around my height living at that -- yeah, I  
5 guess the answer would be yes. My roommates were Spanish,  
6 around my age, yes.

7 Q. And they were living with you in your apartment?

8 A. Correct, my house.

9 MR. YODER: I am referring to what has been  
10 previously marked Defendant's Exhibit 1, your Honor.

11 THE COURT: Yes.

12 Q. Mr. Sinchegarcia, are you aware that the New  
13 Jersey court rules permit service upon a competent  
14 household member residing at the property address age 18 or  
15 over?

16 MR. SINCHEGARCIA: I dispute that. I don't know  
17 if that is a fact.

18 THE COURT: Well, that is my call as opposed to  
19 the witness's call.

20 MR. SINCHEGARCIA: As far as I am aware I am  
21 supposed to --

22 THE COURT: Listen, in fairness, D-1 indicates  
23 that this witness was served personally, so it doesn't say  
24 it was left with an adult over the age of 18. It says Mr.  
25 Sinchegarcia was served personally.

1           Whether or not someone at the subject property  
2 identified himself as the defendant for the purposes of  
3 expediency or just say I will take it and signed his name,  
4 I have no idea.

5           MR. YODER: Your Honor, the process servers do  
6 not ask the individual being served to sign, they fill that  
7 out themselves as to -- with information that they receive  
8 or, if no information is provided, what they believe.

9           Q.     So from this description you are saying that one  
10 of your roommates at the time or your roommate at the time  
11 would generally fit this description, as well?

12          A.     I could tell you that I didn't receive anything  
13 and I could tell you that I had roommates that look Spanish  
14 and are around my age. That's all I can tell you.

15          THE COURT: That look Spanish and are around  
16 your age?

17          MR. SINCHEGARCIA: Right. I could also say that  
18 -- I don't want to speak for anybody, but if they would  
19 have received anything they would have maybe let me know,  
20 hopefully.

21          Q.     Mr. Sinchegarcia, you stated that you had sent  
22 correspondence or a letter to my office?

23          A.     When I started to be aware of the process of  
24 foreclosure, yes.

25          Q.     And that letter was sent in January of 2009?

1 A. Okay. That sounds correct.

2 MR. YODER: Your Honor, can I have this marked  
3 P-2 for Identification.

4 (Letter dated January 12, 2009, was marked as  
5 Plaintiff's Exhibit 2 for Identification.)

6 Q. Mr. Sinchegarcia, I am handing to you what has  
7 been marked Plaintiff's Exhibit 2 for identification. Is  
8 this the letter that you sent to my office?

9 A. (Perusing) Yes.

10 Q. And can you tell me what the date on that letter  
11 is?

12 A. January 12th.

13 Q. And in that letter, in that letter do you notify  
14 my office that you have not been served with a summons and  
15 complaint?

16 A. No.

17 Q. In that letter you were requesting you be given  
18 the 45 days mentioned under Section 6 of the Fair  
19 Foreclosure Act, correct?

20 A. Correct.

21 Q. So this letter would have been in response to  
22 the fair, the Section 6 Fair Foreclosure Act letter that my  
23 office sent to you?

24 A. This letter was in response to me going to  
25 Trenton seeing what was in the file.

1 THE COURT: Can I see P-2.

2 (Witness handing to Court.)

3 THE COURT: Thanks.

4 (Perusing document.)

5 THE COURT: Okay, thanks.

6 Go ahead, Mr. Yoder.

7 Q. Okay. You stated that you sent the letter after  
8 going to Trenton, correct?

9 A. Yes, sir.

10 Q. And that was after you had done research on the  
11 issue of foreclosure action?

12 A. Correct.

13 Q. In that research it indicated that you needed to  
14 be served with a summons and complaint, correct?

15 A. That was the first thing that I knew to do. I  
16 am not a lawyer, I educated myself through libraries and  
17 whoever offered help to me.

18 I don't recall specifically. I found out that I  
19 have 30 days to respond to my summons. So I don't believe,  
20 I am pretty sure that I was not aware at that time that I  
21 had 30 days and you didn't serve me properly. I don't  
22 believe I was aware at that time of that.

23 That was what I was aware of at that time  
24 (indicating.)

25 Q. And your statement is prior to seeing is this

1 letter you had not received any documents from my office?

2 A. Correct.

3 Q. Did you receive a response from my office to  
4 your letter?

5 A. Yes. I am pretty sure after that we started  
6 back and forth different types of mail, yes.

7 MR. YODER: Your Honor, if I could have this  
8 marked as Plaintiff's 3.

9 (Letter dated January 27, 2009, was marked as  
10 P-3 for Identification.)

11 Q. I am handing you what's been marked as P-3 for  
12 Identification. Is this the letter that you received from  
13 my office?

14 A. Yes.

15 Q. What is the date on that letter?

16 A. The 27th.

17 THE COURT: Of?

18 MR. SINCHEGARCIA: January 27, 2009.

19 Q. And in that letter it states that your request  
20 for the 45-day extension under the fair foreclosure act was  
21 denied since your letter had been received after final  
22 judgment had already been entered, correct?

23 A. That's correct.

24 Q. Along with that, you provided no reasonable  
25 evidence of an ability to reinstate your loan, correct?

1 A. That's what the letter says here.

2 Q. Right. Had you provided any proof of an ability  
3 to reinstate?

4 A. I wasn't given the opportunity to provide.

5 Q. In your previous letter dated January 2009  
6 requesting the 45-day extension, did you include any proof  
7 of an ability to reinstate?

8 A. When I sent that letter, no.

9 Q. Along with the letter from my office, did you  
10 receive any documents with that?

11 A. "Documents," meaning?

12 Q. Specifically the letter references that it was  
13 attached to the letter, was a copy of the note, mortgage  
14 and assignment in this case.

15 A. The copy of the note, mortgage and assignment is  
16 when I received this package. That is the only time I  
17 received, and I believe this is -- I forget the  
18 terminology, counteract everything I am saying now.

19 THE COURT: In opposition?

20 MR. SINCHEGARCIA: Opposition. That is the only  
21 time I received a copy of the note, mortgage.

22 Q. How did you know to file your motion to vacate  
23 final judgment?

24 A. Excuse me?

25 Q. How did you know to file a motion to --

1           A.     I did research on my own.

2           Q.     And the case law cited in your motion, where did  
3 you obtain that research?

4           A.     Libraries.

5           Q.     So you obtained your answer --

6           A.     To what specifically?

7                   Everything is what I obtained through library,  
8 research, internet, on my own. Nothing is one specific  
9 source or, per se, book.

10          Q.     Is it fair to say you obtained the information  
11 contained in your motion from things you read on the  
12 internet?

13          A.     And libraries.

14          Q.     It has been brought to my attention you -- it  
15 said when you sent your letter to my office dated January  
16 12 requesting the 45-day extension of time, you had not  
17 previously received any information from my office?

18          A.     Correct.

19          Q.     But in your letter it specifically states in  
20 Paragraph 2 that this letter is in reply to your recently  
21 received letter of this week, correct? Second paragraph,  
22 first sentence.

23          A.     Okay. Like I said, everything happened -- I have  
24 the -- when I went to Trenton, that's where I based  
25 everything on my information. In that package is where

1 copies of stuff that you sent is --

2 THE COURT: You are very specific in the second  
3 paragraph about having received a letter from them and we  
4 are trying to figure out what letter that is. I don't get  
5 the impression from reading that letter that it was  
6 something you just saw in a file, but rather --

7 MR. SINCHEGARCIA: No, your Honor, but what I am  
8 saying is whatever letter I am talking about, it doesn't  
9 say what I previously tried to state, the summons. The  
10 summons already happened at that point.

11 THE COURT: That is not the point. The point is  
12 you said you hadn't received any letter from plaintiff's  
13 attorney by a certain date, yet in that letter that counsel  
14 is asking about you reference a prior letter and we are  
15 trying to figure out what letter you are talking about.

16 MR. SINCHEGARCIA: Well, whatever motion was  
17 sent before this, whether it was the motion to final  
18 vacate --

19 THE COURT: That would be your motion, not that  
20 there is --

21 MR. SINCHEGARCIA: No, the motion to -- the last  
22 before this is when everything started, when I became aware  
23 of it.

24 THE COURT: I am just wondering, and it was a  
25 question I asked before and you said you hadn't received

1 any information from plaintiff's attorney about entering  
2 final judgment and I am just trying to figure out, one of  
3 the letters that you received was the notice from the  
4 plaintiff that final judgment was going to be entered and  
5 this is the amount. And I don't know whether it is --

6 MR. SINCHEGARCIA: Your Honor, this is January  
7 12.

8 THE COURT: When was final judgment entered?

9 MR. SINCHEGARCIA: I went to Trenton in December  
10 which is after the fact that I wrote this letter January  
11 12. I am not specifically sure I can find the time.

12 THE COURT: When was final judgment entered, Mr.  
13 Yoder?

14 MR. YODER: Final judgment was entered on  
15 December 30th, 2008.

16 MR. SINCHEGARCIA: Okay. And I wrote the  
17 letter. Then, yes, that is the letter I am talking about,  
18 which is the --

19 THE COURT: What letter?

20 MR. SINCHEGARCIA: The final judgment letter.

21 THE COURT: That wouldn't be a letter, it would  
22 be a judgment.

23 MR. SINCHEGARCIA: I received -- whatever I  
24 received from them is what I was responding to.

25 THE COURT: I am trying to figure out what is

1 the letter.

2 MR. SINCHEGARCIA: They sent me a letter saying  
3 there is going to be final judgment.

4 THE COURT: That is what I was getting at a  
5 moment ago.

6 MR. SINCHEGARCIA: But that letter wasn't sent  
7 until January or December.

8 THE COURT: It is possible you were mistaken  
9 when you said you had received a letter the week prior. If  
10 you are telling me now that you received a notice from the  
11 plaintiff that final judgment is going to be entered soon,  
12 chances are that letter included the amount due and, if  
13 that's so, then you had an opportunity to contest the  
14 amount due when you received the letter and you didn't.  
15 There are consequences to these notices being sent out and  
16 you are taking no action.

17 You are asking me now to undo what was done.  
18 The plaintiffs are saying they went through the process  
19 correctly and you just didn't respond. You are telling me  
20 you didn't receive notices and that's why the letter is  
21 kind of important.

22 MR. SINCHEGARCIA: Your Honor, I did not receive  
23 -- what I am saying, your Honor, I did not get summoned,  
24 personally summoned, and I was not aware --

25 THE COURT: I understand.

1           THE WITNESS: And the first time I was aware of  
2 everything, that was after Trenton, after I received that  
3 letter, final judgment which by that time I had already  
4 lost my right for thirty days in court.

5           THE COURT: All I am suggesting to you, if the  
6 amount due letter was the letter that you received, your  
7 opportunity to contest the amount due arose at that time  
8 and you are unable to tell me -- strike that.

9           Do you even have a copy of that letter? You  
10 reference the letter, in that letter that you have, P-3.  
11 Do you have a copy of the letter? You obviously received  
12 it since you referenced it.

13           Wouldn't necessarily be in their file, maybe it  
14 is, but I am more interested in what might be in your file  
15 than in their file.

16           MR. SINCHEGARCIA: I don't believe I have it  
17 with me, your Honor. But I can tell you that that letter  
18 that we, that you showed earlier was not part of it.

19           THE COURT: Which letter now? I want to be  
20 specific.

21           The notice of intent? Notice would be something  
22 different.

23           There are no numbers, no breakdown of final  
24 numbers you owe this month?

25           You can't tell me what you received. How do you

1 know what it said if you --

2 MR. SINCHEGARCIA: Because, your Honor, that is  
3 something --

4 THE COURT: I am not talking about the notice to  
5 inform, of intent to foreclose. That would have been sent  
6 prior to the notice of summons and complaint being served.  
7 I am talking about a document sent out by plaintiff, their  
8 attorney, before final judgment was entered alerting you to  
9 the amounts that they were, that would be included in the  
10 final judgment. That's what I am talking about.

11 How can you tell me that if you don't know what  
12 you received?

13 MR. SINCHEGARCIA: Because I remember a letter,  
14 your Honor.

15 THE COURT: What did the letter say?

16 MR. SINCHEGARCIA: My point, your Honor, is that  
17 the letter said -- it did not include any numbers.

18 THE COURT: I am asking you what it said, not  
19 what it didn't say.

20 MR. SINCHEGARCIA: I don't believe I have a copy  
21 of that, your Honor. I have one, I don't believe I have it  
22 with me.

23 THE COURT: Is there a reason why it wouldn't be  
24 included with all the other paperwork you brought to court  
25 today?

1 MR. SINCHEGARCIA: I thought that everything  
2 might be here, your Honor, honestly.

3 THE COURT: All right, Mr. Yoder, go ahead.

4 So I can get to the issue I am focusing on, do  
5 you have a document you would like to mark regarding the  
6 amount?

7 MR. YODER: My understanding, your Honor, is  
8 that since this was a default with no answer filed, the  
9 notation of the entry of default along with notice pursuant  
10 to Section 6 of the Fair Foreclosure Act would be sent to  
11 Mr. Sinchegarcia allowing our office to then submit final  
12 judgment to the Court.

13 THE COURT: Do you have that document?

14 MR. YODER: Yes, your Honor.

15 THE COURT: Mark it P-4.

16 MR. YODER: Notice of entry of default and also  
17 notice pursuant to Section 6 of the Fair Foreclosure Act.

18 (Notice of Entry of Default and Notice Pursuant  
19 to Section 6 of the Fair Foreclosure Act, was marked as  
20 Plaintiff's Exhibit 4 for Identification.)

21 Q. Mr. Sinchegarcia, I will hand you what's been  
22 marked Plaintiff's Exhibit 4 for Identification. Have you  
23 ever seen this? Is this the letter you are saying that you  
24 received --

25 A. No.

1 Q. -- that you responded to?

2 A. It is not.

3 Q. The -- in your letter of January you state that  
4 you are disputing the debt and request all documents upon  
5 which the movant will rely at the time of the hearing.

6 What hearing were you referring to in your  
7 letter when you say you are disputing --

8 A. I am sorry?

9 Q. My last question was, in your letter, when you  
10 say you were disputing the debt and requesting all  
11 documents upon which the movants will rely at the time of  
12 the hearing, which hearing were you referring to?

13 A. I was I guess referring to a hearing such as  
14 this.

15 Q. So it would be the final judgment?

16 A. Right.

17 THE COURT: Can -- may I see the document?

18 MR. SINCHEGARCIA: Yes, your Honor. (Handing.)

19 Q. In your letter of January 12 you specifically  
20 state that in the second paragraph, first sentence, this  
21 letter is reply to your recently received letter of this  
22 week.

23 The first paragraph references that you were  
24 requesting your 45-day extension under the fair foreclosure  
25 act. The letter which has just been provided you marked as

1 Plaintiff's Exhibit 4 is specifically notice pursuant to  
2 Section 6 of the Fair Foreclosure Act advising you of your  
3 right to a 45-day extension.

4 So your letter dated January 12th was in  
5 reference to this letter from my office, correct?

6 A. Was it in reference to this letter? No.

7 Q. It was in response to receiving this notice  
8 advising you that you have a right to 45-day extension?

9 A. Right, but the dates don't -- this is August 7.

10 Q. I believe that letter was sent July 7?

11 THE COURT: July 7.

12 MR. SINCHEGARCIA: And I did not -- I didn't get  
13 this.

14 Q. Do you have --

15 A. I can't tell you. How can I show you proof that  
16 I didn't get this? You can't show me proof that I got  
17 this. I didn't get this. The reason why I say I didn't  
18 get this, because this would let me know something was  
19 going on.

20 THE COURT: Well, I have to be candid with you.  
21 The problem I am having is, the one letter you did claim  
22 you received you don't have a copy of with you, today at  
23 least, and the reason we know you received it is because  
24 you referenced it in one of the letters that you sent to  
25 plaintiff's counsel. So it becomes problematic with you

1 receiving letters and not receiving letters when, in a  
2 letter that you -- that we know you received because you  
3 said it, you don't have.

4 MR. SINCHEGARCIA: I understand, your Honor.

5 Q. And you said you do receive your mail at this  
6 address, correct?

7 A. Yes.

8 Q. And what is the address listed on that letter?

9 A. 110 62nd Street.

10 Q. And that is the property where you live?

11 A. Yes.

12 Q. This letter was sent both regular and certified  
13 mail. Did you receive either?

14 A. Absolutely not. I have not received certified  
15 mail. Certified mail you got to sign for. I have not  
16 signed or received anything like that. Ever.

17 Q. Did you reject or return anything to sender?

18 A. Never. Absolutely not.

19 Q. Because my office did not receive --

20 THE COURT: I don't want you to become a  
21 witness, Mr. Yoder.

22 MR. YODER: Yes, your Honor.

23 Q. When you sent your letter of January 12 you said  
24 that was after going to Trenton and finding out that final  
25 judgment has been entered and, as you alleged, had not been

1 served with a summons and complaint.

2 A. Yes.

3 Q. Yet your letter of January 12 makes no mention  
4 of the entry of judgment.

5 A. Entry of judgment?

6 Q. Of final judgment.

7 A. Okay.

8 Q. It makes no mention of --

9 A. When I went to Trenton they told me that's what  
10 was happening. They have a group of -- they take your file  
11 and they send it to some attorneys to review it. That's  
12 what, that's where it was in the process and it was right  
13 before, it was in the summer. After the fact when I  
14 received the letter which I can't provide is where I  
15 responded to this.

16 Q. When in December did you go to Trenton?

17 A. Has to be late December. I mean, I signed in so  
18 I can prove I was there.

19 Q. Before Christmas?

20 A. It was right around Christmas. I can't tell you  
21 specifically on or before. But I know I signed in, so I  
22 can show proof that I was there.

23 Q. And you waited another two and a half weeks  
24 before sending a letter to my office?

25 A. And then I waited while I was doing my research.

1 I was trying to make myself aware what was going on. I did  
2 not receive a letter from you guys, so I was trying to see  
3 what was the next step.

4 Q. But that letter makes no mention of not having  
5 been served with a summons and complaint, correct?

6 A. My letter?

7 Q. Correct. You advised -- you stated you went to  
8 Trenton and did research.

9 A. Right.

10 Q. And you were aware that you needed to be served  
11 with a summons and complaint.

12 A. I didn't say I was aware at that time. I went  
13 over that before.

14 Q. But you had previously stated that you were  
15 waiting to be served?

16 A. Right.

17 Q. So you were aware you needed to be served?

18 A. Yes.

19 Q. And when you went to Trenton and found out the  
20 foreclosure action had been filed and was pending, and as  
21 you claim not been served with the foreclosure summons and  
22 complaint, you didn't think it was important to send a  
23 letter to my office stating that you had not been served?  
24 Instead you sent this letter dated January 12 that makes no  
25 mention of not being served the summons and complaint,

1 simply requesting an additional 45 days in order to  
2 reinstate.

3 A. Okay.

4 MR. YODER: Thank you.

5 THE COURT: Anything else you want to say, sir,  
6 on redirect?

7 MR. SINCHEGARCIA: I never feel honestly, your  
8 Honor, that I had an opportunity. I am just asking, like  
9 you said, these procedures and formalities, they were my  
10 rights.

11 I didn't get served. I didn't have the  
12 opportunity to go up to court and say whatever it is I need  
13 to, could say.

14 THE COURT: What would you say if I vacated the  
15 final judgment as far as the underlaying mortgage?

16 Let's assume for the sake of this question I  
17 grant your motion, final judgment is vacated, this is your  
18 opportunity to respond to this mortgage foreclosure action.

19 What would you say? We are not talking about  
20 not being served, because we are past that. This is your  
21 opportunity -- if I were to grant the motion I would expect  
22 from you a responsive pleading pursuant to court rule that  
23 contests this mortgage foreclosure action.

24 What would you tell me?

25 MR. SINCHEGARCIA: I would say that I can make

1 the mortgage payments and that I should be allowed the  
2 opportunity to keep my house and making the mortgage  
3 payments, that my falling short of those payments was a  
4 little, was due to a personal hardship, a divorce, which is  
5 well overwith, and I can make my payments now.

6 THE COURT: Again, being as direct with you as I  
7 can be --

8 MR. SINCHEGARCIA: Your Honor, I am sorry I have  
9 been taking -- I beg your forgiveness.

10 THE COURT: Go ahead.

11 MR. SINCHEGARCIA: This is a lot of information  
12 and it is specific to my case, so you are asking me what  
13 would I say.

14 THE COURT: What would you say?

15 MR. SINCHEGARCIA: I don't have an answer  
16 because I don't have a point, you understand what I am  
17 saying? No research of what exactly I can say.

18 THE COURT: Although, if one is not properly  
19 served the issue of a meritorious defense doesn't come into  
20 play because lack of jurisdiction is lack of jurisdiction.  
21 But, you would have to file a responsive pleading and I  
22 have to say to you I am not here to give you advice, but  
23 what you just told my isn't a responsive pleading.

24 MR. SINCHEGARCIA: Your Honor --

25 THE COURT: Your inability and the reason of the

1 inability to pay the mortgage is not pursuant to 464.1. A  
2 responsive pleading does not contest the validity of the  
3 mortgage. It explains away your failure to pay.

4 What you are telling me now and your willingness  
5 to try to recast this loan and modify it or whatever,  
6 whatever accommodation you would try to make, really is  
7 appropriate under this mediation program. That is really  
8 what the mediation program is meant to do.

9 And I am not -- first of all, I am not ruling  
10 that I am granting the motion, number one, I just asked you  
11 a question. I am not ruling on it one way or the other  
12 right now.

13 But don't tell me in the responsive pleading  
14 that you are going to be back looking at a default judgment  
15 because I will strike the answer.

16 MR. SINCHEGARCIA: Your Honor, and my answer to  
17 you, your Honor, is I haven't gotten to that point yet.

18 THE COURT: I got to be honest with you. You  
19 filed this motion in February and I know because of  
20 extenuating circumstances we have carried it to allow  
21 certain matters to ripen, including this notarization  
22 issue, but I would have thought that sometime in January or  
23 February you would have been thinking about what you were  
24 going to say or what you would include in your responsive  
25 pleading if I permitted it.

1 I am having a little bit of difficulty given the  
2 nature of the documents that you have submitted to me, the  
3 pleadings and the brief and the certification and all that,  
4 having a little difficult accepting that you haven't given  
5 it any thought.

6 MR. SINCHEGARCIA: Your Honor, again, I tried to  
7 explain myself. Of course I have given it thought, but  
8 where I am getting my information from, I just try to go  
9 specifically step by step trying to make myself aware of  
10 that stuff preparing myself for the step, and if I am  
11 granted that opportunity, that day in court, I will prepare  
12 myself for that day in court, specifically what is going on  
13 in the court.

14 THE COURT: Okay. Anything else you want to say  
15 to me?

16 MR. SINCHEGARCIA: No, your Honor.

17 THE COURT: I am not cutting you off, I just  
18 wanted to be as candid with you as I possibly could be.  
19 And based upon what you have told me, and I don't know what  
20 caused you to veer off from telling me the reasons for your  
21 inability to pay the mortgage and telling me that you  
22 really hadn't thought about what your responsive pleading  
23 was going to be, yet in response to my question you told me  
24 -- I strongly urge you to avail yourself of the mediation  
25 program because whether or not I grant your motion, you

1 should participate in the mediation program. The mediation  
2 program doesn't go away if I grant the motion. On  
3 the contrary. If I deny the motion, the mediation doesn't  
4 go away, or your eligibility for it.

5 Don't think if I grant the motion you can't to  
6 mediation. In fact, in contested cases it is mandatory.  
7 So I am trying to say nobody is trying to trick you here.  
8 Nobody is waiting for you to give the wrong answer and then  
9 pounce on you and say ah-ha, you didn't tell me the right  
10 thing.

11 That's not how I conduct my court. I am asking  
12 you direct questions, and I expect honest answers. I am  
13 not suggesting you haven't been honest, but I expect  
14 honest, direct answers to my questions.

15 So this isn't a game. It is too important to be  
16 a game. I will rule however I am going to rule, but this  
17 isn't a game.

18 The mediation program is there. Based upon what  
19 you told me, it is tailor made for this situation. It is  
20 not going away.

21 MR. SINCHEGARCIA: I understand, your Honor.

22 THE COURT: No matter what I do, I am going to  
23 -- obviously I am going to try for the mediation program.

24 Anything else that you want to say to me?

25 MR. SINCHEGARCIA: No, your Honor.

1 THE COURT: You can step down.

2 I want to mark these in evidence. I assume you  
3 want to move them into evidence?

4 MR. YODER: Yes.

5 THE COURT: P-1 through 4. Do you want your  
6 items in evidence, too?

7 MR. SINCHEGARCIA: Yes.

8 (Above-mentioned exhibits marked into Evidence.)

9 THE COURT: Not that I am trying to create more  
10 work, but I am trying to get, based upon the testimony I  
11 heard, a final submission from you on this motion and from  
12 you, sir, also, Mr. Sinchegarcia. And I would like it to  
13 be simultaneously submitted, meaning I don't want the  
14 defendant first and then the plaintiffs.

15 Just submit them on the same day. When do you  
16 think you can get something to me?

17 MR. BERNHEIM: When would you like it?

18 THE COURT: Next week. About a week from today,  
19 June the 3rd.

20 MR. YODER: All right.

21 THE COURT: Mr. Sinchegarcia, based upon your  
22 testimony today -- and if you want to submit something else  
23 to me in support of your motion I want it a week from  
24 today, June third. Send a copy to your adversary and then  
25 I will turn it around quickly.

1 I know we have a sheriff's sale scheduled for  
2 the 11th of June, and I have to say -- and this is really  
3 -- this is extremely important. Again, I am not sending  
4 out any messages here, mixed or otherwise. No matter what  
5 I do, if I grant the motion obviously the sheriff's sale is  
6 put off. If I deny the motion, I still want this homeowner  
7 to avail himself of the mediation program which would most  
8 likely result in the sheriff's sale being adjourned.

9 Just so that you understand you have to -- and  
10 again, this is regardless of what happens with this motion  
11 -- call that phone number on the top of that sheet I gave  
12 you so that you can be put together with the housing  
13 counselor.

14 Listen, you want to save your home, true?

15 MR. SINCHEGARCIA: Yes, your Honor.

16 THE COURT: The mediation program is put into  
17 existence so that homeowners can save their homes. That's  
18 why it is there. It is not automatic, but that's why it is  
19 there. So don't lose site of the big picture here.

20 Big picture here is to save your home if it can  
21 happen. So please avail yourself. It is -- the program is  
22 not going away no matter what I do with this motion. But I  
23 do want, in fairness to me, final submissions a week from  
24 today.

25 You don't have to, Mr. Sinchegarcia. No one is

1 -- I am not requiring you to do it, I am not requiring it  
2 from the plaintiff, either. If I don't get anything I will  
3 go with what I have.

4 But I do want an opportunity to give the parties  
5 an opportunity for one final submission, and here is how I  
6 will rule. Most likely very soon after the 3rd.

7 A member of my staff will give plaintiff's  
8 counsel's firm -- will give you a call and give you a call  
9 and say the judge is going to render his decision on such  
10 and such a day at such and such a time. You will get at  
11 least 24 hours' notice, probably much more. You can come  
12 in and watch and listen or you can call in.

13 If both sides call in, you have to organize a  
14 conference called and then call in, okay?

15 MR. SINCHEGARCIA: Yes, your Honor.

16 THE COURT: I will turn it around -- I can  
17 almost guarantee it will be before June 11. I don't want  
18 that sheriff's sale hanging over here without a resolution  
19 on this motion and then depending on what happens, like I  
20 said, the sheriff's sale may have to get put off in any  
21 event, but I want the parties to know what my ruling is, so  
22 I want to move accordingly.

23 MR. HALLINAN: Does anything prevent Mr.  
24 Sinchegarcia from applying to the program before your  
25 ruling?

1 THE COURT: No.

2 MR. HALLINAN: So he could apply for the program  
3 today?

4 THE COURT: Well, he can call that number, be  
5 referred to a housing counselor, meet with a housing  
6 counselor and fill out those documents and have the  
7 documents sent down to the AOC, down to Trenton right away,  
8 and thank you for pointing that out.

9 Nothing prevents you from today starting the  
10 process to apply for the mediation program. You don't have  
11 to wait for my ruling on the motion.

12 Like I said, regardless of how I rule this isn't  
13 going away because if I grant your motion I am going to say  
14 now I want you to file a responsive pleading within ten  
15 days or so, or if I deny your motion you are going to be  
16 looking at a sheriff's sale, but you are still are eligible  
17 for the mediation program, so nothing prevents you from  
18 doing that today.

19 MR. SINCHEGARCIA: I understand, your Honor.

20 MR. YODER: The defendants have the statutory  
21 two adjournments.

22 THE COURT: He hasn't availed himself?

23 MR. YODER: No.

24 THE COURT: You have the right to go to the  
25 sheriff without looking to me and adjourn the sheriff's

1 sale twice just by going to the sheriff and telling them,  
2 telling the sheriff you want an adjournment of the  
3 sheriff's sale. You can go there and ask for the  
4 adjournment and they have to give it to you. Twice. So  
5 don't forget that.

6 I just don't want this case and this home to be  
7 sold or most homes I know are going back to the plaintiffs.  
8 I don't want to have a situation where you lose track of  
9 this, that would make me upset, and that it gets sold at a  
10 sheriff's sale even if it goes back to the plaintiff.

11 I am giving you a lot of information, but you  
12 are obviously an intelligent young man and I assume you are  
13 processing it. You will hear from me before the 11th.

14 MR. SINCHEGARCIA: Thank you, your Honor.

15 THE COURT: And listen, thank you again. I  
16 appreciate your patience and, again, I know my words were  
17 received and message sent and received on this.

18 Again I speak for myself. I am not speaking for  
19 the conference. I am speaking for myself in this case, but  
20 I do appreciate the efforts that were made to correct that  
21 issue.

22 MR. YODER: And we appreciate that, your  
23 Honor.

24 (Whereupon, the case is adjourned.)  
25

## C E R T I F I C A T I O N

I, CAREYANN SHAFTAN, License Number 30X100192900,  
an official Court Reporter in and for the State of  
New Jersey, do hereby certify the foregoing to be  
prepared in full compliance with the current Transcript  
Format for Judicial Proceedings and is a true and  
accurate non-compressed transcript to the best of my  
knowledge and ability.

Careyann Shaftan August 21, 2009  
Official Court Reporter Date

Hudson County Courthouse