No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Anthony Sheely, Jr.,
Felicia A. Boyd-Sheely — Petitioners

Vs.

BANK OF AMERICA, N.A.
THE BANK OF NEW YORK MELLON — Respondents

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEAL FOR THE ELVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Anthony Sheely, Jr.,
Felicia A. Boyd-Sheely
105 Ridge View Dr.
Ball Ground, GA 30107
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QUESTIONS FOR REVIEW

1. When interpreting a state's laws, does an Appellate Court err, when affirming the District Court, when both rulings go against the laws of the state?

2. Do rulings by this Court, on ***Carpenter v. Longan***, 83 U.S. 271, 274, (1872) concerning real property Notes and Deeds remain that "the note and mortgage are inseparable, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity"? In other words, in light of all that has happened, is the quoted case still good law?

3. Is it not a violation of Constitutional Rights for the State of Georgia to allow an entity with no interest in either the Note or Security Deed to foreclose, as shown in the questions from the United States District Court to the Supreme Court of Georgia ***You v. JP Morgan Chase Bank***, 293 Ga. 67, 67, 743 S.E.2d 428, 429 (2013)?

4. As a result of the ***You*** ruling, the Courts in Georgia have held that a servicer of the loan, who holds neither the Note, nor the Security Deed is allowed to exercise non-judicial foreclosure, does this not violate the State and Federal Constitutions?

THE PARTIES

The full names of the parties is as follows:

Petitioners:

Anthony Sheely, Jr.,

Felicia A. Boyd-Sheely

Respondents:

Bank of America, N.A.

The Bank of New York Mellon (f/k/a The Bank of New York, As Trustee for the Certificate-Holders of CWALT, Inc., Alternative Loan Trust 2007-19 Mortgage Pass-Through Certificates Series 2007-19

CORPORATE DISCLOSURE STATEMENT

Petitioner does not know whether there are parent companies, or which entities are the parent companies, or which are publicly held corporations that owns 10% or more of the party's stock. The Corporate entities involved, or are believed to have an interest in the outcome are listed below:

The Bank of New York Mellon

The Bank of New York Mellon, is 100% owned by The Bank of New York Mellon Corporation. The Bank of New York Mellon Corporation is publicly held and does not have a parent corporation. In addition, the following are subsidiaries or affiliates of The Bank of New York Mellon ("BONY") that have issued shares or debt securities to the public: Bank of New York Institutional Capital Trust, Bank of New York Investment Holdings (Del.), Bank of New York Capital IV, Bank of New York Capital V, Mellon Funding Corporation, and Mellon Capital III, Mellon Capital IV.

Bank of America, N.A.

BANA is a national banking association organized under the National Bank Act. Through a series of intervening subsidiaries, BANA is 100% owned by Bank of America Corporation. Bank of America Corporation ("BAC") is a publicly traded company with other subsidiaries, none of which is publicly held. BAC has no parent company, and no publicly-held company owns more than 10% of BAC's shares.

This information came from the CIP filed into the US District Court by Respondents. To the best of The Sheelys' information and belief, this is still a true rendition of the corporate information.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the US Court of Appeals appears at ***Appendix A*** to the Petition and is unpublished. The Opinion of the US District Court appears at ***Appendix B*** and is unpublished.

JURISDICTION

The US Court of Appeals for the Eleventh Circuit affirmed the lower court's ruling on 05/30/2018. An extension of time to file a request for rehearing was granted on 06/18/2018. Petitioners filed their Amended Petition for Panel Rehearing on 07/25/2018. The Petition for Rehearing was Denied on 08/16/2018; the Denial for Rehearing is at ***Appendix C***.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATMENT OF THE CASE

On May 07, 2007, Anthony Sheely, Jr. and Felicia A. Boyd-Sheely ("The Sheelys") closed on a refinance loan with Countrywide Home Loans, Inc. ("Countrywide"). The Sheelys executed a promissory note and security deed in favor of Countrywide, with MERS listed as nominee for the lender. The subject property is located at 105 Ridge View Dr., Ball Ground, GA 30107-5178, in Cherokee County. On 02/23/2010 MERS assigned to BAC Home Loans Servicing, LP. On 06/28/2011, BAC assigned to Bank of New York Mellon.

Mr. Sheely, having worked for thirty years as a CDL truck driver, he became an owner of his own trucking business. Most of Mr. Sheely's income came from contracts with major clients in the automotive industry. Around March 2010, the automotive industry, crashed. The country had already been suffering the Housing bubble burst, which began pulling down other industries, and eventually affected the small trucking business owners. Mr. Sheely, with a fleet of six tractor trailer trucks, ended up losing his whole business, and was forced to go back to being a CDL Driver [App.A,p.3].

The Sheelys had used all of their savings to stay current on their mortgage. 03/10/2010 around 3:00 p.m. Mr. Sheely called Bank of America's ("BANA") CS Loan Modification Team to check on securing one of the loan modifications being advertised on the television. Mr. Sheely was told that he needed to be three to six months behind on his payments. After talking with multiple persons at BANA, who assured The Sheelys that skipping the payments would not show on their Credit Reports, therefore The Sheelys skipped their March – May 2010 payments.

The next time that The Sheelys talked with BANA CS/Loan Mod Team, around 6:30 p.m. on 05/14/2010, Mr. Sheely was informed that he had done the right thing, and that the loan now qualified for modification. Mr. Sheely received the loan mod package, which The Sheelys immediately complete the application and sent it via facsimile to the CS/Loan Mod Team on 06/23/2010.

Around two weeks later, on 07/07/2010 right around 05:00 p.m. Mr. Sheely called the CS/Loan Mod Team to check on his modification application. The Loan

Mod Team acknowledged receipt of the application and documents, and informed Mr. Sheely that due to the large number of applications that they receive on a daily basis, that it could take as long as ninety days before T\he Sheelys would be contacted about the particular program they qualified for.

11/18/2010 the Loan Mod Team sent to Mr. Sheely a letter informing him that his loan met the requirements for a modification and there were several potential programs and that he would receive written information on the exact program that he was being considered for. 11/22/2010 around 4:30 p.m., Mr. Sheely again contacted the Loan Mod Team, and was told that there had been no decision on the program that would be offered.

The Sheelys checked on the program again on 12/14/2010 around 7:15 p.m. and was told that it could easily take 90-120 more days before that information would be available. The Sheelys were also told during that phone conversation that the US Dept of Justice had begun litigation, and all foreclosures would be suspended during 2011.

Around six months after the call with CS/Loan Mod Team, around 05/12/2011 at close to 5:00 p.m. Mr. Sheely called CS/Loan Mod Team and was told that the loan was currently being reviewed for the Making Home Affordable Modification Program.

05/27/2011 around 6:00 p.m. Mr. Sheely called the CS/Loan Mod Team and was told he would receive a package in the mail within 60-90 days. The package never came to The Sheely residence. AT 4:00 p.m. on 08/17/2011, Mr. Sheely was advised to re-fax all th4e documents, the documents had all disappeared. The Sheelys faxed

the documents back to CS/Loan Mod Team on 08/22/2011 and around 3:00 p.m. that same day Mr. Sheely called the CS/Loan Mod Team and talked with Eric Harris who had been assigned to the loan. Harris told Mr. Sheely that it would be 60-90 days before he would hear anything back.

The Sheelys contacted Harris back on 08/25/2011 around 5:00 p.m. and they were told that he could not discuss anything with them about the loan due to having "an advocacy code on their account", and that what that meant was that the borrowers were using a third party to assist with their modification efforts. The Sheelys, feeling panicked, insisted that they needed to know the status of the loan modification they had applied for with Bank of America, not a third party. Harris merely reiterated that he could not discuss The Sheelys' loan with them. The Sheelys attempted to get in touch with a supervisor, but their call was consistently forwarded back to Harris. The Sheelys were informed that Harris was the only person who could divulge any information about their loan, yet he refused to assist them.

09/07/2011 around 6:00 p.m. The Sheelys again called to try to get any information they could, they were routed to Harris who still informed them that they were involved with a third party advocacy, and that he was forbidden to talk with them about their loan modification.

096/2011 around 4:00 p.m. The Sheelys decided to call the corporate headquarters phone number and spoke with a representative and informed them what was going on, and The Sheelys requested to be assigned a new Relationship Manager to replace Harris.

01/06/2012 The Sheelys received a foreclosure notice for a sale date of 02/07/2012. February 2012, The Sheelys were assigned a new Relationship Manager, Ariana Campayne. The Sheelys continued contacting Campayne on a regular basis hoping to learn the status of their loan. Several times The Sheelys were told that their point of contact person had been replaced. 03/06/2013, 2:45 p.m. Shuwana McCleve was their new point of contact ("poc"). 05/12/2013 at 3:30 p.m. the new poc was Lori Hinterbeiger.

There were numerous other times that The Sheelys contacted Bank of America and the CS Loan Mod Team. In all, they faxed the same documents to the Team at least four times. Spoke to numerous employees, telling each one the whole story.

02/16/2012, due to the treatment of being continually run around by CS/Loan Mod Team, The Sheelys did contact several third party companies, seeking any assistance they could receive. For example: MyHomeSupport.org ("MHS"). When The Sheelys could get no information about the foreclosure notice letter, The Sheelys contacted MHS. MHS began working on The Sheelys' behalf, attempting to secure a loan modification for them. The foreclosure sale was pulled the day of the auction, because The Sheelys were "under an active modification review".

Some of the other organizations The Sheelys sought assistance from were OperationRestoration.org; M. E. Ludit Foreclosure Attorneys.

Around 03/26/2012 Bank of America sent Mr. Sheely written communication about the Dept. of Justice ("DOJ") settlement, which The Sheelys would be considered for. The Sheelys contacted CS Loan Mod Team on 04/30/2012 around 4:00 p.m. and

were told that they can only be considered for one loan modification program at a time, and that they were no longer being considered for the Making Home Affordable Program. The Sheelys were told that they would receive something on the program, in the mail.

On or about June 18, 2012, BANA's Home Loan Team sent Mr. Sheely a letter dated June 18, 2012 informing him that he meets the criteria required to apply for a new modification program recently announced as a result of the U.S. Department of Justice and State Attorneys General global settlement with major servicers. In the letter, BANA's Home Loan team encouraged Mr. Sheely to apply since the modification program could provide qualified customers with sign cant principal reduction and reduce monthly payments by an average of 35%.

Mr. Sheely received a letter dated July 6, 2012 from Eric Harris of BANA's Home Loan Team. Mr. Harris acknowledged receipt of Plaintiffs complete financial information for the principal forgiveness modification program. Harris stated that the evaluation process could take approximately thirty (30) days. Mr. Harris further stated that Mr. Sheely would receive one of three responses: the loan was approved to begin the trial period, the loan was not eligible for this program but may be eligible for other foreclosure prevention alternatives, or that more information was needed.

July 2012 around 4:00 p.m. The Sheelys were told that they must restart the application process. August 2012, The Sheelys faxed the same documents, that they had provided numerous times. 10/24/2012 letter communication was received from Harris informing The Sheelys loan had been reviewed for the new principal

forgiveness modification program that was created by the DOJ action but he failed to qualify because he did not make all Trial Period Plan payments on time.

AT No Time, were The Sheelys provided with approval for trial payments, or even told how much the trial payments would be. The Sheelys had desperately sought assistance, and not once were they ever told that they were entering into the trial payment phase of a modification [App.A,p.5].

The Sheelys continued staying in contact with Bank of America, their Loan Mod Team, anyone and everyone they could get to talk with them. There were many, many more promises, and reviews, faded 250 sheets of paper over, and over again. The story was the same, BANA had not received all the documents. The Sheelys filed Bankruptcy at least three times, to stop an illegal auction of their property.

BANA had repeatedly, intentionally made false representations to The Sheelys. Some of the grounds for denying the loan modification included, but were not limited to: they failed to make all trial payments; that the bank could not create an affordable payment without changing the terms of the loan beyond the limits of the program; lack of documents, and more.

The Sheelys went on to learn that BANA had not treated them any differently than others, that BANA had a policy of this same treatment, it was not an accident, or even negligence, it was policy. A new article from 06/18/2013, ***America's Whistleblower's Bombshell: We Were Told To Lie.*** It was BANA's deliberate, malicious intentional actions in order to produce as many foreclosures as possible on the homes of millions of homeowners. The information showed that BANA mortgage

servicing had systematically lied to borrowers, denied loan mods for people that qualified, paid bonuses for forcing people into foreclosures. The Whistleblowers were six former employees and one contractor, all sworn affidavits filed into the Massachusetts Federal Court case No. 1:10-md-2193-RWZ, In Re Bank of America Home Affordable Modification Program Contract Litigation. The actions described by the employees' sworn affidavits, described exactly what had been done to The Sheelys. Even though it had come out as fact what BANA had done, and no matter how many times BANA was fined, or how much money they paid out in fines, they did not change their policies.

BANA's mistreatment of The Sheelys has never ended. Because of what has happened, The Sheelys both suffering debilitating illness and extremely high blood pressure of as high as 214/107, for which medication, does nothing.

Contrary to what BANA told the USCA, which had been "At some point, BANA referred the Sheelys' loan to a law firm to conduct a non-judicial foreclosure sale. In December 2012, the Sheelys received a notice of acceleration and foreclosure sale and a notice of sale under power from McCurdy & Candler, LLC. The notices identified BANA as the servicer and BNY as the secured creditor. Before the foreclosure sale occurred, however, another servicer took over from BANA, and it does not appear from the record that any foreclosure sale has since occurred" [App.A,p.6].

The Sheelys had stated: "On 12/17/2012 The Sheelys received Notice of Acceleration & Foreclosure Sale and a Notice of Sale under Power from McCurdy & Candler, LLC. The Notice identifies BNY Mellon as the secured creditor. It further

states that BANA is the entity with full authority to negotiate, amend, or modify the terms of the loan. The Notice of Sale under Power identifies BNY Mellon as the owner of the security deed". The Sheelys had received not information at that time, or any other time, that the servicer was no longer BANA.

BANA and BNYM failed and refused to comply with the terms of the Notice and Security Deed in order to accelerate the loan shown in ¶ 22 of The Sheely Security Deed, which shows:

> "Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument.... The notice shall specify:
>
> (a) The default;
>
> (b) the action required to cure the default;
>
> (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and
>
> (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If The default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale granted by Borrower and any other remedies permitted by Applicable Law...".

The Sheely loan was accelerated without The Sheelys being notified of the default, without being informed what action was required to cure the default; were not told that a date, not less than 30 days from the date of the notice, by which the default had to be cured, or that the failure to cure the default, would result in acceleration and the auction of their property. In the notice that The Sheelys were

provided, "Notice of Acceleration & Foreclosure Sale, the debt was already being called immediately due and payable in full in violation of the Security Deed and Georgia statutes.

February 2015, The Sheelys filed a civil action against BANA and BNYM for breach of contract, fraud, wrongful foreclosure, and intentional infliction of emotional distress. Defendants, on 04/10/2015, in the action, removed to US District Court for the Northern District of Georgia, Atlanta Division ("USDC"), and given Case No: 1:15-cv-01109-TCB. The Sheelys were represented by The Law Offices of Peggy L. Brown, Peggy L. Brown, Lisa Durham Taylor, and Mary Katherine Durant; Jarrod Sean Mendel represented BANA, BNYM.

USDC Magistrate on 12/30/2015 issued a Non-Final Report and Recommendation ("R&R") recommending that Motion to Dismiss for failure to state a claim be granted in part and denied in part. The R&R was adopted by the Court on 01/25/2016. After discovery had gone on, and The Sheelys deposed, BANA/BNYM deposed The Sheelys. On 01/11/2017 the lenders filed for Summary Judgment. The Sheelys on 02/02/2017 filed for an Extension of Time to Respond to Summary Judgment. On 02/03/2017, USDC Denied, without prejudice, The Sheelys an Extension of time. Apparently The Sheelys' attorneys had not contacted the opposing counsel to find out whether or not they would oppose the extension.

02/06/2017 another motion for extension was filed by The Sheelys, and USDC granted the extension nunc pro tunc on 02/10/2017. The Court Ordered that Defendants electronically file Mrs. Sheely's deposition within 3 days of the Order.

The Magistrate on 07/14/2017 issued the Final R&R, advising that the parties had 14 days to object. The Sheelys were granted an extension of time to object, the Court determined that the objection would be due on 08/07/2017.

The lenders filed an Objection to the R&R on 07/29/2017; The Sheely's objection was filed on 08/07/2017. The Court on 09/08/2017 adopted in part and rejected in part, the Magistrate's Final R&R, and Granted in entirety the lenders' Summary Judgment. That same day, the Clerk's Judgment was entered.

10/06/2017 Notice of Appeal was filed. On 05/30/2018, the USCA affirmed the USDC ruling. Although The Sheelys had motioned USCA to hold the mandate because they planned to Petition this Court, the Motion was denied and on 08/31/2018 was recorded in the record as USDC.

BANA told the Court of Appeals ("USCA") that they had approved The Sheelys multiple times for modification but that The Sheelys had failed to return certain documents. The Sheelys did then, and do now, deny the truthfulness of that allegation.

BANA further claimed that in March 2010 they had approved The Sheelys for a trial modification under HAMP, and had sent to them a letter stating that they needed to make three trial payments and return certain documents. The Sheelys would have gladly made any payments required of them. Clearly, The Sheelys cannot make payments or return documents, if they never receive information telling them to.

BANA went even further, they claimed that in 07/2012 they approved The

Sheelys for a modification under a new program; the program would give a principal reduction of $250,000. The reduction program was created as a result of the Dept of Justice litigation. BANA claims to have sent an approval letter dated 07/11/2012. They claimed that The Sheelys again made no trial payments as they had been instructed to do.

The Sheelys had already shown in documentation to the USDC case that they had repeatedly been told during that period of time by poc Harris that he could not discuss their loan with the Sheelys. The Sheelys pointed that out to USCA the evidence filed into USDC that showed during the periods of time that BANA claimed that they had granted a modification, The Sheelys had shown a different scenario.

The Magistrate in USDC had recommended that Summary Judgment be granted to the lenders on fraud and infliction of emotional distress, but not on breach of contract. USDC disregarded the recommendation, and granted the entirety on Summary Judgment.

USCA held that breach of contract was due to be denied on different grounds than USDC had found. USCA reasoned that: To prove a claim for breach of contract under Georgia law, a plaintiff must show (1) a valid contract, (2) a material breach of its terms, and (3) resultant damages to the party who has the right to complain about the breached contract; and cited to ***Bates v. JPMorgan Chase Bank, NA***, 768 F.3d 1126, 1130 (11th Cir. 2014).

USCA reasoned "Bates controls here. Because there is no evidence that the power of sale has been exercised, the Sheelys must trace their harm back "to the

allegedly unauthorized acceleration of the note." See id. But, like the plaintiff in Bates, the Sheelys "ha[ve] not set forth any contractual damages that could have been caused by the mere threat of exercising the power of sale." See id. at 1133 n.8. Moreover, the security deed in this case contains a reinstatement provision that is materially similar to the provision in Bates, which "negate[s]" the Sheelys' claim arising from the allegedly unauthorized acceleration of the note. See id. at 1133. Because the Sheelys could, even now, return to a pre-acceleration position by paying all outstanding payments and associated fees, the "exercise of the power to accelerate the note could not have caused [them] harm, and therefore, [they] ha[ve] failed to substantiate two important elements of [their] claim for breach of contract: causation and damages." See id.

One of the major issues that The Sheelys have is that even after showing numerous affidavits by BANA employees stating the policies of BANA, and the fact that BANA has repeatedly been fined, sanctioned, and had numerous consent orders for their crimes, BANA is still believed, even over the sworn statements of their employees. The Sheelys' allegations were ignored, even though they had given credible evidence of the wrongs bestowed upon them.

Indeed, USCA stated that "The Sheelys' contention that BANA induced them to default through fraud—by instructing them that they needed to be 90 days behind to qualify for modification... There is no evidence that these statements were false or misleading. See ***Ellis***, 318 F.3d at 1027. Nor were the statements coupled with a promise of modification, such that it could be inferred from BANA's later actions that

it made a promise without a present intent to perform. See id. Rather, the instructions, as recounted in Felicia's declaration, were that the Sheelys would be eligible for modification after three months, not that they were guaranteed modification if they failed to pay for three months. In sum, no reasonable jury could conclude that BANA committed fraud by inducing the Sheelys to default.

The Sheelys do not accept that "no jury could conclude that BANA committed fraud by inducing the Sheelys to default". USCA further held that "the other evidence of misrepresentations, miscommunications, delays, lost documents, and the like, we agree with the district court that, even assuming these facts are true and drawing all reasonable inferences in the Sheelys' favor, "a fact-finder would have to rely on speculation and unfounded conjecture to find in favor of the Sheelys".

What this amounts to is that no matter what a Plaintiff brings into the Courts, and no matter what it is the lender has done, the lender is going to win every time. That is not justice in the United States. Even third world countries don't believe that the lenders are Gods that cannot be touched for their sins.

USCA puts so much faith in BANA that they stated: "Significantly, the Sheelys' fraud claim, as presented on appeal, rests on an inference that BANA never intended to grant a loan modification and that its various communications with the Sheelys about a loan modification were, in essence, all for show. But BANA presented evidence that it reviewed and approved the Sheelys for modification multiple times. BANA showed that it mailed letters notifying the Sheelys that they were approved to begin trial modifications on three separate occasions—in July 2008, March 2010, and

July 2012—but that it denied the modifications when the Sheelys failed either to make the trial payments or to return the required documentation. BANA also presented evidence that it reviewed the Sheelys for modification in 2013 but that it determined that it could not alter the terms of their loan within allowable limits".

USCA's ruling shows that what they consider as evidence, is rebutted affidavits from BANA. The Sheelys presented Affidavits rebutting BANA's assertions. The Sheelys, who have never been fined for crimes, never been sanctioned for lying to and within the Courts, and did nothing except everything BANA told them to do. And that makes BANA's word for something more important than The Sheelys' word for it. It has been proven over and over and over, that BANA perjures themselves in Court, and their attorneys commit subornation perjury, and walk away unscathed. They don't even have to explain their lies and frauds, they are never held responsible. The settlement, the largest one is US history, did nothing to stop these lenders. They went right back to doing the same thins that the settlement was meant to punish them for. USCA's attitude that "the allegedly unauthorized acceleration of the note. See id. at 1133. Because the Sheelys could, even now, return to a pre-acceleration position by paying all outstanding payments and associated fees, the "exercise of the power to accelerate the note could not have caused [them] harm, and therefore, [they] ha[ve] failed to substantiate two important elements of [their] claim for breach of contract; causation and damages." See id. [App.A,p.10].

That Assessment is not really fair, considering The Sheelys had shown that for the past ten years, The Sheelys had attempted to secure a loan modification, because

of the hardship suffered in 2010. If The Sheelys could not pay the payments without a loan modification at that time, they clearly "even now, return to a pre-acceleration position by paying all outstanding payments and associated fees" [id]. could not make up all the payments now.

USCA stated that "a violation of a condition precedent to the power to accelerate and power of sale cannot, in and of itself, create contractual liability." Id. at 1132. Instead, for a mortgagor to succeed on a claim for breach of contract, "she must show that the premature or improper exercise of some power under the deed (acceleration or sale) resulted in damages that would not have occurred but for the breach." Id. at 1132–33. [App.A,p.8]. The statement disregards Georgia foreclosure laws.

REASONS FOR GRANTING THE PETITION

The Sheelys contend that there are numerous reasons to grant the Petition. For one, the Ruling by USCA is in conflict with State of Georgia rulings on the same important issues.

For example, USCA held that "a violation of a condition precedent to the power to accelerate and power of sale cannot, in and of itself, create contractual liability." Id. at 1132.

What Georgia law has held is:

> "Where a foreclosing creditor fails to comply with the statutory duty to provide notice of sale to the debtor in accordance with OCGA § 44–14–162 et seq., the debtor may either seek to set aside the foreclosure or sue for damages for the tort of wrongful foreclosure. ***Calhoun First Nat. Bank v. Dickens***, 264 Ga. 285, 285–286(1), 443 S.E.2d 837 (1994). If the debtor elects to sue for damages, the recovery

> allowed is "the full difference between the fair market value of the property at the time of the sale and the indebtedness to the seller if the fair market value exceeded the amount of the indebtedness." (Citations omitted.) ***Dickens v. Calhoun First Nat. Bank,*** 208 Ga.App. 489, 491(2), 431 S.E.2d 121 (1993), rev'd on other grounds, 264 Ga. 285, 443 S.E.2d 837.

Roylston v. Bank of Am., N.A., 290 Ga. App. 556, 559, 660 S.E.2d 412, 417 (2008).

See also:

> "Although not every irregularity or deficiency will void the sale, if either the notice or the advertisement does not substantially meet legal requirements, the sale should be set aside. ***Walker v. Northeast, etc., Credit Assn.***, 148 Ga.App. 121, 122(2), 251 S.E.2d 92 (1978). ***Martin v. Fed. Land Bank***, 173 Ga.App. 142, 325 S.E.2d 787 (1984) aff'd 254 Ga. 610, 333 S.E.2d 370 (1985), holds that where "no evidence appears in the transcript of the hearing on the confirmation petition tending to indicate either that the sale was properly advertised in accordance with OCGA § 44–14–162 or that the appellant was **375 properly notified of the sale in accordance with OCGA § 44–14–162.1 [sic1] ... the judgment of confirmation must be reversed."

Pope v. Tr. Co. Bank of Coffee Cty., 186 Ga. App. 23, 23, 366 S.E.2d 373, 374–75 (1988).

"OCGA § 44–14–162.2 not only requires that foreclosure notices be sent to the proper address, but also requires that notices be sent to the 'current owner of the property encumbered by the debt." Nowhere does the plain language of the statute specify or even suggest that the foreclosure notice can be sent to anyone other than the debtor. See ***Farris v. First Fin. Bank***, 313 Ga. App. 460, 464 (2), 722 S.E.2d 89 (2011). ***Dip Lending I, LLC v. Cleveland Ave. Properties, LLC***, 345 Ga. App. 155, 157, 812 S.E.2d 532, 535 (2018).

> "Moreover, Dip Lending's argument that strict compliance is not required to satisfy OCGA § 44–14–162.2 (a) is misguided, and its reliance on this Court's holding in ***TKW Partners, LLC v. Archer Capital Fund, L.P.*** is misplaced. 302 Ga. App. 443, 446 (1), 691 S.E.2d 300 (2010). In ***TKW Partners***, this Court held that the notice at issue in that case substantially complied with the contact information provision of OCGA § 44–14–162.2 even though it included the contact information for the lender's attorney, as opposed to the lender, who had the same authority as any individual to negotiate on the lender's behalf. The only alleged deficiency was that the notice did not specifically identify the listed attorney as the person with authority to negotiate, modify or amend the terms of the mortgage. ***Id.*** at 445, 691 S.E.2d 300; see also ***Stowers v. Branch Banking & Trust Co.***, 317 Ga. App. 893, 896 (1), 731 S.E.2d 367 (2012) (confirming ***TKW Partners*** **536 holding stands for the proposition that substantial compliance with the contact information requirement of the statute is sufficient). While this Court has permitted substantial compliance with respect to OCGA § 44–14–162.2 (a), we have emphasized that it is only permitted under the narrowest of circumstances relating to the listing of the person with authority to modify, negotiate, or amend the terms of the mortgage. See ***Peters v. CertusBank Nat. Assn.***, 329 Ga. App. 29, 31–32 (2), 763 S.E.2d 498 (2014) (physical precedent only); see also ***Mbigi v. Wells Fargo Home Mortg.***, 336 Ga. App. 316, 320–31 (1) (b), 785 S.E.2d 8 (2016) (physical precedent only).

Dip Lending I, LLC v. Cleveland Ave. Properties, LLC, 345 Ga. App. 155, 158–59, 812 S.E.2d 532, 535–36 (2018).

> "Neither the plain language of the statute nor our prior holdings permit us to do what Dip Lending suggests. See ***You v. JP Morgan Chase Bank, N.A.***, 293 Ga. 67, 71 (1), 743 S.E.2d 428 (2013) ("Where the plain language of the statute is clear and susceptible to only one reasonable construction, we must construe the statute according to its terms." (citation omitted)); see also ***Ray v. Atkins***, 205 Ga. App. 85, 89 (2), 421 S.E.2d 317 (1992) ("[OCGA § 44–14–162.2], being in derogation of common law, must be strictly construed according to its terms." (citation omitted)); *159 OCGA § 23–2–114 ("Powers of sale

> in deeds of trust, mortgages, and other instruments shall be strictly construed and shall be fairly exercised."). Thus, the trial court did not err in finding Dip Lending failed to comply with the notice provisions of OCGA § 44–14–162.2".

Id.

To allow the USCA's rendering of Georgia foreclosure statutes, will be to allow even more lenders to continue the same actions. Georgia already has a lack of protection for borrowers, and people in other states, say that Georgia is a Bank state, and that the banks can do no wrong. For instance, the Georgia Supreme Court, stated

> "As members of this State's judicial branch, it is our duty to interpret the laws as they are written. See ***Allen v. Wright***, 282 Ga. 9(1), 644 S.E.2d 814 (2007). This Court is not blind to the plight of distressed borrowers, many of whom have suffered devastating losses brought on by the burst of the housing bubble and ensuing recession. While we respect our legislature's effort to assist distressed homeowners by amending the non-judicial foreclosure statute in 2008, the continued ease with which foreclosures may proceed in this State gives us pause, in light of the grave consequences foreclosures pose for individuals, families, neighborhoods, and society in general. Our concerns in this regard, however, do not entitle us to overstep our judicial role, and thus we leave to the members of our legislature, if they are so inclined, the task of undertaking additional reform. Certified questions answered. All the Justices concur."

You v. JP Morgan Chase Bank, 293 Ga. 67, 75, 743 S.E.2d 428, 434 (2013).

Yet in their very same ruling Supreme Court of Georgia reinterpreted Georgia statue, and claimed it is because of securitization, yet the legislature had not stated that the statute should be reconsidered differently than what the statute stated. Georgia in essence made new law. After two hundred years of real property law, Georgia suddenly began ruling against what this Court had ruled concerning whether

or not the Note and Deed are to be held by one entity, and especially that the foreclosing entity had to have both the note and the security instrument.

This Court has held: "the note and the mortgage are inseparable" ***Carpenter v. Longan***, 83 US 271, 274 (1872). See also ***Nagle v. Macy***, 9 Cal. 426, 1858 WL 818 (Cal. 1858) ("The debt and the mortgage are inseparable"). Indeed, this Court went on to state that "a mortgage can have no separate existence" from a promissory note. ***Carpenter***, 83 U.S. at 274.

Since the 19th century a long and still vital line of cases held that mortgages and deeds of trust may not be separat4ed from the promissory notes that create the underlying obligation triggering foreclosure rights. ***In re Bird***, 2007 WL 2684265 at ¶¶ 2-4 (Bkrtcy.D.MD.2007). (:The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the Latter alone is a nullity ...It is equally absurd to assume that such bifurcation was intended because such a bifurcation of the note rom the deed of trust would render the debt unsecured.") ***In re Leisure Time Sports, Inc.*** 194 B.R. 859, 861 (9th Cir. 1996) (stating that '[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures' and that '[i]f the debt is not transferred, neither is the security interest'); ***In re BNT Terminals, Inc.***, 125 B.R. 963 (Bankr. N.D. Ill. 1990), ('An assignment of a mortgage without a transfer of the underlying note is a nullity . ..... It is axiomatic that any attempt to assign the mortgage without transfer of the debt will not pass the mortgagee's interest to the assignee.***"); Yoi-Lee Realty Corp. v. 177th Street***

Realty Associates, 208 A.D.2d 185, 626 N.Y.S.2d 61, 64 (N.Y.A.D. 1 Dept.,1995) ("The mortgage note is inseparable from the mortgage, to which the note expressly refers, and from which the note incorporates provisions for default."); ***In re AMSCO, Inc.***, 26 B.R. 358, 361 (Bkrtcy. Conn., 1982) (reaffirming that "[t]he note and mortgage are inseparable"); ***Barton v. Perryman***, 577 S.W.2d 596, 600 (Ark., 1979) ("[A] note and mortgage are inseparable."); ***Trane Co. v. Wortham***, 428 S.W.2d 417, 419 (Tex. Civ. App. 1968) ("The note and mortgage are inseparable . ..... "); ***Kirby Lumber Corp. v. Williams***, 230 F.2d 330, 333 (5th Cir. 1956) ("The rule is fully recognized in this state that a mortgage to secure a negotiable promissory note is merely an incident to the debt, and passes by assignment or transfer of the note. * * * The note and mortgage are inseparable . ..... "); ***Kelley v. Upshavv***, 39 Cal.2d 179, 192, 246 P.2d 23 (1952) ("In any event, Kelley's purported assignment of the mortgage without an assignment of the debt which is secured was a legal nullity."); ***Hill v. Favour,*** 52 Ariz. 561, 84 P.2d 575 (Ariz. 1938) ("The note and mortgage are inseparable; the former as essential, the latter as an incident.)"; ***Denniston v. C.I.R.***, 37 B.T.A. 834, 1938 WL 373 (B.T.A. 1938) ("All the authorities agree that the debt is the principal thing and the mortgage an accessory . .... The mortgage can have no separate existence."); ***West v. First Baptist Church of Taft,*** 123 Tex. 388, 71 S.W.2d 1090, 1098 (Tex. 1934) ("The trial court's finding and conclusion ignore the settled principle that a mortgage securing a negotiable note is but an incident to the note and partakes of its negotiable character. The note and mortgage are inseparable; the former as essential, the latter as an incident.") (citations omitted);

First Nat. Bank v. Vagg, 65 Mont. 34, 212 P. 509, 511 (Mont. 1922) ("A mortgage, as distinct from the debt it secures, is not a thing of value nor a fit subject of transfer; hence an assignment of the mortgage alone, without the debt, is nugatory, and confers no rights whatever upon the assignee. The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while the assignment of the latter alone is a nullity. The mortgage can have no separate existence.") (citations omitted); ***Southerin v. Mendum***, 5 N.H. 420, 1831 WL 104, at CJ[7 (N .H. 1831) (" [T]he interest of the mortgagee is not in fact real estate, but a personal chattel, a mere security for the debt, an interest in the land inseparable from the debt, an incident to the debt, which cannot be detached from its principal.").

The Sheelys hold that what all those cases says to them is not only that the mortgages follow notes as a matter of default law, but that mortgages cannot legally be separated from notes. Thus in ***Carpenter v. Longan***, 83 U.S. 271, 274, (1872) the United States Supreme Court announced the classic statement of this rule: the note and mortgage are inseparable, the assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity".

CONCLUSION

While the Courts throughout the country, many running rampant making rulings which go against this Court's past rulings, against other courts of the same level, ruling against sister courts, the borrowers throughout the country have waited a very long time for this court to act. To say one way or the other where the borrowers

stand on rulings going against the rulings shown above.

The borrowers continue to wait, wondering whether or not every home in the country will be foreclosed upon, given enough time.

It is necessary for this Court to make a ruling on these matters.

Respectfully submitted, this 12th day of November, 2018,

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