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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL
CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA
CASE NO. 15-1170-CA

21st MORTGAGE CORPORATION,

Plaintiff,

vs.

MARY JEAN ZISKA,

Defendant.

_____/

TRANSCRIPT OF PROCEEDINGS

DATE TAKEN: October 25, 2016

TIME: 10:32 a.m. - 10:46 a.m.

PLACE: Collier County Justice Center
Naples, Florida

BEFORE: Magistrate David Friedman

APPEARANCES

On Behalf of the Plaintiff:
QUINTAIROS, PRIETO, WOOD & BOYER, P.A.
9300 South Dadeland Blvd., Fl 4
Miami, Florida 33156
BY: NICOLE PLANELL, ESQ.

On Behalf of the Defendant:
YERGER/TAYLOR, PA
1570 Shadowlawn Drive
Naples, FL 34104
BY: LINDA YERGER, ESQ.

1 MAGISTRATE FRIEDMAN: -- be the 21st Mortgage
2 Corp. versus Ziska.

3 Make your appearances, please.

4 UNIDENTIFIED FEMALE VOICE: (Indiscernible)
5 21st Mortgage.

6 MAGISTRATE FRIEDMAN: Oh, you're on this,
7 ma'am?

8 UNIDENTIFIED FEMALE VOICE: (Indiscernible).

9 MAGISTRATE FRIEDMAN: Oh, okay.

10 UNIDENTIFIED FEMALE VOICE: Thank you.

11 MAGISTRATE FRIEDMAN: Case number is
12 15-CA-1170, 21st Mortgage Corp. versus Ziska.

13 Who represents plaintiff?

14 MS. PLANELL: Good morning. Nicole Planell on
15 behalf of the plaintiff.

16 MAGISTRATE FRIEDMAN: Spell your last name for
17 me.

18 MS. PLANELL: Sure. P, as in Peter, L-A-N-E,
19 double L.

20 MAGISTRATE FRIEDMAN: Okay. And?

21 MS. YERGER: Linda Yerger, defendant.

22 MAGISTRATE FRIEDMAN: Okay. And who is that
23 seated -- moving to your right?

24 UNIDENTIFIED FEMALE VOICE: Me?

25 MAGISTRATE FRIEDMAN: Yeah.

1 MS. ZISKA: I'm Mary Jean Ziska.

2 MAGISTRATE FRIEDMAN: Right. And?

3 MS. ZISKA: It's my condominium.

4 MAGISTRATE FRIEDMAN: Right.

5 MS. ZISKA: But I thought this was
6 (indiscernible).

7 MAGISTRATE FRIEDMAN: And who are you?

8 MS. GREGORY: I'm Mary Jean Ziska's mother.
9 I'm also her (indiscernible) guardian.

10 MAGISTRATE FRIEDMAN: And you're Ms. Gordon,
11 is it?

12 MS. PLANELL: Gregory.

13 MS. YERGER: Gregory.

14 MAGISTRATE FRIEDMAN: Gregory.

15 MS. YERGER: G-R-E-G-O-R-Y.

16 MAGISTRATE FRIEDMAN: All right. Have a seat,
17 please.

18 MS. GREGORY: Your Honor, I do have a copy of
19 a note I've given to the lawyer. Can I give that
20 to you now?

21 MAGISTRATE FRIEDMAN: No.

22 MS. GREGORY: Okay.

23 MAGISTRATE FRIEDMAN: Thank you. Have a seat.

24 Two motions, right? And I believe they're
25 both the defendant's motions, right?

1 MS. YERGER: I -- I filed the motion to
2 withdraw as counsel. Ms. -- the guardian filed her
3 own separate objection to the sale.

4 MAGISTRATE FRIEDMAN: And that document is not
5 considered by the Court to be a valid document.
6 You are not an attorney of record. You're the
7 guardian. You can't practice law. So I'm going
8 forward with the motion to withdraw.

9 Is there also an objection to sale that's
10 being heard?

11 MS. YERGER: Also filed by the guardian.

12 MAGISTRATE FRIEDMAN: You didn't file it?

13 MS. YERGER: No.

14 MAGISTRATE FRIEDMAN: Okay. Again, that -- a
15 non-lawyer cannot file papers on behalf of a ward,
16 okay?

17 MS. GREGORY: I thought it could be done pro
18 se, like the motion (indiscernible) foreclosure
19 sale.

20 MAGISTRATE FRIEDMAN: Yes. If Ms. Ziska was
21 competent to proceed, she could file papers on her
22 own once her lawyer withdraws.

23 While the lawyer is the attorney of record,
24 only the lawyer can file papers.

25 A guardian is not permitted to file papers as

1 if the guardian was a lawyer. What the guardian is
2 permitted to do is to hire the lawyer for the ward.

3 Okay.

4 MS. ZISKA: But I've never met this woman, I
5 mean, as far as being a lawyer.

6 MAGISTRATE FRIEDMAN: She's about to withdraw.

7 MS. ZISKA: Right. So that's why we were
8 approving of her withdrawal, being able to hire --

9 MAGISTRATE FRIEDMAN: Another lawyer?

10 MS. ZISKA: Yes.

11 MAGISTRATE FRIEDMAN: Well, that's probably
12 what's going to happen.

13 Let me hear what Ms. Yerger has to say about
14 her motion to withdraw.

15 MS. YERGER: Your Honor, we -- I was
16 representing Mary Jean Ziska through the guardian,
17 Marian (phonetic) Gregory, in the defense of the
18 foreclosure action.

19 This went to a non-jury trial before Judge
20 Hayes. There was -- during the time, there was --
21 the original note and mortgage were presented.
22 There was testimony from the witnesses.

23 The transcript from the hearing is published
24 into the court record for review.

25 I've advised both Ms. Gregory and Ms. Ziska to

1 go down to the clerk's office, look over the file.
2 They can see that the original note and mortgage
3 were filed during the case.

4 There was a lot of deliberation by Judge Hayes
5 in rendering the decision. He granted their motion
6 on the plaintiff's side. The sale was set and went
7 forward.

8 My representation was to defend on that
9 foreclosure, and it ended at that point. So I am
10 filing the motion to withdraw.

11 MAGISTRATE FRIEDMAN: All right. And I
12 assume, since I heard from Ms. Ziska, that Ms.
13 Gregory agrees that Ms. Yerger should be permitted
14 to withdraw.

15 Any problem with that?

16 MS. GREGORY: No. That's fine.

17 MAGISTRATE FRIEDMAN: Okay. Plaintiff object?

18 MS. PLANELL: No.

19 MAGISTRATE FRIEDMAN: I'll look for a
20 recommended order within seven days granting the
21 motion to withdrawn.

22 MS. YERGER: Thank you.

23 MAGISTRATE FRIEDMAN: Okay. It looks like the
24 plaintiff also noticed for hearing the objection to
25 sale that was filed by -- I think Ms. Gregory filed

1 it back in September.

2 Is that being heard today? Is that your
3 intention?

4 MS. PLANELL: It is our intention at this
5 point. The defendants did file this pro se
6 objection to foreclosure sale.

7 Plaintiff was the successful bidder at the
8 foreclosure sale. Certificate of sale was issued,
9 and we are requesting that the Court review the
10 objection to foreclosure sale and overrule those
11 objections and request that the Court issue an
12 order that the certificate of title shall be issued
13 forthwith.

14 MAGISTRATE FRIEDMAN: Okay. You've put me in
15 a bit of a quandary because I've already said that
16 the objection to sale filed by the guardian or even
17 if it had been filed by the ward, would be -- the
18 legal term is a nullity, meaning I have to ignore
19 it.

20 But on the other hand, you're asking me to
21 review it. I'll gladly do that, okay, but are you
22 also asking me to consider whether to permit any
23 argument by the -- well, by whom? You see, the
24 guardian cannot practice law and step into the
25 shoes of the ward and speak for her today.

1 The ward is still incapacitated according to
2 the guardianship case as it stands now. Ms. Yerger
3 is still the attorney of record. And if she feels
4 it appropriate to argue the grounds in that
5 objection, that would make sense to me.

6 What do you think?

7 MS. PLANELL: Honestly, I had not considered
8 the argument that the objection to sale was a
9 nullity due to it having been filed by the guardian
10 of Ms. Ziska.

11 I believe that the objection to sale on its
12 merits is not valid and, at this point, plaintiff
13 does request and wish for the property to which
14 they are entitled, they wish to have access to that
15 and be able to proceed with that since there is no
16 impediment to it at this point.

17 MAGISTRATE FRIEDMAN: Ms. Yerger, I didn't
18 mean to put you on the spot, but where do you stand
19 on how I should proceed with respect to the
20 objection that was filed, not by you as attorney of
21 record, but by your client's guardian?

22 MS. YERGER: I think the initial ruling that
23 -- your decision that you're making, that it's a
24 pleading that's a nullity and you can't go forward
25 with it at this point in time. It doesn't matter

1 that there was just a cross-notice that was given.

2 You go to the original document.

3 That would be my understanding of the law,

4 but --

5 MAGISTRATE FRIEDMAN: Okay. This is what I'll

6 do. Since the plaintiff wants me to review what

7 was filed, I will do that. So I'm not going to

8 rule right now on the objection. I'll reserve

9 ruling.

10 For purposes of making a record, although I've

11 stated that the guardian cannot speak for the ward,

12 if the guardian would like to say anything, just

13 for the record, she can tell me what she wants to

14 say.

15 What grounds exist to object to the sale that

16 you would like me to consider that are not in your

17 filed objection? Anything --

18 (Telephone ringing.)

19 MAGISTRATE FRIEDMAN: Hang on a second. Wait.

20 Yes, Sherri? Good. You got it. Yep. I'll

21 send the attorney over. Thank you. He's in 3-2

22 next door.

23 UNIDENTIFIED MALE VOICE: Oh, okay.

24 MAGISTRATE FRIEDMAN: Why don't you bring him

25 over. Thank you, sir.

1 All right.

2 MS. GREGORY: The note that I wrote explains
3 that we'd like a forensic audit on signatures
4 because there was a file sitting on Attorney
5 Yerger's desk when she was heard in front of Judge
6 Hayes, that she never referred to it.

7 And, at that time, there was no promissory
8 note. Then, all of a sudden, a promissory note
9 showed up with a signature. And we'd like that
10 signature and other signatures verified, because
11 this was at the time that David Stern (phonetic),
12 the foreclosure king, was in charge of everything
13 many years ago, and there was a lot of fraud.

14 My daughter, Mary Jean Ziska, has been working
15 on this for months and she has many records. And I
16 would like her to speak, if possible, because she
17 understands it better than I. I'm her assistant
18 right now.

19 Could she speak and explain -- would you
20 accept this note? I gave a copy to Judge Hayes and
21 I gave a copy to Linda.

22 MAGISTRATE FRIEDMAN: I think -- ma'am, I
23 think what you're suggesting are legal grounds that
24 should or could have been presented at the time of
25 the trial. Those are not grounds to object to a

1 sale.

2 MS. GREGORY: They were all mentioned to my
3 attorney at the time, to Linda Yerger. They were
4 ignored. I asked her five questions and she never
5 answered them to this day.

6 MAGISTRATE FRIEDMAN: Well, that's got nothing
7 to do with whether you could object to the sale.
8 Okay? Absolutely nothing.

9 MS. ZISKA: The objection to the foreclosure
10 sale, I thought there were a couple of different
11 grounds that you could use as far as whether the
12 lawyer did her job properly.

13 MAGISTRATE FRIEDMAN: No. What else --

14 MS. ZISKA: It was supposed to be if there was
15 a price that wasn't acceptable, if there was any
16 fraud that was involved.

17 MAGISTRATE FRIEDMAN: Yeah.

18 MS. ZISKA: And different things of that
19 nature.

20 But it goes back to the foreclosure case as
21 far as evidence that wasn't presented and having a
22 -- I've never even met Linda Yerger except for
23 today. So my due process rights were actually
24 violated even if I had a limited guardian, being
25 able to be a part of the whole process.

1 I only found out about the foreclosure within
2 five days, and it was a long weekend, before the
3 sale. I was there at the sale, hoping and praying
4 that something would -- I'd be able to buy it back
5 in some way, shape or form. I know there's a
6 ten-day objection to the foreclosure sale where we
7 submitted an objection to the foreclosure sale
8 because of the due process rights that were
9 violated because I wasn't allowed to be involved.
10 I wasn't notified about anything. It was my
11 property and it was actually -- it was against my
12 rights even just as a -- I mean, not as just a
13 ward, but as someone who had the right to speak up
14 in my defense or to be notified about anything.

15 I wasn't notified at all about anything.

16 MAGISTRATE FRIEDMAN: Okay. I hear you.

17 MS. ZISKA: She said that she was told not to
18 notify me, which is also a violation of my rights.

19 MS. GREGORY: And she didn't have to come to
20 the hearing.

21 MAGISTRATE FRIEDMAN: All right. So it sounds
22 like both of you are complaining about, primarily,
23 one thing, and that is the legal strategies and
24 actions of your attorney.

25 MS. ZISKA: Correct.

1 MAGISTRATE FRIEDMAN: That's it.

2 All right. So let me ask Ms. Planell a
3 question.

4 MS. PLANELL: Yes, Your Honor.

5 MAGISTRATE FRIEDMAN: The law has changed on
6 objections to sale and the Court's equitable powers
7 are significantly broader because they include the
8 power to act equitably, but I've never seen any
9 decision that suggests that the legal strategies or
10 alleged mistakes or errors made by the attorney of
11 record for the borrower or homeowner should be
12 taken into account.

13 The fraud that you can take into account deals
14 with the bank, or the bank's agent or the servicer
15 or the bidding process.

16 Are you familiar with whether these kinds of
17 factors could be taken into account?

18 MS. PLANELL: And I think that the case that
19 the Court is referring to is Supreme Court of
20 Florida, is *Arsali versus Chase Home Finance* in
21 which the Court ruled that the inadequacy of the
22 bid price is not necessary to be alleged and proven
23 as the only factor for the Court to determine when
24 reviewing objections to sale.

25 The case law is clear that any objection to a

1 foreclosure sale must be directed toward conduct
2 that occurred at or which related to the
3 foreclosure sale itself. Any impropriety with
4 regards to deficiencies in the legal arguments or
5 the trial or the evidence presented or the
6 defenses, all of that is not an appropriate basis
7 for an objection to a foreclosure sale.

8 MAGISTRATE FRIEDMAN: Right.

9 MS. PLANELL: And as counsel for the
10 plaintiff, I was present at this trial before Judge
11 Hayes with Ms. Yerger and Ms. Gregory was present
12 as well, and the Court -- it was a lengthy,
13 contested trial which all of the evidence was
14 presented to the Court, and competent and
15 substantial evidence was presented to Judge Hayes
16 in which he thoroughly reviewed and determined that
17 plaintiff had established its prima facie case
18 regardless of the defenses that the defendant had
19 filed. There were multiple affirmative defenses.

20 The notice of the transcript was filed with
21 the Court as well, and there is no case law in
22 Florida that says that anything that would be
23 outside of any impropriety with the sale itself or
24 any action on behalf of the parties related towards
25 the sale would have any bearings on an objection to

1 a sale.

2 MAGISTRATE FRIEDMAN: Thank you. That's my
3 understanding of the law, too.

4 So if either of you wants to say anything else
5 that has something to do with the trial itself,
6 don't waste your breath or my time.

7 MS. ZISKA: No, but --

8 MAGISTRATE FRIEDMAN: Only the objection --
9 the objection to sale must attack the sale itself,
10 and if there's only one bid and it's \$100, it
11 doesn't matter. That's fine, too.

12 So if you want to attack the sale, I'm all
13 ears. If you want to attack the trial, it's not
14 going to be heard by me.

15 MS. ZISKA: But I thought if the -- as far as
16 for the chain of title, it's --

17 MAGISTRATE FRIEDMAN: No. You're not
18 listening.

19 MS. ZISKA: Okay.

20 UNIDENTIFIED FEMALE VOICE: No one listens.

21 MAGISTRATE FRIEDMAN: This hearing is
22 concluded. We're done. Thank you.

23 MS. ZISKA: Do we --

24 MAGISTRATE FRIEDMAN: We are off the record.
25 The hearing is concluded, period.

1 MS. PLANELL: Thank you, Your Honor.

2 MS. ZISKA: Objection to the magistrate.

3 MAGISTRATE FRIEDMAN: Out. Leave.

4 (Proceedings concluded.)

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1 STATE OF FLORIDA
2 COUNTY OF COLLIER

3
4 I, Joyce B. Howell, do hereby certify that:

5 1. The foregoing contains a full, true and
6 correct transcript of proceedings in the above-entitled
7 matter, transcribed by me to the best of my knowledge
8 and ability from the digital recording provided by the
9 court.

10 2. I am not counsel for, related to, or
11 employed by any of the parties in the above-entitled
12 cause.

13 3. I am not financially or otherwise
14 interested in the outcome of this case.

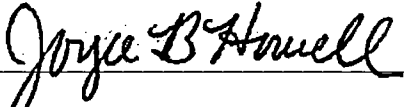
15
16 SIGNED AND CERTIFIED:

17
18 Date: January 22, 2017

19

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21



Joyce B. Howell

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explains 10:2	11 6:11,17, 19,23 7:14 8:17 9:5,19, 24 10:22 11:6,13,17 12:16,21 13:1,5 14:8 15:2,8,17,21, 24 16:3	14:11,15 hear 5:13 12:16 heard 4:10 6:12 7:2 10:5 15:14 hearing 5:23 6:24 12:20 15:21,25 hire 5:2,8 Home 13:20 homeowner 13:11 Honestly 8:7 Honor 3:18 5:15 13:4 16:1 hoping 12:3	job 11:12 Judge 5:19 6:4 10:5,20 14:10,15
<hr/> F <hr/>			<hr/> K <hr/>
facie 14:17 factor 13:23 factors 13:17 familiar 13:16 feels 8:3 FEMALE 2:4,8, 10,24 15:20 file 4:12,15, 21,24,25 6:1 7:5 10:4 filed 4:1,2, 11 6:3,25 7:16,17 8:9, 20 9:7,17 14:19,20 filing 6:10 Finance 13:20 fine 6:16 15:11 Florida 13:20 14:22 foreclosure 4:18 5:18 6:9 7:6,8,10 10:12 11:9,20 12:1,6,7 14:1,3,7 forensic 10:3 form 12:5 forthwith 7:13 forward 4:8 6:7 8:24 found 12:1 fraud 10:13 11:16 13:13 FRIEDMAN 2:1, 6,9,11,16,20, 22,25 3:2,4, 7,10,14,16, 21,23 4:4,12, 14,20 5:6,9,	front 10:5	hire 5:2,8 Home 13:20 homeowner 13:11 Honestly 8:7 Honor 3:18 5:15 13:4 16:1 hoping 12:3	kinds 13:16 king 10:12
	<hr/> G <hr/>		<hr/> L <hr/>
gave 10:20,21 give 3:19 gladly 7:21 Good 2:14 9:20 Gordon 3:10 granted 6:5 granting 6:20 Gregory 3:8, 12,13,14,18, 22 4:17 5:17, 25 6:13,16,25 10:2 11:2 12:19 14:11 grounds 8:4 9:15 10:23,25 11:11 guardian 3:9 4:2,7,11,25 5:1,16 7:16, 24 8:9,21 9:11,12 11:24 guardianship 8:2	G-R-E-G-O-R-Y 3:15 gave 10:20,21 give 3:19 gladly 7:21 Good 2:14 9:20 Gordon 3:10 granted 6:5 granting 6:20 Gregory 3:8, 12,13,14,18, 22 4:17 5:17, 25 6:13,16,25 10:2 11:2 12:19 14:11 grounds 8:4 9:15 10:23,25 11:11 guardian 3:9 4:2,7,11,25 5:1,16 7:16, 24 8:9,21 9:11,12 11:24 guardianship 8:2	homeowner 13:11 Honestly 8:7 Honor 3:18 5:15 13:4 16:1 hoping 12:3	L-A-N-E 2:18 law 4:7 7:24 9:3 13:5,25 14:21 15:3 lawyer 3:19 4:22,23,24 5:1,2,5,9 11:12 Leave 16:3 legal 7:18 10:23 12:23 13:9 14:4 lengthy 14:12 limited 11:24 Linda 2:21 10:21 11:3,22 listening 15:18 listens 15:20 long 12:2 lot 6:4 10:13
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hand 7:20 Hang 9:19 happen 5:12 Hayes 5:20 6:4 10:6,20	hand 7:20 Hang 9:19 happen 5:12 Hayes 5:20 6:4 10:6,20	involved 11:16 12:9 issue 7:11 issued 7:8,12	made 13:10 magistrate 2:1,6,9,11, 16,20,22,25 3:2,4,7,10, 14,16,21,23 4:4,12,14,20 5:6,9,11 6:11,17,19,23 7:14 8:17 9:5,19,24
		<hr/> J <hr/>	
		Jean 3:1,8 5:16 10:14	

10:22 11:6, 13,17 12:16, 21 13:1,5 14:8 15:2,8, 17,21,24 16:2,3 make 2:3 8:5 making 8:23 9:10 MALE 9:23 Marian 5:17 Mary 3:1,8 5:16 10:14 matter 8:25 15:11 meaning 7:18 mentioned 11:2 merits 8:12 met 5:4 11:22 mistakes 13:10 months 10:15 morning 2:14 mortgage 2:1, 5,12 5:21 6:2 mother 3:8 motion 4:1,8, 18 5:14 6:5, 10,21 motions 3:24, 25 moving 2:23 multiple 14:19	notice 14:20 noticed 6:24 notified 12:10,14,15 notify 12:18 nullity 7:18 8:9,24 number 2:11	2:13,15 6:17, 24 7:7 8:12 9:6 14:10,17 plaintiff's 6:6 Planell 2:14, 18 3:12 6:18 7:4 8:7 13:2, 4,18 14:9 16:1 pleading 8:24 point 6:9 7:5 8:12,16,25 power 13:8 powers 13:6 practice 4:7 7:24 praying 12:3 present 14:10,11 presented 5:21 10:24 11:21 14:5, 14,15 price 11:15 13:22 prima 14:17 primarily 12:22 pro 4:17 7:5 problem 6:15 proceed 4:21 8:15,19 proceedings 16:4 process 11:23,25 12:8 13:15 promissory 10:7,8 properly 11:12 property 8:13 12:11 proven 13:22 published 5:23	purposes 9:10 put 7:14 8:18
<hr/> Q <hr/>			
quandary 7:15 question 13:3 questions 11:4			
<hr/> R <hr/>			
recommended 6:20 record 4:6,23 5:24 8:3,21 9:10,13 13:11 15:24 records 10:15 referred 10:6 referring 13:19 related 14:2, 24 rendering 6:5 representation 6:8 representing 5:16 represents 2:13 request 7:11 8:13 requesting 7:9 reserve 9:8 respect 8:19 review 5:24 7:9,21 9:6 reviewed 14:16 reviewing 13:24 rights 11:23 12:8,12,18			

<p>ringing 9:18 rule 9:8 ruled 13:21 ruling 8:22 9:9</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sale 4:3,9,19 6:6,25 7:6,8, 10,16 8:8,11 9:15 11:1,7, 10 12:3,6,7 13:6,24 14:1, 3,7,23,25 15:1,9,12 seat 3:16,23 seated 2:23 send 9:21 sense 8:5 separate 4:3 September 7:1 servicer 13:14 set 6:6 shape 12:5 Sherri 9:20 shoes 7:25 showed 10:9 side 6:6 signature 10:9,10 signatures 10:3,10 significantly 13:7 sir 9:25 sitting 10:4 sounds 12:21 speak 7:25 9:11 10:16,19 12:13 Spell 2:16 spot 8:18 stand 8:18</p>	<p>stands 8:2 stated 9:11 step 7:24 Stern 10:11 strategies 12:23 13:9 submitted 12:7 substantial 14:15 successful 7:7 sudden 10:8 suggesting 10:23 suggests 13:9 supposed 11:14 Supreme 13:19</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>telephone 9:18 ten-day 12:6 term 7:18 testimony 5:22 thing 12:23 things 11:18 thought 3:5 4:17 11:10 15:15 time 5:20 8:25 10:7,11, 24 11:3 15:6 title 7:12 15:16 today 7:2,25 11:23 told 12:17 transcript 5:23 14:20 trial 5:19 10:25 14:5, 10,13 15:5,13</p>	<hr/> <p style="text-align: center;">U</p> <hr/> <p>understanding 9:3 15:3 understands 10:17 UNIDENTIFIED 2:4,8,10,24 9:23 15:20</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid 4:5 8:12 verified 10:10 versus 2:2,12 13:20 violated 11:24 12:9 violation 12:18 VOICE 2:4,8, 10,24 9:23 15:20</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wait 9:19 ward 4:15 5:2 7:17,25 8:1 9:11 12:13 waste 15:6 weekend 12:2 withdraw 4:2, 8 5:6,14 6:10,14 withdrawal 5:8 withdrawn 6:21 withdraws 4:22 witnesses 5:22</p>	<p>woman 5:4 working 10:14 wrote 10:2</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>years 10:13 Yerger 2:21 3:13,15 4:1, 11,13 5:13,15 6:13,22 8:2, 17,22 11:3,22 14:11 Yerger's 10:5</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Ziska 2:2,12 3:1,3,5 4:20 5:4,7,10,16, 25 6:12 8:10 10:14 11:9, 14,18 12:17, 25 15:7,15, 19,23 16:2 Ziska's 3:8</p>
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