

APR 16 2019

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Case No. 18-9054

In The
Supreme Court of the United States

SANDRA FORQUER,
Petitioner,

v.

WELLS FARGO BANK, N.A.,
Respondent.

On Petition for Writ of Certiorari to the
Maryland Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Sandra Forquer, *Pro Se*
P.O. Box 127
Forest Hill, Maryland 21050
(410) 652-8585
ssforquer@yahoo.com

ORIGINAL

QUESTIONS PRESENTED

1. Whether the:
 - a. Maryland Court of Appeals erred when they denied accepting a Petition for Writ of Certiorari regarding the improper dismissal of the Petitioners Verified Replevin Action in the lower courts.
 - b. Circuit Court of Harford County, Maryland misinterpreted a decision from the Maryland Court of Special Appeals (“COSA”) in order to dismiss the Petitioners Verified Replevin Action that was on appeal from the District Court of Maryland for Harford County.
2. Whether the lower courts violated the Petitioner’s right to Due Process and Equal Protection under the law by denying the Petitioner access to the courts for a remedy. The Petitioner’s Writ of Certiorari in the Maryland Court of Appeals was unopposed by the Respondent, yet the court denied the petition.

LIST OF ALL PARTIES

The Petitioner is Sandra Forquer, a living, natural woman, and is a resident of the state of Maryland.

Respondent is Wells Fargo Bank, N.A., a for profit commercial corporation operating and doing business in the United States of America. It is defined in 28 U.S.C. § 1603, as a separate legal person, an association, a limited liability company, and a foreign state, and they are subject to U.S.C. Title 15 - Commerce and Trade and the Uniform Commercial Code.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF ALL PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATUTES AND RULES.....	vi
OTHER.....	vi
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	1
STATEMENT OF THE FACTS	2
ARGUMENT	4
Question 1.....	4
Question 2.....	10
REASONS FOR GRANTING CERTIORARI	15
CONCLUSION.....	16

APPENDIX

Order, Sandra S. Forquer v. Wells Fargo Bank, N.A., No. COA-PET-0358-2018 (Maryland Court of Appeals 2018)	App. A
Order, Sandra S. Forquer v. Wells Fargo Bank, N.A., No. C-12-CV-18-315 (Circuit Court of Harford County Maryland 2018)	App. B

TABLE OF AUTHORITIES

	Page
Cases	
<i>5-Star Management, Inc. v. Rogers</i> , 940 F.Supp. 512 (USD Ct. E.D. NY 1996).....	10
<i>Adams v. Madison Realty & Development, Inc.</i> 853 F2d 163 (3 rd Cir. 1988)	11
<i>Anastasoff v. United States</i> , 223 F.3d 898 (8th Cir. 2000)	2
<i>Barry Properties, Inc. v. Fick Bros. Roofing Co.</i> , 277 Md. 15, 353 A.2d 222 (1976)	13
<i>Beard v. Warden of Md. House of Correction</i> , 193 Md. 715, 67 A.2d 236 (1949)...	13
<i>Berry & Gould v. Berry</i> , 360 Md. 142, 151 (2000).....	9
<i>Campbell v. State</i> , 37 Md. App. 89, 376 A.2d 866 (1977)	13
<i>Carpenter v. Longan</i> , 83 U.S. 16 Wall. 274 (1872).....	7
<i>City of Dallas v. Mitchell</i> , 245 S.W. 944.....	12
<i>Cogswell v. Citifinancial Mortgage</i> , 624 F.3d 395 (US Cir.7 th 2010)	11
<i>Davis v. Wechler</i> , 263 U.S. 22, 24	12
<i>Edwards v. Md State Fair and Agr. Soc.</i> , 476 F. Supp. 153 (D. Md. 1979).....	13
<i>Fenner v. Bruce Manor, Inc.</i> , 409 F. Supp. 1332 (D. Md. 1976)	13
<i>Frank v. State of Md.</i> , 359 U.S. 360, 79 S. Ct. 804, 3 L. Ed. 2d 877 (1959).....	13
<i>Garcia v. Foulger Pratt</i> , 155 Md. App. 634, 845 A.2d 16 (2003)	8
<i>Gore Enterprise Holdings, Inc. v. Comptroller of Treasury</i> , 437 Md. 492, 87 A.3d 1263 (2014)	13
<i>Green v. Cooperstone Ltd. Partnership</i> , 28 Md. App. 498, 346 A.2d 686 (1975)....	13
<i>Greenline Equip. Corp., Inc. v. Covington Cty. Bank</i> , 873 So. 2d 950, 958 (Miss.2002)	6
<i>Haines v. Kerner</i> , 404 U.S. 519-421.....	2

<i>Hajewski v. Baltimore County Com'r's</i> , 184 Md. 161, 40 A.2d 316 (1944).....	13
<i>Harrison-Solomon v. State</i> , 442 Md. 254, 112 A.3d 408 (2015).....	13
<i>Heath v. State</i> , 198 Md. 455, 85 A.2d 43 (1951).....	13
<i>In re Kemp</i> , No. 08-18700-JHW (Bankr. D. NJ 201)	10
<i>Johnson v. State</i> , 193 Md. 136, 66 A.2d 504 (1949)	13
<i>Lawson v. Commonwealth Land Title Ins. Co.</i> , 518 A. 2d 174, Md. Court of Special Appeals 1986.....	9
<i>Marks v. Branstein</i> , No. 09-11402-NMG (USD Ct D. MA 2010)	10
<i>NAACP v. Alabama</i> , 375 U.S. 449.....	12
<i>New Bd. Of School Com'r's of Baltimore City v. Public School Adm'r's and</i>	
<i>Norton v. Shelby County</i> , 118 U.S. 425 p. 442	11
<i>Olson v. Thompson</i> , OK 18, 52 P. 388, 6 Okla. 576 (1898).....	7
<i>Penniman v. Winner</i> , 54 Md. 127 (1880).....	9
<i>Pitsenberger v. Pitsenberger</i> , 287 Md. 20, 410 A.2d 1052 (1980).....	13
<i>Platsky v. C.I.A.</i> , 953 f.2d. 25.....	2
<i>Radio Position Finding Corp. v. Bendix Corp.</i> , 205 F. Supp. 850 (D. Md. 1962) ..	12
<i>Riger v. L and B Ltd. Partnership</i> , 278 Md. 281, 363 A.2d 481 (1976).....	13
<i>Sanner v. Trustees of Sheppard and Enoch Pratt Hospital</i> , 278 F. Supp. 138 (D. Md. 1968)	13
<i>Scott v. Jenkins</i> , 345 Md. 21, 690 A.2d 1000 (1997)	8
<i>Sherer v. Cullen</i> , 481 F 946.....	11
<i>Sigler v. Hidy, et al.</i> , [Ia.] 9 N.W. 374	7
<i>Slansky v. State</i> , 192 Md. 94, 63 A.2d 599 (1949).....	13
<i>Stromberb v. California</i> , 283 U.S. 359	12

<i>Sup'r's Ass'n of Baltimore City, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002)</i>	13
<i>Tierco Maryland, Inc. v. Williams, 381 Md. 378, 849 A.2d 504 (2004)</i>	8
<i>Toland v. Futagi, 425 Md. 365, 40 A.3d 1051 (2012)</i>	13
<i>Weingartner v. Chase Home Finance, No. 2:09-cv-02255-RCJ-RJJ (USD Ct. D. NV 2010)</i>	10
<i>Wells Fargo Bank v. Sessley, 2010-Ohio-2902 (OH Ct. App. 2010)</i>	10

Statutes & Rules

Article 3 Negotiable Instruments.....	4,14
MD Code, Courts & Judicial 4-401.....	2,3,4,8,12
MD Code, Courts & Judicial 4-401(2)	2,3,4
MD. Commercial Law § 3-103(a)(8) (2017)	5
MD. Commercial Law § 3-104(b) (2017).....	4
MD. Commercial Law § 3-501 (2017)	5,14
MD. Commercial Law § 3-501(b)(2)(iii) (2017).....	5,6,8,12
Uniform Commercial Code	5,10,11

Other

<i>1 Dan B. Dobbs, Law of Remedies § 4.1(1), at 553 (2d ed. 4 1993)</i>	9
Black's Law Dictionary 2 nd Edition	7
Due Process Clause of the Fifth Amendment	13
Due Process Clause of the 14 th Amendment	13
Supremacy Clause, Article VI, Section 2, of the U.S. Constitution	11

PETITION FOR WRIT OF CERTIORARI

Petitioner, Sandra Forquer respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the Maryland Court of Appeals order to deny Petitioner's request for a Writ of Certiorari and the order of dismissal from the Circuit Court of Harford County, Maryland, for erroneously dismissing the Petitioner's Verified Replevin Action, as res judicata.

This Petition involves a case of first impression. The matters of this case have not been previously addressed by a higher court and involves an issue that requires interpretation by the Supreme Court.

OPINIONS BELOW

The order of denial for the Petition for Writ of Certiorari from the Maryland Court of Appeals (January 18, 2019) (App. A).

The order of dismissal from the Circuit Court of Harford County Maryland order (September 12, 2018) (App. B).

STATEMENT OF JURISDICTION

The Maryland Court of Appeals entered its order denying the Petitioner's unopposed Petition for Writ of Certiorari on January 18, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

MD. Commercial Law Code § 3-103 (2017); MD. Commercial Law Code § 3-104 (2017); MD. Commercial Law Code § 3-501 (2017); MD. Code, Courts & Judicial Proceedings § 4-401 and 4-401(2); Due Process Clause of the Fifth Amendment; Due Process Clause of the 14th Amendment; Supremacy Clause, Article VI, Section 2, of the U.S. Constitution.

STATEMENT OF THE FACTS

By Law and precedent, and in accordance with the Supreme Court of the United States, *pro se* pleadings MAY NOT be held to the same standard of perfection as an attorney's; and whose motions, pleadings and all papers may ONLY be judged by their function and never their form.

See: Haines v. Kerner; Platsky v. CIA; Anastasoff v. United States; Pro se litigants are to be held to less stringent pleading standards; *Haines v. Kerner*, 404 U.S. 519-421; In re Haines: pro se litigants are held to less stringent pleading standards than admitted or licensed bar attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. *Platsky v. C.I.A.*, 953 f.2d. 25; In re *Platsky*: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and how to repair pleadings. *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000); In re *Anastasoff*: litigants' constitutional (guaranteed) rights are violated when courts depart from precedent where parties are similarly situated.

The Petitioner should not be held to the same standards of perfection as a BAR licensed attorney. It is the Petitioner's wish that the court allow her the opportunity to correct any defects or errors in order to conform to the rules and procedures.

This case began as a Verified Claim for Replevin in the District Court of Maryland for Harford County, Case No. 09-01-0002012-2018. This was an action to have the court cause Respondent to return the Petitioner's chattel property, the Note and Deed of Trust dated October 31, 2005, that is being wrongfully detained.

Pursuant to MD. Rule § 4-401, and specifically § 4-401(2), a replevin action to acquire the chattel property of the Petitioner, regardless of the amount, is proper in the lower district court of Maryland. The case does not involve real property. It involves the Petitioner's personal chattel property, the Genuine Original Note # 242162C and the Genuine Original Deed of Trust, that were associated with a completed foreclosure action. This replevin action stands alone and has not been decided.

The District Court of Maryland for Harford County had exclusive jurisdiction of this civil action, pursuant to MD. Code, Courts & Judicial

Proceedings § 4-401¹ and 4-401(2)², and venue was proper in the district court, pursuant to MD. Code, Courts & Judicial Proceedings § 4-401.

On October 31, 2005, Petitioner created and issued a Note # 242162C with GSF Mortgage Corporation (“GSF”) in the amount of \$202,000.00, which is evidenced by the signature. On October 31, 2005 Petitioner created and issued a Deed of Trust in the amount of \$202,000.00.

A state non-judicial foreclosure action was ratified and completed in the Circuit Court of Harford County, Maryland, Case No. 12-C-13-001357, in February 2017.

On March 24, 2016, Petitioner sent to John R. Shrewsberry, Chief Financial Officer of Wells Fargo Bank, N.A. (“Wells Fargo”), by USPS Certified Mail No. 7014 3490 0001 4101 6603, a formal demand letter requesting the return of the Petitioner’s personal chattel property, the Note # 242162C. This demand letter was received by the Respondent on March 28, 2016 at 10:23 a.m. The Petitioner never received a response to her demand.

The Petitioner filed the replevin action in the District Court of Maryland for Harford County Case No. 09-01-0002012-2018, on April 11, 2018. The Petitioner had never filed a replevin action prior to this case. A show cause hearing was held on May 18, 2018, and the lower court erroneously dismissed the case, based on the presumption that a note is not a negotiable instrument regulated under Article 3 of the Maryland Code, Commercial Law (“MD Comm. Law”), and therefore did not have to be returned to the Petitioner.

An appeal was timely filed in the Circuit Court of Harford County, Maryland, Case No. C-12-CV-18-000315, on June 15, 2018. The circuit court held a hearing de novo on September 12, 2018. At the hearing, counsel for the Respondent submitted an unreported decision from the Court of Special Appeals (COSA), Case No. 441/September term, 2015, stating that the replevin action had already been decided, and that the replevin action was res judicata. This is false and erroneous. The unreported opinion of COSA was for an appeal that the Petitioner had filed for an order from the circuit court on the state non-judicial foreclosure action, for the a ratification of the sale of the Petitioner’s property, Case No. 12-C-13-001357. The Petitioner explained to the

¹ § 4-401 - Except as provided in § 4-402 of this subtitle, and subject to the venue provisions of Title 6 of this article, the District Court has exclusive original civil jurisdiction in:

² (2) An action of replevin, regardless of the value of the thing in controversy;

judge that the COSA unreported opinion was in reference to a separate case and did not pertain to the replevin action.

At the hearing, the circuit court dismissed the Petitioner's appeal for the replevin action, stating that the case was res judicata. The Petitioner had not previously filed a replevin action prior to the filing of this case. Res judicata does not apply to this replevin action.

On October 12, 2018, Petitioner attempted to file a notice of appeal into the circuit court to appeal the circuit court's September 12, 2018 decision. Petitioner was informed that she needed to file a Petition for a Writ of Certiorari to the Maryland Court of Appeals. Petitioner is not an attorney and is not schooled in legal procedures. Petitioner then filed the Petition for Writ of Certiorari, case no. COA-PET-0358-2018.

On January 18, 2019, the Maryland Court of Appeals denied the Petitioner's unopposed Petition for Writ of Certiorari, stating that "there has been no showing that review by certiorari is desirable and in the public interest."

The Petitioner timely filed this Petition for Writ of Certiorari in the Supreme Court of the United States.

ARGUMENT

Question 1

Pursuant to MD. Rule § 4-401, and specifically § 4-401(2), the district court has exclusive original civil jurisdiction in a replevin action. A replevin action is proper in the district court, when a Petitioner is attempting to have personal property returned that is being wrongfully detained, regardless of the amount in controversy. Pursuant to Maryland laws, an action for replevin is under the exclusive jurisdiction of and can only be filed in the state's lower district court.

The Petitioner's verified replevin action was filed in the District Court of Maryland for Harford County on April 11, 2018, Case No. 09-01-0002012-2018. On May 18, 2018, the lower district court dismissed the Petitioner's replevin, based upon its presumption that a Note is not a negotiable instrument regulated under Article 3 of the MD. Comm. Law, and therefore is not required to be returned to the maker of the instrument. Under Definitions in the MD Comm. Law § 3-104(b), "Instrument" means a negotiable instrument". The Uniform

Commercial Code ("UCC") governs all commercial activities, which include notes, under Article 3-Negotiable Instruments³.

The goal of the UCC was to achieve substantial uniformity in commercial laws across the 50 states. The UCC was adopted, enacted and codified into the Maryland code of statutes, Maryland Code, Commercial Law.

A presentment was made to the Petitioner and the real property was sold. The note and deed of trust obligations are fulfilled. Upon demand, Respondent is required by the laws of Maryland, especially and specifically, *inter alia*, MD Comm. Law § 3-501, to surrender the Genuine Original Note and the Genuine Original Deed of Trust relating to the real property, back to Petitioner.

The state foreclosure case is complete. There is nothing more that can be done with the foreclosure action. The note and deed of trust must be returned to the maker and issuer once the transaction has been satisfied and upon demand from the person, the Petitioner, whom presentment had been made, pursuant to Md. Comm. Law § 3-501(b)(2)(iii), which states:

Upon demand of the person to whom presentment is made, the person making presentment must: (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

Sandra S. Forquer is the maker, creator and issuer of the personal, chattel property known as the Note dated October 31, 2005, as evidenced by her signature and the Deed of Trust.

MD Comm. Law § 3-103(a)(5) defines maker:

"Maker" means a person who signs or is identified in a note as a person undertaking to pay.

Wells Fargo Bank, N.A., the Respondent, is not a party to the Petitioner's instruments. Wells Fargo Bank, N.A. is not a party to the contract that was created between GSF Mortgage and the Petitioner.

³ Articles: 3 (negotiable instruments, promissory notes, banknotes, and drafts), 4 (bank deposits and check collection), 5 (letters of credit), and 7 (warehouse receipts, bills of lading, and documents of title) all regulate **commercial paper**, devices used to transfer funds from one party to another. These Articles regulate the form such devices can take, the manner in which they can be created, fulfilled, and transferred to third parties. *Business Law Basics*.

The Petitioner is a party to those instruments⁴. Wells Fargo Bank, N.A. does not have a superior claim to instruments that they were never a party to. The Petitioner in the replevin action is the legal and lawful maker, creator, issuer and owner of the chattel property, the note and deed of trust. The Petitioner has a superior claim to those instruments. Wells Fargo was allegedly given the position of holder of the instruments. A position of holder does not give the holder a superior claim above the actual maker and signatory of an instrument.

Counsel for the Respondent previously attempted to convolute and distort this replevin action, in order to get it dismissed, making ridiculous accusations that the replevin action was an attack on the state non-judicial foreclosure action. The foreclosure action was completed in February 2017, and the case is closed. The Petitioner is not attempting to re-litigate the illegally filed state foreclosure action, therefore, res judicata and collateral estoppel do not apply to this replevin action. The replevin action stands alone.

Replevin is a type of action that can be used by anyone with a genuine claim to personal property, and the Petitioner has demonstrated that she has a genuine claim to her instruments. Pursuant to MD. Comm. Law (§ 3-501(b)(2)(iii)), upon demand the Respondent is required to return the personal chattel property to the Petitioner once the obligation is satisfied. If they do not, they are in violation of commercial law and they are liable. "Where one acquires possession of the property in a lawful manner . . . his refusal to relinquish possession or control over the property after a demand by [p]laintiff gives rise to the action."⁵

The Petitioner is the maker of the instruments and has made numerous demands for them to be returned. Md. Comm. Law § 3-501(b)(2)(iii) states:

Upon demand of the person to whom presentment is made, the person making presentment must: (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made. *Emphasis added.*

⁴ MD Comm Law Code § 3-103(a)(8) definition: "Party" means a party to an instrument.

⁵ *Greenline Equip. Corp., Inc. v. Covington Cty. Bank*, 873 So. 2d 950, 958 (Miss. 2002) (quoting *Nat'l Benefit Adm'r's, Inc. v. Miss. Methodist Hosp. & Rehab. Ctr., Inc.*, 748 F. Supp. 459, 466 (S.D. Miss. 1990))

The Supreme Court stated in *Olson v. Thompson*, OK 18, 52 P. 388, 6 Okla. 576 (1898):

“...where the possession of a note that has become invalid is sought by the maker, it is not because he claims to be entitled to it as property, (so far as his relation to it is concerned,) but because he is entitled to be protected against it as evidence of a claim.” *Sigler v. Hidy, et al.*, [Ia.] 9 N.W. 374, (*Emphasis added*).

The Supreme Court case *Olson v. Thompson* also stated that “**the true rule is that the maker of a promissory note—not void, ab initio—is entitled to the immediate possession of the same when it has been paid or cancelled by order of court, or when, for any other reason, it has become absolutely void and invalid as an obligation.**” This Supreme Court decision has never been overturned.

Black's Law Dictionary 2nd Ed. defines maker, “(A) *This term is applied to one who makes a promissory note...*”.

The Respondent has no valid claim in order to retain the Petitioner's note and deed of trust. There is no further obligation with the instruments, and therefore no reason to withhold those instruments from the Petitioner, the maker and the actual party entitled to be in possession of them.

U.S. Supreme Court rulings have stated that the deed of trust must always follow the note. As decided in *Carpenter v. Longan*, 83 U.S. 16 Wall. 274 (1872) it stated, “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.”

Since the note and deed of trust cannot be bifurcated, the Respondent is required to have both instruments and must be in possession of them. The Respondent has no legal right or purpose to retain the deed of trust and the Petitioner requested that both instruments be returned.

A *prima facie* case for replevin requires a Petitioner to show they are entitled to immediate possession of personal property (chattel) and has made a demand to the person or entity possessing the property, but the demand has been refused.

The Respondent filed affidavits into the state non-judicial foreclosure action, Case No. 12C-13-1357, stating they were in

possession of the Petitioner's note and deed of trust, thereby demonstrating they are in possession of the chattel property being sought. The Petitioner has demonstrated that a demand was made to the Respondent prior to initiating the replevin action, and that the Respondent has failed and refused to return the personal chattel property. The Petitioner has demonstrated that pursuant to Md. Comm. Law § 3-501(b)(2)(iii) – the Petitioner is entitled to immediate possession of the chattel property, the note and deed of trust. All three requisites for a replevin action have been met. Petitioner has stated a claim upon which relief should have been granted.

Petitioner claims the Respondent cannot be harmed financially, or in any other way, by returning the Genuine Original Promissory Note and Deed of Trust, and all copies, certified or not, to the Petitioner. Petitioner claims this Replevin stands alone and is not related to any other litigation.

Respondent's failure to return Petitioner's personal, chattel property, constitutes a willful, deliberate act of wrongdoing. *Scott v. Jenkins*, 345 Md. 21, 690 A.2d 1000 (1997). *Tierco Maryland, Inc. v. Williams*, 381 Md. 378, 849 A.2d 504 (2004); *Garcia v. Foulger Pratt*, 155 Md. App. 634, 845 A.2d 16 (2003) "in the sense of conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will or fraud."

After the district court dismissed the Petitioner's replevin action, an appeal was filed with the Circuit Court of Harford County, Maryland. On September 12, 2018, the circuit court heard the case de nova and erroneously dismissed the case on the presumption that it was res judicata, basing that decision on an unreported opinion from the COSA, which had nothing to do with a replevin action. The unreported opinion also stated that pursuant to Md. Rule 1-104, "it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority."

The unreported opinion was a result of a COSA appeal that was filed from a circuit court decision on the ratification of a foreclosure sale in circuit court Case No. 12-C-13-1357. In the COSA appeal, the Petitioner entered a motion for replevin, requesting to have the note returned. The Petitioner did not realize when she entered the motion, that it was not the correct court. A replevin action is only proper in the state's lower district court, pursuant to MD. Code, Courts & Judicial Proceedings § 4-401. Petitioner made a mistake and filed the motion into the appeal court, not knowing COSA can only review matters that

were previously litigated, and new matters cannot be considered. Therefore COSA deemed the Petitioner's motion was moot⁶. The opinion of COSA pertained to a ratification order in a foreclosure case, not a replevin. In order for the Petitioner's replevin action to be res judicata, there had to be a final judgment on the matter of replevin. There is no final judgment because a replevin action had never been filed prior to the case that is currently being petitioned.

The Petitioner brought the verified replevin action before the court because of the Respondent's intentional refusal to return the Petitioner's chattel property, after several demands had been made for the instruments to be returned. The Petitioner had also requested in the state non-judicial foreclosure action that the instruments be returned to her. Respondent made claims in a foreclosure action, Case No. 12-C-13-1357 that they were in possession of the Petitioner's original Note and Deed of Trust. Respondents have refused to return the Petitioners chattel property, and the property is being wrongfully detained.

In *Lawson v. Commonwealth Land Title Ins. Co.*, 518 A. 2d 174, Md. Court of Special Appeals 1986. The court agreed that tort claims permit recovery for the loss or deprivation of intangible property. "In the first stage, the law came to regard the physical document evidencing an intangible right — a **promissory note**, a stock certificate, a bank book, etc. — as itself a chattel capable of conversion. In the second, it merged the underlying intangible right with the document so that the injured owner could recover not just the nominal value of the document itself that was wrongfully withheld but also the value of the right evidenced or represented by the document." *Emphasis added.*

Respondent is not entitled to keep the Petitioner's chattel property, the Promissory Note, as this constitutes unjust enrichment. "One whose money or property is taken by fraud or embezzlement, or by conversion, is entitled to restitution [.]" *1 Dan B. Dobbs, Law of Remedies* § 4.1(1), at 553 (2d ed. 4 1993). "A person who receives a benefit by reason of an infringement of another person's interest, or of loss suffered by the other, owes restitution to him in the manner and amount necessary to prevent unjust enrichment." *Berry & Gould v. Berry*, 360 Md. 142, 151 (2000) (quoting Restatement (Second) of Restitution § 1 (Tentative Draft No. 1, 1983)). In *Penniman v. Winner*, 54 Md. 127 (1880), it held that an action of trover would lie for the

⁶ Moot refers to an issue that remains unsettled, open to argument or debatable. It refers to a legal question which has not been determined by any decision of any court. *US Legal definitions.*

wrongful detention of "a valuable security," in that case the equivalent of a promissory note.

Maryland law clearly indicates that the Petitioner has a legal and lawful right to demand to have her personal property returned, but the Maryland courts are not following the law in a manner that is equal to all parties in the case. That is a denial of equal protection under the law by the Maryland courts.

Question 2

The intended protections of the UCC are recognized across the United States. The UCC is a comprehensive modernization of the law governing commercial transactions. It is designed to simplify the law, clarify it, and to ensure uniformity in the adopting states.

The UCC provides for the uniqueness of commercial law as an appropriate field for achieving uniformity of law. One of the UCC's primary goals is to promote certainty and predictability in commercial transactions. The UCC mandates and regulates how commercial activity is to be conducted.

There is significant case law regarding the protection of the maker of a note or deed of trust, from multiple claims on their instruments. It is not an unreasonable request for the maker of the instruments to demand they be returned. *5-Star Management, Inc. v. Rogers*, 940 F.Supp. 512 (USD Ct. E.D. NY 1996) Recognizing a policy to "protect the maker of the Note, who also issues a mortgage, from being exposed to liability twice in respect of the same underlying debt."

See *In re Kemp*, No. 08-18700-JHW (Bankr. D. NJ 201) "From the maker's standpoint, therefore, it becomes essential to establish that the person who demands payment of a negotiable Note, or to whom payment is made, is the duly qualified holder. Otherwise the obligor is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument." *Emphasis added.*

Wells Fargo Bank v. Sessley, 2010-Ohio-2902 (OH Ct. App. 2010), Noting an "underlying concern about multiple judgments on the same debt."

Weingartner v. Chase Home Finance, No. 2:09-cv-02255-RCJ-RJJ (USD Ct. D. NV 2010) Rejecting a MERS claim of independent authority

to assign the beneficial interest in the underlying debt, the Court indicated a need to avoid the risk of “rival claimants to the same underlying debt.” *Marks v. Branstein*, No. 09-11402-NMG (USD Ct D. MA 2010) and, also, *In re Kemp*, No. 08-18700-JHW (Bankr. D. NJ 2010). *Emphasis added.*

Adams v. Madison Realty & Development, Inc. 853 F2d 163 (3rd Cir. 1988) Holding that strict compliance with the UCC protects each intended owner of the note as it get passed about; *Cogswell v. Citifinancial Mortgage*, 624 F.3d 395 (US Cir.7th 2010). Otherwise, the obligor is exposed to the risk of double payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument.” *Emphasis added.*

It’s obvious from the lower court’s rulings, that the Petitioner is not being allowed access to the court to have the case decided by a jury of her peers. Petitioner is not being provided equal protection and due process under the law. The lower courts continue to look for erroneous reasons to dismiss the Petitioners case. Whether the reason is because the Petitioner is without counsel, I do not know. Whatever the reason, the Petitioner’s wish is for this court to remand the replevin action back to the lower state district court, for the chattel property to be returned to the Petitioner, and to instruct the court to allow the case to proceed forward to trial.

Sherer v. Cullen, 481 F 946, “We could go on, quoting court decision after court decision, however, the Constitution itself answers our question. Can a government legally put restrictions on the rights of the American people at any time, for any reason? The answer is found in Article Six of the U.S. Constitution.”; “An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed.”, *Norton v. Shelby County*, 118 U.S. 425 p. 442.

The issues in the replevin action are not conclusions, they are facts before the court, but the lower courts continue to dismiss the Petitioner’s replevin action based on incorrect beliefs, misinformation, and misapplication of the law. The Petitioner asserts that she has been denied equal protection of the law, and access to the judicial system through the unreasonable denial of the replevin action by the District Court and Circuit Court of Harford County, and also the Maryland Court of Appeals. The law clearly states that the Petitioner is entitled to have her personal property returned. The Petitioner is being deprived of her personal property, which is a violation of her Constitutional

rights. The Supremacy Clause, Article VI, Section 2, of the U.S. Constitution states:

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any Thing in the Constitution or laws of any state to the contrary notwithstanding."

The responsibility of a judge is to say what the law is, and not what they think it should be. Judges are to follow the rule of law and uphold the constitution and laws as they are written, in order to protect the public. They must apply the written law to each case without being biased.

The MD Comm. Law § 3-501(b)(2)(iii) is law that clearly states: **"Upon demand of the person to whom presentment is made, the person making presentment must – sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.** *Emphasis added.*

Yet, the District Court of Harford County, the Circuit Court of Harford County and the Maryland Court of Appeals all refused to enforce Maryland's commercial law, and MD. Code, Courts & Judicial Proceedings § 4-401, as it is written.

The judges in the Maryland Court of Appeals took an oath and have an obligation to uphold and defend all of the public's Constitutional rights. That did not happen in this case. The Maryland Court of Appeals refused to enforce the law and uphold its obligation to defend the public's right to due process and equal protection under the Constitution.

"To take away all remedy for the enforcement of a right is to take away the right itself. But that is not within the power of the State." *City of Dallas v. Mitchell*, 245 S.W. 944; "The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice.", *Davis v. Wechler*, 263 U.S. 22, 24; *Stromberg v. California*, 283 U.S. 359; *NAACP v. Alabama*, 375 U.S. 449.

The scope of the Due Process Clause and the Equal Protection Clause of the Federal Constitution are not coterminous, however, the due process of law as guaranteed by the Fifth Amendment includes, at

least in part, equal protection as guaranteed by the 14th Amendment. *Radio Position Finding Corp. v. Bendix Corp.*, 205 F. Supp. 850 (D. Md. 1962), judgment aff'd, 371 U.S. 577, 83 S. Ct. 548, 9 L. Ed. 2d 537 (1963) (applying Maryland law).

The Due Process Clause imposes the requirement of fairness on governmental activity, and the touchstone of due process is fair warning. *Gore Enterprise Holdings, Inc. v. Comptroller of Treasury*, 437 Md. 492, 87 A.3d 1263 (2014). All Maryland proceedings are to be tested by fundamental fairness.⁷ However, due process requires more than just fairness of procedures in that it is also a substantive restraint on the content of laws; however, substantive due process does not mean that there are vested rights in particular rules of common law.⁸

In determining whether the denial of a certain right is a denial of due process of law, the crucial question is whether the persons formulating and insisting on people's rights, when the meaning of due process was in the formative state before its incorporation in American constitutional law, believed that such right was so fundamental that there could be no due process without it.⁹

The application of the broad restraints of due process compels inquiry into the nature of the demand being made on individual freedoms in a particular context and justification of the social need on which the demand rests.¹⁰

The Due Process Clause of the Fifth Amendment to the Federal Constitution is a limitation on all powers conferred by the people on the Federal Government, and has no reference to state action.¹¹ The rights conferred by the Fifth Amendment, therefore, are not implicit in the concept of the 14th Amendment to the Federal Constitution.¹²

⁷ *Harrison-Solomon v. State*, 442 Md. 254, 112 A.3d 408 (2015).

⁸ *Sanner v. Trustees of Sheppard and Enoch Pratt Hospital*, 278 F. Supp. 138 (D. Md. 1968), judgment aff'd, 398 F.2d 226 (4th Cir. 1968) (applying Maryland law).

⁹ *Slansky v. State*, 192 Md. 94, 63 A.2d 599 (1949).

¹⁰ *Frank v. State of Md.*, 359 U.S. 360, 79 S. Ct. 804, 3 L. Ed. 2d 877 (1959) (overruled in part on other grounds by, *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 87 S. Ct. 1727, 18 L. Ed. 2d 930 (1967)) (applying Maryland law).

¹¹ *State ex rel. Beard v. Warden of Md. House of Correction*, 193 Md. 715, 67 A.2d 236 (1949); *Johnson v. State*, 193 Md. 136, 66 A.2d 504 (1949); *Hajewski v. Baltimore County Com'r's*, 184 Md. 161, 40 A.2d 316 (1944).

¹² *Heath v. State*, 198 Md. 455, 85 A.2d 43 (1951).

The Due Process Clause of the 14th Amendment inhibits only such action as may fairly be said to that of the states.¹³ Accordingly, the first prerequisite to raising a due process argument is that the action complained of must constitute state action.¹⁴ It obliges one to do what is just, not merely refraining from doing what is improper,¹⁵ and it erects no shield against merely private conduct, however discriminatory or wrongful.¹⁶

Prior to considering whether an individual's right to due process was violated, courts must determine first that **(1) State action has been employed (2) to deprive that individual of a substantial interest in property.** *In re Ryan W.*, 434 Md. 577, 76 A.3d 1049 (2013); *Rhoads v. Sommer*, 401 Md. 131, 931 A.2d 508 (2007). *Emphasis added.*

The Petitioner is the maker and the only remaining party to those instruments, and is requesting the instruments, as defined in the MD Comm. Law, Article 3 Negotiable Instruments, to be returned. GSF, the original party named in the instruments, relinquished their ownership rights and any claims to the instruments, when they sold the note and deed of trust. The Respondent is not a party to those instruments/contracts. The Respondent has no valid claim on those instruments in order to retain possession of them, and the Respondent has no further use for these instruments. A foreclosure of the personal property was completed.

A demand was made for the note and deed of trust to be returned to the Petitioner, pursuant to MD Comm. Law 3-501. The Respondents refused to return the instruments that they used to conduct the state non-judicial foreclosure action. The Respondents are unlawfully withholding the Petitioner's personal chattel property.

¹³ *Pitsenberger v. Pitsenberger*, 287 Md. 20, 410 A.2d 1052 (1980); *Riger v. L and B Ltd. Partnership*, 278 Md. 281, 363 A.2d 481 (1976); *Barry Properties, Inc. v. Fick Bros. Roofing Co.*, 277 Md. 15, 353 A.2d 222 (1976).

¹⁴ *Toland v. Futagi*, 425 Md. 365, 40 A.3d 1051 (2012); *New Bd. Of School Com'r's of Baltimore City v. Public School Adm'r's and Sup'r's Ass'n of Baltimore City*, 142 Md. App. 61, 788 A.2d 200, 160 Ed. Law Rep. 832 (2002).

¹⁵ *Campbell v. State*, 37 Md. App. 89, 376 A.2d 866 (1977).

¹⁶ *Edwards v. Maryland State Fair and Agr. Soc.*, 476 F. Supp. 153 (D. Md. 1979), judgment, aff'd in part, rev'd in part on other grounds, 628 F.2d 282 (4th Cir. 1980)(applying Maryland law); *Fenner v. Bruce Manor, Inc.*, 409 F. Supp. 1332 (D. Md. 1976)(applying Maryland law); *Green v. Cooperstone Ltd. Partnership*, 28 Md. App. 498, 346 A.2d 686 (1975).

REASONS FOR GRANTING CERTIORARI

This Petition for a Writ of Certiorari involves a case of first impression¹⁷. The issues of this case have not been previously addressed by a higher court, and it involves an issue that requires interpretation and direction by the Supreme Court.

Pursuant to the MD Comm. Law, the Petitioner has made a demand to have personal property returned to her, but was denied. The Respondent cannot be harmed financially or in any other way by returning the Original Note and Deed of Trust, and all copies, certified or not, to the Petitioner. Petitioner claims the replevin action stands alone and is not related in any way to any other litigation. The Petitioner has demonstrated all of the requirements for a proper replevin action are present in this case and that the matter has never been previously litigated, but yet the Petitioners replevin action was continuously dismissed by the lower state courts.

It is important for state courts to follow state laws as they are written, and allow state citizens the opportunity to access its courts for redress of grievances in a valid state court action. This is how the judiciary instills confidence in the public's perception of the court system. The public's perception of how the judiciary system works in this country has been very much affected by the actions of lower state courts who do not follow and apply the law in an unbiased manner.

The bias is clearly evident in this case. The Petitioner is a pro se litigant and the Respondent is a well-known corporation with unlimited resources. Regardless of the stature of each party, the law should have been applied equally, and it was not.

This is a case of first impression that needs to be heard on its merits, to prevent future incidents of a pro se litigant being treated in this manner and denied access to the judiciary system, and being denied possession of their personal chattel property. Both parties need to be treated in a manner that is fair, honest and equal. The Petitioner is being deprived of personal property without due process and equal protection of law, which is a violation of the Petitioners Constitutional rights.

¹⁷ A case of first impression involves a legal issue, or question of law, that has not been ruled on by a court that has jurisdiction over the case. Because this type of case requires the court to make an interpretation of some point of law, these decisions often become binding precedent, at least in the jurisdiction in which the case is decided.

This Court's silence on the questions presented encourages the lower state courts to continue to use their positions in a manner that is unjust and unequal to all who come to the courts for relief and fairness in the justice system. The Petitioner should not be denied access to the court in order to have her case to be properly adjudicated in a manner that is fair, honest and equal to all involved.

CONCLUSION

For all of the foregoing reasons, it is the wish of the Petitioner that the Petition for Writ of Certiorari be granted.

Date: April 15, 2019

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Sandra Forquer, *Petitioner*
P. O. Box 127
Forest Hill, MD 21050
410-652-8585
ssforquer@yahoo.com

Word Count – 6,028
Font – Century Schoolbook 12 pt.