NO. 19-_____

In the Supreme Court of the United States

MULTIVENTAS Y SERVICIOS, INC., ET AL.,

Petitioners,

v.

ORIENTAL BANK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Puerto Rico

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In an action for collection of monies and foreclosure where the plaintiff is neither owner, nor holder, nor possessor of the promissory note, if the plaintiff lacks standing to sue?

2. If the plaintiff lacks standing, the Court lacks jurisdiction; if the Court lacks jurisdiction, the dismissal of the complaint is due because the case is not justiciable; in the absence thereof, if it is appropriate to provide relief from Judgment?

3. Is a plaintiff who has no standing in an action is subject to a jurisdictional dismissal since (i) courts have jurisdiction only over controversies that involve the plaintiff, (ii) a plaintiff found to lack "standing" is not involved in a controversy, and (iii) the courts therefore have no jurisdiction of the case when such plaintiff purports to bring it?

4. Whether, in accordance with Uniform Commercial Code (UCC) regulations, the plaintiff in an action for collection of monies and mortgage foreclosure can be the owner, holder or possessor of a promissory note (defined and regulated by UCC Section 3) that has been converted—along with other hundreds or thousands of promissory notes—into a new kind of instrument called *Securities* (defined and regulated by UCC Section 8) after the process of *Securitization*?

PARTIES TO THE PROCEEDINGS

Petitioners, Appellants and Defendants-Counterclaimants Below

- Multiventas y Servicios, Inc.
- Multiventas y Servicios P.R., Inc.
- Multi-Batteries & Forklifts, Corp.
- Awesome, Inc.
- Pedro Rivera Concepción
- María Mercedes Feliciano Caraballo and the Conjugal Partnership constituted by both

Respondent, Appellee and Plaintiff-Counterclaim Defendant Below

- Oriental Bank

CORPORATE DISCLOSURE STATEMENT

Multiventas y Servicios, Inc., Multiventas y Servicios P.R., Multi-Batteries & Forklifts, Corp., Awesome, Inc. are native corporations organized under the Commonwealth of Puerto Rico, and which have no parent company. None of the corporate petitioners is publicly traded, and no public corporation owns a 10% or greater stake in any of them.

LIST OF PROCEEDINGS

The proceedings before the Courts of the Commonwealth of Puerto Rico identified below are directly related to the above-captioned case before this Court.

Court in question: Supreme Court of the Commonwealth of Puerto Rico. *Case*: *Oriental Bank v. Multi-Ventas y Servicios, Inc., et. al.*, Case No. CC-2019-0839. *Entry of Judgment*: December 23, 2019–final judgment/order denying discretionary review of the Supreme Court of the Commonwealth of Puerto Rico (Resolution denying writ of certiorari, App.1a).

Court in question: Puerto Rico Court of Appeals. *Case*: *Oriental Bank v. Multi-Ventas y Servicios, Inc., et. al.*, Case No. KLAN-2019-00962. *Entry of Judgment*: September 16, 2019–final judgment of the Puerto Rico Court of Appeals (Judgment denying Appeal, App.10a).

Court in question: Puerto Rico Court of First Instance of Caguas. *Case*: *Oriental Bank v. Multi-Ventas y Servicios, Inc., et. al.*, Case No. ECD-2015-1017. *Entry of Judgment*: July 31, 2019–final judgment of the Puerto Rico Court of First Instance of Caguas (Resolution denying Motion for Relief from Judgment, App.20a).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Multiventas y Servicios, Inc.; Multiventas y Servicios P.R., Inc.; Multi-Batteries & Forklifts, Corp.; Awesome, Inc.; Pedro Rivera Concepción; María Mercedes Feliciano Caraballo and the Conjugal Partnership constituted by both, respectfully petition for a writ of certiorari to the Supreme Court of the Commonwealth of Puerto Rico.

OPINIONS AND ORDERS ENTERED IN THE CASE

The final judgement of the Supreme Court of Puerto Rico—Entry: December 23, 2019—was not reported, and a certified translation is set forth at App.1a (denying Writ of Certiorari in *Oriental Bank v. Multi-Ventas y Servicios, Inc., et. al.*, Case No. CC-2019-0839).

The final judgement of the Puerto Rico Court of Appeals—Entry: September 16, 2019—was not reported, and a certified translation is set forth at App.10a (denying Appeal in *Oriental Bank v. Multi-Ventas y Servicios, Inc., et. al.*, Case No. KLAN-2019-00962). *See also* order of the Puerto Rico Court of Appeals—Entry: October 8, 2019—which was not reported, and a certified translation is set forth at App.5a (denying petition for rehearing). The final judgment of the Puerto Rico Court of First Instance of Caguas—Entry: July 31, 2019—is unreported, and a certified translation is set forth at App.20a (Resolution denying Motion for

Relief from Judgment *Oriental Bank v. Multiventas y Servicios, Inc., et. al.*, Case No. ECD-2015-1017).

JURISDICTION

Pursuant Tittle 28 U.S.C. § 1258, final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court of the United States by writ of certiorari:

[i] where the validity of a treaty or statute of the United States is drawn in question; or

[ii] where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or

[iii] where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

This Court has jurisdiction pursuant to 28 U.S.C. § 1258 because the final judgment of the Supreme Court of the Commonwealth of Puerto Rico is contrary to Federal Laws and Regulations, is repugnant to the Constitution and is contrary to the rights claimed by petitioners under the Constitution of the United States.

The final judgment of the Puerto Rico Court of First Instance of Caguas, entry: July 31, 2019, denying Motion for Relief from Judgment (App.20a). The final

judgment of the Puerto Rico Court of Appeals, entry September 16, 2019, denied Appeal (App.10a). The order of the Puerto Rico Court of Appeals, entry October 8, 2019, denied petition for rehearing (App.5a). The final judgment of the Supreme Court of the Commonwealth of Puerto Rico, entry: December 23, 2019, denied writ of certiorari (App.1a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

All relevant constitutional and statutory provisions are in the appendix:

- U.S. Const. amend. XIV, § 1 (App.25a)
- U.C.C. § 3-104. Negotiable Instrument (App.25a)
- U.C.C. § 8-102(15). (App.27a)
  Definitions; Security
- U.C.C. § 8-103. (App.28a)
  Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets
- U.C.C. § 8-104. (App.29a)
  Acquisition of Security or Financial Asset or Interest Therein

INTRODUCTION

This case presents important national policy questions on the matter of Secondary Mortgage Market and its Securitization Process. More specifically, this

case provides the opportunity to the Supreme Court of the United States to calibrate, as accurately as possible, the adjustment handles of the Secondary Mortgage Market, which nourishes a considerable part of the Securities Market of the United States, so that the latter thrives and develops optimally for the benefit of future generations over the next centuries.

Moreover, this case will allow the Supreme Court of the United States to delimit, differentiate, rule, fill gaps and make the corresponding allocations—both for the securities holders, who invest their capital in the stock market; as for taxpayers since the United States Government, at their expense, pays exorbitant sums of money (massive bailout) in the rescue of large institutions [*i.e.* insurance companies (A.I.G.); GSE entities (FANNIE MAE); banks; investment bank (Goldman Sachs, Bear Stearns)] that link the Financial System, and whose failures unleash the level of uncertainty that precipitates the fall of the Market—so that wrong collateral damage and economic losses suffered by securities holders and taxpayers cease.

Precisely, we all lived during the Market downturn that occurred in the 2006-2008 biennium, where the securities holders lost their investments, savings, pensions, and the taxpayers were encumbered with a debt of 700 billion dollars.[1]

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[1] *See:* The Emergency Economic Stabilization Act of 2008 (700 Billion). *See*, in addition, the estimate of the Total Cost of the bailouts that have been paid by the federal government, over the past centuries, at the expense of taxpayers, to rescue the Financial System from its failures. The total cost is estimated at 29 Trillion Dollars. Felkerson, James (Dec. 2011) *$29,000,000,000,000: A Detailed Look at the Fed's Bailout by Funding Facility and Recipient,* SSRN Electronic Journal.

In the spheres of financial brokers of Wall Street, it was argued that the 2008 Global Financial Crisis was a product of the collapse of the real estate bubble in the United States in 2006, which caused approximately, in October of 2007, the so-called subprime mortgage crisis. However, these financial professionals leave their analysis in the immediate vicinity of the racks of the 2008 Crisis.

Unlike the notorious past crisis of the years 1792, 1857, 1907, 1929, where the Financial System was affected by endogenous failures (natural and typical of a developing system—with slight variations in the 1929 Crisis, due to the events that took place in England, which had an impact on the mood of investors in the New York Stock Exchange[2]), in the 2008 Crisis, the Financial System was affected by "exogenous failures" (pernicious actions of intervenors in the Secondary Mortgage Market). A Crisis like that of 2008 will not be repeated if the adjustment handles of the Secondary Mortgage Market are calibrated as detailed below.

It is worth clarifying that we are not implying that, now, the Financial System will come infallible; that the Stock Market will be exempt from the known economic cycles that are inherent in its nature; that the United States Stock Exchanges will never suffer another fall. We are not involving any of those scenarios. What we maintain is that, if the Supreme Court

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[2] When we refer to the Stock Exchange, we do it in a general and inclusive way regarding the 3 most important Stock Exchanges in the United States: National Association of Securities Dealers Automated Quotation (NASDAQ); New York Stock Exchange (NYSE); and American Stock Exchange (AMEX).

of the United States calibrates, with its guidelines, the adjustment handles of the Secondary Mortgage Market, then this Market will not affect the United States Stock Market again. Certainly, in the way it did in 2008, it was devastating and denigrating for the American Nation. We cannot allow such a scenario to be repeated. The future of the United States Stock Market would be jeopardized. The credibility in it would succumb. Its stratum would be degraded to a mere slot machine from any corner of Las Vegas.

At this historic moment (Year 2020), investors in the United States Stock Market and taxpayers of the American Nation need to see that the guidelines of the United States Supreme Court will protect their property rights from the pernicious actions of the intervenors in the Secondary Mortgage Market. Removing the actions of these intervenors entities will be of benefit and health for the Capitalist Economic System of the United States, with positive repercussions at the global level. What handles of the Secondary Mortgage Market need adjustment? They are several. Let's see in tight synthesis.

First, it is worth reviewing the following elements of the Secondary Market. Before, notice that the securities that are generated after the Secondary Market (Asset-Backed Securities (ABS)) are different securities than the other securities that are traded on the Stock Exchange (Corporate Securities). They are even different from the US Treasury securities (bonds, mortgage notes, bills). Let's see in more detail.

- Asset-backed securities are securities that are backed by a discrete pool of self-liquidating financial assets. Asset-backed securitization is a financing technique in which financial assets, in

many cases themselves less liquid, are pooled and converted into instruments that may be offered and sold in the capital markets.[3]

- In a basic securitization structure, an entity, often a financial institution and commonly known as a "sponsor," originates or otherwise acquires a pool of financial assets, such as mortgage loans, either directly or through an affiliate. It then sells the financial assets, again either directly or through an affiliate, to a specially created investment vehicle that issues securities "backed" or supported by those financial assets, which securities are "asset-backed securities." Payment on the asset-backed securities depends primarily on the cash flows generated by the assets in the underlying pool and other rights designed to assure timely payment, such as liquidity facilities, guarantees or other features generally known as credit enhancements.
- The structure of asset-backed securities is intended, among other things, to insulate ABS investors from the corporate credit risk of the sponsor that originated or acquired the financial assets.
- The ABS market is young and has rapidly become an important part of the U.S. capital markets. One source estimate that U.S. public non-agency ABS issuance grew from $46.8 billion in 1990 to $416 billion in 2003.[4] Another source estimates 2003

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[3] "Securitization" is a commonly used term to describe this financing technique, although other terms, such as "asset-backed financing," also are used.

[4] *See* Bank One Capital Markets, Inc., 2004 Structured Debt Yearbook.

new issuance closer to $800 billion.[5] ABS issuance is on pace to exceed corporate debt issuance in 2004.[6]

- While residential mortgages were the first financial assets to be securitized, non-mortgage related securitizations have grown to include many other types of financial assets, such as credit card receivables, auto loans and student loans.

- Asset-backed securities and ABS issuers differ from corporate securities and operating companies. In offering ABS, there is generally no business or management to describe. Instead, information about the transaction structure and the characteristics and quality of the asset pool is often what is most important to investors.

Just look at the increase in the volume of Asset-Backed Securities issues from 46.8 billion to 416 billion in just over a decade to conclude that we are facing financial assets that deserve constant calibration and regulation to prevent the Secondary Market from affect-

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[5] *See* Asset Securitization Report (pub. by Thomson Media Inc). *See also* Asset-Backed Alert (pub. by Harrison Scott Publications). The four primary asset classes currently securitized are residential mortgages, automobile receivables, credit card receivables and student loans, which represented approximately 52%, 19%, 16% and 9% of 2003 new issuance, respectively.

[6] *See*, *e.g.*, Jennifer Hughes and David Wells, *Asset-Backed Bonds Hit Record*, Financial Times, Nov. 11, 2004, at 17; Aaron Lucchetti, *Indebted Consumers Reshape the Bond Market–Betting on Americans' Ability To Pay Their Bills May Pose Risks If Interest Rates Move Higher*, Wall St. J., Sep. 14, 2004, at C1; and Christine Richard, *U.S. Asset-Backeds: No Slowdown As Consumers Borrow*, Dow Jones Capital Markets Report, Sep. 17, 2004. *See also* The Bond Market Association, Bond Market Research Quarterly, November 2004.

ing the Stock Market, as it did in 2008. During the lustrum before the Fall of 2008 (2000-2005), the need for specific and separate regulation of this type of securities (ABS) intensified. In the absence of controls in said Secondary Market, the RUSH FOR MORTGAGE NOTES was huge for that time.

Unfortunately, the formative documents for the issuance of the Asset-Backed Securities were inadequate to link the rights and obligations of the holders of the Asset-Backed Securities and the issuers of negotiable instruments (mortgage note).

Unlike the holders of the typical Securities of the companies (*i.e.* shares of Amazon, Coca Cola, Apple; bank shares of Wells Fargo, Bank of America, Citigroup) or Treasury Securities of the United States (*i.e.* Bonds, Letters, Mortgage notes), the holders of the atypical Securities called Asset-Backed Securities (*i.e.* Mortgage Backed Securities) DO NOT ACQUIRE THE OWNERSHIP of the security component asset: Mortgage Note. Due to this lack of ownership, the holder of an Asset-Backed Security lacks standing to bring a legal action against the issuers of the Mortgage Note in the event of default so that he can secure its investment in the Asset-Backed Securities. Thus, the intervenors are prevented from manipulating the loss of said securities.

In the contrary sense, the holder of a U.S. Treasury or Private Company, does have standing to bring legal action against said obligors to fulfill their obligations since the holder (Security Holder) is the owner of the company shares or bonds, bills or mortgage notes of the United States Treasury.

When the Secondary Mortgage Market designed the creation of its atypical Securities (Asset Backed-Securities), the Great Failure to dismantle, demarcate, separate the active security component (the Note) of security itself was incurred. Thus, the rights and obligations of the Asset run North; and the rights and obligations of the Securities run in the South direction.

In this Secondary Mortgage Market, true securities should be created. Properly, they should be Current Asset Securities (CAS or CA Securities) where the asset (Mortgage Note) becomes the security itself after the Securitization process, and the original contractual obligation of the issuer of the Negotiable Instrument (Mortgage Note) is assigned to the holder of the Current Asset Securities through the corresponding specific endorsement of the mortgage note (*i.e.* Pay to the Order: CA Security Holder John Smith (100%); or Pay to the Order: CA Security Holder John Smith (25%), Jim Crow (25%), Michelle Williams (25%), Mary Olsen (25%)) together with their Securities Conversion Certificate duly fixed/attached to the securitized mortgage note.

Thus, in the event of a breach of the payment obligation of the issuer of the Note, the CA Security Holder may recover its investment through the corresponding legal action against the Issuer of the Mortgage Note. To do this, he would have standing and would not see his investment lost. Neither third-party (pernicious intervenors) could claim from the insurance company (*i.e.* AIG) the payment of the multiple Credit Default Swap obtained from the same Negotiable Instrument securitized in the Secondary Market, which would entail the insolvency of the insurance company before a magnitude considerable of Toxic Negotiable

Instruments, and, consequently, forcing the public funds to be paid, at the expense of the taxpayers, to pay the Bail-Outs of the Too Big to Fail.

At present, the pernicious intervenors of the Secondary Mortgage Market, by untying the ownership of the Mortgage Note of the Asset-Backed Securities, can, on the one hand, cause the collapse of the Stock Market (placing Toxic Mortgage Notes), thereby canceling the payment of the Asset Backed Security performance and destroying its value; and, on the other hand, hog the old securitized notes improperly for the purpose of: (1) create new financial products (*i.e.* "CDO") to resell and collect more—(Re-Securitization); (2) sue debtors to collect money and execute mortgages—whose loans fell into "default" because of the disgraced economy that the pernicious intervenors caused because their abnormal gain diminishes the money supply in circulation, which leads, in turn, to a contraction of the economy—to hog, without any right, the properties that backed the mortgage notes. This, despite the fact that they already have collected the amount of money which specifies the mortgage note when they sold it in the Secondary Market and made a huge abnormal gain; (3) they sell loan lists to other types of investors, of a lower rank.

In the above-captioned case, the plaintiff (respondent) is neither owner nor holder nor holder of the securitized notes. Therefore, it lacked standing and, consequently, the judgement rendered in its favor is null and void *ab initio*. In addition, the defendants (petitioners) were deprived of their property without the Due Process of Law. The record of this case required the celebration of a Trial on the Merits.

STATEMENT OF THE CASE

Straight to the relevant point, in the above-captioned case, only in Appearance, the Court of First Instance was presented with a case for collection of monies and foreclosure where, in the complaint dated September 10, 2015, the plaintiff, on one hand, claimed to be the creditor of every mortgage and holder of each mortgage note listed in the complaint; and, on the other hand, it requested the foreclosure of each mortgage to collect its claim.

In Fact, in the above-captioned case, the Court of First Instance was not presented a justiciable case, since the plaintiff lacked standing when it filed the its complaint on September 10, 2015, because, in reality, it was neither the owner, nor the holder, nor the possessor of each aforementioned mortgage note; nor was he the creditor of each of these mortgages, because, previously (between the dates of: MARCH 5, 2003 and July 9, 2009), the ORIGINATOR (Eurobank) sold each aforementioned mortgage note on the secondary mortgage market, where they were subject to *Securitization* between the dates of: March 30, 2003 and July 15, 2009. [7],[8]

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[7] In a broader sense, *Securitization* means the process by which a set of original mortgage Notes is converted into a new legal entity called: securities. A known fact is that if an original Mortgage Note is converted-along with other hundreds or thousands-into Securities, then the original Mortgage Note is no longer a negotiable instrument, thus losing its original legal identity due to its conversion into a new kind of species: "*Securities*"–*Cf.* Chapter 2, Chapter 8 of the Law on Commercial Transactions of Puerto Rico, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*; Article

At the time of the sale of each Mortgage Note, *infra*, Prior to the filing of the complaint in the above-captioned case (September 10, 2015), the ORIGINATOR collected the amount of each aforementioned mortgage note by third-party payment.

3, Article 8 of the Uniform Commercial Code of the United States of America (App.25a, *et seq.*).

De facto, after the "securitization" process of a Mortgage Note, the "Debt Holders", "Note Holders" cease to exist given that their claim is duly satisfied through the sale of the mortgage Note on the Secondary Market and its eventual Securitization. After the Securitization process of the mortgage Notes and the issuance and sale of the Securities, the figure of the "Securities Holders" is birthed. These final investors at the end of the chain, acquired the "Securities". The resulting "Securities" are subject to the market risks. However, these "Securities Holders" ensure their investment through "CDS" ("Credit Default Swap") and charge the insured amount against the failure to pay the performance of the Securities.

8 It is worth noting that when the Mortgage Notes go through the securitization process-where the mass of these Mortgage Notes is generated (called "*Pool*") and result in securities-, these Mortgage Notes are withdrawn from circulation on the Market and, in physical terms, they are archived in a vault as documents constituting the *Pool* that precedes the securities resulting from the securitization process. In accordance with federal regulations, these resulting documents (the former mortgage Notes) are placed under the permanent custody of the designated "Master Documents Custodian" of the Secondary Market, from whose custody they cannot be removed. This custodian neither owns, nor is holder, nor is possessor of the Mortgage Notes subject to *Securitization*. This custody is imposed by federal regulations so that, on one hand, the securitized Mortgage Notes and the resulting securities do not coexist in circulation; and, on the other hand, to comply with the Federal Internal Revenue Code requirements, so that the taxable process of the *Trust* can allow the issuance of the resulting securities.

The third party (Secondary Market investor) who acquired it, paid the ORIGINATOR the amount of each mortgage note. In view of these facts, at the time the complaint was filed in the above-captioned case (September 10, 2015), the plaintiff was neither the owner, nor the holder, nor the possessor of the aforementioned mortgage note, nor was it the creditor for each mortgage, since the ORIGINATOR had previously sold each mortgage note, *infra*, on the Secondary Market, and each mortgage note was securetized—it went through the securitization process.

Therefore, the case filed by the plaintiff was not justiciable, given that the plaintiff lacked standing at because it was neither the owner, nor the holder, nor the possessor of each aforementioned mortgage note; nor was it a creditor of each mortgage and, in addition, each mortgage note was securitized. Thus, the Lower Court lacked jurisdiction to award the action for the collection of monies and foreclosure filed by the plaintiff. Hence, the judgment is null and void by issuing a ruling without jurisdiction. In view thereof, relief from the judgment must be granted.

On September 10, 2015, respondent filed complaint against the petitioners before the Puerto Rico Court of First Instance of Caguas (No. ECD-2015-1017) case for collection of monies and foreclosure (App.131a). The petitioners filed Answer to the complaint and Counterclaim (App.166a). A summary judgment entered (App. 270a), and the petitioners filed Motion for Suspension of Judgment (App.67a). The Court of First Instance of Caguas denied relief from judgment (Entry: July 31, 2019. App.20a).

Petitioners filed an appeal before Puerto Rico Court of Appeals. The Court of Appeals of Puerto Rico

denied the appeal (Entry: September 16, 2019. App. 10a). Petitioners filed a petition for writ of certiorari before the Supreme Court of the Commonwealth of Puerto Rico, where they claimed their constitutional right to a Due process of Law, the application of the Federal and State Law and Regulations, and their rights of property and liberty. App.30a. The Supreme Court of the Commonwealth of Puerto Rico denied the writ of certiorari (App.1a).

REASONS FOR GRANTING THE PETITION

I. IMPORTANT FEDERAL QUESTIONS HAVE NOT BEEN BUT SHOULD BE SETTLED BY THIS COURT ON THE MATTER OF SECURITIZATION (OWNERSHIP OF THE NOTE AFTER BEING SECURITIZED; SECURITIES HOLDERS RIGHTS AFTER SECURITIES BEING CRASHED; QUANTITY OF CREDIT DEFAULT SWAP ISSUE FOR THE SAME LOAN; DESTINATION OF THE FORECLOSURE BENEFIT WHEN THE SECURITIES MARKET CRASHES), STANDING OF A PLAINTIFF WHO IS NEITHER OWNER, NOR HOLDER, NOR POSSESSOR OF THE MORTGAGE NOTE—WHICH HAS BEEN SECURITIZED, IN OTHER WORDS, CONVERTED, TOGETHER WITH OTHER HUNDREDS OR THOUSANDS OF NOTES, INTO SOMETHING OF A NEW NATURE: "SECURITIES", AND LACK OF ALLOCATION, IN THE SECURITIES CERTIFICATES, THE ALIQUOT PART CORRESPONDING TO THE NOTE

As we detail in the introduction, the lack of adjustments in the regulations of the Secondary Mortgage Market leave us in a vacuum that contributes itself to many irregularities that affect the Economic System of the American Nation.

There is no guideline, nor does the Uniform Commercial Code regulates the changes that occur in obligations and contracts when mortgage notes are converted into Securities after the Securitization process. There is a legal massive hole there. Please note that after the conversion of the Mortgage Note into Securities, the entity that underlies it is the security and the Mortgage Note, in physical terms, it

is withdrawn from the circulation of the market and is filed in a drawer as a constituent, formative document (building blocks), and evidence that it existed to generate the securities.

Due to the absence of guideline, we have seen a hotbed of legal actions in the Courts of the United States and Puerto Rico where they are debated the ownership of the Mortgage Note after being securitized; the Securities Holders rights after securities being crashed; the Credit Default Swaps issues for the same loan; destination of the foreclosure benefit when the Securities Market Crashes. Moreover, the Standing of a plaintiff who is neither owner, nor holder, nor possessor of the Mortgage Note which have been securitized, in other words, converted, together with other hundreds of Notes, into something of new species: "*Securities*".

The problem lies in the formative documents for the issuance of the Asset-Backed Securities. They are inadequate to link the rights and obligations of the holders of the Asset-Backed Securities and the issuers of negotiable instruments (mortgage note). That Bridge between them must be created so that the Securities Holders have True standing to sue Note Issuers without affecting the Financial System or the Government having to recharge the taxpayers account when having to perform the Bail-Out.

This Supreme Court of the United States has the power to instantly build the bridge that is needed to solve the national problem. An opinion of this Supreme Court is enough, stating that the Securities Holders are the real parties with standing to sue the Note Issuers for a default of payment. Through this channel, the Secondary Market will be adjusted by

making the correct allocation, in the securities certificates, of the aliquot part of Note who will acquire the Securities Holders.

With regard to the standing to sue, the Supreme Court of the United States gave an illustration thereof, in the case of *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998), that "[s]tanding to sue is part of the common understanding of what it takes to make a justiciable case." Therefore, "standing is a 'jurisdictional requirement'", *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 179, 298 N.E.2d 515 (1973). In view of the foregoing, "the issue of standing, inasmuch as it is jurisdictional in nature, may be raised at any time during the pendency of the proceedings", *New Boston Coke Corp. v. Tyler*, 32 Ohio St.3d 216, 218, 513 N.E.2d 302 (1987). *See also: Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012 Ohio 5017, ¶ 22, 979 N.E.2d 1214.

In 1992, the Supreme Court of the United States established that "[b]ecause standing to sue is required to invoke the jurisdiction of the common pleas court, "standing is to be determined as of the commencement of suit.", *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-571, 112 S.Ct. 2130, 119 L.Ed.2d 351, fn. 5 (1992); *See also*: *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC)*, 528 U.S. 167, 180, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000); *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1154-1155 (10th Cir. 2005); *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1275 (11th Cir. 2003); *Perry v. Arlington Hts.*, 186 F.3d 826, 830 (7th Cir. 1999); *Carr v. Alta Verde Industries, Inc.*, 931 F.2d 1055, 1061 (5th Cir. 1991).

To be more specific, "[s]tanding is the legal right to set judicial machinery in motion", *Hiland v. Ives*, 28 Conn. Supp. 243, 245, 257 A.2d 822 (1966). Thus, "[t]he plaintiff must prove that it had standing to foreclose when the complaint was filed", *McLean v. JP Morgan Chase Bank Natl. Assn.*, 79 So.3d 170, 173 (Fla. App. 2012). *See also*: *Burley v. Douglas*, 26 So.3d 1013, 1019 (Miss. 2009), quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 571, 112 S.Ct. 2130, 119 L.Ed.2d 351, fn. 5 (1992); *Deutsche Bank Nat'l Trust Co. v. Mitchell*, 422 N.J. Super. 214, 224, 27 A.3d 1229 (App. Div. 2011). *See also: McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 2011 Fla. App. LEXIS 19931, 36 Fla. L. Weekly D2728a (Fla. 4th DCA Dec. 14, 2011); *Taylor v. Deutsche Bank Nat'l Trust Co.*, 44 So.3d 618 (Fla. 5th DCA 2010).

In *Saratoga County Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.2d 801, 812, 798 N.E.2d 1047, 766 N.Y.S.2d 654 (2003), *cert denied* 540 U.S. 1017, 124 S.Ct. 570, 157 L.Ed.2d 430 (2003), it was ruled that "standing to sue is critical to the proper functioning of the judicial system. It is a threshold issue. If standing is denied, the pathway to the courthouse is blocked. The plaintiff who has standing, however, may cross the threshold and seek judicial redress."

In *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012 Ohio 5017, 979 N.E.2d 1214, the Supreme Court of Ohio ruled that "a plaintiff in a foreclosure action must have standing at the time it files the complaint in order to invoke the jurisdiction of the court". *Schwartzwald* at ¶ 41-42. *See also*: *In re 2007 Administration of Appropriations of Water of the Niobrara*, 278 Neb. 137, 145, 768 N.W.2d 420 (2009); *Country Place Cmty. Ass'n v. J.P. Morgan Mortg.*

Acquisition Corp., 51 So.3d 1176, 1179 (Fla. 2d DCA 2010). "Standing to sue is jurisdictional in nature as it concerns a party's capacity to invoke the jurisdiction of the court, and, therefore, whether a party has standing is evaluated at the time of the filing of the complaint." *Id.* at ¶ 24.

It is clear that "[i]n a mortgage foreclosure action, a plaintiff has standing where it is both the holder and assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced." *Homecomings Fin., LLC v. Guldi*, 108 A.D.3d 506, 507-508, 969 N.Y.S.2d 470 (2nd Dept. 2013), quoting: *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 279, 926 N.Y.S.2d 532 (2nd Dept. 2011); *See also*: *Bank of N.Y. Mellon Trust Co. NA v. Sachar*, 95 A.D.3d 695, 695, 943 N.Y.S.2d 893 (1st Dept. 2012); *US Bank N.A. v. Cange*, 96 A.D.3d 825, 826, 947 N.Y.S.2d 522 [2d Dept. 2012]; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d at 753-754 [2009]; *Countrywide Home Loans, Inc. v. Gress*, 68 A.D.3d 709, 888 N.Y.S.2d 914 [2d Dept. 2009]); *HSBC Bank USA v. Hernandez*, 92 A.D.3d 843, 843, 939 N.Y.S.2d 120; *Aurora Loan Servs., LLC v. Taylor*, 114 A.D.3d 627, 980 N.Y.S.2d 475 [2d Dept. 2014]; *Deutsche Bank Natl. Trust Co. v. Whalen*, 107 A.D.3d 931, 932, 969 N.Y.S.2d 82 [2d Dept. 2013].

Thus, "[a] plaintiff has standing to maintain the action only where the plaintiff is the proper assignee of the mortgage and the underlying note at the time the foreclosure action was commenced". *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 [2d Dept. 2009]; *Federal Natl. Mtge. Assn. v. Youkelsone*, 303 A.D.2d 546, 755 N.Y.S.2d 730 [2d Dept. 2003]; *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204,

887 N.Y.S.2d 615 [2d Dept. 2009]; *First Trust Nat'l Ass'n v. Meisels*, 234 A.D.2d 414, 651 N.Y.S.2d 121 [2d Dept. 1996]). "A party cannot foreclose on a mortgage without having title, giving it standing to bring the action". *See: Kluge v. Fugazy*, 145 A.D.2d 537, 538, 536 N.Y.S.2d 92 [2nd Dept. 1988].

In an action for collection of monies and foreclosure, the plaintiff has standing to sue when "it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced." *See: Mortgage Elec. Registration Sys., Inc. v. Coakley*, 41 A.D.3d 674, 838 N.Y.S.2d 622 [2007]; *Federal Natl. Mtge. Assn. v. Youkelsone*, 303 A.D.2d 546, 546-547, 755 N.Y.S.2d 730 [2003]; *First Trust Natl. Assn. v. Meisels*, 234 A.D.2d 414, 651 N.Y.S.2d 121 [1996]); *HSBC Bank USA v. Hernandez*, 92 A.D.3d 843, 939 N.Y.S.2d 120 [2d Dept. 2012]; *U.S. Bank, NA v. Collymore*, 68 A.D.3d at 753; *Countrywide Home Loans, Inc. v. Gress*, 68 A.D.3d 709, 888 N.Y.S.2d 914 [2d Dept. 2009]. *Denaro*, 98 A.D.3d at 964; *Dellarmo*, 94 A.D.3d at 748; *Bank of New York*, 86 A.D.3d at 279; *Collymore*, 68 A.D.3d at 753; *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 207, 887 N.Y.S.2d 615 [2d Dept. 2009]; *Bank of New York v. Silverberg*, 86 A.D.3d 274, 279, 926 N.Y.S.2d 532 [2d Dept. 2011]; *Aurora Loan Servs., LLC v. Weisblum*, 85 A.D.3d 95, 108, 923 N.Y.S.2d 609 [2d Dept. 2011].

Thus, "[t]o have standing to foreclose, it must be demonstrated that the plaintiff holds the note and mortgage in question." *Mazine v. M & I Bank*, 67 So.3d 1129, 1132 (Fla. 1st DCA 2011); *See also*: *BAC Funding Consortium, Inc. v. Jean-Jacques*, 28 So.3d 936, 938 (Fla. 2d DCA 2010). The plaintiff must have

the requisite standing when the foreclosure complaint is filed. *See*, *Rigby v. Wells Fargo Bank, N.A.*, 84 So.3d 1195, 1196 (Fla. 4th DCA 2012) (quoting: *Venture Holdings & Acquisitions Grp., LLC v. A.I.M. Funding Grp., LLC*, 75 So.3d 773, 776 (Fla. 4th DCA 2011)). "It is axiomatic that plaintiff has standing to sue if it was the lawful holder of the note and mortgage when the action was commenced". *Mortgage Electronic Registration Systems, Inc. v. Coakley*, 41 A.D.3d 674, 838 N.Y.S.2d 622 (2nd Dept. 2007).

"A plaintiff seeking foreclosure must establish that it was the owner or holder of the note and mortgage at the time that it commenced the foreclosure action". *See: Mortgage Elec. Registration Sys. v. Coakley*, 41 A.D.3d 674, 838 N.Y.S.2d 622 [2nd Dept. 2007]; *Federal Natl. Mtge. Assn. v. Youkelsone*, 303 A.D.2d 546, 755 N.Y.S.2d 730 [2nd Dept. 2003]; *See also*: *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 887 N.Y.S.2d 615 [2nd Dept. 2009].

The decision in *Bank of New York v. Silverberg,* 86 A.D.3d at 280, (2nd Dept. 2011) upheld that: "a plaintiff does not have standing to bring a foreclosure action if does not own the note. In *Kluge v. Fugazy et al.*, 145 A.D.2d 537; 536 N.Y.S.2d 92 (N.Y. 1988), it was ruled that: "foreclosure of a mortgage may not be brought by one who has no title to it and absent transfer of the debt, the assignment of the mortgage is a nullity [Emphasis added]. Essentially, Kluge's decision found that, due to the fact that the plaintiff was not the holder of each mortgage note and the assignee of the mortgage, it lacked standing to file the action for collection and foreclosure. *See also*: *Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 637, 931 N.Y.S.2d 630; *Bank of NY v. Silverberg*,

86 A.D.3d 274, 926 N.Y.S.2d 532; *Campaign v. Barba*, 23 A.D.3d 327, 805 N.Y.S.2d 86 [2d Dept. 2005].

In *Carpenter v. Longan*, 83 U.S. 271, 274, 21 L.Ed 313 [1873], the Supreme Court of the United States ruled that: "an assignment of the mortgage without the note is a nullity". "[O]wnership of the note is part of a Plaintiff's prima facie case and its burden of proof" *Wells Fargo Bank, N.A., v. Cohen*, 80 A.D.3d 753, 915 N.Y.S.2d 569 (2d Dept. 2011); *Argent Mtge. Co., LLC v. Mentesana*, 79 A.D.3d 1079, 915 N.Y.S.2d 591 (2d Dept. 2010); *Campaign v. Barba*, 23 A.D.3d 327, 805 N.Y.S.2d 86 (2nd Dept. 2005).

In *Deutsche Bank National Trust v. Brumbaugh*, 2012 OK 3, 270 P.3d 151, ¶ 11, it was ruled that: [t]o commence a foreclosure action, a plaintiff must demonstrate it has a right to enforce the note and, absent a showing of ownership, the plaintiff lacks standing. *See: Gill v. First Nat. Bank & Trust Co. of Oklahoma City*, 1945 OK 181, 195 Okla. 607, 159 P.2d 717.

Thus, "[t]he party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action." *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010). "To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage and note". *Household Fin. Realty Corp. of N.Y. v. Winn*, 19 A.D.3d 545, 796 N.Y.S.2d 533 [2005]; *Sears Mtge. Corp. v. Yaghobi*, 19 A.D.3d 402, 796 N.Y.S.2d 392 [2005]; *Ocwen Fed. Bank FSB v. Miller*, 18 A.D.3d 527, 794 N.Y.S.2d 650 [2005]; *U.S. Bank Trust N.A. Trustee v. Butti*, 16 A.D.3d 408, 792 N.Y.S.2d 505 [2005]). *First Union Mortgage Corp. v. Fern*, 298 A.D.2d 490, 749 N.Y.S.2d

42 [2d Dept. 2002]; *Village Bank v. Wild Oaks, Holding, Inc.*, 196 A.D.2d 812, 601 N.Y.S.2d 940 [2d Dept. 1993]).

Now then, "[w]here standing is put into issue by a defendant's answer, a plaintiff must prove its standing if it is to be entitled to relief. Standing is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation". *See: Wells Fargo Bank Minnesota National Association*, 42 A.D.3d 239, 837 N.Y.S.2d 247 [2nd Dept. 2007]. "If plaintiff lacks standing to sue, the plaintiff may not proceed in the action", *Deutsche Bank National Trust Company, et al. v. Campbell et al.*, 21 Misc. 3d 1145[A], 875 N.Y.S.2d 819, 2008 NY Slip Op 52506[U] [Supreme Court of New York, Kings County 2008].

Where standing is raised as a defense by the defendant, the plaintiff is required to prove its standing before it may be determined whether the plaintiff is entitled to relief. *See: U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 753, 890 N.Y.S.2d 578 [2d Dept. 2009]. Said in other terms: "Where a defendant raises the issue of standing, the plaintiff must prove its standing to be entitled to relief." (*U.S. Bank, N.A. v. Dellarmo*, 94 A.D.3d 746, 748, 942 N.Y.S.2d 122 [2d Dept. 2012]; *U.S. Bank, N.A. v. Sharif*, 89 A.D.3d 723, 724, 933 N.Y.S.2d 293 [2d Dept. 2011]; *Bank of New York v. Silverberg*, 86 A.D.3d 274, 279, 926 N.Y.S.2d 532 [2d Dept. 2011]; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 753, 890 N.Y.S.2d 578 [2d Dept. 2009].)

"The party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action. *Verizzo v. Bank of N.Y.*, 28 So.3d 976, 978 (Fla. 2d DCA 2010); *Philogene v. ABN Amro Mortgage Group Inc.*, 948 So.2d 45, 46 (Fla. 4th DCA 2006); *Lizio v.*

McCullom, 36 So.3d 927, 929 (Fla. 4th DCA 2010). As we have pointed out before: "[a] party must have the note and the mortgage in order to demonstrate standing". *See: Richards*, 189 Ohio App.3d 276, 2010 Ohio 3981, at ¶ 13, 938 N.E.2d 74; *Losantiville Holdings L.L.C. v. Kashanian*, 1st Dist. Hamilton No. C-110865, 2012 Ohio 3435, ¶ 17; *Arch Bay Holdings, L.L.C. v. Brown*, 2d Dist. Montgomery No. 25073, 2012 Ohio 4966, ¶ 16; *U.S. Bank Natl. Assn. v. Marcino*, 181 Ohio App.3d 328, 2009 Ohio 1178, ¶ 32, 908 N.E.2d 1032 (7th Dist.); *Rowland*, 2008 Ohio 1282, at ¶ 12.

To be more specific, the lack of standing cannot be remedied after the filing of the complaint. Along these lines: "[i]f, at the commencement of the action, a plaintiff does not have standing to invoke the court's jurisdiction, the plaintiff cannot "cure the lack of standing by [subsequently] obtaining an interest in the subject of the litigation and substituting itself as the real party in interest". *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, Slip Opinion No. 134 Ohio St.3d 13, 2012 Ohio 5017, 979 N.E.2d 1214.

Thus, "a retroactive assignment cannot be used to confer standing upon the assignee in a foreclosure action commenced prior to the execution of an assignment." *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 210, 887 N.Y.S.2d 615 [2d Dept. 2009].

In other words, "the plaintiff's lack of standing at the inception of the case is not a defect that may be cured by the acquisition of standing after the case is filed." *Progressive Exp. Ins. Co. v. McGrath Comty. Chiropractic*, 913 So.2d 1281, 1286 (Fla. 2d DCA 2005). "Thus, a party is not permitted to establish the right to maintain an action retroactively by acquiring standing to file a lawsuit after the fact". *Id.* at 1286.

Thus, "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. These risks provide makers with a recognizable interest in demanding proof of the CHAIN OF TITLE." *Adams v. Madison Realty & Development, Inc.* (C.A.3, 1988), 853 F.2d 163, 168.

"Standing is a threshold question for the court to decide in order for it to proceed to adjudicate the action." *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 77, 1998 Ohio 275, 701 N.E.2d 1002.

Even without opposition, a plaintiff in a foreclosure action must satisfy a court that it has proper standing or title to bring the action, that the mortgage and note was actually funded by the plaintiff, and that the transaction itself, the one sued upon, has the indicia of reliability and is free of fraud. *Kluge v. Fugazy*, 145 A.D.2d 537, 536 N.Y.S.2d 92 (2nd Dept. 1988); *Katz v. East-Ville Realty Co*, 249 A.D.2d 243, 672 N.Y.S.2d 308 (1st Dept. 1998).

A plaintiff who has no standing in an action is subject to a jurisdictional dismissal since (1) courts have jurisdiction only over controversies that involve the plaintiff, (2) a plaintiff found to lack "standing is not involved in a controversy, and (3) the courts therefore have no jurisdiction of the case when such plaintiff purports to bring it." *Security Pac. Natl. Bank v. Evans*, 31 A.D.3d 278, 820 N.Y.S.2d 2.

In *U.S. Bank National Association v. Antonio Ibañez*, 941 N.E.2d 40 (Mass, 2011), it was ruled that:

the plaintiffs did not demonstrate that they were the holders of the Ibanez and LaRace mortgages at the time that they foreclosed these properties, and therefore the trial court ruled the foreclosure sales were invalid.

Prior to this, we should note that, in Spain, a new financial field in matters of mortgage note securitization, if we compare it with the United States, its Courts have already suspended foreclosures and order the dismissal of the claim for collection of monies and foreclosure, the foregoing, in cases where there is proof that the mortgage note has been securitized (referred to in the United States as *Securitization*). To the extent even, that the Courts of Spain have declared the nullity of judgments for collection of monies and foreclosure in cases where, in the action for nullity of judgment, there is a demonstration that the mortgage note has been securitized.

Three essential elements are extracted from the conclusions of law on the aforesaid decisions at federal level, which apply to the case under discussion. These elements are: (1) "[a] crucial element in any mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose."; (2) "the party seeking foreclosure must demonstrate that it owns and holds the note and mortgage in question—otherwise, the plaintiff lacks standing to foreclose"; (3) "[a] plaintiff seeking foreclosure in a mortgage proceeding must establish that it had standing to foreclose at the time it filed suit".

II. THE COURT BELOW COMMITTED AN ERROR SO IMPORTANT THAT IT MUST BE CORRECTED IMMEDIATELY. ITS DECISION: HAS DIRECTLY AFFECTED THE LIBERTIES AND PROPERTIES OF THE PETITIONERS WITHOUT DUE PROCESS OF LAW

In the above-captioned case, the plaintiff (respondent) is neither owner nor holder nor holder of the securitized notes. Therefore, it lacked standing and, consequently, the judgement rendered in its favor is null and void *ab initio*. In addition, the defendants (petitioners) were deprived of their property without the Due Process of Law. The record of this case required the celebration of a Trial on the Merits.

Both, the Fifth Amendment (limiting the federal government) and the Fourteenth Amendment (limiting state and local governments) respectively, provide that neither the United States nor state governments shall deprive any person "of life, liberty, or property without due process of law."[9] The Due Process Clause, is invoked to resolve a huge variety of legal disputes, ranging from a public utility terminating a customer's electric service, *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1 (1978), to a high school student's suspension from classes, *Goss v. Lopez,* 419 U.S. 565 (1975), to the jail conditions for pretrial detainees, *Bell v. Wolfish*, 441 U.S. 520 (1979), to the right to use contraceptives, *Griswold v. Connecticut*, 381 U.S. 479 (1965), to the incorporation doctrine, *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and much more.

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9 "No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . " *See* U.S.C.A. Const. Amend. XIV, § 1 "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . " *See* U.S.C.A. Const. Art. V.

Due Process covers a huge territory because at its root, due process is about fairness: treating people right, following the rule of law, avoiding arbitrariness and injustice.[10] Consequently, due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government, outside the sanction of law.

Over a century ago, the Supreme Court declared that Due Process "is a restraint on the legislative as well as on the executive and judicial powers of the government . . . " *See Murray's Lessee v. Hoboken Land & Improv. Co.*, 59 U.S. 272 (1856); and *Hurtado v. California*, 110 U.S. 516 (1884). That's why; "the actions of state courts and judicial officers in their official capacities is to be regarded as action of the state within the meaning of the 14 amendment." *See Shelley v. Kraemer*, 334 U.S. 1 (1948). The previous; is important since "[. . .]there is no federal due process protection without a state actor[. . .]" *Boley v. Brown,* 10 F.3d 218 (1993). Since Due Process is triggered when the government "deprives" a person of something that constitute a life, liberty or property interest, at the outset, this means that Due Process claims has a state action requirement.

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty

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10 Aaron H. Caplan. (2018). *An Integrated Approach to Constitutional Law; Second Edition*. Ed.: West Academic Publishing, U.S. Page 858.

and property. When protected interests are implicated, the right to some kind of prior hearing is paramount."[11]

Although due process tolerates variances in procedure "appropriate to the nature of the case," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950), it is nonetheless possible to identify its core goals and requirements. First, "procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978)[12]. Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972)[13].

In short, Procedural Due Process can be broken down into three basic questions: (1) has there been a deprivation? (2) of life, liberty or property? (3) without

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11 *Id.*

12 *Carey v. Piphus*, 435 U.S. 247, 259 (1978). "[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases." *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).

13 At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. *Carey v. Piphus*, 435 U.S. 247, 266–67 (1978); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Nelson v. Adams*, 529 U.S. 460 (2000) (amendment of judgement to impose attorney fees and costs to sole shareholder of liable corporate structure invalid without notice or opportunity to dispute).

due process of law?[14]. Now, "Once it is determined that the Due Process Clause applies, "the question remains [is] what process is due." *Morrissey v. Brewer,* 408 U.S. 471 (1972)."[15]

In the above-captioned case, the record shows that the celebration of a Trial on the Merits is the process that is still due.

CONCLUSION

On one hand, a crucial element in actions for collection and foreclosure is that the plaintiff must prove that it has standing to sue. To achieve this, it must prove that it is the owner, holder, and possessor of the mortgage note and is mortgage creditor in question. Otherwise, the plaintiff lacks standing to sue for collection and foreclosure. In addition, the plaintiff must establish that it has standing at the time of filing its complaint.

Based on the expert evidence in the proceedings, it has been inexorably proven that, on the filing date of the complaint in the above-captioned case, the plaintiff was neither the owner, nor the holder, nor the possessor of each aforementioned mortgage note; nor, was it the creditor of each mortgage because, prior to the date of filing of the complaint, the originator sold each

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14 Chemerinsky. (2015). Constitutional Law; Principles and Policies. Fifth Edition. Ed.: Wolters Kluwer, U.S.

15 *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985); quoting *Morrissey v. Brewer*, 408 U.S. 471 (1972).

mortgage note on the Secondary Mortgage Market, and they were securitized.

In view of these facts, the case under discussion suffered from lack of justiciability due to the plaintiff's lack of standing to sue, because it was neither the owner, nor the holder, nor the possessor of each aforementioned mortgage note; neither was it a creditor of each mortgage at the time of filing its complaint. without jurisdiction, due to the plaintiff's lack of standing to sue, this Court of First Instance issued a judgment which ruled in favor of the action for collection and foreclosure filed by the plaintiff. Based on the foregoing, the above judgment is null and void. In view of the nullity of the judgment, it is appropriate to relieve the same.

On the other hand, there is no guideline, nor the Uniform Commercial Code regulates the changes that occur in obligations and contracts when mortgage notes are converted into Securities after the Securitization process. There is a legal massive hole there. Due to the absence of guideline, we can see a hotbed of legal actions in the Courts of the United States and Puerto Rico where they are debated the ownership of the Mortgage Note after being securitized; the Securities Holders rights after securities being crashed; the Credit Default Swaps issues for the same loan; destination of the foreclosure benefit when the Securities Market Crashes. Moreover, the Standing of a plaintiff who is neither owner, nor holder, nor possessor of the Mortgage Note which have been securitized, in other words, converted, together with other hundreds of Notes, into something of new species: "*Securities*".

The problem lies in the formative documents for the issuance of the Asset-Backed Securities. They are

inadequate to link the rights and obligations of the holders of the Asset-Backed Securities and the issuers of negotiable instruments (mortgage note). That Bridge between them must be created so that the Securities Holders have True standing to sue Note Issuers without affecting the Financial System or the Government having to recharge the taxpayers account when having to perform the Bail-Out.

This Supreme Court of the United States has the power to instantly build the bridge that is needed to solve the national problem. An opinion of this Supreme Court is enough, stating that the Securities Holders are the real parties with standing to sue the Note Issuers for a default of payment. Through this channel, the Secondary Market will be adjusted by making the correct allocation, in the securities certificates, of the aliquot part of Note who will acquire the Securities Holders.

The petitioners respectfully request that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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