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1 LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 26, 2009

2 10:00 A.M.

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4 THE CLERK: Calling Item Number 2, CV08-5341, Jose L.
5 Pineda versus GMAC Mortgage, LLC, et al.

6 Counsel and Mr. Pineda, will you state your
7 appearances, please.

8 MR. PINEDA: Present. Jose Pineda.

9 THE COURT: Good morning.

10 MS. VANDALE: Good morning, Your Honor. Leslie
11 Vandale on behalf of defendants.

12 THE COURT: I called this case first not because I
13 want to address the merits at the moment, but to give both
14 sides an opportunity to understand where I'm heading on this,
15 and in particular give you an opportunity to look into your
16 file, which I hope is complete and that you brought with you --
17 I am referring to counsel for the defendants -- because I'm
18 inclined to grant this motion to vacate and set aside the
19 judgment. And it's because there's been so much -- putting it
20 as charitably as I could in favor of the defendants, so much
21 confusion. And I think it's actually worse than confusion. I
22 think it's misrepresentations that may have been inadvertent
23 and unintentional and short of fraud, but extremely
24 aggravating, that led to the entry of the judgment dismissing
25 the case.

1 So you take this document and you spend as much
2 time -- we are going to call this case again at 10:45. Be
3 prepared to answer the various entries in these errors,
4 omissions and inconsistencies that I worked on over the
5 weekend. And I will give you an opportunity to set the record
6 straight, and if you are unable to do so, I will grant the
7 motion to set aside the judgment. I will enjoin any efforts to
8 foreclose or collect money pending further proceedings. So
9 that's why I called this case first. The burden is going to be
10 on you to unravel the confusion that your various filings have
11 caused.

12 Now, I will conclude this stage of what we are doing
13 with this observation: I want you to state on the record right
14 now who your clients are on this case.

15 MS. VANDALE: GMAC Mortgage, LLC, and ETS Services,
16 LLC.

17 THE COURT: Nobody else?

18 MS. VANDALE: Not that I am aware of, Your Honor.
19 Those are the defendants named in the case.

20 THE COURT: Okay. We'll resume this by 10:45, I
21 think.

22 *(Unrelated court matters heard.)*

23 THE CLERK: Item Number 2, CV08-5341, Jose L. Pineda
24 versus GMAC Mortgage, LLC, et al.

25 THE COURT: Okay. Ms. Vandale, you are with the firm

1 of Wolfe & Wyman, right?

2 MS. VANDALE: Yes.

3 THE COURT: Have you had a chance to review the Draft
4 order that -- it wasn't really an order. It was an outline --

5 MS. VANDALE: Sure. Yes, I have.

6 THE COURT: -- that I circulated some hour ago or so?

7 MS. VANDALE: Yes, I have, Your Honor.

8 THE COURT: Any particular approach you want to take
9 in answering the issues that I flagged on that?

10 MS. VANDALE: Well, first, Your Honor, I'd like to
11 just clarify my answer previously on the record regarding the
12 defendants that we represent in this case. Technically, GMAC
13 and ETS have been named as defendants, so officially we made
14 appearances on their behalf. To the extent that this action by
15 the plaintiff challenges the enforceability of the loan that
16 GMAC is servicing, to the extent it challenges the right to
17 collect on that obligation on behalf of the investor, on behalf
18 of the owner of the loan -- to that extent GMAC, as a servicer,
19 is obligated to step in and defend on their behalf.

20 MR. PINEDA: Objection, Your Honor.

21 MS. VANDALE: There is no other defendants named in
22 this case, but that is -- as I said, to the extent that they
23 would be required to defend that, on an investor's behalf, our
24 representation of GMAC extends to any beneficial interest
25 holder in the loan.

1 MR. PINEDA: Objection, Your Honor.

2 THE COURT: I'll give you a chance to be heard. You
3 just be patient, Mr. Pineda. Let me carry out this proceeding.
4 You will have an opportunity to be heard.

5 Who is the investor?

6 MS. VANDALE: The investor is the trust that has been
7 set forth.

8 THE COURT: Which trust? Give me the precise name,
9 please.

10 MS. VANDALE: I am just going to refer to my other
11 documents. Give me a minute.

12 American Home Mortgage Investment Trust 2005-4A.

13 THE COURT: American Home -- say it again.

14 MS. VANDALE: Mortgage Investment Trust 2005-4A.

15 THE COURT: Now, to answer my question, which took
16 you a few minutes to do, what document did you look at or find
17 that shows that the investor to whom you were referring in your
18 previous comments -- and I'll comment on those comments in a
19 minute. What document are you now relying on to represent to
20 this Court and to Mr. Pineda that the investor is American Home
21 Mortgage Investment Trust 2005-4A?

22 MS. VANDALE: Excuse me, Your Honor. I'm sorry. I'm
23 missing just one other document in my briefcase.

24 THE COURT: Go get it, but while you are doing so let
25 the record reflect that counsel's difficulty -- and I'm not

1 trying to be abusive to counsel -- is a very graphic reflection
2 of the utter confusion and disarray that the defendants and
3 parties affiliated with the defendants and the defense counsel
4 both are dealing with and are causing in this lawsuit.

5 Now, did you find the document?

6 MS. VANDALE: Yes. I believe the trust is
7 established in the home equity -- I'm sorry, the HELOC
8 servicing agreement dated October 7, 2005.

9 THE COURT: That's one of the documents that's
10 spelled out in this outline I gave, right?

11 MS. VANDALE: Correct.

12 THE COURT: And so when you tell me the investor is
13 American Home Mortgage Investment Trust 2005-4A, is that a
14 representation that that entity now owns the loan and
15 ultimately is entitled to any payments that are made on that
16 loan?

17 MS. VANDALE: Yes.

18 MR. PINEDA: Objection, Your Honor. That's
19 misleading.

20 THE COURT: Mr. Pineda, I'll give you a chance to be
21 heard. Now, don't force me to take any further action. There
22 is a coherent requirement that I have to follow, so just be
23 patient.

24 And that HELOC servicing agreement is one of the
25 documents that I did not mention at the April 27th proceedings

1 as shown in the outline I circulated at the top of Page 2,
2 correct?

3 MS. VANDALE: Certainly, Your Honor, yes, and that
4 was something I was going to address.

5 THE COURT: All right. Address it now.

6 MS. VANDALE: Okay. In your Draft ruling, you
7 indicate that we misrepresented -- made a misrepresentation in
8 failing to disclose certain information, and I can appreciate
9 the Court's confusion and frustration.

10 Just to back up a bit, the entire mortgage loan
11 securitization transaction business is somewhat complicated in
12 that there are a number of lawyers, parties and agreements
13 involved. When my client was served with this lawsuit --

14 THE COURT: Which client now?

15 MS. VANDALE: GMAC Mortgage.

16 THE COURT: Yeah.

17 MS. VANDALE: -- as a servicer, they retained our
18 firm to step in and represent them in defending this case. We
19 defended at the pleading stage with a motion to dismiss to
20 address the pleading deficiencies in the complaint at that
21 time.

22 We were defending that complaint, which set forth
23 various servicing-related causes of action, RESPA, Fair Debt
24 Collection Practices Act, fair credit reporting, all which
25 relate to servicing, and there were no issues set forth in the

1 complaint by plaintiff alleging that he was being asked for
2 payment from multiple different parties. There was no issue of
3 ownership of the loan, so --

4 THE COURT: I don't think that's a fair statement of
5 what the plaintiff was alleging or trying to find out.

6 At the core of his complaint, which had a lot of
7 defects to it -- probably at the end of the day may or may not
8 contain merit -- was the view that you had no right -- your
9 clients had no right to seek to collect money from him or to
10 foreclose on the house, and the posture of the case that was
11 presented to the Court at the early stages was in the context
12 of an apparent effort to foreclose and throw him out of the
13 house. The notion that ETS had dropped any steps to seek a
14 foreclosure was not even disclosed. I can't understand that.

15 MS. VANDALE: I understand, Your Honor. I think
16 between my client and myself, we did not realize that there had
17 been an updated step where the foreclosure trustee had actually
18 rescinded the Notice of Default. We just simply didn't follow
19 up with that latest step.

20 THE COURT: What is your understanding right now --
21 right now as you stand here before me, what is your
22 understanding as to the rights of Mr. Pineda to be in that
23 house?

24 MS. VANDALE: The rights to be -- it depends on the
25 first-position lender. I'm not aware of whether the

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1 first-position lien holder has taken any steps to foreclose or
2 the status of his payment on that loan. My client was simply
3 servicing a second-position home equity line of credit loan.

4 THE COURT: Was that made clear to the Court that the
5 dispute that thus far has been the nature of this and the
6 content of this lawsuit involved only a second mortgage?

7 MS. VANDALE: From the very beginning, we indicated
8 that we were servicing a home equity line of credit loan, Your
9 Honor. I don't know that we specifically stated it was a
10 second-position lien, but home equity line of credits typically
11 are.

12 THE COURT: And what is your understanding as to what
13 your clients are attempting to accomplish with respect to
14 whatever rights they have, whoever they are and whoever has the
15 rights, on the second home equity loan?

16 MS. VANDALE: As of this time?

17 THE COURT: Yes.

18 MS. VANDALE: Nothing, Your Honor. They have charged
19 off the loan. They're not continuing foreclosure efforts.

20 THE COURT: So are you prepared on behalf of your
21 clients to basically enter into a settlement agreement with Mr.
22 Pineda that says, "Let's declare peace. We're not taking any
23 position as to the house, as to your obligations and somebody
24 else's rights under the first home loan, but we are not coming
25 after you for any further payments, and we have written off any

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1 obligations under the loan that you took out"? Are you
2 prepared to enter into that agreement?

3 MS. VANDALE: I would be prepared to recommend that
4 to my client. It seems like something my client would
5 typically be willing to do. I'm not authorized to state on the
6 record that they would.

7 THE COURT: Right now, as I construe what you are
8 telling me, you are basically telling me and telling Mr.
9 Pineda, "Hey, we don't have a dispute with each other. We're
10 not coming after you, and you don't have to sue us, so what's
11 the point of me even reopening the case because there's no
12 fight that we have."

13 Now, I would have to reopen the case to have that
14 settlement agreement executed properly and serve as an
15 appropriate protection for Mr. Pineda, but that seems to me to
16 be the most practical thing to do.

17 MS. VANDALE: Absolutely. I agree, Your Honor.

18 THE COURT: On that point, Mr. Pineda, right now this
19 case doesn't involve Bank of America or whoever is the first
20 lender to you, right?

21 MR. PINEDA: No, it doesn't.

22 THE COURT: The practice in court is for counsel and
23 litigants to stand.

24 So if you get this document that I just proposed to
25 Ms. Vandale on behalf of her clients -- and it would say any

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1 entity, any so-called investor, such as American Home Mortgage
2 Investment Trust 2005-4A, on which GMAC purports to act as the
3 servicer or ETS as the trustee, they're not coming after you
4 and you don't owe them any further obligations, that's going to
5 give you what you wanted, right?

6 MR. PINEDA: Yes, it will. In addition, I would ask
7 the Court for them to remove any derogatory information from my
8 credit because they have been reporting. I need that removed
9 from my credit report.

10 THE COURT: No, I don't think that would be
11 consistent of the scope of what I can negotiate and explore
12 here, but what you could do is take the document that I am
13 expecting Ms. Vandale to be able to get her clients to sign off
14 on and send it to any credit reporting agency. You have the
15 opportunity, you have the power, you have the right, legally
16 and otherwise, to clear up any so-called derogatory information
17 relating to that aspect of your dealings with these particular
18 parties.

19 MS. VANDALE: Your Honor, if I may just address that
20 for a moment. I don't want to represent to the Court or to the
21 plaintiff that my client would necessarily be willing to agree
22 with something like that when --

23 THE COURT: Something like which?

24 MS. VANDALE: To agree to remove derogatory credit
25 reporting.

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1 THE COURT: I'm not contemplating that you have to
2 get that commitment from your client.

3 MS. VANDALE: I just want to make that clear. Thank
4 you.

5 THE COURT: What I want, because it's practical and
6 it's fair to both sides, particularly to Mr. Pineda, is to have
7 his status vis-a-vis your clients, and any entity your clients
8 purport to represent, clarified. And the clarification has to
9 be that there's no dispute between them henceforth, no
10 obligations owed by either side to the other.

11 Now, I want you to contact your clients today. I
12 want you to tell them that I was prepared to -- and I am -- in
13 fact, there is no doubt about this. I am granting the motion
14 to vacate the judgment and to reopen -- that I have set forth a
15 preliminary, far from complete, road map of all of the grounds
16 under Rule 60 why that would be warranted; that I am
17 prepared -- if this case doesn't settle and settle quickly, I
18 am prepared to follow the footsteps of several other judges
19 around the country, state and federal, to take this case as a
20 paradigm for a much larger problem, a much larger financial,
21 regulatory and litigation problem that can stem -- that has
22 stemmed from the way these loans were issued, packaged,
23 securitized and then lost in the maze of confusion that you
24 yourself understandably have suffered from.

25 Ms. Vandale, you have been given an unenviable task,

1 and you have not succeeded in carrying it out, but that may not
2 be your fault. It is impossible to understand what happened to
3 this loan based upon what the defendants have filed. How can
4 you expect Mr. Pineda to understand? He's not even a lawyer.
5 He has done a good job of trying to protect his own interests.

6 Now, you tell your clients that unless this case can
7 be disposed of, this case is going to be something that's going
8 to go far beyond this case.

9 MS. VANDALE: I understand.

10 THE COURT: I want a status report from you, and if
11 the report is, as you intend to try to get it, that the case
12 will settle, then I want you to send a Proposed Settlement
13 Agreement to Mr. Pineda.

14 Now, I want it to be clear and comprehensible, plain
15 language, English, no big references to a lot of other
16 entities. It seems to me that what's at stake here is an
17 agreement that would encompass both ETS and GMAC Mortgage, LLC,
18 that would set forth that, to the extent that they have
19 functioned or purported to function as agents of any type for
20 American Home Mortgage Acceptance, Inc., American Home Mortgage
21 Investment Trust 2005-4A, and American Home Mortgage Servicing,
22 Inc., those three entities.

23 They waive and give up any rights they may have had
24 vis-a-vis Mr. Pineda, they confirm that they have no claims
25 against Mr. Pineda, and they have no claims or intentions to

1 seek any relief of any type relating to the residence, and
2 specify the residence.

3 Put down the loan document, too, whatever it is that
4 was initially issued long ago. Make it clear in plain language
5 you are talking about the second and not the initial. I'm not
6 trying to help anybody or hurt anybody as to disputes that are
7 not before the Court.

8 And, Mr. Pineda, don't look for ways to say no. You
9 don't need this dispute to deal with when you may have other
10 things that require careful attention as well.

11 And I want that agreement to be sent to Mr. Pineda by
12 not later than a week from today.

13 You will have not more than one week to either accept
14 it and execute it or propose changes to it. You deal directly
15 with Ms. Vandale.

16 You have a right to deal directly with Mr. Pineda
17 because he has no lawyer. There is no bar to your
18 communicating directly with him as an unrepresented plaintiff.

19 And then I want the parties to file a stipulated
20 agreement calling for the dismissal of the case with prejudice
21 after the settlement has been entered into.

22 Meanwhile, I am orally granting the motion to vacate
23 the judgment and reopen the case. And I am orally enjoining
24 your clients -- and any entity for which they have purported to
25 act or are currently acting as an agent -- from seeking to

1 collect any money on the second loan, the home equity loan, or
2 seeking any relief relating to the property, such as
3 foreclosure.

4 A short Minute Order will go out reflecting what I
5 have just set forth orally.

6 Any questions, Ms. Vandale?

7 MS. VANDALE: I do have a question. In describing
8 the terms of the settlement agreement you are requiring, you
9 indicated that my client will say it has no claims against
10 plaintiff --

11 THE COURT: As to this property.

12 MS. VANDALE: I just want to make sure that we are
13 not asking through this claim that we ever had any interest
14 in --

15 THE COURT: No, I'm not. I'm not trying to get you
16 to say, "We never had a basis to do anything." I'm trying to
17 get you to say --

18 MS. VANDALE: We won't pursue any future claims.

19 THE COURT: -- "There is nothing left between us."

20 MS. VANDALE: Thank you.

21 THE COURT: Any questions, Mr. Pineda?

22 MR. PINEDA: Yes. I would like to clarify one thing.
23 My week to respond, when does it begin? From the time she
24 mailed it or from the time I receive it?

25 THE COURT: Do you have a fax or an email?

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1 MR. PINEDA: Yeah, I got email. It's been in my
2 brief the whole time.

3 THE COURT: Give her the fax and the email, and it's
4 from the time you receive it, which will be the time it goes
5 out.

6 MR. PINEDA: Okay.

7 THE COURT: And you can communicate with her by email
8 as well.

9 MR. PINEDA: Right.

10 THE COURT: But I want the parties to file the
11 settlement agreement. So an order is going to go out granting
12 the motion to reopen the case and containing the gist of what I
13 otherwise have just explored with the lawyers.

14 All right. Thank you. We're adjourned.

15 *(Proceedings concluded.)*

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