

In The
Supreme Court of the United States

KATHLEEN C. HAMPTON,
Petitioner,
v.

PROF-2013-S3 LEGAL TITLE TRUST
BY U.S. BANK, NATIONAL ASSOCIATION,
AS LEGAL TITLE TRUSTEE, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Virginia

BRIEF IN OPPOSITION OF FAY SERVICING, LLC;
PROF-2013-S3 LEGAL TITLE TRUST BY
U.S. BANK, N.A. AS LEGAL TITLE TRUSTEE;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; AND SAMUEL I. WHITE, P.C.,
AS SUBSTITUTE TRUSTEE

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I. PARTIES TO THE PROCEEDINGS:

Kathleen C. Hampton was Appellant in the Supreme Court of Virginia and Plaintiff in Loudoun Circuit Court.

Samuel I. White, P.C.; Fay Servicing, LLC; PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Associations, as Legal Title Trustee; and Mortgage Electronic Registration Systems, Inc. were Defendants in Loudoun Circuit Court and Appellees in the Supreme Court of Virginia.

II. CORPORATE DISCLOSURE/ RULE 29.6 STATEMENT:

Fay Servicing LLC, is a wholly-owned subsidiary of Fay Financial, LLC, and is based out of Springfield, Illinois. There are no parent companies, trusts, and/or affiliates of Fay Servicing, LLC that have issued shares and/or debt securities to the public.

Samuel I. White, P.C. is a private law firm headquartered in Virginia Beach, Virginia with offices in Maryland, Virginia, and West Virginia. It has no parent companies, trusts, subsidiaries and/or affiliates that have issued shares and/or debt securities to the public.

Mortgage Electronic Registration Systems, Inc. is wholly-owned by MERSCORP Holdings, Inc., which is headquartered in Reston, Virginia. There are no parent companies, trusts, and/or affiliates that have issued shares and/or debt securities to the public.

Upon present information, knowledge, and belief, PROF-2013-S3 Legal Title Trust by U.S.

Bank, N.A. as Legal Title Trustee is not a corporate entity, and it has no parent companies, trusts, and/or affiliates that have issued shares and/or debt securities to the public.

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III. STATEMENT OPPOSING THE EXERCISE OF JURISDICTION:

Hampton asserts that this Court's limited appellate federal jurisdiction is invoked under "28 U.S.C. §§ 1257(a) and 2101(c)". *Petition for Certiorari*, at p. 2. However, 28 U.S.C. § 1257(a) applies to state supreme court final judgments being reviewed by this Court when the validity of **a treaty or United States statute** is in question. Or, when the validity of a **state statute is questioned, unconstitutional, or runs afoul of federal laws**. Finally, the code section applies if a **right or privilege is claimed under the Constitution or statutes of the United States**.

Herein, there is no federal statute, treaty, federal law, or Virginia statute in the eight (8) questions presented in Hampton's *Petition*. *See Petition for Certiorari*, at i. The last category enumerated in the claimed jurisdictional statute, 28 U.S.C. § 1257(a), a Constitutional right or privilege, is at most, tangentially raised by Hampton's inclusion broadly, generically, and baldly of "equal protection" and/or "due process" in two of her questions presented. *See Petition for Certiorari*, at i.

Yet, both questions presented (numbers one and six) concern Hampton's overarching misunderstanding that a full-blown evidentiary proceeding or trial is not a federal Constitutional guarantee to litigants, including *pro se* litigants, and that federal Constitutional rights are not abridged by a trial court when a dispositive motion is granted that short-circuits a suit before trial, leading to early dismissal when there is a pleading insufficiency and/or failure to state a claim upon which relief can

be granted. Just because one claims “equal protection” and “due process” rights and protections are triggered, invoked, and/or abridged generically and conclusively, does not necessarily make it so. Because there is no actual due process and/or equal protection right or privilege triggered herein by Hampton’s claims, 28 U.S.C. § 1257(a) does not apply to provide a basis for jurisdiction of this Court.

Hampton’s additional basis cited for invoking jurisdiction, 28 U.S.C. § 2101(c), is wholly inapplicable. This code section does not apply because it governs deadlines for appeal or certiorari and does not pertain to jurisdiction in any respect.

Instead of Hampton’s cited jurisdictional bases, a *Petition* must, in actuality, demonstrate one or more established factors for making the case worthy of granting *certiorari* and for invoking the limited federal appellate jurisdiction of this Court. *See* S. Ct. R. 10. There is nothing present in Hampton’s appeal and *Petition* to indicate how this Court’s jurisdiction is triggered or invoked, and because of same, the Appellees respectively object to and oppose the request of Hampton for this Court to exercise its limited appellate federal jurisdiction over the case. *See* S. Ct. R. 10; & S. Ct. R. 15(2), (4).

Hampton disputes largely findings of fact and some limited determinations of law while presenting questions of state rather than federal law throughout her *Petition*. *See id.*; *see also Petition for Certiorari*, at p. i; *in passim*. This is an insufficient basis for asserting jurisdiction. Hampton requests a review of the Loudoun Circuit Court’s and Supreme Court of Virginia’s decisions, both of which rested on adequate and independent state law grounds even if they may have triggered a limited, discrete federal

issue, such as her claimed, generic “equal protection” and/or “due process” constitutional rights. *Id.* This is inadequate for invoking jurisdiction.

Throughout her *Petition*, Hampton misconstrues this Court to be a court of error charged with correcting a claimed misapplication of the law by the Loudoun Circuit Court and Supreme Court of Virginia. *Cf. S. Ct. R. 10.* Nowhere within her *Petition* does Hampton accurately assert a trigger which may invoke this Court’s jurisdiction and necessitate the need for granting her *Petition*. *Cf. S. Ct. R. 10.*

There is no allegation that the Loudoun Circuit Court’s rulings, as affirmed by the Supreme Court of Virginia, conflict with decisions of one or more federal courts of appeals or state supreme courts on an important issue of federal law; nor that Loudoun Circuit Court decided an important federal question in a way that conflicts with rulings of this Court, nor that the Loudoun Circuit Court decided a question of federal law that is so important that this Court should hear the matter even absent a conflict, nor that the Loudoun Circuit Court and/or Supreme Court of Virginia, which affirmed the Circuit Court, so far departed from the accepted and usual course of judicial proceedings or, in the case of the Supreme Court of Virginia, that it sanctioned such a departure by the Loudoun Circuit Court, as to call for an exercise of this Court’s supervisory power. *See id.* **None of these valid jurisdictional bases** are asserted by Hampton anywhere within the *Petition* in the questions presented, basis of jurisdiction, and/or otherwise.

Beyond the absence of any stated triggers to invoke the jurisdiction of this Court, the Loudoun

Circuit Court's ruling in its *Final Order*, as amended, was correct and it was also affirmed by the Supreme Court of Virginia. This case does not merit this Court's attention to redress any matter, as the litigation process which has been ongoing since 2015 and the multiple administrative complaints filed by Hampton have provided more than ample redress opportunities for her to be heard upon her alleged grievances and claims.

**IV. STATEMENT OF THE CASE,
BACKGROUND FACTS, AND
PROCEDURAL HISTORY:**

This case is a borrower's final exhausting of an appeal of her suit contesting and challenging a foreclosure completed on December 7, 2015, for her Round Hill, Virginia residence. The suit represents her ongoing prolific efforts (both, inside and outside of litigation) to stall a pending post-foreclosure eviction proceeding notwithstanding a **long-standing conceded decade of mortgage loan default from June, 2009** for the subject property. Both, the affirmative foreclosure contest litigation and its companion eviction case have been exhaustively litigated in the Loudoun Circuit and General District Courts and in the Supreme Court of Virginia multiple times over to date. The eviction proceeding is set for jury trial on October 21-23, 2019, in Loudoun Circuit Court.

None of Hampton's challenges raised of equal protection, due process, fraud, takings, wrongful and/or negligent conduct, "show me the note", "show me the noteholder authority to foreclose", title defect in property's legal description, theft, conversion,

“judicial notices”, and/or regulatory consent orders have been found by any prior courts to hold legal merit and/or comprise a cognizable, valid, and/or colorable claim against any of the named Defendants. As such, all such claims have been dismissed with prejudice.

A. Hampton’s Mortgage Loan and Its Refinancing.

Hampton borrowed money for a mortgage loan to fund her purchase of the subject property in Loudoun County, Virginia on July 28, 2005, from original lender, America’s Wholesale Lender/Countrywide Home Loans, Inc. (“Countrywide”). *See Petition for Appeal*, at p. 3; *Second Am. Complt.*, at ¶¶2 & 16. She subsequently refinanced this loan with the same lender on June 9, 2006. *See id.* Hampton signed the purchase money promissory note (“*Note*”) that memorialized her mortgage loan and its later refinancing. *See id.* On the same dates as the execution of the notes, Hampton also executed an original 2005 *Deed of Trust* and then, a refinancing 2006 *Deed of Trust*, the latter of which was recorded at Instrument No. 20060614-0052490, thereby encumbering the residential real property at 34985 Snickersville Turnpike, in Round Hill, Virginia, 20141 (“Property”) comprising Hampton’s residence. *See id.; Defendants’ Demurrer to Sec. Am. Complt.*, at p. 4.

B. Assignment of Mortgage Loan and Instruments from BANA f/k/a Countrywide to PROF.

As of July 17, 2015, Defendant, Fay Servicing, LLC (“Fay”) became servicer for Hampton’s refinanced mortgage loan and its 2006 *Deed of Trust*. *See id.* Although not required, an assignment of the 2006 *Deed of Trust* was executed by Bank of America, N.A. (“BANA”) f/k/a Countrywide on December 17, 2015, and recorded in the public land records of the Loudoun Circuit Court on December 28, 2015, as Instrument No. 20151228-0084736 (the “2015 *Deed of Trust Assignment*”). The recorded 2015 *Deed of Trust Assignment* memorialized the assignment of the mortgage loan and the 2006 *Deed of Trust* to the assignee, PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Associations, as Legal Title Trustee (“PROF”).

The 2015 *Deed of Trust Assignment* also significantly marked the end of BANA’s involvement with the Property and any interest therein. BANA, Countrywide, and Federal National Mortgage Association are also Defendants/Appellees in this appeal but due to the 2015 *Deed of Trust Assignment*, they have no further interest in the Property, mortgage loan, and/or its servicing. Thereafter, instead, Fay serviced Hampton’s mortgage loan for PROF. Notwithstanding same, Hampton continues to assert the majority of her claims (if not all of them) against Countrywide and/or BANA over past servicing grievances pre-foreclosure, all of which are now moot and no longer ripe due to the assignment, transfer, and sale of the mortgage loan and its operative instruments from

BANA or Countrywide to PROF, as serviced by Fay, as well as by the completed foreclosure.

C. December 7, 2015, Foreclosure of Property.

A non-judicial foreclosure sale for the Property was scheduled by Fay for December 7, 2015, for the **June, 2009, default** of Hampton on the refinancing 2006 *Deed of Trust*. *See id.* Intervening bankruptcy proceedings caused a delay in being able to conduct the foreclosure. The foreclosure was conducted and concluded on that date and as a result of sale, PROF held the winning high bid. *See id.*

The *Deed of Foreclosure* prepared by SIWPC and executed on December 7, 2015, was recorded on May 13, 2016, in the Loudoun Circuit Court public land records at Instrument 20160513-0028205. The *Deed of Foreclosure* transferred and conveyed title to the Property post-foreclosure from Hampton, as former owner and grantor to PROF, as grantee, owner, and winning high bidder at the foreclosure.

The final accounting and report for the foreclosure foreprepared by SIWPC were approved by the Loudoun County Commissioner of Accounts by the filed Commissioner's Report of November 4, 2016. Hampton's multiple sets of exceptions and/or objections filed (some late) on November 21, 2016, and November 23, 2016, to the Commissioner's Report were subsequently overruled by Loudoun Circuit Court on December 1, 2016, by its *Order*. The Loudoun Circuit Court confirmed the Commissioner's Report for the foreclosure. No irregularities, abnormalities, or anomalies were noted in the December 7, 2015, foreclosure despite

Hampton's multiple attempted claims to the contrary.

D. Hampton Files Suit to Contest Foreclosure Sale for Property.

i. First Suit in Federal Court.

Hampton first filed suit in December, 2015, merely three (3) days prior to the scheduled foreclosure. Specifically, Hampton, *pro se*, filed on December 4, 2015, a federal court case seeking an injunction or temporary restraining order to prevent the foreclosure in the United States District Court for the Eastern District of Virginia, Alexandria Division (the "First Suit"). *See generally Plaintiff's Application for Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief* filed under Case No.: 1:15-cv-01624 [ECF Docket Doc. No.: 1]. In response, Fay, as Servicing Agent and Attorney-in-Fact for PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee and Samuel I. White, P.C. ("SIWPC"), by counsel, filed a *Motion to Dismiss* that First Suit for Hampton's failure to state a claim upon which relief could be granted pursuant to *Rule 12(b)(6)* of *The Federal Rules of Civil Procedure*. *See Motion to Dismiss for Failure to State a Claim* filed under Case No.: 1:15-cv-01624 [ECF Docket Doc. No.: 2]. A hearing was scheduled for May 25, 2016, on the *Motion to Dismiss*. *See Notice of Hearing* filed under Case No.: 1:15-cv-01624 [ECF Docket Doc. No.: 6]. However, on May 17, 2016, the United States District Court for the Eastern District of Virginia, Alexandria Division entered an *Order*

canceling the May 25, 2016, hearing and resolved the First Suit based upon pleadings. *See Order* entered in Case No.: 1:15-cv-01624 [ECF Docket Doc. No.: 52]. On May 18, 2016, the Eastern District Court in Alexandria entered an *Order* dismissing, without prejudice, the First Suit. *See Order* entered in Case No.: 1:15-cv-01624 [ECF Docket Doc. No.: 54].

ii. Second Suit in State Court.

Hampton initiated the second suit in the Loudoun Circuit Court (the “Second Suit”) on December 11, 2015, filing a *Complaint for Preliminary Injunction*, seeking to enjoin the foreclosure for the Property that had already been conducted and concluded four (4) days earlier on December 7, 2015. *See Application for Temporary Restraining Order, Preliminary Injunction, and Declaratory Relief*, filed in Case No.: 98163.

The state court’s Second Suit pleadings are identical to the First Suit filed by Hampton in federal court. Defendants, Fay and SIWPC filed a *Demurrer* to Hampton’s Second Suit *Complaint*. *See Demurrer* filed with Loudoun Circuit Court on January 7, 2016. Defendant, MERS also filed a *Demurrer* to Plaintiff’s *Complaint*. *See MERS’ Demurrer* filed in Loudoun Circuit Court on January 27, 2018. After the *Demurrers* were filed, Hampton filed an *Amended Complaint*. Defendants, Fay, SIWPC, and MERS filed a *Demurrer* to the Second Suit’s *Amended Complaint*. *See Amended Complaint for Fraud on this Court as to Filings, Lack of Standing to Foreclose, Illegal Foreclosure Attempts, and Petition for Continued Restraining Order*

and/or Injunction, and Declaratory Relief at the Conclusion of the Federal Case in U.S. District Court, filed with Loudoun Circuit Court on March 7, 2016.

Hampton brought default judgment proceedings against PROF and filed a praecipe to set a hearing on an *Opposition and Application for Entry of Default and Default Judgment on Defendant PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association*, which was scheduled for hearing on July 1, 2016. *See Praecipe* filed with Loudoun Circuit Court on June 10, 2016. The Court denied Hampton's *Motion for Default Judgment* against PROF since a *Demurrer* was filed by Defendant, Fay, as Servicing Agent and Attorney in Fact for and on behalf of PROF. PROF was not required to file a separate responsive pleading due to Fay's representative role as its servicer, agent, and attorney in fact, and, as a result, PROF was not in default due to the filing made by Fay on PROF's behalf. The Loudoun Circuit Court agreed and expressly recognized that PROF was defended in the suit by Fay, thereby denying Hampton's default proceedings against PROF. *See Order* as entered on July 1, 2016 in Loudoun Circuit Court.

Hampton filed a *Second Amended Complaint*, to which Defendants, Fay, as Servicing Agent and Attorney-in-Fact PROF, MERS, and SIWPC, as Substitute Trustee, again filed *Demurrers*. *See Demurrer to Plaintiff's Sec. Am. Complt.* filed in Loudoun Circuit Court on Sept. 19, 2016. Defendants, Fay, as Servicing Agent and Attorney-in-Fact for PROF, MERS, and SIWPC's *Demurrers* were heard on January 3, 2017. At the close of the lengthy hearing in which a court reporter was

present and transcribed proceedings, the Loudoun Circuit Court issued its bench ruling and entered a *Final Order* sustaining the *Demurrers*, with prejudice, and without granting Hampton further leave to amend the *Second Amended Complaint*. *See Order entered on January 3, 2017*, of Loudoun Circuit Court.

The *Second Amended Complaint* was dismissed, with prejudice, as to all Parties Defendants, which included Fay, as Servicing Agent and Attorney in Fact for the PROF, MERS, SIWPC, BANA, Countrywide, and Fannie Mae. The ruling was reduced to an entered *Final Order* on January 3, 2017, by the Loudoun Circuit Court after a bench ruling was delivered on the record.

iii. First Appeal to Supreme Court of Virginia.

Hampton filed a *Notice of Appeal* to the Supreme Court of Virginia, appealing the January 3, 2017, *Order* of the Loudoun Circuit Court. *See Notice of Appeal* filed in Loudoun Circuit Court on January 24, 2017. Hampton filed a *Petition for Appeal* to the Supreme Court of Virginia, to which BANA, Countrywide, Fannie Mae, Fay, LLC, MERS, and SIWPC filed *Briefs in Opposition*. On August 14, 2017, the Supreme Court of Virginia dismissed Hampton's *Petition for Appeal* because the *Final Order* was not deemed appealable by that Court with regard to all parties in the case, namely, PROF. The Virginia Supreme Court held that there was no final order entered as PROF in the Loudoun Circuit Court that could be the subject of an appeal by Hampton.

Hampton filed a *Motion to Amend*, seeking to amend the Loudoun Circuit Court's January 3, 2017, *Order* to add PROF as a separate defendant rather than relying upon the represented capacity in which PROF was previously included by its servicer, agent, and attorney in fact, Fay. Hearing was scheduled on March 30, 2018, in Loudoun Circuit Court on the *Motion to Amend*, at which, the Circuit Court added Defendant, PROF to the *Final Order* which was entered previously on January 3, 2017. *See Order* of Loudoun Circuit Court of Mar. 30, 2018.

iv. Second Appeal to Supreme Court of Virginia.

Hampton noted her second appeal to the March 30, 2018, *Final Order* on March 30, 2018, to the Supreme Court of Virginia. Hampton filed her *Petition for Appeal* on July 25, 2018, and Defendants, Fay, as Servicing Agent and Attorney in Fact for PROF, PROF itself, MERS, and SIWPC filed an *Amended Brief in Opposition to Plaintiff's Petition for Appeal*. On November 9, 2018, The Supreme Court of Virginia stated there was no reversible error in the judgment complained of by the Loudoun Circuit Court and refused the second *Petition for Appeal* of Hampton. *See Order* of Virginia Supreme Court entered on November 9, 2018. On November 26, 2018, Hampton filed a *Petition for Rehearing* with the Supreme Court of Virginia. On February 1, 2019, the Supreme Court of Virginia denied Hampton's *Petition for Rehearing* and affirmed its prior ruling denying Hampton's *Petition for Appeal*.

V. LEGAL ARGUMENT, CITED AUTHORITIES, AND QUESTIONS PRESENTED:

A. LOUDOUN CIRCUIT COURT WAS NOT REQUIRED TO GRANT HAMPTON'S REQUEST FOR "JUDICIAL NOTICES" (REQUESTS FOR FULL EVIDENTIARY PROCEEDINGS OR TRIAL) IN RULING ON DEFENDANTS' DEMURRERS AND DID NOT VIOLATE DUE PROCESS AND/OR EQUAL PROTECTION TO HAMPTON BY SUSTAINING DEMURRERS.

i. Hampton's Erroneous "Judicial Notice" Claims.

Hampton requested the Loudoun Circuit Court on multiple occasions to take "judicial notice" of a number of facts which Defendants argued appeared more like proffers or stipulations that were improper to consider procedurally at the hearing on Defendants' *Demurrer(s)*. *See* Tr. of Hearing of Jan. 3, 2017, at pp. 29-30. What Hampton called "judicial notices" appears to be more aptly, a grievance on Hampton's part that the Second Suit was dismissed by *Demurrers* instead of at the close of a full-blown trial and evidentiary proceeding being held. Hampton repeatedly complains of the inability to present her facts and findings at trial and to conduct discovery to develop her case, in association with the misnomer of her claims of ignored "judicial notices"

by the Loudoun Circuit Court. *See Petition for Certiorari*, at pp. 17-22, & *in passim*.

Hampton claims the Loudoun Circuit Court's failure to consider these "judicial notices" before and/or in ruling on Defendants' *Demurrer(s)* constitutes a violation of her right to procedural due process and/or equal protection. *See id.* For, to Hampton, the complained-of and omitted or neglected "judicial notices" were "required to give the court sufficient evidence to connecting the facts and making a decision on the same." *See* Hampton's *Pet. for Appeal* to the Virginia Supreme Court, at p. 26.

ii. Full Evidentiary Proceeding or Trial Guarantee Does Not Exist in Equitable Relief Foreclosure Contest Suit.

As a fundamental premise, a *pro se* litigant – or any litigant – is not entitled to a full evidentiary proceeding and trial if dispositive motions, such as demurrers and/or summary judgment motions are properly brought and granted for the failure to sufficiently state a claim upon which relief can be granted or for judgment as a matter of law due to lack of any disputed material facts. *See* FED. R. CIV. PRO. R. 12(i) (citing that "[i]f a party so moves, any defense listed in Rule 12(b)(1)-(7)- whether made in a pleading or by motion – and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial."); VA. CODE §8.01-271.1 (1950, as amended); *Rule 3:20* of *The Rules of the Supreme Court of Virginia*. Instead of being mandatory as Hampton alleges, the decision of a trial court to grant an evidentiary hearing is

purely discretionary and is left to the “sound discretion of district [trial] courts”, according to this Court. *See Schriro v. Landrigan*, 550 U.S. 465, 472-73, 127 S.Ct. 1933, at 1939 (2007) (quoting 28 U.S.C. §2254(d) & R. 8(a) of FED. R. CIV. PRO.)(stating that the judge must review the answer, transcripts, and records of state-court proceedings to determine if an evidentiary hearing is warranted) (alteration added).

Moreover, there is no constitutional guarantee to a full-blown trial and/or evidentiary proceeding for any litigant if there are insufficiencies in the pleading of a civil case and its claims, including facts and supporting allegations. Hampton’s *Petition* fails to cite any specific state and/or federal constitutional provision, as well.

This is particularly true in a case where litigation has been filed in both, state and federal court and has been ongoing since 2015, at all levels of trial and appellate courts. Hampton has had at least “four bites at the apple” in trying to bring an affirmative foreclosure contest or challenge suit. She still has an eviction proceeding pending. There is absolutely no merit to the contention that Hampton has not enjoyed her days in Court and/or that she has been denied any opportunity to be heard on her claims in the Courts of the Commonwealth of Virginia, both, at the state and federal levels, such that any of her applicable constitutional protections are not more than adequately afforded to her.

iii. **Loudoun Court Did Not Violate Hampton's Constitutional Protections in Sustaining Defendants' Demurrers and Denying Hampton's Evidentiary Proceeding and Trial Requests on Deficient, Insufficient Second Amended Complaint.**

It follows then, that, the Trial Court's denials of Hampton's claims on two occasions, ultimately as affirmed by the Supreme Court of Virginia, were not a violation of Hampton's due process and/or equal protection rights, protections, and/or privileges just because she did not enjoy the desired full evidentiary proceedings and trial that she sought in filing the litigation. *See United States v. Lariscy*, 16 F.3d 413, 1994 WL 8212, No. 93-2002, at *1 (4th Cir. 1994); *Stewart v. Dimon*, No. 1:14-cv-1707, 2015 WL 11110945, at *4 (E.D. Va. Mar. 13, 2015)(holding that the Seventh Amendment only preserves the right to a jury trial in suits at common law which are legal and are distinct from suits arising in equity. Because foreclosures are equitable in nature, and are not legal, there is no Seventh Amendment right to a jury trial in any action contesting or challenging a foreclosure sale, and “[t]hus, plaintiff's constitutional claims must be dismissed”).

Instead, equal protection and due process claims entail grievances of a markedly different nature and the threshold triggers for same are not met herein by Hampton. *See Klimko v. Virginia Empl. Comm'n*, 216 Va. 750, 760, 222 S.E.2d 559, 568 (1976) (quoting *NLRB v. Mackay Co.*, 304 U.S. 333, 351, 58 S.Ct. 904, 913 (1938))(explaining that

whether procedural protections are due depends on the level to which an individual will be “condemned to suffer grievous loss”, and there is no technical or particular form of procedure dictated but it protects substantial rights with impact on public rights)(citing further that, “the need of the claimant here is not so brutal and the countervailing public interests preponderate, [so] we are of opinion that. . . hearing is not a due process imperative”).

Hampton has somehow conflated and confused these constitutional principles when she mistakes her contractually-grounded disputes over her refinanced 2006 *Note* and 2006 *Deed of Trust* with her lender, servicer, investor, and/or trustee regarding her ten (10)-year defaulted mortgage loan for a constitutional matter implicated in eminent domain or condemnation takings case which involve the taking of private property for greater public good, safety, and transportation. Hampton’s case is not a “takings” case in any way, shape, or form: she privately contracted for a mortgage loan in 2005, refinanced in 2006, and defaulted on same ten (10) years ago in 2009. However, notwithstanding that conceded default, Hampton expects to receive a free \$300,000 to \$400,000 Northern Virginia house and be absolved from the burden of performing under her mortgage loan contract. *See Petition for Certiorari*, at p. i (second question presented on “takings”). This windfall is not permissible under Virginia contract law and established common law precedent.

The Supreme Court of Virginia has noted that “[d]ue process requires ‘no particular form of procedure; it protects substantial rights.’” *Klimko*, 216 Va. at 760, 222 S.E.2d at 568 (quoting *Mackay*, 304 U.S. at 351, 58 S.Ct. at 913). Herein, Hampton

was first afforded an opportunity to be heard at a hearing on Defendants' *Demurrers* on January 3, 2017, and to make her case known as to why the Defendants' *Demurrers* should not be granted and why her claimed "judicial notices" should have been admitted. *See* Tr. of Hearing of Jan. 3, 2017, at pp. 29-30. Hampton was again afforded an opportunity to be heard when the *Motion to Amend* the January 3, 2017, *Final Order* was set for hearing. Moreover, Hampton has had a further opportunity to be heard upon her claims, matters, and suits in her pleadings and memoranda filed in various Virginia state and federal courts and in her arguments heard since her litigation began in 2015, including before the Supreme Court of Virginia's writ panel in October, 2018. Further still, Hampton previously argued at length about the "judicial notices" claim at the January 3, 2017, hearing on the *Demurrers*. *See, e.g.*, Tr. of Hearing of Jan. 3, 2017, at pp. 13-28, & 34-37.

Equal protection and due process are inapplicable to this foreclosure contest case but *in arguendo*, even if these protections were somehow deemed applicable herein, Hampton has been afforded multiple ample opportunities to be heard upon her claims in pleadings, memoranda, and hearing arguments. Specifically, she was given the opportunity to argue before the Loudoun Circuit Court as to why her *Second Amended Complaint* should not be dismissed. Also, between the three complaints filed in Loudoun Circuit Court and the fourth prior federal court complaint filed in the Eastern District of Virginia, Alexandria Division, which she voluntarily dismissed, Hampton has been given no less than at least **four "bites at the**

apple” to file a single viable, cognizable complaint that stated sufficient legal and factual basis to survive a demurrer. *See Eddine v. Eddine*, 12 Va. App. 760, 763, 406 S.E.2d 914, 916 (1991) (quoting *Dohany v. Rogers*, 281 U.S. 362, 369, 50 S.Ct. 299, 302 (1930))(holding that “[t]he requirements of the due process clause are satisfied if a party ‘has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it.’”).

The Court of Appeals of Virginia in *Eddine* deduced that a party must have an opportunity to present objections and to make their appearance, solely. *See Eddine*, 12 Va. App. 760, at 763. Nowhere therein is it dictated that factual findings, “judicial notices”, of conclusions of law of a complainant must be heard and/or accommodated. *Cf. Eddine*, 12 Va. App. 760, at 763. Just because the ultimate relief Hampton requested was not granted does not mean that she was deprived of any opportunity to be heard, to appear, to object, or of any protections arguably due to her under equal protection and/or due process constitutional principles.

iv. Actual Principle of “Judicial Notice” is Not Applicable.

It would have been improper for Loudoun Circuit Court to consider additional disputed evidence under the “judicial notice” statute, *The Code of Virginia §§8.01-386 and -389* (1950, as amended) or *Rules 2.201 “Judicial Notice of*

Adjudicative Facts” and *Rule 2.202 “Judicial Notice of Law”* in *The Rules of the Supreme Court of Virginia*.

First, *Rule 2:201* as to adjudicative facts states expressly that “[a] court may take judicial notice of a factual matter not subject to reasonable dispute” and that fact must be common knowledge or capable of “accurate and ready determination” by resort to sources whose accuracy cannot be questioned (emphasis added). Hampton’s facts are disputed, are not common knowledge, and cannot be verified by unquestioned sources readily. As such, her requested facts are not appropriate and proper for the taking of judicial notice. *See R. 2:201 of The Rules of the Supreme Court of Virginia.*

Second, *Rule 2:202* for judicial notice of law states that it can be done when “necessary to ascertain what the law, statutory, administrative, or otherwise” of Virginia, another state, the U.S., or other country says, now or previously and further, that an official “document or publication” is to be consulted. *R. 2:202 of The Rules of the Supreme Court of Virginia.* Nothing in Hampton’s *Petition for Certiorari* cites to an actual or prior state or federal law that needs to be consulted and of which the Supreme Court of Virginia or the Trial Court needed to take judicial notice to rule upon the Defendants’ *Demurrers* at hearing on January 3, 2017. Thus, *Rule 2:202* is equally non-applicable.

v. **Loudoun Circuit Court Properly Sustained Defendants' Demurrers to Second Amended Complaint.**

Loudoun Circuit Court properly dismissed all ten (10) Counts in Hampton's *Second Amended Complaint* as invalid or unrecognized under current statutory and/or common law jurisprudence in Virginia, or for failing to plead the claims with appropriate specificity. *See Final Order as to Defendants, Fay Servicing LLC, As Servicing Agent and Attorney in Fact for PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Mortgage Electronic Registration Systems, Inc., and Samuel I. White, P.C.* entered on Jan. 3, 2017, in Loudoun Co. Cir. Ct., at p. 1. Defendants successfully argued that Hampton's *Second Amended Complaint* fell far short of the well-pleaded complaint requirements recognized in the courts of the Commonwealth and Fourth Circuit, and that Defendants were prejudiced in mounting their continued defenses to Hampton's serial and duplicative filing of litigation intended solely to stall and prevent her inevitable eviction from the Property post-foreclosure. *See* Tr. of Hearing of Jan. 3, 2017, at p. 46; *Defendants' Demurrer to Sec. Am. Compl.*, at pp. 6-7.

Defendants' *Demurrers* were sustained as to Count I for failure to allege a cause of action for fraud based upon general allegations; as to Counts II, III, and IV for failure to allege a cause of action with sufficient particularity; as to Count V for failure to allege how Defendants' purported actions constituted a breach of contract and to specify an amount of damages; as to Counts VI, VII, and VIII

for failure to state a cognizable cause of action; as to Count IX for failure to allege facts sufficient to support a cause of action for intentional infliction of emotional distress, relying on conclusory allegations and failure to allege any actual emotional distress for which she sought medical attention; and as to Count X for failure to allege special damages, improperly naming the Defendants and relying merely on conclusory allegations. *See Tr. of Hearing of Jan. 3, 2017, at pp. 38-45.* Further still, Counts I through VI of the *Second Amended Complaint* were properly dismissed for failure to state a claim, and in fact, the Loudoun Circuit Court stated that the claims were either invalid or unrecognized in the Commonwealth of Virginia, such as for Hampton's alleged claims of "lack of standing to foreclose", "fraud on the IRS", "violations of HAMP", "IFR guidelines", and "illegal foreclosure". *See Final Order as to Defendants, Fay Servicing LLC, As Servicing Agent and Attorney in Fact for PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee, Mortgage Electronic Registration Systems, Inc., and Samuel I. White, P.C.* entered on Jan. 3, 2017, in Loudoun Co. Cir. Ct., at p. 1; *Tr. of Hearing of Jan. 3, 2017, at pp. 38-42;* and *Order* entered on Jan. 11, 2017.

B. HAMPTON'S MORTGAGE NOTE WAS BLANK-ENDORSED BEARER PAPER ENFORCEABLE BY POSSESSOR, WRITTEN ASSIGNMENT OF SECURING DEED OF TRUST WAS RECORDED FOR TRANSFER TO PROF, HAMPTON LACKS STANDING TO OBJECT TO FREELY-

**TRANSFERABLE NOTE WHICH
EXPRESSLY DISCLOSED TRANSFER
POSSIBILITY, AND “SHOW ME THE
NOTE” CLAIMS ARE DISALLOWED.**

Count VII of the *Second Amended Complaint* was properly dismissed as a “show me the note” or a “show me the noteholder authority to foreclose” claim, both of which claims are disallowed in the Commonwealth of Virginia and Fourth Circuit under well-settled state and federal common law jurisprudence. *See, e.g., Pham, et al. v. Bank of New York, et al.*, 856 F.Supp.2d 804, 815-16 (E.D. Va. 2012). Hampton alleged in Count VII that both, the *Appointment of the Substitution of Trustee* and *Assignments of the Deed of Trust* are invalid instruments on their face, as filed and recorded in the public land records. *See Sec. Am. Complt.*, at ¶329. Such claims have been resolutely defeated and defeated in the Fourth Circuit. *See, e.g., Gallant v. Deutsche Bank Nat. Trust Co.*, 766 F. Supp.2d 714, 720 (W.D. Va. 2011); *Zambrano v. HSBC Bank USA, Inc.*, 2010 WL 2105164, at *6 (E.D. Va. May 25, 2010), *aff'd sub nom. Zambrano v. HSBC Bank USA, N.A.*, 442 F. App'x 861 (4th Cir. Aug. 16, 2011); *Pena v. HSBC Bank USA*, No. 1:14CV1018, 2014 WL 5684798, at *6 (E.D. Va. Nov. 4, 2014), *aff'd sub nom. Pena v. HSBC Bank USA, Nat'l Ass'n*, 633 F. App'x 580 (4th Cir. Dec. 28, 2015) (citing therein that, “Plaintiffs have failed to state a claim that HSBC lacked authority to foreclose on the property.”).

The Eastern District of Virginia in the landmark “show me the note” case, *Pham*, 856 F.Supp.2d at 810, held, “[i]n sum, because Virginia

law unequivocally disallows a ‘show me the note’ claim against a noteholder, it also disallows similar ‘show me the noteholder’s authority’ claims against MERS and [substitute trustee] here.” *Id.* at 810.

Hampton, in Count VII of her *Second Amended Complaint*, claims a lack of evidence of transfers of the *Deed of Trust* on the Property and demanded that Defendants’ “principal was, in fact, the owner of the loan”, in an attempt to defeat the foreclosure action via a disallowed “show me the noteholder authority to foreclose” claim. *See Sec. Am Compt.,* at ¶329. Such a claim by Hampton is disallowed under established, settled common law jurisprudence in the Fourth Circuit.

Hampton’s *Note* is a blank-endorsed note that is deemed bearer paper as a matter of statutory law in Virginia. *See VA. CODE §8.3A-205(b)* (1950, as amended) (“[i]f endorsement is made by the holder of an instrument and it is not a special endorsement, it is a ‘blank endorsement.’ When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.”). As such, any possessor, even a thief is entitled to enforce the *Note*. *See id.* Consequently, Hampton’s moot, tired arguments of lacking noteholder or *Deed of Trust* lienholder authority to foreclose fall prey to deaf ears in the Commonwealth under long-established, well-settled statutory precedent.

C. PRO SE LITIGANTS ARE ENTITLED TO DEFERENCE BUT MINIMAL PLEADING STANDARDS BEYOND BALD CONCLUSIONS AND FORMULAIC RECITALS ARE STILL REQUIRED.

Pro se litigants, such as Hampton are afforded a certain amount of deference, as this Court noted, "[e]ven in the formal litigation context, *pro se* litigants are held to a lesser pleading standard than other parties." *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 402 (2008). As such, a "document filed *pro se* is 'to be liberally construed,' and 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285 (1976)). Yet, even so, "the requirement that a plaintiff's factual allegations 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests applies to all claimants, including those proceeding *pro se*.'" *Hinton v. Trans Union, LLC*, 654 F. Supp.2d 440, 446 (E.D. Va. 2009) (quoting *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S.Ct. 2197 (2007)) (citing that, "[t]hus, although a '*pro se* complaint 'must be held to less stringent standards than formal pleadings drafted by lawyers,'" a *pro se* plaintiff's "obligation to provide the ground of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."").

Hampton is held to a standard of at least supplying "fair notice" through factual allegations and sufficient legal basis -- something more than bald or bare recitals. *Id.* Hampton's pleadings from 2015 in both, state and federal court at all levels have fallen short of this minimal threshold standard. As such, the Loudoun Circuit Court properly found that Hampton's *Second Amended Complaint* offered no more than a recitation of the elements of her

causes of action and was without merit, and further, that it was improper to continue to exhaust and claim the Court's and Defendants' resources to defend against her baseless claims. *See* Tr. of Hearing of Jan. 3, 2017, at pp. 38-46.

D. HAMPTON FAILED TO ADEQUATELY PLEAD "WRONGFUL AND NEGLIGENT TREATMENT" BY BANA AND ERRONEOUS PROPERTY LEGAL DESCRIPTION, REQUIRING CORRECTIVE AFFIDAVIT; BOTH CLAIMS ARE IRRELEVANT, AS BANA SOLD LOAN AND IS NO LONGER A PARTY IN INTEREST AND ANY TITLE DEFECT IS MOOT POST-FORECLOSURE SALE AND TRANSFER OF TITLE.

As of July 17, 2015, Fay assumed the servicing of Hampton's mortgage loan for the Property. As a matter of public record, an assignment of the 2006 *Deed of Trust* was executed by BANA f/k/a Countrywide on December 17, 2015, and recorded in the public land records of the Loudoun Circuit Court on December 28, 2015, as Instrument No. 20151228-0084736, assigning the mortgage loan to PROF.

BANA had no interest in the mortgage loan and/or Property as a result of its sale of the operative *Note* and assignment of the *Deed of Trust* on December 17, 2015, recorded on December 28, 2015. Any allegations and questions presented (i.e., number three) in the *Petition* as to BANA and any alleged "wrongful and/or negligent" treatment by the

former lender and/or servicer with regard to Hampton are long-since mooted, irrelevant, and improper. *See Petition for Certiorari*, at p. i.

There is an insufficient statement of any claim by Hampton upon which relief can be granted and an erroneous eighth question presented with respect to legal description errors for the Property that would warrant the recording of a corrective affidavit. *See Petition for Certiorari*, at p. i. The foreclosure was held and put to record in 2015. There was absolutely no title defect or impediment to recording the *Deed of Foreclosure*. The Commissioner of Accounts approved the final accounting in a *Final Report* and the Loudoun Circuit Court affirmed same over Hampton's objections. Therefore, the question presented as to an alleged defect in the chain of title in the *Petition* is not germane, ripe, or relevant and has nothing to do with these responding Defendants and issues raised in Trial Court proceedings.

VI. CONCLUSION:

Appellees, Fay Servicing LLC; PROF-2013-S3 Legal Title Trust, By U.S. Bank, National Association, as Legal Title Trustee; Mortgage Electronic Registration Systems, Inc.; and Samuel I. White, P.C., as Substitute Trustee, respectfully request that this Court (a) dismiss the appeal for lack of jurisdiction; or (b) deny Appellant, Kathleen C. Hampton's *Petition for Writ of Certiorari*; and (c) affirm the Supreme Court of Virginia's and Loudoun Circuit Court's rulings, sustaining Defendants' *Demurrers* to the *Second Amended Complaint* and dismissing the *Second Amended Complaint*, with prejudice, and without granting Hampton further

leave to amend, as set forth in the Loudoun Circuit Court's *Amended Final Order* entered on March 30, 2018.

Respectfully Submitted,

FAY SERVICING, LLC;

**PROF-2013-S3 LEGAL TITLE
TRUST, BY US BANK, NATIONAL
ASSOCIATION, AS LEGAL TITLE
TRUSTEE;**

**MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
AND**

**SAMUEL I. WHITE, P.C.,
SUBSTITUTE TRUSTEE**

By: /s Lisa Hudson Kim

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