

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA, CASE NO.: 2017-003860-AW
RESIDENTIAL MORTGAGE FORECLOSURE

HSBC BANK USA, NATIONAL ASSOCIATION AS
TRUSTEE FOR SG MORTGAGE SECURITIES TRUST
2005 OPTI ASSET-BACKED CERTIFICATE SERIES 2005,

Plaintiff/Counter-Defendant,

vs.

MONIQUE L'ITALIEN, and STEFANIE L'ITALIEN,
etc., et. ux., et al.,

Defendants/Plaintiffs-in-Counterclaim

vs.

HSBC BANK USA, NATIONAL ASSOCIATION AS
TRUSTEE FOR SG MORTGAGE SECURITIES TRUST
2005 OPTI ASSET-BACKED CERTIFICATE SERIES 2005,
and OCWEN LOAN SERVICING, LLC.,

Defendants-in-Counterclaim.

**CLASS REPRESENTATIVE & CLASS PLAINTIFFS' RULE 1.510(c)
STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR
PARTIAL SUMMARY JUDGMENT AS TO ISSUES OF LIABILITY ONLY**

Class Representative **MONIQUE L'ITALIEN** ("L'ITALIEN") and Class Plaintiffs (together referred to as "Class Plaintiffs"), pursuant to Rule 1.510(c), Florida Rules of Civil Procedure, hereby file this Statement of Material Facts in support of their Motion for Partial Summary Judgment.

1. L'ITALIEN is the title owner and mortgagor of the real property located at 623 36th Street, West Palm Beach, Florida ("the Property"), which is the property subject to the foreclosure action brought against L'ITALIEN by the Plaintiff/Counter Defendants. See Foreclosure Complaint (D.E. 6); (see also depo. of L'ITALIEN taken on April 9, 2019, pp. 9, 143).

2. HSBC BANK, USA, NATIONAL ASSOCIATION is the Plaintiff in the foreclosure action (see Foreclosure Complaint D.E. 6) and is a Counterclaim Defendant in the Third Amended Counterclaim, D.E. 209.

3. OCWEN LOAN SERVICING, LLC, (“OCWEN”) is the loan servicer for the loan subject to this litigation. (D.E. 6, para. 7) and is a Counterclaim Defendant in the Third Amended Counterclaim, D.E. 209.

4. HSBC BANK has delegated to OCWEN the authority to service the loan on its behalf pursuant to a power of attorney, attached to the foreclosure Complaint as Exhibit D. (D.E. 6, Ex. D.)

5. The power of attorney allows OCWEN to attempt to collect obligations or debts such as service of process fees, attorneys’ fees, and maintenance fees. (See OCWEN’s Corporate Representative, Jason Jastrzemski’s depo., p. 19 and D.E. 6, Ex. D.).

6. PHH MORTGAGE CORPORATION is the successor in interest to OCWEN LOAN SERVICING, LLC (“OCWEN”) via a merger. (Gina Feezer, Class Certification Testimony, Tr. 711-712). Throughout this litigation, PHH MORTGAGE CORPORATION has been referred to as “OCWEN”, and will continue to be for purposes of this Motion for Summary Judgment and Statement of Facts.

7. Michael Cook was designated by OCWEN as a corporate representative. (Cook depo., p. 11).

8. At the time of Mr. Cook’s deposition, his title was “attorney performance manager at OCWEN”, and his role was manager of the Default Invoicing Department. (Cook dep., p. 18).

9. Mr. Cook’s responsibility was managing the Default Invoicing Group, which processes invoices submitted by “default counsel and certain title vendors for reimbursement for expenses incurred in the default process”. (Cook dep., pp. 24-25).

10. OCWEN sent to L’ITALIEN on a monthly basis, Mortgage Account Statements (MAS), which included MASs dated May 17, 2017, June 19, 2017, July 17, 2017, and August 17, 2017. (Cook dep., pp. 65, 76-77, 81; dep. Ex’s 25, 29, 31, 35).

11. All of the MASs are based on the same format. (Cook dep., pp. 78, 81).

12. Christian Kennedy was also designated as a corporate representative for OCWEN. (Kennedy dep., p.5).

13. Mr. Kennedy’s position at the time of his deposition was Vice President of Cashiering and Servicing Transaction Management. (Kennedy dep., p. 5).

14. OCWEN was responsible for creating and did create, the MASs that were sent to the Class Plaintiffs. (Kennedy dep., pp. 7-8).

15. Once the MASs are ready to be sent, OCWEN utilizes a vendor which mails them to borrowers throughout the State of Florida. (Kennedy dep., pp. 7-8).

16. The MASs derive from a uniform template that OCWEN created. (Kennedy dep., p.11; dep. Ex. 97).

17. The MASs sent to the Class Plaintiffs provided information under the following headings “Account Information”; “Explanation of Amount Due”; “Activity Since Last Statement,” and “Important News.” (dep. Ex’s 25, 29, 31, 35 and Template 97).

18. The MASs sent to the Class Plaintiffs contain the following language under the section entitled “**Important News**”, “See reverse side for important information and state specific disclosures.” *Id.*

19. On the reverse side of the MAS, there is a section entitled, “Important Information.” In this Important Information section, the MAS states the following:

Important Notice - This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose...

Important Credit Reporting Notification - We may report information about the account to credit bureaus. Late payments, missed payments, or other defaults on the account may be reflected in your credit report.

(See Template 97; Kennedy dep., pp.24, 28; dep. Ex’s 25, 29, 31, 35).

20. Another corporate representative designated by OCWEN was Jason Jastrzemski. (Jastrzemski dep., pp. 9, 21-22).

21. Mr. Jastremski testified that the debt collector referred to in the MASs sent to the Class Plaintiffs was OCWEN. (Jastremski dep., p. 31).

22. The MASs sent to the Class Plaintiffs contain information regarding the Total Amount Due, the Due Date, the Outstanding Principal Balance and the Interest Rate. (Dep. Ex’s 25, 29, 31, 35, 97).

23. Additionally, at the bottom of each MAS is a payment coupon indicating the “Amount Due,” along with OCWEN’s address. (Kennedy dep., p.11; dep. Ex. 25, 29, 31, 35, 97).

24. The May 17, 2017 MAS sent to L’ITALIEN indicated that the Total Amount Due was \$93,454.29. (Dep. Ex. 25).

25. The May 17, 2017 MAS lists the various items that makes up the Total Amount Due of \$93,454.29. One of those items is “Fees/Other Charges (Since Last Statement)” with an amount of \$1,029.50. (See Dep. Ex. 25).

26. The May 17, 2017 MAS, under the section entitled “Activity Since Last Statement, (04/17/17 to 05/17/17)” includes the following: Charge – Service of Process - \$325.00; Charge -

FC Thru Service Complete \$690.00; and Charge - Property Inspection Fee - \$14.50. These three items total \$1,029.50. (Dep. Ex. 25).

27. The “FC Through Service Complete” is an attorneys’ fee charge, assessed to L’ITALIEN, for a payment made by OCWEN to its foreclosure attorneys after the Complaint was filed through service of process. (Cook dep., pp. 210-212).

28. OCWEN charged the Class Plaintiffs attorneys’ fees for the time period after a title search was conducted, after the Complaint was filed, and then after the Complaint was filed through service of process. (See Cook dep., pp. 211-212).

29. The July 17, 2017 MAS sent to L’ITALIEN indicates that the Total Amount Due was \$94,084.69. (Dep. Ex. 31).

30. The July 17, 2017 MAS (Dep. Ex. 31), had a section entitled “Explanation of Amount Due”, that has a category “Fees/Other Charges (Since Last Statement)” with an amount of \$349.50.

31. The July 17, 2017 MAS, under the section “Activity Since Last Statement (6/19/2017 to 7/17/2017),” contained the following: Charge – Property Inspection Fee \$14.50; Charge – Property Valuation Expense \$85 and Charge - Property Maintenance Expense \$250.00, which total \$349.50. (Dep. Ex. 31).

32. OCWEN makes the decision as to the charges contained in MASs sent to borrowers. (Kennedy Dep., pp. 7-8, 11 and 21).

33. The Van Ness Law Firm was the law firm representing OCWEN in the foreclosure case filed against L’ITALIEN. (Cook dep., p. 25; dep. Ex. 6).

34. David Friedman was designated as the Corporate Representative of the Van Ness Law Firm. (Friedman dep. pp. 8-9, 24).

35. The Van Ness Law Firm has represented OCWEN in residential foreclosure matters hundreds, if not thousands, of times. (Friedman dep., p. 39).

36. The Van Ness Law Firm did not have anything to do with the preparation of the MASs. (Kennedy dep., p. 21).

37. OCWEN’s foreclosure counsel did not review the MASs before they were sent to the Class Plaintiffs. (Kennedy dep., p. 21).

38. The MASs are not sent to OCWEN’S foreclosure counsel at any time before or after they are sent to the borrower. (Kennedy dep., p. 21).

39. OCWEN’s foreclosure counsel was not involved in sending the MASs to the Class Plaintiffs. (Kennedy dep., p. 21).

40. The MASs are not related to the prosecution of foreclosure actions. (Kennedy dep., pp. 21-22).

SERVICE OF PROCESS FEES

41. OCWEN charged the Class Plaintiffs during the class period fees, for service of process or for attempted service of process of unknown tenant(s) and/or an unknown spouse. (Cook dep., pp. 66-69; dep. Ex. 25, 26, 46).

42. Provest, an entity which provides service of process services, sent an invoice to the Van Ness Law Firm in the L'ITALIEN foreclosure case for \$325.00, which included charges for an attempt to serve the unknown spouse of MONIQUE L'ITALIEN, the unknown spouse of STEFANIE L'ITALIEN, and an unknown tenant. (See Ex. 26; Cook, dep., pp. 66-69).

43. The charge for each of the attempted service of process on the "unknowns" was \$65.00, for a total of \$195.00. (Cook dep., pp. 86-88; dep. Ex. 26).

44. The Van Ness Law Firm sent OCWEN an invoice for service of process fees of \$325.00. (Cook dep., p. 69; dep. Ex. 46).

45. The service of process charges of \$325.00 were part of the \$1,029.50 of "Fees/Other Charges" (Since Last Statement) that was included in L'ITALIEN's Total Amount Due. (Cook dep. pp. 95-96, 102-103; dep. Ex. 25).

46. Evan Heffner is an attorney who at relevant times worked for the Van Ness Law Firm. (Heffner dep., pp. 8, 11).

47. Mr. Heffner, while an employee of the Van Ness Law Firm, mostly was assigned uncontested foreclosure cases (Heffner dep., p. 13).

48. Mr. Heffner, while an employee of the Van Ness Law Firm, was assigned to the foreclosure case against L'ITALIEN. (Heffner dep., pp. 24-25).

49. It was the policy and practice of OCWEN's counsel as evidenced in the Class Plaintiffs' cases, during the class period, to name an unknown tenant as a defendant in the foreclosure complaint and issue a separate summons for the "unknown tenant". (Friedman dep., p. 59; Evan Hefner dep., p. 169).

50. It was OCWEN's counsel's policy and practice as evidenced in the Class Plaintiffs' cases, during the class period, to name an unknown spouse of the borrower as a defendant in the foreclosure complaint and issue a separate summons for the unknown spouse of the borrower, when OCWEN did not have information as to whether the borrower had married. (Friedman dep., p. 59; Hefner dep., pp. 167-169).

51. The reason OCWEN's counsel obtains a separate summons for an unknown spouse and/or unknown tenant, is so the process server can serve the unknown spouse or unknown tenant if there is an actual spouse or an actual tenant residing on the premises. (Friedman dep., pp. 87-91).

52. OCWEN's counsel acknowledged that if valid jurisdiction was not established by service of process on an unknown spouse or an unknown tenant when the real tenant or real spouse was not named in the foreclosure complaint, there would not be any justification for issuing a separate summons for an unknown tenant or an unknown spouse. (Friedman dep., p. 97).

53. The Van Ness Law Firm did not advise OCWEN to charge any Class Plaintiff service of process charges as part of the MAS, or that OCWEN was justified in charging any Class Plaintiff service of process fees. (Friedman dep., pp. 114-115).

ATTORNEYS' FEES WITHOUT TIME RECORDS

54. It is OCWEN's policy and practice to charge borrowers the amount of attorneys' fees OCWEN pays its foreclosure counsel at certain intervals during the foreclosure litigation without regard to whether specific services were actually rendered or the actual time spent in rendering services. (Cook dep., pp. 205-206, 211-212).

55. The April 17, 2017 sent to L'ITALIEN includes an attorneys' fee charge of \$690.00 that was paid by OCWEN to the Van Ness Law Firm for the interval after the complaint was filed. (Cook dep., pp. 210-212; dep. Ex. 54).

56. The May 17, 2017 MAS sent to L'ITALIEN contained an attorneys' fee charge of \$690.00 that OCWEN paid its foreclosure counsel for the interval after the complaint was filed up through service of process. (Cook dep., pp. 210-212; dep. Ex. 25).

57. The \$690 attorney's fee charge on the May 17, 2017 MAS is part of the \$1,029.50 that makes up the "Fees/Other Charges (Since Last Statement)" which is included in the total amount due of \$93,459.29. (Dep. Ex. 25).

58. In uncontested foreclosure cases, as was the case with in the Class Plaintiffs' cases, neither OCWEN nor its attorneys kept time records indicating what activities were performed and the amount of time it took to accomplish each activity. (Friedman dep., pp. 30-31, 120).

59. At the Class Certification hearing, Cassandra Jeffries of McCabe Weissberg Law Firm, testified as a witness for OCWEN. (See Class Certification Hearing Tr., pp. 430-432).

60. Ms. Jeffries herself and the McCabe Weissberg Law Firm have represented OCWEN on a number of occasions. (Dep. Ex. 64, Class Certification Hearing Tr., p. 435; affidavit of Jim Bonfiglio).

61. Neither Ms. Jeffries nor the McCabe Weissberg firm prepare or keep any time records for uncontested foreclosure cases. (See Tr. of Class Certification Hearing, pp. 524-525).

62. Robertson Anschutz and Schneid Law Firm has represented OCWEN on a number of occasions in residential foreclosure cases. (Dep. Ex. 64; Affidavit of James Bonfiglio).

63. Ms. Virginia Sloat-Rogers of Robertson Anschutz and Schneid testified in a deposition that in uncontested foreclosure cases, neither she nor the Robertson Anschutz and Schneid Law Firm keep any time records. (Sloat-Rogers dep., p. 49).

64. Instead of maintaining time records, OCWEN's counsel in the L'ITALIEN case and in the Sub-Class members cases submit a form affidavit that is not case-specific and does not include the work performed in any specific case but lists activities that may be performed in any uncontested foreclosure case. (Friedman dep., pp. 122-124).

65. OCWEN's counsel admitted that the activities and time contained in the form "Affidavit of Time and Effort" are calculated so that the amount of attorneys' fees adds up to the amount OCWEN paid its attorneys as a flat fee, regardless of whether the specified services were performed and without regard for how much time was actually spent on the file. (Friedman dep., pp. 130-132).

66. Neither OCWEN nor its counsel adjusts, corrects, modifies or makes any reduction to the amount of time even when OCWEN knows the activities listed in the affidavit did not occur. (Friedman dep., pp. 133, 167-168).

67. In L'ITALIEN's May 17, 2017 MAS, there was a \$690.00 attorney's fee charge for the interval after the complaint was filed through service of process. (Cook dep., pp. 211-212; dep. Ex. 25).

68. Mr. Friedman testified that he was not aware of any legal work performed in L'ITALIEN's case after the complaint was filed through service of process. (Friedman dep., p.167).

69. The only activities Mr. Friedman was aware of after the complaint was filed and through service of process was sending the summons to the process server and receiving the returns of service back from the process server. (Friedman dep., pp. 167-168).

70. Evan Heffner, while employed at the Van Ness Law Firm, represented OCWEN in L'ITALIEN's foreclosure case, and was the attorney who signed, swore to, and filed the Affidavit of Time and Effort to support OCWEN's attorney's fee claim against L'ITALIEN. (See dep. Ex. 75 - Affidavit of Time and Effort; Heffner dep., pp. 24-26).

71. One of the entries in the Affidavit signed and sworn to by Mr. Heffner describing services alleged to have been performed in the L'ITALIEN foreclosure case and for which Ms. L'Italien was charged in the May 17, 2017 MAS was the following:

Review of Returns of Service – communications with process server regarding additional service attempts or amended service returns as appropriate. Review affidavits of diligent search as needed. Review and revise service list. Preparation and filing notice of action as needed. Review proof of publication as needed. Review and filing of notice of dropping defendants as appropriate.

(Dep. Ex. 75).

72. In fact, there were no additional service attempts or amended service returns, no affidavit of diligent search, no notice of action, or proof of publication. (Friedman dep., pp. 205-208; Heffner dep pp.120-123)

73. Mr. Heffner admitted that when he signed, swore to, and filed the Affidavit of Time and Effort he knew these activities never took place. (Heffner dep., pp. 120-123)

74. OCWEN has a written policy regarding charges to borrowers in foreclosure cases which states:

Servicer may collect a default related fee if the fee is for reasonable and appropriate services **actually rendered**.

(Dep. Ex. 63, B.S. OLS 002650 and OLS 002769)(emphasis supplied).

75. OCWEN'S policy regarding charging borrowers for attorney's fees is the following:

[a]ttorneys' fees charged in connection with a foreclosure action... **shall only be for work actually performed and shall not exceed reasonable and customary services for such work.**

(Dep. Ex. 63, B.S. OLS 002650 and OLS 002769)(emphasis supplied).

76. OCWEN charged the Class Plaintiffs attorneys' fees during the foreclosure litigation before there was any determination or ruling on entitlement for fees or that OCWEN was the prevailing party. (L'ITALIEN dep., Ex. 25 and 54).

MAINTENANCE FEES

77. L'ITALIEN and Class members were charged a "Property Maintenance Expense" even though no physical maintenance was ever performed on their property. (Dep. Ex. 31 and Jastrzemski Dep., p.54).

78. L'ITALIEN and other Sub-Class members who owned property in West Palm Beach were charged a \$250.00 property maintenance expense, which OCWEN claims was a registration cost required to be paid by a City of West Palm Beach ordinance. (Jastrzemski dep., p. 47).

79. The July 17, 2017 MAS makes no mention of any registration cost or any charge relating to a West Palm Beach ordinance. (Dep. Ex. 31).

80. The West Palm Beach ordinance that was in effect on July 17, 2017, required a registration cost only for property that was vacant or abandoned. (See West Palm Beach City Ordinance Section 18-209 and 18-210).

81. L'ITALIEN and other Sub-Class members who owned property in West Palm Beach were charged a \$250.00 property maintenance expense even though the property they owned was neither vacant nor abandoned. (Jastrzemski dep., pp. 51-52).

82. The City of West Palm Beach amended its ordinance in 2020, requiring a registration cost for all properties in foreclosure, regardless of whether they are vacant.

83. The \$250 property maintenance expense on the June 19, 2017 MAS is part of the \$349.50, which is part of the "Fees/Other Charges (Since Last Statement)" and is included in the total amount due of \$94,084.69. (Dep. Ex. 31).

ATTEMPTING TO COLLECT MORTGAGE PAYMENTS NOT YET DUE

84. OCWEN attempted to collect mortgage payments that were not yet due as of the date of the MAS which states that the Total Amount Due is "DUE NOW". (Kennedy dep., pp. 59-61; dep. Ex.'s 25, 29, 31, 35).

85. The June 19, 2017, MAS send to L'ITALIEN states that the Total Amount "DUE NOW" is \$93, 610.82. (Dep. Ex. 29).

86. The total amount due of \$93,610.82 included the mortgage payment for July 2017, which was not yet due as of June 19, 2017, but was due on July 1, 2017. (Kennedy Dep., pp. 259-261; dep. Ex. 29).

87. The June 19, 2017, MAS did not advise L'ITALIEN that the total amount "DUE NOW" included the next month's mortgage payment. (Kennedy dep., pp. 61-63).

88. This practice of attempting to collect the next month's mortgage payment before the payment was due also applied to the amount required to reinstate one's mortgage. (Kennedy dep., pp. 49-52).

89. In the May 17, 2017, MAS sent to L'ITALIEN, the reinstatement amount was \$18,687.20. (L'ITALIEN dep. Ex. 25).

90. OCWEN's corporate representative admitted that this reinstatement amount included the June 1, 2017, mortgage payment that was not due as of May 17, 2017. (Kennedy dep., pp. 49-52).

OCWEN'S STANDARD POLICIES & PRACTICES

91. OCWEN's corporate representative, Michael Cook, testified that the actions of OCWEN in its interactions with L'ITALIEN were in accordance with OCWEN's standard policies and practices. (Cook dep., p. 233).

92. Gina Feezer, a corporate representative of OCWEN, testified that all actions taken by OCWEN in its interaction with L'ITALIEN followed OCWEN's standard policies and procedures. (Feezer dep. Jul. 9, 2019, p. 184).

93. Ms. Feezer testified at the Class Certification hearing that the manner in which OCWEN serviced L'ITALIEN's mortgage was in the same manner as any other borrower's mortgage was serviced. (Class Certification Hearing Tr., p. 761).

94. OCWEN's attempt to collect the next month's mortgage payment was in accordance with OCWEN's standard practice and there was nothing unique regarding the charges to L'ITALIEN from any other borrowers in the state of Florida. (Kennedy dep., pp. 72-73).

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We hereby certify a true and correct copy of the foregoing was filed and served via an automatic email generated by the Florida Courts E-filing Portal in compliance with Fla. R. Gen. Prac. & Jud. Adm. 2.516 on those listed on the Service List, this 23rd day of January 2025.



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