

No. 18-9127

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
The Supreme Court of Virginia

PETITIONER'S REPLY TO WAIVER OF BANK OF AMERICA, N.A.,
FANNIE MAE, AND COUNTRYWIDE HOME LOANS, INC., AND
TO 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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Petitioner, Kathleen C. Hampton (“Petitioner” or “Hampton”), *pro se*, respectfully submits her Reply to Waiver of Bank of America, et al. and Reply to Brief in Opposition of PROF-2013-S3 Legal Title Trust, et al. to her Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia.

AS TO WAIVER OF BANK OF AMERICA, ET AL.

Petitioner believes this Superior Court should request a response of Bank of America, N.A., Fannie Mae, and Countrywide Home Loans, Inc. (“CW”) (“Bank Defendants”), particularly since the loan origination began with predatory loans dating back to 2005, and resulting in the subject predatory re-finance loan of 2006, and the Deed of Trust, which accompanied it, which should be found *void ab initio*.

Further, in investigations pending in the Virginia Office of Attorney General, Predatory Lending Unit, Hampton has learned more violations to the Deed of Trust:

As to Countrywide (“CW”) and the origination of Hampton’s loans:

Under Code of Virginia Section 6.2-1629. Prohibited practices; authority of the Attorney General: A. ... **no person** that is engaged in the business of originating residential mortgage loans in the Commonwealth **shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction.** (emphasis added)

Hampton was deceived, fraud is evident in the transaction staged with HSBC, and she was sold a re-finance loan they clearly knew was subprime and/or unaffordable.

CW’s wrongdoing, once again, is further evidenced in the Deed of Trust, where:

“Under Code of Virginia Section 6.2-1614. Prohibitions applicable to mortgage lenders and mortgage brokers. No mortgage lender ... shall
1. **Obtain any agreement or instrument in which blanks are left to be filled in after execution;** ... 5. ... **submitting false information in connection with an application for the mortgage loan, breaching any representation or covenant made in the agreement or instrument,** or failing to perform any other

obligations undertaken in the agreement or instrument; ... 7. Knowingly or intentionally engage in the act or practice of refinancing a mortgage loan within 12 months following the date the refinanced mortgage loan was originated, unless the refinancing is in the borrower's best interest ..." (emphasis added)

Clearly, the blanks in the DOT at time of signing the same were a violation of the above. The blanks referred to page nos. of the re-financed [subprime] loans, and were never filled in thereafter and, in fact, they were **struck through** as if it were not a re-finance, concealing the fact that CW was not entitled to a prepayment penalty for an in-house refinance, in addition to the fraud and deceit in recorded documentation with the Clerk's Office, in support of Hampton's claim to a *void ab initio* DOT. Notable also is this refinance was done within 11 months and was not in Hampton's best interest, since it was set to fail, as clearly it was "unaffordable."

Further, at no time have any of the Respondents, particularly Bank Defendants addressed their mandated compliance with Fannie Mae Guidelines "Announcement 09-05R" dated April 21, 2009 (the last two pages of Exhibit 15), or any mandates to their "Consent Orders" under the Independent Foreclosure Review (IFR) through the OCC/U.S. Treasury, which Hampton qualified for. Clearly, these are Federal programs which this court should have jurisdiction over.

**AS TO REPLY TO BRIEF IN OPPOSITION OF
PROF-2013-S3 LEGAL TITLE TRUST, ET AL.**

In reply to the Brief in Opposition by PROF-2013-S3 Legal Title Trust, et al. ("Trust Defendants"), and particularly to their arguments on this Superior Court's Jurisdiction, Hampton stated that this Court's jurisdiction is invoked under 28

U.S.C. §1257(a) and perhaps misplaced §2101(c), as it applied to the petition being timely filed within ninety days after the judgment on the *Petition for Rehearing*.

Pertinent constitutional and statutory provisions were set forth in the Appendix to Hampton's Petition (App. N), which Hampton draws this Court's attention to the last paragraph on the last page thereof:

"The party secured by the deed of trust, or the holders of greater than fifty percent of the monetary obligations secured thereby, shall have the right and power to appoint a substitute trustee or trustees. The instrument of appointment shall be recorded in the office of the clerk wherein the original deed of trust is recorded prior to or at the time of recordation of any instrument in which a power, right, authority or duty conferred by the original deed of trust is exercised." (emphasis added)

Here, Trust Defendants appointed a substitute trustee, while they no longer owned the loan as it had been sold to PRMF Acquisitions on June 19, 2015, and exercised a "power, right, authority or duty conferred by the original deed of trust" without being assigned the same or recording the same "in the office of the clerk wherein the original deed of trust was recorded." This is but one merit to Hampton's case that was pled and Judicially Noticed. Thus, wrong party appointed a substitute trustee and could not make claim to being secured by the Deed of Trust, nor had an Assignment of the Deed of Trust been made to them prior to exercising foreclosure.

Where further shown in the Bloomberg Audit Reports Highlights pages 24-31 of the Second Amended Complaint:

"Bloomberg Loan Securitization Audit Report HIGHLIGHTS

1. There is no evidence on Record to indicate that the Mortgage was ever transferred concurrently with the purported legal transfer of the Note, such that the Mortgage and Note has been irrevocably separated, thus making a nullity out of the purported security in a property, as claimed." ...

- Although MERS records an assignment in the real property records, the promissory note which creates the legal obligation to repay the debt has not been transferred nor negotiated by MERS.” ...
- MERS is not a party to the alleged mortgage indebtedness underlying the security instrument for which it serves as “nominee”. ...

The loan was originally made to Countrywide Home Loans, Inc. and may have been sold and transferred to Fannie Mae Remic Trust 2006-67. There is no record of Assignments to either the Sponsor or Depositor as required by the Pooling and Servicing Agreement.

In Carpenter v. Longan 16 Wall. 271, 83 U.S. 271, 274, 21 L.Ed. 313 (1872), the U.S. Supreme Court 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 assignment of the latter alone is a nullity.”

An obligation can exist with or without security. With no security, the obligation is unsecured but still valid. A security interest, however, cannot exist without an underlying existing obligation. It is impossible to define security apart from its relationship to the promise or obligation it secures. The obligation and the security are commonly drafted as separate documents – typically a promissory note and a Mortgage. If the creditor transfers the note but not the Mortgage, the transferee receives a secured note; the security follows the note, legally if not physically. If the transferee is given the Mortgage without the note accompanying it, the transferee has no meaningful rights except the possibility of legal action to compel the transferor to transfer the note as well, if such was the agreement. (Kelley v. Upshaw 91952) 39 C.2d 179, 246 P.2d 23; Polhemus v. Trainer (1866) 30C 685).

“Where the mortgagee has “transferred” only the mortgage, the transaction is a nullity and his “assignee” having received no interest in the underlying debt or obligation, has a worthless piece of paper (4 Richard R. Powell), Powell on Real Property, § 37.27 [2] (2000).

By statute, assignment of the mortgage carries with it the assignment of the debt. .. Indeed, in the event that a mortgage loan somehow separates interests of the note and the Mortgage, with the Mortgage lying with some independent entity, the mortgage may become unenforceable. The practical effect of splitting the Mortgage from the promissory note is to make it impossible for the holder of the note to foreclose, unless the holder of the Mortgage is the agent of the holder of the note. Without the agency relationship, the person holding only the trust will never experience default because only the holder of the note is entitled to payment of the underlying obligation. The mortgage loan becomes ineffectual when the note holder did not also hold the Mortgage.”

Thus, Hampton's claim to no one having a right to foreclose.

Furthermore, the Supreme Court of Virginia refused the petition for appeal on their "opinion there is no reversible error in the judgment complained of." The Court did not address any errors assigned other than the judgment complained of. Still further, upon the Petition for Rehearing, the prayer of the petition was denied, and the only court of Appeal beyond that State Supreme Court is rightfully in the hands of this Superior Court.

Further, beginning on pages 23-33, of Hampton's Petition, she had pled with "factual" evidence (exhibits) that drew a reasonable inference that the defendants were liable for the misconduct alleged, and **for Hampton's case not to be heard on the merits thereto is a clear violation of her rights to procedural due process.**

Hampton's Constitutional Rights are supported by the Jurisdictional Statement bridging pages 33 through 36. Clearly, this Superior Court has jurisdiction over Hampton's Appeal.

Petitioner in her "questions presented" and throughout her Petition is seeking "clarity and uniformity" and believes that this case, upon being heard, may aid in establishing the same.

Continuing here from page 40 of Hampton's Petition:

It would seem that in light of the bad practices of these servicers, including Fay on behalf of PROF/US Bank, uniform non-foreclosure rules should be developed to protect citizens nationwide from the unlawful taking of their homes in violation of their Constitutional rights and without due process. ... It is time for the courts to stand up to these TBTF banks and/or their servicers. The solution is always uniformity and clarity must be achieved. Perhaps the better solution would be to bar non-judicial foreclosures altogether until our faith in home ownership can be restored.

CONCLUSION

Once again, Petitioner respectfully request certiorari be granted for this Petition, in order that this Court may restore and protect citizens' Constitutional rights as they were created to be. I trust in God and this Superior Court.

The petition for a writ of certiorari should be granted.

Dated: September 25, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen C. Hampton". The signature is fluid and cursive, with the first name "Kathleen" being more prominent than the last name "Hampton".

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