

No.

SUPREME COURT OF THE UNITED STATES

PHILLIP T. THOMPSON

Plaintiff / Counter Defendant – Petitioner,

v.

BANK OF NEW YORK MELLON TRUST COMPANY, et al.

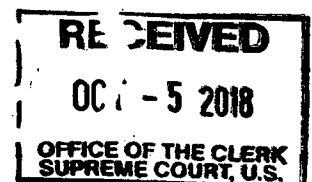
Defendants / Counter Claimants – Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO
EIGHTH CIRCUIT

No. 16-4157

**MOTION FOR CLERK TO FILE PETITION FOR WRIT OF
CERTIORARI OUT OF TIME**

Phillip Thompson, *pro se*
6115 Sandy Lane
Little Rock, AR 72204
(501) 952-8892



STATEMENT

Petitioner, Phillip Thompson, hereby request the Court to file his petition of writ certiorari out of time. This motion should be granted due to the district court and 8th Circuit's decisions directly contravenes *Carpenter v. Longan*, 83 U.S. 271, 274, 21 L.Ed 313 (1873), and creates a circuit split on the precedent set by this Court.

Petitioner had 90 days from the 8th circuit's denial of his en banc review on 06/21/2018, to file his petition of writ of certiorari. Therefore, Petitioner had until 09/19/2018 to file his petition of writ of certiorari in the U.S. Supreme Court. Due to miscalculation of time, petitioner sent his writ post marked on 09/21/2018. Petitioner begs the Court to file this writ, out of time for the reasons set forth below.

ARGUMENT

There is a reasonable probability this Court will grant certiorari because the 8th Circuit's answer to an important federal question-The Supreme Court has held that "[t]he note and mortgage are inseparable; the former as essential, the later as an incident. An assignment of the note carries the mortgage with it, while an assignment of the later alone is a nullity." *Carpenter v. Longan*, 83 U.S. 271, 274, 21 L.Ed 313 (1873). Moreover, in *National Live Stock Bank of Chicago v. First National Bank of Geneseo*, 203 U.S. 296, 306, 27 S.Ct. 79, 51 L.Ed. 192 (1906), the Supreme Court held that a mortgage has no separate existence from the note as it cannot survive the debt which the note represents.

In a *sworn* lost note affidavit, BONY stated as follows in regards to the transfer of Thompson's note and mortgage:

NOTE- Equifirst to Barclays Bank PLC to Sutton Funding LLC to BONY

MORTGAGE- Equifirst to Sutton Funding LLC to BONY

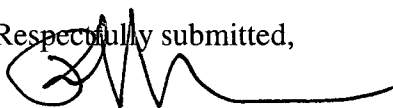
More disturbing and an injustice to the Petitioner is that the Respondent was awarded a summary judgment with this genuine issue of material fact. The District Court *never* ruled on this important issue, and the 8th Circuit affirmed with no written explanation. Furthermore the conflicting application of law set by this Court and other compelling conflicts of law of other District Court's set forth in this writ, Petitioner begs the Court to file his writ out of time to keep the precedent set forth by this Court consistent.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court to file his petition for a writ of certiorari out of time

Dated October 1, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'P. Thompson', written over a horizontal line.

Phillip Thompson

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**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 16-4157

Phillip T. Thompson

Plaintiff - Appellant

v.

Bank of New York Mellon Trust Company; Mortgage Electronic Registration Systems, Inc.;
Sutton Funding, LLC; Mickel Law Firm, PA

Defendants - Appellees

Sherry L. Morris; Arkansas Child Support Enforcement Unit; Arkansas Department of Finance
& Administration; Internal Revenue Service

Third Party Defendants - Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock
(4:13-cv-00120-KGB)

JUDGMENT

Before WOLLMAN, LOKEN and KELLY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

May 03, 2018

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Exhibit
A

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 16-4157

Phillip T. Thompson

Appellant

v.

Bank of New York Mellon Trust Company, et al.

Appellees

Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock
(4:13-cv-00120-KGB)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 21, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Exhibit
B

**Additional material
from this filing is
available in the
Clerk's Office.**