

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50-2010-CA-012592-XXXX-MB

GREEN TREE SERVICING,
LLC,

Plaintiff,

vs.

CHERANE PEFLEY,

Defendant.

EXCERPT FROM HEARING

Volume 1 of 1

Pages 1 - 7

DATE: Thursday, March 27, 2014
PLACE: Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
BEFORE: Honorable
Circuit Court Judge

This cause came on to be heard at the time and
place aforesaid. The following proceedings were
reported by:

Roger Watford, RMR, RPR, FPR
U.S. Legal Support, Inc.
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West Palm Beach, Florida 33401
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1 APPEARANCES:

2
3 ON BEHALF OF THE PLAINTIFF:

4 SHD LEGAL GROUP, P.A.
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7 954-564-0071
8 BY: NOEL VAN DEN HOUTEN, ESQ.

9
10 ON BEHALF OF THE DEFENDANT:

11 LAW OFFICES OF PHILIPPE SYMONOVICZ
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13 Suite 210
14 Fort Lauderdale, Florida 33306
15 954-764-7600
16 BY: PHILIPPE SYMONOVICZ, ESQ.
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1 MR. SYMONOVICZ: Thank you, Your Honor.

2 First of all, there was no default.

3 There is no question whatsoever that they modified
4 her loan payments. They had already modified them
5 several times and she always paid them. Whether
6 they were up or down, she's always paid them.
7 There is no testimony to refuted that.

8 That email is clearly, and then there's a
9 letter confirming it, is clearly a confirmation
10 that her payment was now \$2,506.07 and that she
11 paid it. She tried to pay it three times. She
12 actually paid it twice. They kept the first one of
13 October 2008. The second one, November 2008, they
14 returned to her in December after she tried to make
15 the December payment. And they didn't actually
16 return her check. They returned their own check
17 after they deposited the money.

18 It's quite clear whatsoever that they
19 couldn't accelerate this loan, she was willing to
20 pay whatever amounts they told her to pay whether
21 they were up or down, and it's quite clear the
22 escrow had changed from 2007 to 2008, because all
23 expenses on her property went down from 6400 and
24 change to 1700. That's a huge difference.

25 And it's quite clear they were

1 over-escrowing in this loan and nobody from the
2 bank can testify as to what these different amounts
3 are. She can't even tell what the principal and
4 interest was. The principal and interest of the
5 loan originally, if we look at the note, is \$2,051.

6 The witness says there was, the trial
7 period agreement, assume we even go as far as the
8 trial period agreement, which we shouldn't even
9 have to because, as far as I am concerned, she was
10 given a mortgage and they refused her payments and
11 after accepting them they refused them, but assume
12 that was not the case, she was given a trial period
13 payment, which clearly says in the very first
14 paragraph if she pays everything and her
15 information hasn't changed she's entitled to a loan
16 modification.

17 It doesn't tell you on what basis or how
18 much the monthly payments are going to be, but it
19 says she's entitled to a loan modification.
20 There's no refuting that. Paragraph number 3
21 doesn't contradict that. It simply says they want
22 to have a chance to look at her financials. Well,
23 that's a joke, because they have had a year and a
24 half to. They claim she has been in default since
25 November 2008.

1 And, coincidentally, the month that she
2 makes her last payment they send her a rejection
3 letter on the trial mod and about a week later,
4 remember, on the 16th of March they say you are
5 ineligible, and they did say she was because that's
6 their handwriting, I can prove it's not ours, the
7 eligible handwriting on that trial mod is theirs,
8 so it said she was eligible.

9 Suddenly in March after she made all
10 three payments she's ineligible and then a week
11 later, March 23rd, they send her a default letter
12 that claims she's been in default since November of
13 2008. That is 15 months before that. No bank in
14 the world waits 15 months, back to 2008, to declare
15 somebody was in default. But they did? It's kind
16 of bizarre. But the bottom line is she was never
17 in default. That's why.

18 She was never in default. She agreed to
19 pay whatever they told her to pay, and then they
20 refused to take her money, and they shouldn't be
21 here in court today with this. Their complaint
22 needs to be dismissed. There should be no
23 foreclosure.

24 Thank you, Your Honor, for your time.

25 THE COURT: Okay. The Court having

1 considered all the evidence that has been
2 introduced, finds that plaintiff's predecessor in
3 interest agreed to a monthly mortgage payment of
4 \$2,506.07 in 2008 and then refused to accept
5 defendant's payment, as alleged in the affirmative
6 defense number 5.

7 The plaintiff prevented defendant from
8 complying with the terms of the loan. Plaintiff
9 comes to court with unclean hands and it would be
10 unconscionable to render a verdict in favor of the
11 plaintiff. The Court finds in favor of the
12 defendant. Please provide the Court with the final
13 judgment finding in favor of the defendant.

14 MR. SYMONOVICZ: Thank you, Your Honor.

15 THE COURT: And, if it's applicable, the
16 Court will reserve jurisdiction to consider an
17 award of attorney's fees regarding entitlement and
18 amount.

19 MR. SYMONOVICZ: Thank you, Your Honor.

20 MS. VAN DEN HOUTEN: Thank you, Your
21 Honor.

22 THE COURT: You're welcome.

23 (Excerpt concluded.)
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CERTIFICATE OF REPORTER

I, Roger Watford, RMR, FPR, RPR, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 1 through 6, and that the transcript is a true and complete record of my stenographic notes.

Dated this 29th day of March, 2014.



Roger Watford, RMR, FPR, RPR
Court Reporter



<p style="text-align: center;">A</p> <p>\$2,051 4:5 \$2,506.07 3:10 6:4 accelerate 3:19 accept 6:4 accepting 4:11 affirmative 6:5 aforesaid 1:20 agreed 5:18 6:3 agreement 4:7,8 alleged 6:5 amount 6:18 amounts 3:20 4:2 APPEARANCES 2:1 applicable 6:15 assume 4:7,11 attorney's 6:17 authorized 7:4 Avenue 1:24 award 6:17</p> <hr/> <p style="text-align: center;">B</p> <p>back 5:14 bank 4:2 5:13 basis 4:17 Beach 1:2,16,17,24 BEHALF 2:2,7 bizarre 5:16 bottom 5:16 Boulevard 2:8 Box 2:4</p> <hr/> <p style="text-align: center;">C</p> <p>case 1:3 4:12 cause 1:20 CERTIFICATE 7:1 certify 7:3 chance 4:22 change 3:24 changed 3:22 4:15 check 3:16,16 CHERANE 1:8 Circuit 1:1,1,18 claim 4:24 claims 5:12 clear 3:18,21,25 clearly 3:8,9 4:13 coincidentally 5:1 comes 6:9 complaint 5:21 complete 7:6 complying 6:8 concerned 4:9 concluded 6:23 confirmation 3:9 confirming 3:9 consider 6:16</p>	<p>considered 6:1 contradict 4:21 County 1:2,16 court 1:1,18 5:21 5:25,25 6:9,11 6:12,15,16,22 7:12 Courthouse 1:16</p> <hr/> <p style="text-align: center;">D</p> <p>DATE 1:15 Dated 7:8 day 7:8 December 3:14,15 declare 5:14 default 3:2 4:24 5:11,12,15,17,18 defendant 1:9 2:7 6:7,12,13 defendant's 6:5 defense 6:6 DEN 2:5 6:20 deposited 3:17 difference 3:24 different 4:2 dismissed 5:22 Dixie 1:16</p> <hr/> <p style="text-align: center;">E</p> <p>East 2:8 eligible 5:7,8 email 3:8 entitled 4:15,19 entitlement 6:17 escrow 3:22 ESQ 2:5,10 evidence 6:1 Excerpt 1:11 6:23 expenses 3:23</p> <hr/> <p style="text-align: center;">F</p> <p>far 4:7,9 favor 6:10,11,13 fees 6:17 FIFTEENTH 1:1 final 6:12 financials 4:22 finding 6:13 finds 6:2,11 first 3:2,12 4:13 Florida 1:2,17,24 2:4,9 following 1:20 foreclosure 5:23 foregoing 7:5 Fort 2:4,9 FPR 1:23 7:3,11</p>	<p style="text-align: center;">G</p> <p>given 4:10,12 go 4:7 going 4:18 GREEN 1:4 GROUP 2:3</p> <hr/> <p style="text-align: center;">H</p> <p>half 4:24 hands 6:9 handwriting 5:6,7 heard 1:20 HEARING 1:11 Highway 1:16 Honor 3:1 5:24 6:14,19,21 Honorable 1:17 HOUTEN 2:5 6:20 huge 3:24</p> <hr/> <p style="text-align: center;">I</p> <p>ineligible 5:5,10 information 4:15 interest 4:4,4 6:3 introduced 6:2</p> <hr/> <p style="text-align: center;">J</p> <p>joke 4:23 Judge 1:18 judgment 6:13 JUDICIAL 1:1 jurisdiction 6:16</p> <hr/> <p style="text-align: center;">K</p> <p>kept 3:12 kind 5:15</p> <hr/> <p style="text-align: center;">L</p> <p>Lauderdale 2:4,9 LAW 2:8 Legal 1:23 2:3 letter 3:9 5:3,11 line 5:16 LLC 1:5 loan 3:4,19 4:1,5 4:15,19 6:8 look 4:5,22</p> <hr/> <p style="text-align: center;">M</p> <p>March 1:15 5:4,9 5:11 7:8 mod 5:3,7 modification 4:16 4:19 modified 3:3,4 money 3:17 5:20 month 5:1</p>	<p>monthly 4:18 6:3 months 5:13,14 mortgage 4:10 6:3</p> <hr/> <p style="text-align: center;">N</p> <p>needs 5:22 never 5:16,18 NOEL 2:5 North 1:16 note 4:5 notes 7:7 November 3:13 4:25 5:12 number 4:20 6:6</p> <hr/> <p style="text-align: center;">O</p> <p>O 2:4 Oakland 2:8 October 3:13 OFFICES 2:8 Okay 5:25 originally 4:5 over-escrowing 4:1</p> <hr/> <p style="text-align: center;">P</p> <p>P 2:4 P.A 2:3 pages 1:13 7:5 paid 3:5,6,11,12 Palm 1:2,16,17,24 paragraph 4:14,20 Park 2:8 pay 3:11,20,20 5:19,19 payment 3:10,15 4:13 5:2 6:3,5 payments 3:4 4:10 4:18 5:10 pays 4:14 PEFLEY 1:8 period 4:7,8,12 PHILIPPE 2:8,10 place 1:16,20 plaintiff 1:6 2:2 6:7,8,11 plaintiff's 6:2 Please 6:12 predecessor 6:2 prevented 6:7 principal 4:3,4 proceedings 1:20 7:5 property 3:23 prove 5:6 provide 6:12</p> <hr/> <p style="text-align: center;">Q</p>
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question 3:3	TREE 1:4	23rd 5:11
quite 3:18,21,25	trial 4:6,8,12 5:3 5:7	27 1:15
<hr/> R <hr/>	tried 3:11,14	29th 7:8
Railroad 1:24	true 7:6	<hr/> 3 <hr/>
record 7:7	twice 3:12	3 4:20
refused 4:10,11 5:20 6:4	<hr/> U <hr/>	33306 2:9
refuted 3:7	U.S 1:23	33339 2:4
refuting 4:20	unclean 6:9	33401 1:17,24
regarding 6:17	unconscionable 6:10	<hr/> 4 <hr/>
rejection 5:2	<hr/> V <hr/>	444 1:24
remember 5:4	VAN 2:5 6:20	<hr/> 5 <hr/>
render 6:10	verdict 6:10	5 6:6
report 7:5	Volume 1:12	50-2010-CA-012... 1:3
reported 1:21	vs 1:7	561 1:25
Reporter 7:1,12	<hr/> W <hr/>	<hr/> 6 <hr/>
reserve 6:16	waits 5:14	6 7:6
return 3:16	want 4:21	6400 3:23
returned 3:14,16	Watford 1:23 7:3 7:11	<hr/> 7 <hr/>
RMR 1:23 7:3,11	week 5:3,10	7 1:13
Roger 1:23 7:3,11	welcome 6:22	<hr/> 8 <hr/>
RPR 1:23 7:3,11	went 3:23	835-0220 1:25
<hr/> S <hr/>	West 1:17,24,24	<hr/> 9 <hr/>
says 4:6,13,19,21	whatsoever 3:3,18	954-564-0071 2:5
second 3:13	willing 3:19	954-764-7600 2:10
send 5:2,11	witness 4:6	
SERVICING 1:4	world 5:14	
SHD 2:3	<hr/> X <hr/>	
simply 4:21	<hr/> Y <hr/>	
somebody 5:15	year 4:23	
stenographic 7:7	<hr/> Z <hr/>	
stenographically 7:4	<hr/> 0 <hr/>	
Suddenly 5:9	<hr/> 1 <hr/>	
Suite 2:9	1 1:12,12,13 7:5	
Support 1:23	11438 2:4	
SYMONOVICZ 2:8,10 3:1 6:14,19	15 5:13,14	
<hr/> T <hr/>	16th 5:4	
talk 5:20	1700 3:24	
tell 4:3,17	1995 2:8	
terms 6:8	<hr/> 2 <hr/>	
testify 4:2	2007 3:22	
testimony 3:7	2008 3:13,13,22 4:25 5:13,14 6:4	
Thank 3:1 5:24 6:14,19,20	2014 1:15 7:8	
theirs 5:7	205 1:16	
three 3:11 5:10	210 2:9	
Thursday 1:15		
time 1:20 5:24		
times 3:5,11		
today 5:21		
told 3:20 5:19		
transcript 7:6		