APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Resolution of the Supreme Court of Puerto Rico (Entry: December 23, 2019) 1a

Resolution of the Court of Appeals of Puerto Rico (Entry: October 8, 2019) 5a

Judgement of the Court of Appeals of Puerto Rico (Entry: September 16, 2019) 10a

Resolution and Order of the Court of First Instance Superior Court of Caguas, Puerto Rico (Entry: July 31, 2019) 20a

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional and Statutory Provisions Involved 25a

OTHER DOCUMENTS

Petition for Writ of Certiorari filed in Puerto Rico Supreme Court (Entry: November 5, 2019) 30a

Motion for Suspension of Judgment (Entry: January 21, 2019) 67a

Complaint filed in the Court of First Instance Superior Court of Caguas (Entry: September 10, 2015) 131a

Answer to the Complaint and Amended Counterclaim (Entry: August 10, 2017) 166a

APPENDIX TABLE OF CONTENTS (Cont.)

Judgment of Court of First Instance Superior Court of Caguas, Puerto Rico (Entry: July 30, 2018)..... 270a

Motion for Reconsideration and Request for Initial and/or Additional Findings of Fact and Conclusions of Law (Entry: August 14, 2018)..... 322a

RESOLUTION OF THE
SUPREME COURT OF PUERTO RICO
(ENTRY: DECEMBER 23, 2019)

NoReply@ramajudi-cial.pr <NoReply@ramajudi-cial.pr>

To: mongelafosselaw@gmail.com

23 December 2019 at 15:16 p.m.

THE COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

ORIENTAL BANK,

Respondent,

v.

MULTIVENTAS Y SERVICIOS, INC. ET AL.,

Petitioner.

Case Number: CC-2019-0839

Original: E CD2015-1017

Appeals: KLAN201900962

Collection of Monies

Civil Action or Crime

angel ramon zayas febres, esq

zayasfebreslaw@gmail.com

Notice

I CERTIFY THAT RELATION TO PETITION FOR CERTIORARI THE COURT ISSUED A RESOLUTION WHICH IS ATTACHED

Click here to access the electronic document to which this notice refers. The document will be available through this link for 45 days from the time the notice was filed in the case record.

Alfredo Fernández Martínez, Esq.
afernandez@delgadofernandez.com

Pedro Antonio Hernández Freire, Esq.
phernandez@delgadofernandez.com

IN SAN JUAN, PUERTO RICO, ON DECEMBER 23, 2019

Sonnya Isabel Ramos Zeno
Acting Supreme Court Clerk

P.P.: /s/ Rosalia Pabón Rivera
Deputy Clerk

IN THE SUPREME COURT OF PUERTO RICO

ORIENTAL BANK,

Respondent,

v.

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,

Petitioners.

No. CC-2019-0839

Panel composed of Associate Justice Martínez Torres as President, and Associate Justices Rivera García and Colón Pérez.

RESOLUTION

In San Juan, Puerto Rico, on December 20, 2019.

After review of the Petition for Certiorari filed in the instant case, said petition is denied.

So determined by the Court and certified by the Acting Supreme Court Clerk.

/s/ Sonnya Isabel Ramos Zeno
Acting Supreme Court Clerk

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP A

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of Three (3) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is an Electronic notice and a Resolution (Re: Certiorari) in Commonwealth of Puerto Rico Certiorari Case No. CC-2019-0839.

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

RESOLUTION OF THE
COURT OF APPEALS OF PUERTO RICO
(ENTRY: OCTOBER 8, 2019)

NoReply@ramajudi-cial.pr <NoReply@ramajudi-cial.pr>

To: mongelafosselaw@gmail.com

8 October 2019 at 16:38 p.m.

THE COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
CAGUAS JUDICIAL REGION

ORIENTAL BANK,

v.

MULTIVENTAS Y SERVICIOS, INC.

Case Number: KLAN201900962

Re: Civil Appeal

Notice

To: Angel Ramon Zayas Febres, Esq.
zayasfebreslaw@gmail.com

Alfredo Fernández Martínez, Esq.
afernandez@delgadofernandez.com

Pedro Antonio Hernández Freire, Esq.
phernandez@delgadofernandez.com

General Clerk, Caguas (Deputy)
Caguas Judicial Center
PO Box 491 Caguas PR 00726

THE UNDERSIGNED CLERK CERTIFIES AND NOTIFIES YOU THAT IN RELATION TO THE: MOTION FOR RECONSIDERATION-OCTOBER 1, 2019

THIS COURT ISSUED A RESOLUTION IN RECONSIDERATION ON OCTOBER 8, 2019, OF WHICH A COPY IS ATTACHED OR FOR WHICH A LINK IS PROVIDED:

Click here to access the electronic document to which this notice refers. The document will be available through this link for 45 days from the time the notice was filed in the case record.

YOU ARE ADVISED THAT SINCE YOU ARE A PARTY OR THE LEGAL REPRESENTATIVE THEREOF IN THE CASE SUBJECT TO THIS RESOLUTION IN RECONSIDERATION, WITH RESPECT TO WHICH AN APPEAL OR PETITION FOR CERTIORARI MAY BE FILED, IN ACCORDANCE WITH THE PROCEDURE AND THE TIME PERIOD ESTABLISHED BY LAW, RULE OR REGULATION, I SEND THIS NOTICE TO YOU.

I FURTHER CERTIFY THAT TODAY I SENT COPIES OF THIS NOTICE TO THE INDIVIDUALS INDICATED ABOVE, TO THEIR ADDRESSES OF RECORD IN THE CASE, IN ACCORDANCE WITH APPLICABLE REGULATIONS. ON THIS SAME DATE, A COPY OF THIS NOTICE WAS FILED IN THE CASE RECORD.

IN SAN JUAN, PUERTO RICO, ON OCTOBER 8, 2019

Lilia M. Oquendo Solis
Name of the Clerk of the
Court of Appeals

P.P.: /s/ Enibeth Garcia Rivera
Name and Signature of the
Deputy Clerk of the Court

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
PANEL I

ORIENTAL BANK,

Respondent,

v.

MULTIVENTAS Y SERVICIOS, INC., ET AL.,

Petitioners.

No. KLAN201900962

Case No. E CD2015-1017

Re: Collection of Monies and Mortgage Foreclosure

Appeal emanating from the Court of First Instance, Court of Caguas

Panel composed of its presiding judge, Judge Ramírez Nazario, Judge Candelaria Rosa and Judge Cancio Bigas.

RESOLUTION

In San Juan, Puerto Rico, on October 8, 2019.

After review of the *Motion for Reconsideration* filed by the appellants on October 1, 2019, said motion is DENIED.

So determined by the Court and certified by the Court of Appeals.

/s/ Lilia M. Oquendo Solís
Clerk of the Court of Appeals

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP B

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of Three (3) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is an Electronic notice (Re: Civil Appeal) and a Resolution (Re: Collection of Monies and Mortgage Foreclosure) in Commonwealth of Puerto Rico Appellate Case No. KLAN201900962/ Civil Case No. E CD2015-1017.

In Cambridge, Massachusetts, on January 17, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

JUDGEMENT OF THE COURT OF APPEALS OF PUERTO RICO (ENTRY: SEPTEMBER 16, 2019)

NoReply@ramajudi-cial.pr <NoReply@ramajudi-cial.pr>

To: mongelafosselaw@gmail.com

16 September 2019 at 11:56 a.m.

THE COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF APPEALS
CAGUAS JUDICIAL REGION

ORIENTAL BANK,

v.

MULTIVENTAS Y SERVICIOS, INC.

Case Number: KLAN201900962

Re: Civil Appeal

Notice

To: Angel Ramon Zayas Febres, Esq
zayasfebreslaw@gmail.com

Alfredo Fernández Martínez, Esq.
afernandez@delgadofernandez.com

Pedro Antonio Hernández Freire, Esq.
phernandez@delgadofernandez.com

General Clerk, Caguas (Deputy)
Caguas Judicial Center
PO Box 491 Caguas PR 00726

THE UNDERSIGNED CLERK CERTIFIES AND NOTIFIES YOU THAT IN RELATION TO THE: APPEAL-AUGUST 27, 2019 THIS COURT ISSUED A FINAL RESOLUTION ON SEPTEMBER 16, 2019, OF WHICH A COPY IS ATTACHED OR FOR WHICH A LINK IS PROVIDED:

Click here to access the electronic document to which this notice refers. The document will be available through this link for 45 days from the time the notice was filed in the case record.

YOU ARE ADVISED THAT SINCE YOU ARE A PARTY OR THE LEGAL REPRESENTATIVE THEREOF IN THE CASE SUBJECT TO THIS RESOLUTION IN RECONSIDERATION, WITH RESPECT TO WHICH AN APPEAL OR PETITION FOR CERTIORARI MAY BE FILED, IN ACCORDANCE WITH THE PROCEDURE AND THE TIME PERIOD ESTABLISHED BY LAW, RULE OR REGULATION, I SEND THIS NOTICE TO YOU.

I FURTHER CERTIFY THAT TODAY I SENT COPIES OF THIS NOTICE TO THE INDIVIDUALS INDICATED ABOVE, TO THEIR ADDRESSES OF RECORD IN THE CASE, IN ACCORDANCE WITH APPLICABLE REGULATIONS. ON THIS SAME DATE, A COPY OF THIS NOTICE WAS FILED IN THE CASE RECORD.

IN SAN JUAN, PUERTO RICO, ON SEPTEMBER 16, 2019

Lilia M. Oquendo Solis
Name of the Clerk of the
Court of Appeals

P.P.: /s/ Waileny Pizarro Quiñones
Name and Signature of the
Deputy Clerk of the Court

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
PANEL I

ORIENTAL BANK,

Appellant,

v.

MULTIVENTAS Y SERVICIOS, INC., ET. ALS.,

Appellees.

No. KLAN201900962

Civil Case No. E CD2015-1017 (Courtroom 702)

Re: Collection of Monies and Mortgage Foreclosure

Appeal (heard as Certiorari) from the Court of First Instance, Superior Court of Caguas

Panel comprised of Chief Judge Ramírez Nazario, Judge Candelaria Rosa and Judge Cancio Bigas.

Candelaria Rosa, Sitting Judge

RESOLUTION

In San Juan, Puerto Rico, on September 16, 2019.

The above-captioned petitioners appear by writ of *certiorari*, requesting that we revoke a *Resolution and Decree* issued on July 25, 2019 by the Court of First

Instance, Superior Court of Caguas. By said judgment, the Court *Denied* the petition for relief from judgment filed by the petitioners in the suit for collection of monies and mortgage foreclosure brought against them by Oriental Bank. We Deny.

In summary, this case revolves around a suit brought by Oriental Bank on September 10, 2015. In said suit, it claims to have acquired and been the bona fide holder of certain loans obtained as a result of the closure of operations at Eurobank, due to which it requested the collection of outstanding amounts, which are liquid and exigible. The appellees in turn issued their reply and counterclaim to the suit, in which they have denied the facts alleged therein and argued that Oriental Bank lacks standing to sue since the promissory notes ceased to exist upon being submitted to the secondary mortgage market. In this manner, they maintained that because the notes in question were submitted to said securitization process, they t lost their legal identity and ceased to exist.

Oriental Bank denied the allegations of the counterclaim and argued that it did have standing to sue because it is the holder of the promissory notes left unpaid by the appellees. It also petitioned for a summary judgment in its favor. The appellees voiced their opposition, arguing that Oriental Bank's standing to sue was in dispute.

On July 26, 2018, the Court of First Instance issued a summary judgment in Oriental Bank's favor. In it, the Court concluded that Oriental Bank's standing to sue through the courts is not in dispute as long as it is in physical and legal possession of the mortgage notes in question. It therefore sentenced the appellees to issue payment of the sums owed plus interests, costs,

expenses and legal fees, and ordered the mortgaged properties sold at public auction if said payment was not made.

However, the originating Court rejected the application of the securitization doctrine, considering that Oriental Bank proved that the promissory notes are in its possession and have not been sold on the secondary market. Furthermore, it maintained that the expert reports presented by the appellees did not refute this fact. It therefore dismissed the counterclaim due to insufficient grounds.

Disagreeing, the appellees came before this Court of Appeals and reiterated their position regarding Oriental Bank's lack of standing to sue. In a subsequent ruling issued on February 13, 2019 in case KLAN 201801042, a separate panel of this Appeals Court confirmed the appealed ruling. Notwithstanding, while the appeal in question was still pending, the appellees filed a motion for relief from judgment before the Court of First Instance on January 22, 2019. Because said petition for relief was denied by the Court of First Instance, the appellees appear before us by means of the above-captioned appeal, and again reiterate their position regarding Oriental Bank's lack of standing to sue.

The writ of *certiorari* is a discretionary and extraordinary appeals process through which a higher-level court may rectify legal errors under the terms provided in Rule 52.1 of the Civil Procedural Code of Puerto Rico, 32 LPRA Sec. V, Rule 52.1, and in accordance with the conditions set forth in Rule 40 of the regulations of this Appeals Court, 4 LPRA Sec. XXII-B, Rule 40; *García v. Padró*, 165 DPR 324 (2005).

In this regard, the role of the Court of Appeals concerning review of disputes by writ of *certiorari* requires assessing the actions of the Court of First Instance and predicating its intervention on whether it constituted a misuse of discretion; if said court's discretion has not been misused, prejudiced, erroneous or biased, the rulings of the Court of First Instance must not be intervened with. *Zorniak v. Cessna*, 132 DPR 170 (1992); *Lluch v. España Service Sta.*, 117 DPR 729 (1986).

Furthermore, Rule 49.2 of the Civil Procedural Code, 32 LPRA Sec. V, Rule 49.2, establishes the procedural mechanism available for requesting that the court of first instance provide relief from the effects of a judgment. *De Jesús v. González Lugo*, 170 DPR 499 (2007). However, the cited Rule 49.2 provides the following clarification:

> Whenever an appeal or writ of *certiorari* is pending a final resolution in voluntary jurisdiction proceedings, the appealed court may not grant any relief under this rule unless it is so authorized by the court of appeals. Once the appeals court has issued its judgment, no relief that is incompatible with the order may be granted under this rule unless permission for it is first sought from the court of appeals. In either case, the motion for relief must always be brought before the appealed court within the term indicated above, and if said court determines that it would be willing to grant the relief, the corresponding authorization shall be sought from the appeals court.

The above passage means that, unless otherwise ordered, "Once the appeal has been filed, all proceedings in lower courts pertaining to the appealed ruling

or any portion thereof shall be relieved, as shall any matters constituted therein." Rule 52.3(a) of the Civil Procedural Code, 32 LPRA Sec. V, Rule 52.3(a). Furthermore, for the sentence to be relieved in accordance with Rule 49.2 of the Civil Procedural Code *ut supra*, the appellee must cite one of the reasons provided within said rule for the relief to be granted. *García Colón et. al. v. Sucn. González*, 178 DPR 527 (2010). In such case, the court must determine whether circumstances specific to the case justify such relief. *Olmeda Nazario v. Sueiro Jiménez*, 123 DPR 294 (1989). Nevertheless, the above-mentioned rule does not constitute a master key to reopen disputes, nor does it replace the appeals process or appeals requesting reversal. *Negrón Rivera & Bonilla, ex parte*, 120 DPR 61 (1987). Similarly, the motion for relief is not available to correct legal errors or errors in the evaluation or assessment of evidence. R. Hernández Colón, *Legal Practice in Puerto Rico, Civil Procedural Code*, 4th ed., San Juan, P.R., LexisNexis, 2007, Sec. 4804, p. 353; *García Colón et. al. v. Sucn. González ut supra*, pp. 542-543.

In the case brought for consideration of this court, the request for relief from judgment was brought before the originating court while an appeal was pending before us. Per our discussion, Rule 49.2 of the Civil Procedural Code *ut supra* prevents the Court of First Instance from granting any remedy under such a circumstance unless it has been so authorized by this appeals court. Any determinations made under Rule 49.2 in this case without having petitioned this court for such an authorization are deemed inadmissible.

Notwithstanding the above, it is evident that the appellants have reiterated their same position as in

this appeal regarding the lack of standing to sue, both before the initial court and before this court, always unsuccessfully. It is therefore worth clarifying that relief from judgment constitutes an exceptional remedy, whose aim is not to grant the appellee an additional opportunity to reiterate its arguments, nor to seek to correct alleged legal errors that were already addressed through the corresponding motions for reconsideration and appeal proceedings.

In view of the above, we hereby conclude that with regard to the criteria pertaining to Rule 40 of the Regulations of this Court of Appeals, 4 LPRA Sec. XXII-B, Rule 40, there are no reasons to intervene in the appealed judgment.

The petitioned writ of *certiorari* is hereby denied on the grounds set forth.

So determined and ordered by the Court and certified by the Clerk of the Court of Appeals.

/s/ Lilia M. Oquendo Solís
Clerk of the Court of Appeals

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP B

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of eight (8) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is an Electronic Notice (Re: Civil Appeal) and a Resolution from the Court of Appeals in Commonwealth of Puerto Rico Appellate Case No. KLAN201900962.

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

RESOLUTION AND ORDER OF THE COURT OF FIRST INSTANCE SUPERIOR COURT OF CAGUAS, PUERTO RICO (ENTRY: JULY 31, 2019)

NoReply@ramajudi-cial.pr <NoReply@ramajudi-cial.pr>

To: mongelafosselaw@gmail.com

31 July 2019 at 9:01 a.m.

THE COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF FIRST INSTANCE
COURT OF CAGUAS-SUPERIOR

ORIENTAL BANK,

Plaintiff,

v.

MULTIVENTAS Y SERVICIOS, INC.

Defendant.

Case Number: E CD2015-1017

Courtroom No. 0702

Re: Mortgage Foreclosure

Notice

To: Angel Ramon Zayas Febres, Esq.
zayasfebreslaw@gmail.com

Alfredo Fernández Martínez, Esq.
afernandez@delgadofernandez.com

Pedro Antonio Hernández Freire, Esq.
phernandez@delgadofernandez.com

THE UNDERSIGNED CLERK CERTIFIES AND NOTIFIES YOU THAT IN RELATION TO THE: ABOVE-CAPTIONED CASE THIS COURT ISSUED A RESOLUTION ON JULY 25, 2019.

A COPY IS ATTACHED OR A LINK IS PROVIDED:

Click here to access the electronic document to which this notice refers. The document will be available through this link for 45 days from the time the notice was filed in the case record.

/s/ Annette M Prats Palerm
Judge

YOU ARE ADVISED THAT SINCE YOU ARE A PARTY OR THE LEGAL REPRESENTATIVE THEREOF IN THE CASE SUBJECT TO THIS RESOLUTION, YOU MAY FILE AN APPEAL, MOTION FOR RECONSIDERATION OR PETITION FOR CERTIORARI IN ACCORDANCE WITH THE PROCEDURE AND THE TIME PERIOD ESTABLISHED BY LAW, RULE OR REGULATION.

I CERTIFY THAT THE DETERMINATION ISSUED BY THE COURT WAS DULY ENTERED AND FILED TODAY, JULY 31, 2019, AND THAT COPIES OF THIS NOTICE WERE SENT TO THE INDIVIDUALS INDICATED ABOVE, TO THEIR ADDRESSES OF RECORD IN THE CASE, IN ACCORDANCE WITH

APPLICABLE REGULATIONS. ON THIS SAME DATE, A COPY OF THIS NOTICE WAS FILED IN THE CASE RECORD.

IN CAGUAS, PUERTO RICO, ON JULY 31, 2019.

Carmen A. Pereira Ortiz
Name of the Regional Clerk

P.P.: /s/ Lili Rodriguez
Name and Signature of the
Deputy Clerk of the Court

COMMONWEALTH OF PUERTO RICO COURT OF FIRST INSTANCE SUPERIOR COURT OF CAGUAS, CAGUAS, PUERTO RICO

ORIENTAL BANK,

Plaintiff,

v.

MULTIVENTAS Y SERVICIOS, INC., ET. AL.,

Defendants.

Civil Case No. E CD2015-1017 (Courtroom 702)

Re: Collection of Monies and Mortgage Foreclosure

Before: Annette Prats PALERM,
Superior Court Judge.

RESOLUTION AND ORDER

In relation to the briefs submitted by the parties in the above-captioned case, the Court determines as follows:

Notice to the Court and Motion Assuming Legal Representation (filed on July 16, 2019)

- The legal representation of Ángel Zayas Febres is accepted. Opposition to Motion under Rule 49.2 (d) . . . (filed on June 14, 2019 by the plaintiff)

- The defendants' Petition for Relief from Judgment is denied.

ORDERED TO BE NOTIFIED.

Issued in Caguas, Puerto Rico, on July 25, 2019.

/s/ Annette Prats Palerm
Superior Court Judge

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP B

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of Three (3) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is an Electronic Notice (Re: Mortgage Foreclosure) and a Resolution and Order (Re: Collection of Monies and Mortgage Foreclosure) in Commonwealth of Puerto Rico Civil Case No. E CD2015-1017.

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1

Sec. 1. [Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.C.C. § 3-104. Negotiable Instrument

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the

holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at

or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

U.C.C. § 8-102(15). Definitions; Security

(15) "Security," except as otherwise provided in Section 8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which: (A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or (B) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

U.C.C. § 8-103.
Rules for Determining Whether Certain Obligations and Interests Are Securities or Financial Assets

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in Section 9-102(a)(15), is not a security or a financial asset.

U.C.C. § 8-104.
Acquisition of Security or Financial Asset or Interest Therein

(a) A person acquires a security or an interest therein, under this Article, if:

(1) the person is a purchaser to whom a security is delivered pursuant to Section 8-301; or

(2) the person acquires a security entitlement to the security pursuant to Section 8-501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this Article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 8-503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b).

PETITION FOR WRIT OF CERTIORARI FILED IN PUERTO RICO SUPREME COURT (ENTRY: NOVEMBER 5, 2019)

IN THE PUERTO RICO SUPREME COURT

ORIENTAL BANK,

Plaintiff-Appellee,

v.

MULTI-VENTAS Y SERVICIOS, INC.; MULTI-VENTAS Y SERVICIOS P.R., INC.; MULTI-BATTERIES & FORKLIFTS, CORP.; AWESOME, INC.; PEDRO RIVERA CONCEPCIÓN; MARÍA MERCEDES FELICIANO CARABALLO; AND THEIR CONJUGAL PARTNERSHIP,

Defendants-Petitioners.

Civil No. CC-2019-839

From: The Court of Appeals

KLAN-2019-00962

Of The Court of First Instance Caguas
Judicial Center Superior Court

Civil No.: ECD-2015-1017

Re: Collection of Monies and Mortgage Foreclosure

Counterclaim: Extinguishment of Promissory Notes Extinguishment of Pledges Extinguishment of Mortgages

Representation of the Petitioner

Ángel R. Zayas Febres, Esq.
Monge La Fosse
Attorneys &
Counsellors at Law, LLC
PO Box 192053
San Juan, P.R. 00919-2053
Tel. (787) 765-9090
Fax: (787) 765-9035
Cell: (787) 906-9096
USDC-PR No. 21424
Email: mongelafosselaw@gmail.com
zayasfebreslaw@gmail.com

Representation of the Appellee

Alfredo Fernández Martínez, Esq.
Pedro A. Hernández Martínez, Esq.
DELGADO & FERNÁNDEZ
P.O. Box 11750
Fernández Juncos Station
San Juan, P.R. 00910-1750
Telephone: (787) 274-1414
Telefax: (787) 764-8241
License: USDC-PR No. 10632
License: USDC-PR No. 19347
E-mail: afernandez@delgadofernandez.com
phernandez@delgadofernandez.com

TABLE OF CONTENTS

		Page(s)
I.	LEGAL PROVISIONS ESTABLISHING JURISDICTION AND COMPETENCE OF THE SUPREME COURT	2-3
II.	LEGALLY-GROUNDED DISCUSSION JURISDICTIONAL BASIS	2-3
III.	DECISION WHOSE REVIEW IS SOUGHT	3-4
IV.	DECISION OF THE COURT OF FIRST INSTANCE	4
V.	FAITHFUL AND CONCISE EXPOSITION OF THE PROCEDURAL FACTS AND MATERIAL AND PERTINENT FACTS OF THE CASE	5-16
VI.	ASSIGNMENT OF ERROR THE COURT OF APPEALS ERRED BY NOT DECREEING RELIEF FROM THE SUMMARY JUDGMENT WAS ISSUED WITHOUT DUE PROCESS OF LAW-14TH AMENDMENT OF THE UNITED STATES CONSTITUTION	17
VII.	DISCUSSION OF THE ASSIGNMENT OF ERROR	17-24
VIII.	PRAYER	25
IX.	NOTIFICATIONS	25

LEGAL TABLE OF CONTENTS

	Page(s)
I. CONSTITUTION AND LAWS OF PUERTO RICO	
Article V Constitution Commonwealth of Puerto Rico	1
Articles 3.001, 3.002(d) of the Judiciary Act of the Commonwealth of Puerto Rico of 2003, Law No. 201 of August 22, 2003, 4 L.P.R.A. §§ 24r, 24s	1-3
Rules 20, 20(a) Regulations of the Puerto Rico Supreme Court (2011), 4 L.P.R.A. App. XXI-A, R. 20	2-3
Rules 20(C) of the Regulations Puerto Rico Supreme Court (2011), 4 L.P.R.A. App. XXI-A, R. 20(C) Rule 84 (A) of the Regulations of the Court of Appeals, 4 L.P.R.A. XXII-B, R. 84	2-3
Civil Procedure Rule 52.2(b), 32 L.P.R.A. App. V.	2-3
Civil Procedure Rule 36, 32 L.P.R.A. App. V.	20
Civil Procedure Rule 49.2, 32 L.P.R.A. App. V.	4,15,23,24
II. CASE LAW OF THE PUERTO RICO SUPREME COURT	
Bco. Santander P.R. v. Fajardo Farms Corp., 141 D.P.R. 237, [243-244] (1996)	24
Consejo Tit. C. Parkside v. MGIC Fin. Corp., 128 D.P.R. 538 (1991)	20, 21
Corp. Presiding Bishop CJC of LDS v. Purcell, 117 D.P.R. 714 (1986)	21
Cuadrado Lugo v. Santiago Rodríguez,	20

126 D.P.R. 272 (1990)	
Estado Libre Asociado v. Tribunal Superior, 86 D.P.R. 692, 697-698 (1962)	23
Figueroa v. Banco de San Juan, 108 D.P.R. 680, 688 (1979)	24
Jusino Figueroa v. Walgreens of San Patricio, Inc., 155 D.P.R. 560 (2001)	21, 22
Maldonado Elias v. Gomales Rivera, 118 D.P.R. 260 (1987)	18
Mercado Vega v. U.P.R., 128 D.P.R. 273 (1991)	21, 22
Metrop. de Préstamos v. López de Victoria, 141 D.P.R. 844 (1996)	21
Montañez v. Policía de Puerto Rico, 150 D.P.R. 917, 921-922 (2000)	24
Oriental Bank & Trust v. Perapi S.E., 2014 PRSC 133, Decision of November 15, 2014	22
Rodríguez Figueroa v. Registrador de la Propiedad, 75 D.P.R. 712, 718 (1953)	23
Tello, Rivera v. Eastern Airlines, 119 D.P.R. 83 (1987)	20
III. LAW AND FEDERAL CASE LAW	
14th Amendment of the United States Constitution	passim
Armstrong v. Manzo, 380 U.S. 545, 552 (1965)	20
Baldwin v. Hale, 68 U.S. (1 Wall.) 223, 233 (1863)	19
Carey v. Piphus, 435 U.S. 247, 259 (1978)	19
Cleveland Bd. of Educ. v. Loudermill,	19

470 U.S. 532, 542, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985)	
Fuentes v. Shevin, 407 U.S. 67, 81 (1972)	19
Gikas v. Washington School Dist., 328 F.3d 731, 738 (3d Cir. 2003)	19
Graham v. City of Philadelphia, 402 F.3d 139, 145 (3d Cir. 2005)	19
Hoult v. Hoult, 57 F3d. 1, 6 (1995)	23
In re: Hunter, 66 F.3d 1002, 1005 (1995)	23
Medina v. California, 505 U.S. 437, 443 (1992)	19
Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 16, 98 S. Ct. 1554, 56 L.Ed.2d 30 (1978)	19
Morrissey v. Brewer, 408 U.S. 471, 481 (1982)	20
Shelley v Kraemer, 334 U.S. 1 (1948)	19
IV. FEDERAL AND STATE LEGAL AUTHORS	
H.A. Kooman, Federal Civil Practice, Atlanta, The Harrison Company Pub., 1975, Vol. 4, sec. 60.06, p. 246	24
J.W. Moore, Moore's Federal Practice, 3rd ed., San Francisco, LexisNexis, 2009, Vol. 12, sec. 60.44(1) (b), p. 60-150	23, 24
T.A. Coyne, Federal Rules of Civil Procedure, 2nd ed., Minnesota, West Group, 2000, sec. VII-74	23
Hernández Colón, Rafael, Práctica Jurídica de Puerto Rico, Derecho	23

Procesal Civil, LexisNexis de Puerto Rico, Inc., 2010, page 275	
J.A. Cuevas Segarra, Tratado de Derecho Procesal Civil, San Juan, Pubs. JTS, 2000, Volume I p. 609	23

PETITION FOR CERTIORARI

TO THE HONORABLE SUPREME COURT:

COME NOW the above-captioned petitioners, through their undersigned attorneys and, most respectfully, STATE, ALLEGE AND PETITION:

I. Legal Provisions Establishing the Jurisdiction and Competence of the Puerto Rico Supreme Court

The Puerto Rico Supreme Court has jurisdiction and competence to hear the above–captioned Petition for *Certiorari* by virtue of Article V of the Constitution of the Commonwealth of Puerto Rico, Articles 3.001, 3.002(d) of the Judiciary Act of the Commonwealth of Puerto Rico of 2003, Law No. 201 of August 22, 2003, 4 L.P.R.A. §§ 24r, 24s; and Rule 20 of the Regulations of the Puerto Rico Supreme Court (2011) 4 L.P.R.A. App. XXI-A, R.20. Also applicable are Rule 52.2(b) of the Rules of Civil Procedure, 32 L.P.R.A. App. V, R. 52.2(b) and Rule 84 of the Regulations of the Court of Appeals, 4 L.P.R.A. App. XXII-B, R. 84.

II. Legally-Grounded Discussion on Jurisdictional Basis

Article 3.002(d) of the Judiciary Act of the Commonwealth of Puerto Rico of 2003, 4 L.P.R.A § 24s (d) confers upon the Supreme Court the authority to

review, by means of a *Writ of Certiorari*, those judgments or decisions issued by the Puerto Rico Court of Appeals within the jurisdictional term of thirty (30) days as of the filing in the case records of a copy of the notification of the appealed judgments. Rule 52.2(b) of the Rules of Civil Procedure of 2009, 32 L.P.R.A. App. V, R. 52.2(b) and Rule 20(a)(1) of the Regulations of the Puerto Rico Supreme Court (2011), 4 L.P.R.A. App. XXI-A, R. 20(a)(1), provides that the petition for *Certiorari* to review a judgment or decision of the Court of Appeals must be filed within the jurisdictional term of thirty (30) days as of the date a copy of the notification of the appealed judgment is filed in the case records. This term is interrupted with the timely filing of a motion for reconsideration-*Rule 52.2(F) of the Rules of Civil Procedure of 2009, 32 L.P.R.A. App. V, R. 52.2(F); Rule 84(A) of the Regulations of the Court of Appeals, 4 L.P.R.A. XXII-B, R. 84(A) and Rule 20(C) of the Regulations of the Puerto Rico Supreme Court (2011), 4 L.P.R.A. App. XXI-A, R. 20(C).*

On **August 27, 2019**, the petitioner filed an appeal before the Court of Appeals [App.19, page 3257, *et seq.*]. On **September 16, 2019**, the Court of Appeals served notice of the Decision of September 16, 2019 [App.21, pp. 3298- 3305]. On **October 1, 2019**, the petitioner filed a Motion for Reconsideration before the Court of Appeals [App.22, pp. 3306-3316], which was DENIED by means of the decision notified on **October 8, 2019** [App.23, pp. 3317-3319].

Consequently, the term of thirty (30) days to file this petition for *certiorari* began on October 8, 2019 and ended on November 7, 2019. Having filed this petition for *Certiorari* on or before November 7, 2019, before this Honorable Supreme Court, this Court

therefore acquired jurisdiction to hear said petition for *Certiorari*, given that it was filed within its jurisdictional term.

III. Decision Whose Review Is Sought

The petitions contest the ruling of the Court of Appeals, Panel I, comprised of its chief justice, Judge Ramírez Nazario, Judge Candelaria Rosa and Judge Cancio Bigas, of September 16, 2019, in the case of *Oriental Bank v. MultiVentas y Servicios, Inc. et al.*, Civil No. KLAN-2019-00962, whose notification was filed in the case records on September 16, 2019 [App.21, pp. 3299-3305]. On October 1, 2019, the petitioner filed a Motion for Reconsideration before the Court of Appeals [App.22, pp. 3306-3316], which was DENIED by means of the Decision of October 8, 2019, notified on October 8, 2019 [App.23, pp. 3317-3319]. Currently, there is no other appeal *sub judice* related to the original case.

IV. Decision of the Court of First Instance

It is the ruling of July 25, 2019, issued by the Caguas Court of First Instance, in the case of *Oriental Bank v. MultiVentas y Servicios, Inc., et al.*, Civil Number ECD-2015-1017, through Honorable Judge Annette Prats Palerm, denying the petition for Relief from Judgment [App.18, pp. 3254-3256]. This is in spite of the expert testimony the petitioner filed with its Motion for Relief from Judgment under Rule 49.2(d) of Civil Procedure, *infra* [App.8, pp. 2012-3195]. Said ruling of July 25, 2019 was notified and filed in the case records on July 31, 2019 [App.18, pp. 3254-3256]. On July 31, 2019, the term began to file

an appeal before the Court of Appeal, which was filed in a timely manner on August 27, 2019.

V. List of Pertinent Material and Procedural Facts

This case is a COMPLAINT for collection of monies and mortgage foreclosure by ordinary proceedings [App.1, pp. 1-643] and a COUNTERCLAIM containing documentary evidence, which, on the one hand, disputed the fundamental facts of the Complaint, and, on the other hand, demonstrated the plaintiff's lack of standing to bring suit [App.4, pp. 709-1916].

Following certain appeal processes with respect to the dispute regarding the appropriateness of an extinguishment of litigious obligation; other court proceedings relating to the petition for summary judgment and its opposition; a complicated discovery of evidence phase; hurricane Maria; a change of Judge, a judicial hearing on the was held on the status of the proceedings, discussing at length the difficulties of the Discovery Phase.

In compliance with the Order issued in Court, the defendant–counterclaimant filed a Petition for Order, relating to the Discovery of Evidence in particular and regulated by the Federal Law. Consequently, the Court of First Instance issued the Order transcribed below. In a timely manner, the defendant-counterclaimant filed a Motion before the Lower Court to extend the term to provide notice of the extra-judicial acts to resolve the Discovery disputes.

Commonwealth of Puerto Rico
GENERAL COURT OF JUSTICE
COURT OF FIRST INSTANCE
SUPERIOR DIVISION OF CAGUAS

ORIENTAL BANK *PLAINTIFF*	*CIVIL NO. ECD2015/2017* *COURT 702*
v.	*RE:*
MULTI-VENTAS Y SERVICIOS, INC., MULTI-VENTAS Y SERVICIOS P.R., INC., ET AL. *DEFENDANTS*	*COLLECTION OF MONIES, MORTGAGE FORECLOSURE*

ORDER

In response to the "Opposition to request for order relating to Discovery in Particular and Regulated by Federal Law" filed on June 5, 2008 by the plaintiff, Oriental Bank, through its legal representative, the Court decides the following:

The parties must meet in the next 20 days and discuss any dispute related to the discovery of evidence, 10 days after which they shall inform the Court of the efforts made.

ORDERED TO BE NOTIFIED.

In Caguas, Puerto Rico, on June 8, 2018.

[Signature]

Notwithstanding, **(i)** the case being in the Discovery Phase with orders of the court due to the plaintiff's non-compliance and its violations of federal regulations (Qualified Written Request, *inter alia*); **(ii)** the file being Without Answer to the Amended Counterclaim on the part of the plaintiff-counterclaim defendant (who was to be the subject of our motion for entry of default); and **(iii)** the Proceedings being full of Disputed Facts, on July 26, 2018, the Court of First Instance

issued a Summary Judgment for the plaintiff and dismissed, with prejudice, the Amended Counterclaim (that was NOT answered by the plaintiff) [App.6, pp. 1919-1950]. It is ordered that judicial notice be taken of the proceedings of CC-2019-0089.

The judgment in question was issued **WITHOUT DUE PROCESS OF LAW**. This judgment was issued summarily: (i) there being a genuine dispute in relation to the material facts of the case (whose adjudication required a hearing on the merits)[1]; (ii) in the middle of the discovery of evidence phase; (iii) without the amended Counterclaim having been answered; and (iv) without a hearing on the merits. The defendants-counterclaimants were deprived of an individual property interest, protected by the Fourteenth Amendment of the United States Constitution, and the civil proceedings made available to them by the Court did NOT afford Due Process of Law. Therefore, the State (through the Court of Justice/its officers) deprived the defendants-counterclaimants of their constitutional rights protected by our Constitution and by the 14th Amendment of the United States Constitution.

On August 14, 2018, the petitioners filed a Motion for Reconsideration and Request for Initial and/or Findings of Fact and Conclusions of Law [App.7, pp.

---

[1] A review of the Answer to the Complaint and Amended Counterclaim, together with the expert testimony in the proceedings, was enough to take note of the disputed material facts and the true legal matters that must be decided by means of a **Trial on the Merits**. Due to their length, we adopt, by way of reference, the facts and documentary evidence of the petitioners that disputed the allegations of the complaint, App.4, pp. 709-1916.

1951- 2011]. In this brief, the following was established*, ad verbatim, with the exclusion of some citations that can be seen in Appendix 7, supra:*

"With all due respect for the first version your Honor has given to the processing of the plaintiff's petition for summary judgment, we set out the **Errors in Law** that would materialize if, in Reconsideration, your Honor were not to overturn the aforementioned judgement. In essence: **(i)** contrary to our first perception, in the instant case there is a dispute as to the material and fundamental facts of the case that impede a summary order; **(ii)** the issuance of the judgment was made without completing the Discovery phase, which presented serious conflicts given the plaintiff's unwillingness to answer our interrogatories, requests and Qualified Written Request (regulated by federal law), this being a procedural situation that we explained to your Honor during the last Hearing on the Status of the Proceedings. Therefore, your **judicial action affected the Due Process of Law and the constitutional rights** of the defendants-counterclaimants; **(iii)** the facts of the Defense and Counterclaim of the defendant-counterclaimant were ignored, also ignoring 19 Expert Reports in the proceedings that evidenced the irrefutable facts regarding the sale of the promissory notes in dispute on the Secondary Market and their Securitization, *inter alia*.

All of the above made it obligatory to DENY the plaintiff's petition for summary judgment and to go ahead with the Discovery of Evidence in order to channel the above-captioned case for a TRIAL ON ITS MERITS. During said Hearing, our expert witness can illustrate and demonstrate the details of the databases he accesses (*i.e.*, Bloomberg, Securities and Exchange

Commission, as he states in his Expert Reports) in order to find the data on the Sale and Securitization of a certain Promissory Note. Likewise, he can explain the alphanumeric and other codes that were summarized in the screenshots that each Expert Report contains in the case records, **on its last page**."

REQUESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The requested findings of Fact are the following:

1. On **SEPTEMBER 10, 2015**, the counterclaim defendant filed the complaint for collection of monies and mortgage foreclosure of the above-captioned case.

2. On the filing date of the aforementioned complaint, the counterclaim defendant was NOT the owner, holder, possessor of the original PROMISSORY NOTES; nor was it the creditor of the MORTGAGES, that are the subject matter of the above-captioned action.

3. The counter defendant lacked standing to bring suit when it filed the complaint of the above-captioned case, given that it is not the owner, holder, possessor of the aforementioned PROMISSORY NOTES; nor is it the creditor of the MORTGAGES.

4. Between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**,[2] *i.e.*, during the period of: **6 to 12 years**

2

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003

BEFORE the filing of the above-captioned complaint, the counterclaim defendant's predecessor sold each original PROMISSORY NOTE on the Secondary Market and each PROMISSORY NOTE underwent the Securitization process in the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.

5. Following the sale of each original PROMISSORY NOTE on the Secondary Market, the counterclaim defendant's predecessor collected the amount of each PROMISSORY NOTE through a third party (investor of the Secondary Market), making a profit on the sale of each PROMISSORY NOTE on dates before the above-captioned complaint.

NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

6. As from the date of sale of each original PROMISSORY NOTE on the Secondary Mortgage Market, between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**, the plaintiff's predecessor ceased to be owner, holder, possessor and creditor of each MORTGAGE that is the subject matter of the collection and foreclosure case.[3] After the dates of each sale, the plaintiff was also not, is it, the owner, holder, possessor of the promissory notes in question.

7. After the Securitization process of each PROMISSORY NOTE (between the dates of: **MARCH 30, 2003 AND JULY 15, 2009**,[4] in the respective Trusts: **EURO**

---

[3] It is worth emphasizing that when promissory notes undergo the Securitization process–which creates the so-called pool of these promissory notes–said promissory notes are withdrawn from circulation on the Market and, in physical terms, they are filed in vaults as documents constituting the Pool that precedes the Securities resulting from the Securitization process. In accordance with federal regulations, these pooled documents (the old promissory notes) are placed under the permanent custody of the designated Master Document Custodian of the Secondary Market, without them being able to be removed from his custody.

[4]

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003

LOAN CLO I-EBS OVERSEAS INC III[5]), each PROMISSORY NOTE was converted into something else of a new type, *i.e.*, Securities.

NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

5

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	(1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	(2,443,000.00):	EBS OVERSEAS INC II

8. The allegations of the plaintiff-counterclaim defendant, in the above–captioned case, that it is the owner, holder of the PROMISSORY NOTES and creditor of the MORTGAGES, are false representations.

9. Between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**, the plaintiff-counterclaim defendant's predecessor sold each original PROMISSORY NOTE in question on the Secondary Market and collected the amount thereof by means of a payment by a third party **BEFORE** the filing of the above-captioned Complaint (**SEPTEMBER 10, 2015**).

10. Following the sale of each Original PROMISSORY NOTE on the secondary mortgage market each PROMISSORY NOTE had undergone Securitization [6] by the dates between: **MARCH 30, 2003 AND**

NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	(1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

[6] In broad terms, **Securitization means the process whereby a pool of original promissory notes is converted into Securities**. It is well known that if a PROMISSORY NOTE is converted—together with thousands or hundreds of others—**into Securities, then the original PROMISSORY NOTE ceases to exist due to its conversion into something else of a new type:** Securities—*See:* Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Article 3, Article 8 of the United States Uniform Commercial Code, U.C.C. § 3-104; U.C.C. § 8-

JULY 15, 2009—in other words, they were converted, together with other hundreds or thousands of promissory notes,[7] into SECURITIES.

11. Each Original PROMISSORY NOTE in dispute, after its Securitization process, lost its original legal entity. Securities are the new thing resulting from the pool of hundreds of promissory notes, including each Original PROMISSORY NOTE, subject to Securitization.[8]

12. Securities are the new legal entity resulting from said Securitization process of the promissory notes.[9]

102(15); and "Tax Reform Act" of 1986-REMICs, 26 CFR § 1.860 F-2, *et seq.*

In fact, following the Securitization process of a PROMISSORY NOTE, the Debt Holders, Note Holders cease to exist upon the emergence of the Securities Holders. These final investors of the chain, acquire Securities. These Securities are subject to market risks. Notwithstanding, said Securities Holders insure their investment by means of the CDS (Credit Default Swap) and collect the insured amount in case of a credit event.

[7] Between 2,000 and 5,000 promissory notes of non conforming loans. Among hundreds of promissory notes of conforming loans.

[8] PROMISSORY NOTES and Securities are regulated, respectively, by Chapter 2 and Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702 (15); and by Article 3 and Article 8, respectively, United States Uniform Commercial Code, U.C.C. § 3-104; U.C.C. § 8-102(15); and Tax Reform Act of 1986-REMICs, 26 CFR § 1.860 F-2, *et seq.* "Real Estate Mortgage Investment Conduits (REMICs) came into existence through the Tax Reform Act of 1986. Under this act, qualified residential and commercial mortgages notes are pooled and securitized."

[9] Compare: Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*;

13. Following the grouping of the Original PROMISSORY NOTE in dispute, with hundreds or thousands of promissory notes and having carried out their pooling in the Securitization process of the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**, between the dates of: **MARCH 30, 2003 AND JULY 15, 2009**, the resulting Securities are circulated and sold to the general public in global markets (shares or pieces of the pool).[10]

14. Between the defendant-counterclaimant of the above-captioned case and the Securities Holders there is no contractual relationship. Investors that are at the end of the Securitization food chain have standing to bring suit in order to seek compliance with the terms of the Securities by the Securities Holders.[11]

15. None of the Securities Holders acquired any Original PROMISSORY NOTE in question. They acquired: Securities–financial instrument resulting from the Securitization process of hundreds or thousands of promissory notes.

---

19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Article 3, Article 8 of the United States Uniform Commercial Code, U.C.C. § 3-104; U.C.C. § 8-102(15); and "Tax Reform Act" of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

10 These buyers of securities are at the end of the Securitization Food Chain and they are called: Securities Holders.

11 Securities resulting from the Securitization of promissory notes are subject to market risks. Notwithstanding, Securities Holders insure their investment by means of the CDS (Credit Default Swap) and collect the insured amount in case of a default on payment of the yield on Securities. Securities Holders have no standing to bring suit to claim the principal obligation derived from the original PROMISSORY NOTE because they acquired Securities

16. After the Securitization process of each Original PROMISSORY NOTE, all previous Note Holders & Mortgage Holders of each Original PROMISSORY NOTE collected the amount shown on each PROMISSORY NOTE upon selling it on the Secondary Mortgage Market.

17. The Original PROMISSORY NOTES in dispute were sold by the plaintiff-counterclaimant's predecessor to investment intermediaries of the secondary mortgage market. In this transaction, the plaintiff-counterclaimant's predecessor collected the amount of each original PROMISSORY NOTE by means of payment by a third party (first financial intermediary). In turn, the Intermediary Investment Bank sold each promissory note to another Intermediary Investment Bank of greater hierarchy. In this transaction, the first intermediary investment bank also collected the amount of each promissory note by means of payment by a third party (second investment intermediary).

18. The last Investment Bank that purchased and pooled the PROMISSORY NOTES, including each original PROMISSORY NOTE in dispute, submitted them to the Securitization process in order to recoup its investment in the acquisition of the PROMISSORY NOTES and obtain more profit upon selling the Securities resulting from the Securitization process. Each Original PROMISSORY NOTE in dispute was pooled with thousands or hundreds of PROMISSORY NOTES creating the Pool that resulted in the thing of a new type: Securities of the respective Trusts: **EURO**

LOAN CLO I-EBS OVERSEAS INC III, by the dates between: **MARCH 30, 2003 AND JULY 15 2009**.[12]

19. Prior to the conversion of each Original PROMISSORY NOTE, together with other thousands of promissory notes, into Securities, there had to be actual sales of the Original PROMISSORY NOTE in question, between the Originator and the Sponsor and Depositor; and between the Depositor and the Trustee to create the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**-*i.e.* REMICs, "Tax Reform Act of 1986"; *U.S. Bank National Association v. Antonio Ibañez,* 941 N.E.2d 40 (Mass 2011).[13]

20. Under Articles 1777 and 1232 of the Civil Code of Puerto Rico, 1930, the corresponding mortgage loan assignment instruments had to be executed between: (i) the original creditor and the secondary market investment bank; (ii) between the Originator and the Sponsor; (iii) the Sponsor and the Depositor; and (v) the Depositor and the Trustee—REMICs, "Tax Reform Act of 1986." And this did not occur. *See statement in*: *U.S. Bank National Association v. Antonio Ibañez*, 941 N.E.2d 40 (Mass 2011), 458 Mass 637 (2011).

---

[12] The flow of sales and negotiations of the original promissory note and the specifications and details of the resulting Securities are evidenced with the corresponding Expert Reports prepared by experts of the United States.

[13] Simultaneously, the mortgage loan assignments or transfers take place between the Originator and the Sponsor; between the Sponsor and Depositor; and between the Depositor and the Trustee—REMICs, Tax Reform Act of 1986; *U.S. Bank National Association v. Antonio Ibañez*, 941 N.E.2d 40 (Mass 2011)

21. As of the filed date of the complaint of the above-captioned case (**SEPTEMBER 10, 2015**), the plaintiff-counterclaim defendant did NOT have standing to claim the collection of the Original PROMISSORY NOTES under dispute, because it was not the owner, holder or possessor of the aforesaid Original PROMISSORY NOTES; nor did the creditor of the MORTGAGES listed in its complaint, given that its predecessor sold them on the secondary market, which collected the amount of each PROMISSORY NOTE, and each one underwent Securitization between the dates of **MARCH 30, 2003 AND JULY 15, 2009**, in the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.

22. After the date of sale of each original PROMISSORY NOTE on the Secondary Mortgage Market (between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**), all of their past owners and holders collected their respective amounts due and the debt evidenced on each original promissory note, owed thereto, was extinguished by means of payment by a third party. After the extinction of the debt, each mortgage that secured the debt was also extinguished.

23. The secondary market investment intermediaries—*i.e.*, commercial banks, investment banks, Fannie Mae, Freddie Mac, Goldman Sachs, Morgan Stanley, Lehman Brothers, Merryll [sic] Lynch, Bear Stearns, Deutsche Bank, Wells Fargo—did not have standing to claim the collection of the Original PROMISSORY NOTES because NONE of them is owner or holder of any Original PROMISSORY NOTE given that, in turn, they sold them on the secondary mortgage market and collected on them by means of payment by a third party. Furthermore, each original PROMIS-

SORY NOTE underwent Securitization and, consequently, each Original PROMISSORY NOTE was converted–together with other thousands or hundreds of PROMISSORY NOTES–into something else of a new type: Securities of the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III** between the dates of: **MARCH 30, 2003 AND JULY 15 2009**. Thus, the original PROMISSORY NOTES lost their legal entity.

24. Knowing full well that its predecessor had sold each Original PROMISSORY NOTE in dispute, on the secondary mortgage market, and its predecessor having collected its amount due by means of payment by a third party, the plaintiff-counterclaim defendant, in the above-captioned case, made the false representation that it was owner and holder of each Original PROMISSORY NOTE and the creditor of each MORTGAGE. [. . .].

25. The plaintiff-counterclaim defendant did not have standing to bring suit in the above-captioned case. The above-captioned collection of monies and mortgage foreclosure case is not actionable due to the plaintiff-counterclaim defendant's lack of standing to bring suit. It is not entitled to collect the PROMISSORY NOTES or enforce the mortgage guarantees, given that its predecessor collected the amount of the aforesaid Original PROMISSORY NOTES when it sold each one on the secondary market. By the filing date of the above–captioned complaint, the Original PROMISSORY NOTES had already been collected on and had lost their legal entities by their conversion–together with other thousands or hundreds of PROMISSORY NOTES –into Securities and the Mortgages had lost their lien

status by extinction of the debt by means of the payment by a third party.

26. The abundant sworn Expert Testimony in the proceedings inexorably demonstrates that each PROMISSORY NOTE in dispute was sold, transferred and underwent Securitization [together with a pool of hundreds of promissory notes] prior to the filing date of the above-captioned case.

27. The plaintiff-counterclaim defendant's lack of standing to bring suit, at the moment it filed its complaint, rendered null the jurisdiction of the Court of First Instance in the above-captioned case. There being no jurisdiction, the above-captioned collection and foreclosure case is not actionable.

28. In the above-captioned case, the plaintiff-counterclaim defendant had no standing to bring suit at the moment it filed its complaint. The plaintiff-counterclaim defendant violated the Due Process of Law upon filing its complaint without having standing to bring suit. Thus, it must be dismissed.

29. In other respects, the mortgage deeds listed in the instant case suffer an irremediable defect: non-existence of a valid upset price for the first auction. Said defect nullifies each mortgage deed and impedes their enforcement.

30. In each of said mortgage deeds, the "Property Value" clause did not express any appraisal price agreed upon between the parties for the first auction. Instead, said clause mentioned, deceitfully, a price imposed by the Originator in terms of the amount of the credit granted without taking into account the property's appraisal value-on the date of the mortgage-plus its value appreciation.

31. An upset price, deceitfully and unilaterally set by the originator based on the amount of the credit granted does not constitute a valid upset price for the first auction. This would permit the adjudication of high-value properties for ridiculous amounts. Such mortgage does not meet the constitutive requirement of the upset price. Consequently, the aforementioned mortgage deeds are null, *ab initio*, and cannot be registered in the Property Registry. If, due to error or oversight, they were registered, their respective registration entries must be cancelled.

32. The principal of each Mortgage Deed listed in the instant complaint cannot be a valid auction upset price because it is not in line with the property's appraisal-on the date of the mortgage deed-plus the increase of value (appreciation), which is fitting to expect, ordinarily.

33. Paragraphs 3 and 4 of Article 104 of the Property Registry Law, 2015, are unconstitutional. They are also contrary to the capital markets laws. Said prices impose an auction "upset price" for all cases and they do not provide for alternatives to adjust the upset price in cases where there is a net equity value. The legal provision that authorizes such a deprival of the property's equity is unconstitutional.

34. Between the parties there was no negotiation or agreement as to the minimum price of the properties listed in the complaint. This was deceitfully inserted by the Originator in each of said mortgage deeds.

35. An upset price, deceitfully and unilaterally inserted in the mortgage deed by the originator, based on the amount of the credit granted, does not constitute a valid upset price for the first auction. Such mortgage

does not meet the constitutive requirement of the upset price. Such mortgage deed is null.

This being the case, on January 22, 2019, the petitioner filed a Motion under Rule 49.2(d) of Civil Procedure for relief from the judgment issued in the above-captioned case against Due Process of Law [App.8, pp. 2012-3195].

With the Motion for relief from judgment, extensive documentary evidence was submitted, providing a new opportunity for the Court of First Instance to afford Due Process [of] Law and, consequently, to decree the relief from summary judgment in order to conclude the Discovery of Evidence Phase and, for such purpose, hold a Hearing on its Merits [App.8, pp. 2023-2025, 2076-3195].

After various court proceedings [App.10-14, pp. 3220-3237] and the Opposition to the Motion for Relief from Judgment [App.15, pp. 3238-3246], on July 31, 2019, notice was served of the Decision issued by the Court of First Instance on July 25, 2019, denying Relief from the summary judgment issued without Due Process of Law [App.18, pp. 3254-3256].

On August 27, 2019, the petitioner filed a petition before the Court of Appeals [App.19, page 3257, *et seq.*]. On September 16, 2019, the Court of Appeals service notice of the Decision of September 16, 2019, denying the issuance of the writ of *Certiorari* [App.21, pp. 3298- 3305]. On October 1, 2019, the petitioner filed a Motion for Reconsideration before the Court of Appeals [App.22, pp. 3306-3316], which was DENIED by means of the Decision of October 8, 2019, notified on October 8, 2019 [App.23, pp. 3317-3319].

In view of the above and of the proceedings of the original case, the petitioner, with the utmost respect, assigns and discusses the following error:

VI. Assignment of Error

THE COURT OF APPEALS WAS WRONG TO NOT DECREE RELIEF FROM A SUMMARY JUDGMENT THAT WAS ISSUED WITHOUT DUE PROCESS OF LAW–14th AMENDMENT OF THE UNITED STATES CONSTITUTION

VII. Discussion of the Assignment of Error

The Court of Appeals was wrong to not decree relief from a summary judgment that was issued without Due Process of law-14th amendment of the United States Constitution. The case being in the Discovery of Evidence Phase with orders of the court due to the plaintiff's non-compliance and its violations of federal regulations (Qualified Written Request, *inter alia*); the file being Without Answer to the Amended Counterclaim on the part of the plaintiff-counterclaim defendant (who was to be the subject of our motion for entry of default); and the Proceedings being full of Disputed Facts, the Court of First Instance issued Summary Judgment for the plaintiff, and dismissed the Amended Counterclaim-limiting, in addition, the counterclaimants' right to request an entry of default by the plaintiff due to having failed to submit a responsive pleading.

The aforementioned summary judgment was issued WITHOUT DUE PROCESS OF LAW: (i) there being a genuine dispute in relation to the material facts of the case (whose adjudication required a hearing on the merits); (II) in the middle of the discovery of

evidence phase; (III) without the amended Counterclaim having been answered; and (iv) without a hearing on the merits. Thus, the defendants-counterclaimants were deprived of an individual property interest, protected by the Fourteenth Amendment of the United States Constitution, and the civil proceedings made available to them by the Court did NOT afford Due Process of Law. Therefore, the State (through the Court of Justice/ its officers) deprived the defendants-counterclaimants of their constitutional rights protected by our Constitution and by the 14th Amendment of the United States Constitution.

The United States Constitution includes the concept of Due Process of Law in the Fifth and Fourteenth Amendments, which are based on the American historical experience that fundamental rights can be protected and preserved only if there is any restriction on arbitrary and whimsical actions of the state. The procedural aspect of Due Process of Law establishes the constitutional restrictions on government actions and demands that the citizen be heard before the State deprives him of his property or liberty.

The Right to be Heard is a fundamental Constitutional Right. The literal meaning of Due Process of Law is a fair process. This means that no person may be deprived of his life, liberty or property without an opportunity to be heard in defense of his rights. *Maldonado Elias v. Gonzales Rivera*, 118 D.P.R. 260 (1987)

In the case of *Shelley v. Kraemer*, 334 U.S. 1 (1948), the United States Supreme Court asserted that: "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 14th Amendment."

From the case of *Medina v. California*, 505 U.S. 437, 443 (1992), it is deduced that: [a] basic threshold issue respecting whether due process is satisfied is whether the government conduct being examined is a part of a criminal or civil proceeding. In this sense, in the case of *Carey v. Piphus*, 435 U.S. 247, 259 (1978) it was clarified that: "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."

In *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972), the United States Supreme Court illustrates that: [t]he hearing is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions . . . " *See also Gikas v. Washington School Dist.*, 328 F.3d 731, 738 (3d Cir. 2003) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L.Ed.2d 494 (1985)); *see also Graham v. City of Philadelphia*, 402 F.3d 139, 145 (3d Cir. 2005) (citing *Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 16, 98 S. Ct. 1554, 56 L.Ed.2d 30 (1978)). "Parties whose rights are to be affected are entitled to be heard." *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863). Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The language of the Fourteenth Amendment requires the provision of due process when an interest in one's "life, liberty or property" is threatened. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1982).

As is well known, the summary judgment is a procedural mechanism provided for by Rule 36 of Civil Procedure, 32 L.P.R.A. App. V. By virtue of said rule,

a court may issue summary judgment to decide a dispute filed when the documents accompanying the motion and opposition thereto–*i.e.*, depositions, answers to interrogatories, admissions, allegations, sworn statements-demonstrate that there is no substantial dispute as to any material fact and that, as a matter of law, it is proper to issue judgment for the movant. *Cuadrado Lugo v. Santiago Rodríguez*, 126 D.P.R. 272 (1990); *Jusino Figueroa v. Walgreens of San Patricio, Inc.*, 155 D.P.R. 560 (2001).

The purpose of a motion for summary judgment is to expedite the conclusion of disputes, eliminating the hearing on the merits, but provided there is no legitimate dispute of material facts, in such a way that it only remains to apply the law. In this sense, *see: Jusino Figueroa v. Walgreens of San Patricio, Inc.*, 155 D.P.R. 560 (2001); *Consejo Tit. C. Parkside v. MGIC Fin. Corp.*, 128 D.P.R. 538 (1991)*; Tello, Rivera v. Eastern Airlines*, 119 D.P.R. 83 (1987). The summary judgment is an extraordinary remedy that must only be granted when the movant has established its right with clarity and has demonstrated that the other party has no right of recovery under any circumstance, which results discernable from the allegations that have not been refuted by the evidence submitted with the motion. *Consejo Tit. C. Parkside v. MGIC Fin. Corp.*, 128 D.P.R. 538 (1991); *Corp. Presiding Bishop CJC of LDS v. Purcell*, 117 D.P.R. 714 (1986).

A motion for summary judgment must be decided against the movant party when the court is in doubt as to the existence of a dispute. *Consejo Tit. Parkside v. MGIC Fin. Corp.*, 128 D.P.R. 538 (1991); *Corp. Presiding Bishop CJC of LDS v. Purcell*, 117 D.P.R. 714 (1986). The summary judgment may only be issued in

clear cases, when the court has before it the truth regarding all the pertinent facts. *Consejo Tit. C. Parkside v. MGIC Fin. Corp.*, 128 D.P.R. 538 (1991); *Corp. Presiding Bishop CJC of LDS v. Purcell*, 117 D.P.R. 714 (1986). When, in a dispute, the facts are undisputed and only a matter of law is presented, it is proper to decide the matter by summary judgment in accordance with this rule. *Mercado Vega v. D.P.R.,* 128 P.R. 273 (1991).

A summary judgment cannot be granted when there is not a clear certainty as to all the facts of the dispute, which is necessary in order to preclude a hearing on the merits. *Metrop. de Préstamos v. López de Victoria*, 141 D.P.R. 844 (1996). The party that files a motion for the issuance of a summary judgment in a litigation is obligated to demonstrate, beyond all doubt, the non-existence of a genuine dispute as to any pertinent fact, which, in light of the applicable substantive law, would result in a judgment for the movant as a matter of law. *Mercado Vega v. U.P.R.*, 128 D.P.R. 273 (1991). The recourse of summary judgment may be granted in cases where there are no genuine and substantial disputes as to the material facts[14,15]

---

14 *Oriental Bank & Trust v. Perapi S.E.*, 2014 TSPR 133, decision of November 15, 2014.

15 The Supreme Court has determined that **a material fact is a fact that may affect the result of the claim pursuant to the applicable substantive law**. *Meléndez González v. M. Cuebas, Inc.*, infra; *Ramos Pérez v. Univisión, infra*, citing J.A. Cuevas Segarra, Tratado de Derecho Procesal Civil, San Juan, Pubs. JTS, 2000, Volume I p. 609. *See also*: Hernández Colón, Rafael, Práctica Jurídica de Puerto Rico, Derecho Procesal Civil, LexisNexis de Puerto Rico, Inc., 2010, page 275.

Pursuant to this rule, and upon comparing and contrasting the facts alleged by each party together with the respective documentary evidence, it must be concluded that the plaintiff's petition for summary judgment should NOT have been granted in light of the facts in dispute. In addition, the instant case was in the middle of the discovery phase and the plaintiff-counterclaim defendant had not even answered the Amended Counterclaim.

A reading of the Answer to the Complaint and Amended Counterclaim, together with the expert testimony in the proceedings [App.13, pp. 1528-2629; 1441-1443], sufficed to take cognizance of the disputed material facts that warrant a Trial on the Merits and not a summary proceeding. The case records clearly show the genuine DISPUTE that exists in relation to the material facts of the case.

In view of the genuine dispute that exists in relation to the said material facts, it must be concluded that the issued judgment is NOT pursuant to Law due to having been issued summarily. The Lower Court could NOT issue a summary judgment with the existence of facts in dispute. Thus, it must be overturned.

In other respects, subsection (d) of Rule 49.2 of Civil Procedure, *supra*, authorizes the Court to relieve a party from the effects of a judgment when it is deemed void. **A judgment is void** when it has been issued without jurisdiction or **when, upon issuing it, due process of law has been violated**. *Figueroa v. Banco de San Juan*, 108 D.P.R. 680, 688 (1979); *Estado Libre Asociado v. Tribunal Superior*, 86 D.P.R. 692, 697-698 (1962); *Rodríguez Figueroa v. Registrador de la Propiedad*, 75 D.P.R. 712, 718 (1953). *See* R. Hernández Colón, *op. cit.* sec. 4807, p. 354; J.A. Cuevas Segarra,

op. cit., V. II, pp. 795- 796. *See also Hoult v. Hoult*, 57 F3d. 1, 6 (1995)*; In re: Hunter*, 66 F3d. 1002, 1005 (1995).[16]

It is important to point out that, under this ground–*subsection (d) of Rule 49.2 of Civil Procedure*- there is no margin for discretion as there is under other grounds of Rule 49.2 of Civil Procedure, *supra;* if a judgment is void, it must be left without effect regardless of the merits the aggrieved party's defense or claim may have.[17] R. Hernández Colón, *op. cit.*, sec. 4807, p. 355; Wright, Miller and Kane, *op. cit.*, Vol. 11, sec. 2862, p. 322. On this matter, the Supreme Court has stated:

> . . . the discretion of the court, pursuant to the provisions of the aforementioned Rule 49.2 of Civil Procedure, to relieve a party from the effects of a judgment when it is a judgment that is "void"; if it is void, there is no discretion for relief; there is an obligation

---

[16] *See also* J.W. Moore, *Moore's Federal Practice*, 3rd ed., San Francisco, LexisNexis, 2009, Vol. 12, sec. 60.44(1) (b), p. 60-150; T.A. Coyne, *Federal Rules of Civil Procedure*, 2nd ed., Minnesota, West Group, 2000, sec. VII-74; H.A. Kooman, Federal Civil Practice, Atlanta, The Harrison Company Pub., 1975, Vol. 4, sec. 60.06, p. 4623 upon discussing Federal Rule of Civil Procedure 60(b)(4), hch is similar to our Rule of Civil Procedure 49.2(4), *supra.*

[17] The author, Harold A. Kooman, points out, in his work, Federal Civil Practice, that: "An important distinction must be kept in mind in considering the voidness of a judgment as a ground for relief. **A void judgment is theoretically no judgment at all, is legally ineffective, and creates no rights or obligations**." H.A. Kooman, *op. cit.*, sec. 60.06, p. 246.

> to declare it void.[18] (Citations omitted).
>
> The conclusion is inescapable, therefore, that, faced with the certainty of the nullity of a judgment, it is mandatory to declare its legal nonexistence; this is regardless of the fact that the corresponding petition is after the expiration of the term of six (6) months determined in the aforementioned Rule 49.2 of Civil Procedure. *Montañez v. Policía de Puerto Rico*, 150 D.P.R. 917, 921-922 (2000). *See Bco. Santander P.R. v. Fajardo Farms Corp.*, 141 D.P.R. 237, [243-244] (1996); *Figueroa v. Banco de San Juan*, 108 D.P.R. 680, [689] (1979). *See also* H.A. Kooman, *op. cit.*, sec. 60.6, pp. 246-247.

In conclusion the lower Courts were wrong not to decree relief from a summary judgment that was issued without Due Process of Law-14th Amendment of the United States Constitution. Consequently, it is applicable to decree relief from the issued summary judgment and to order the continuation of the legal proceedings (discovery phase and trial on the merits)

VIII. Prayer

WHEREFORE, the petitioners respectfully request the Honorable Supreme Court to issue *Writ of Certiorari* and, consequently, revoke the appealed Resolution and, accordingly, decree that the summary judgment be vacated and order the continuation of the legal proceedings.

---

[18] *See* J.W. Moore, *op. cit.*, Vol. 12, sec. 60.44(5)(a), pp. 60-163.

RESPECTFULLY REQUESTED.

In San Juan, Puerto Rico, on November 5, 2019.

I CERTIFY: that on the same filing date, I sent a true and exact copy of the above brief and a true and exact digital copy of its appendixes, by certified mail with acknowledgement of receipt, to all the attorneys and parties of record, to their corresponding addresses and to the Court of Appeals and the Court of First Instance of Caguas (to these last two, without the digitalized appendix).

/s/ Ángel R. Zayas Febres, Esq.
Monge La Fosse
Attorneys & Counsellors at Law, LLC
PO Box 192053
San Juan, P.R. 00919-2053
Tel. (787) 765-9090
Fax: (787) 765-9035
Cell: (787) 906-9096
USDC-PR No. 21424
Email: mongelafosselaw@gmail.com
zayasfebreslaw@gmail.com

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP E

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of thirty-four (34) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is a Petition for Certiorari in the Commonwealth of Puerto Rico Civil Case No. 19 -839. [Re: Collection of Monies and Mortgage Foreclosure].

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

MOTION FOR SUSPENSION OF JUDGMENT (ENTRY: JANUARY 21, 2019)

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
JUDICIAL CENTER OF CAGUAS
SUPERIOR COURT

ORIENTAL BANK,

Plaintiff,

v.

MULTI-VENTAS Y SERVICIOS, INC.; MULTI-VENTAS 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,

Defendants.

Civil Case No.: ECD-2015-1017

Re: Collection of Monies and Foreclosure
(Ordinary Proceedings)

Counterclaim: Absence of Promissory Note; Termination of Promissory Note; Absence of Pledge; Termination of Pledge; Absence of Mortgage;

In an action for collection of monies and foreclosure, if the plaintiff **is**

Neither owner, Nor holder, **Nor possessor of the promissory note**, then, the plaintiff **lacks standing to sue**. If the plaintiff lacks standing, then, the Court **lacks jurisdiction**. If the Court lacks jurisdiction, then the dismissal of the complaint is due because the case is NOT justiciable. In the absence thereof, **it is appropriate to relieve the Judgment.** Rule 3.1 (A)(1) of Civil Procedure *E.L.A. v. Aguayo*, 80 D.P.R. 552 (1958)

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

MOTION UNDER
RULE 49.2. (D) OF CIVIL PROCEDURE, 2009.
FOR RELIEF FROM JUDGMENT AND
REQUEST FOR ORAL ARGUMENT HEARING

TO THE HONORABLE COURT:

COMES NOW the defendant by way of the undersigning attorneys, and most respectfully requests Relief from the Judgment handed down in the above-captioned case, to the extent that the same was issued without jurisdiction due to the plaintiff's lack of standing to

sue. As grounds for this request, the defendant respectfully STATES, ALLEGES AND PETITIONS:

I. Introduction and Preamble of Material Facts That Require Relief from the Judgment (Spanish Judgments Inserted)

At the outset, based on the nature of the proceedings, we come to plead with your Honor that, within the analysis of the Motion for Relief from Judgment, under Due Process of Law and with the powers held by this Court, **AN ORAL ARGUMENT HEARING BE SCHEDULED TO DISCUSS AND ARGUE ALL THE ITEMS OF THE BRIEFS OF THESE PROCEDURAL FORMALITIES UNDER RULE 49.2 OF CIVIL PROCEDURE**.

Your Honor, the undersigned, personally, pleads that we be granted an opportunity to be heard in an Oral Argument Hearing, which is essential for the adjudication of the sub judice process due to the high complexity of the constructs required for analysis. It is worth mentioning at this point that the undersigned has more than **28 years of university studies** in the areas of Economy, International Trade, Finance, Accounting, Management, etc., at all levels: Bachelor's Degree, Master's Degree, PhD, and as a result of this knowledge, coupled with ten years of Studies in Comparative Law, Foreign Exchange Law, *inter alia*, and based on numerous meetings with bankers, members of Board of Directors of Banks, experts and engineers of the Secondary Market of Puerto Rico and the United States, we have been able to incorporate and simplify the constructs needed to understand the mechanics of the secondary market, its flaws and its

effect on the standing of the plaintiff banks in actions for collection of monies and foreclosure.

Please grant us the right to be heard, allow me, with the greatest respect, to bring you into a position so as to award our motion for Relief from Judgment, all this, in accordance with law. WE ENCOURAGE YOU, YOUR HONOR! LET US DO OUR WORK OF JUSTICE! **Your Honor, in accordance with Code 8 of Judicial Ethics; and we humbly, in accordance with Code 4 of Professional Ethics**. For over a decade now and focusing specifically on these types of cases, since the market collapse in the year 2018, hundreds of Judges and Attorneys have been edified by our reasons during Oral Argument Hearings, and we have received numerous recognitions from Judges and Bank Attorneys. There are so many questions that arise in the minds of the Judges during these Oral Argument Hearings that, sometimes, we have spent an entire day in Court (9:00 a.m. to 5:00 p.m.), thus, it is our pleasure to fully answer your questions in this regard. Likewise, we hope to do the same in this case, after you schedule the respective Oral Argument Hearing.

In turn, it is worth mentioning that, **pursuant to Rule 3.1 (A) (1) of Civil Procedure and case law in jurisdiction matters**, this Honorable Court must consider whether this Court had proper jurisdiction or not to hear this case. With all due respect, we understand that this Court lacked jurisdiction to hear this case given that the plaintiff (INCLUDING THE ORIGINATOR-SPONSOR) lacked standing in this case because IT NEITHER OWNS, NOR IS HOLDER, NOR IS POSSESOR of each promissory note at issue. In view thereof, the above-captioned case was NON-JUSTICIABLE

and, therefore, the Relief from the judgment issued without jurisdiction must apply.

This reality (lack of jurisdiction) cannot be changed by any other factor. It is not changed by the fact that the defendant has not previously questioned your jurisdiction or that this Court has not considered the same, in spite of the questioning thereof. It is not changed by the fact that this case has reached the appellate courts. It is not changed by the fact of the rulings of such appellate courts. It is not changed by the fact that the defendant has reached an agreement. It is not changed by the fact of the passage of time. IF THIS COURT DID NOT HAVE JURISDICTION, AS IN FACT IT DID NOT HAVE, SINCE THE BEGINNING OF THE CASE, EVERYTHING RULED BY THE SAME IS NULL AND VOID-including the judgment.

To be more specific, any provision, any agreement, as the case may be, which has mediated between the parties in this case, is **EQUALLY NULL AND VOID due to lack of cause, which is a constitutive element of the Settlement Agreement**. What is certain is that the defendants in the cases of collection of monies and foreclosure **ARE UNAWARE that the plaintiff lacks standing to sue**.

During the Oral Argument Hearing, we will explain how the plaintiff, in this case, created the appearance of being the owner, holder, and possessor of the promissory notes that were securitized and, therefore, were removed from circulation on the market and archived and placed under custody of the Master Documents Custodian, as documents which constitute the Securities issued after the *Securitization process* of

each promissory note in question, along with other hundreds/thousands of promissory notes.

It is undeniable that, in the above-captioned case, this Court did **Not** have a justiciable case at hand, given that the plaintiff lacked standing when it filed its complaint because, in reality, it was **Not** the owner, **Nor** the holder, **Nor** the possessor of the above promissory notes; nor was it the creditor of such mortgages because the ORIGINATOR-SPONSOR of each promissory note in question sold it on the secondary mortgage market, which was subject to *Securitization*.[1] *See* Exhibits 1-19.

---

[1] That is to say, **it was converted**, along with other hundreds or thousands of promissory notes ("pool"), **into** any of the following **Securities**: "Mortgage-Backed Securities" ("MBSs"); "Asset-Backed Securities; "DS" ("Debt Securities"); "CDOs" ("Collateralized Debt Obligations"); "CMOs" ("Collateralized Mortgage Obligations"); "Whole Loan CMOs" ("Whole Loan Collateralized Mortgage Obligations"). The foregoing, under the USA "Tax Reform Act, 1986", through the REMICs instrument. These Securities are security instruments arising from the pool generated from the amalgam of hundreds or thousands of original PROMISSORY NOTES.

In a broader sense, **Securitization means the process by which a set of original promissory notes is converted into securities**. A known fact is that if an original PROMISSORY NOTE is converted—along with other hundreds or thousands-into Securities, then **the original PROMISSORY 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 3, Article 8 of the Uniform Commercial Code of the United States of America; and the "Tax Reform Act" of 1986-REMICs.

***De facto*, after the "securitization" process of a PROMISSORY NOTE, the "Debt Holders", "Note Holders" cease to exist given that their claim is duly satisfied through the sale of the**

At the time of the sale of each PROMISSORY NOTE, i.e., BEFORE filing the complaint in the above-captioned case, the ORIGINATOR-SPONSOR of each promissory note collected its amount through a third-party payment. The third party (Secondary Market investor) who acquired it, paid its value to the ORIGINATOR-SPONSOR.

In view of these facts, at the time the complaint was filed in the above-captioned case, the plaintiff was **NEITHER the owner, NOR the holder, NOR the possessor of the aforementioned promissory note, nor was it the mortgage creditor, since the ORIGINATOR-SPONSOR had previously sold each promissory note (prior to the complaint) on the secondary market, and each mortgage loan was securitized, i.e., it underwent the *securitization* process.**[2] [*See* Exhibits 1-19].

---

promissory note on the Secondary Market and its eventual Securitization. After the Securitization process of the promissory 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.

[2] It is worth noting that when the promissory notes go through the securitization process-where the mass of these promissory notes is generated (called "Pool") and result in securities-, these promissory 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 promissory 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,

Therefore, the court action filed by the plaintiff **was NOT justiciable,** given that the plaintiff lacked standing at the time it submitted its complaint. It lacked standing because it was **NEITHER the owner, NOR the holder, NOR the possessor of the above-mentioned promissory notes; nor was it a mortgage creditor and, in addition, the mortgage loans were 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, the relief from the judgment is appropriate. Let us see.

APPARENTLY, in the above-captioned case, this 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 promissory 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, this Court 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 promissory note; nor was it

---

NOR is holder, NOR is possessor of the promissory notes subject to Securitization. This custody is imposed by federal regulations so that, on one hand, the securitized promissory 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 creditor of each of these mortgages, because, previously (between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**), *infra*, the ORIGINATOR-SPONSOR sold each aforementioned promissory note on the secondary mortgage market, which were subject to Securitization between the dates of: **MARCH 30, 2003 AND JULY 15, 2009**,[3] *infra*.

At the time of the sale of each promissory note, *infra*, PRIOR to the filing of the complaint in the above-captioned case (**September 10, 2015**), the ORIGINATOR-SPONSOR collected the amount of each aforementioned PROMISSORY NOTE by third-party payment. The third party (Secondary Market investor) who acquired it, paid the ORIGINATOR-SPONSOR the amount of each PROMISSORY 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 promissory note, nor was it the creditor for each mortgage, since the ORIGINATOR-SPONSOR had previously sold each promissory note, *infra*, on the Secondary Market, and each mortgage loan was securitized, *i.e.*, it went through the securitization process.** [***See Exhibits 1-19, Expert Evidence Sworn Statement with Apostille***].

Therefore, the court action 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 promissory note; nor was it a creditor of each mortgage and, in addition, each mortgage loan was securitized**.

---

[3] *See* Exhibits 1-19-Expert Evidence with Sworn Statement and Apostille.

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.

SECURITIZATION PARTICIPANTS		
ORIGINATOR	SPONSOR	DEPOSITOR
Eurobank	Eurobank	Eurobank Shares
TRUSTEE	ISSUING ENTITY	PRIOR SERVICER
Deutsch Bank	EBS Overseas Inc. II	Eurobank
CUSTODIAN	SOLD TO SECONDARY MARKET	CLOSING DATE
Oriental Bank	December 27, 2005	January 5, 2006

See Exhibits 1-19.

App.77a

MULTIVENTAS Y SERVICIOS, INC.

19 Notes Securitization Process flowchart

#	1 Note: Amount and Date	2 1st Originator	3 2nd Originator (Who accepted an endorsed Note)	4 Bank Sold Note on Secondary Market (Securitization process)	5 Date Note Sold On Secondary Market (Securitization process)	6 Date Note Securitized (Securitization process)	7 Name and number of the Trust (Securitization process)
C1	$180,000.00 August 27, 1990	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C2	$720,000.00 July 29, 1992	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C3	$900,000.00 September 28, 1992	BPPR	Eurobank	Eurobank	December 5, 1992	December 16, 1992	EURO Max IV MBS
C4	$300,000.00 June 26, 1993	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C5	$300,000.00 September 3, 1998	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C6	$280,000.00 March 5, 1999	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I

MULTIVENTAS Y SERVICIOS, INC.

19 Notes Securitization Process flowchart

#	1 Note: Amount and Date	2 1st Originator	3 2nd Originator (Who accepted an endorsed Note)	4 Bank Sold Note on Secondary Market (Securitization process)	5 Date Note Sold On Secondary Market (Securitization process)	6 Date Note Securitized (Securitization process)	7 Name and number of the Trust (Securitization process)
C7	$700,000.00 December 6, 2000	BPPR	Eurobank	Eurobank	January 5, 2001	January 30, 2001	Euro Multi Credit CDO
C8	$600,000.00 October 4, 2001	Eurobank	N/A	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C9	$1,200,000.00 November 21, 2002	Eurobank	N/A	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C10	$432,000.00 February 17, 2004	Eurobank	N/A	Eurobank	February 28, 2004	October 15, 2004	EBS Overseas Inc. I
C11	$800,000.00 September 29, 2004	Eurobank	N/A	Eurobank	October 7, 2004	October 15, 2004	EBS Overseas Inc. I
C12	$2,443,000.00 December 20, 2005	Eurobank	N/A	Eurobank	December 27, 2005	January 5, 2006	EBS Overseas Inc. II

MULTIVENTAS Y SERVICIOS, INC.

19 Notes Securitization Process flowchart

#	1 Note Amount Date Executed	2 1st Originator	3 2nd Originator (Who accepted as endorsed Note)	4 Bank Sold Note on Secondary Market (Securitization process)	5 Date Note Sold On Secondary Market (Securitization process)	6 Date Note Securitized (Securitization process)	7 Name and number of the Trust (Securitization process)
C13	$680,000.00 December 20, 2005	Eurobank	N/A	Eurobank	December 27, 2005	January 5, 2006	EBS Overseas Inc. II
C14	$1,500,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C15	$1,020,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C16	$920,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C17	$550,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C18	$157,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C19	$100,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III

II. Law on Jurisdiction Matters [Justiciability and Standing of a Plaintiff in Cases of Collection of Monies and Foreclosure]

As is known, jurisdiction is the primary source for court authority to interpret and enforce the laws in our system of government. This is governed by the application of the various doctrines which give life to the principle of justiciability: **standing**, mootness and public policy issues, *P.P.D. vs. Gobernador I*, 139 D.P.R. 643, 666 (1995).

It is a repeated rule governing the constitutional concept of justiciability in our jurisdiction, which **requires the existence of a case or a real dispute for the valid exercise of judicial power**. *Ortiz v. Panel F.E.I.*, 155 D.P.R. 219 (2001). By virtue thereof, the Courts must ensure that the matters brought into consideration are "justiciable", that is to say: (1) The same do not involve public policy issues put forward by the Executive Branch; (2) **that the parties have active capacity or standing to sue;** (3) that the dispute is not moot or advisory in nature; and (4) that the dispute is ripe. *Acevedo Vilá v. Meléndez Ortiz*, 164 D.P.R., 2005 T.S.P.R. 79, 2005 JTS 80; *Com. de la Mujer v. Srio. de Justicia*, 109 D.P.R. 715, 720-725 (1980).

One of the axioms derived from this prudential approach **is the one designated as standing, which focuses mainly on the person who files the action** and secondarily on issues to be awarded. *Hernández Torres v. Hernández Collin*, 129 D.P.R. 824 (1992). One of the requirements for justiciability in disputes is that the parties must have the legal capacity to act as such. *Hernández Agosto v. Romero Barceló*, 112 D.P.R. 407, 413 (1982). Lack of jurisdiction **cannot be remedied, nor can the Court claim it**, in which case,

the courts are bound by the unavoidable duty of examining their own jurisdiction. *Pagán Navedo vs. Alcalde Mun. de Cataño*, 143 D.P.R. 314, 326 (1997).

Rule 3.1 (a) (1) of Civil Procedure, 32 L.P.R.A. Ap. V, Rule 3.1, which in turn, provides in its relevant parts:

> (a) **The General Court of Justice shall have jurisdiction**:
>
> (1) **On any matter, case or dispute arising within the territorial limits of the Commonwealth of Puerto Rico**, and . . .

In Puerto Rico, since 1958, the Supreme Court recognized the **doctrine of case and dispute**. *See E.L.A. v. Aguayo*, 80 D.P.R. 552, 558 (1958), explained the authority of the courts to determine **whether or not the cases brought before them are collusive, moot or fictitious**. **The doctrine is birthed from the basic principle that the courts exist only to resolve genuine disputes** arising between opposing parties that have real interest in obtaining a remedy affecting legal relations. The Supreme Court stated that this requirement is a derivative of the anthropological origin of judicial bodies. It is jurisdictional in nature and has constitutional rank in various countries. An essential complement to this limitation has to be the inherent power and duty of **each court to investigate,** as often as required, **the circumstances in which the disputes arise and develop**. This power has been recognized long ago in the Anglo-Saxon system of justice and numerous judgments support the same. *Id.* p. 559.

The **requirement of standing for justiciability of a dispute, or for a dispute being acceptable for judicial awarding, is meant primarily** to assure the Court that the filing party has an interest in such action, to the

extent that, in all probability, it will pursue its cause of action vigorously and that, consequently, it will bring the matters in dispute to the attention of the Court. *Asociación de Fotoperiodismo de P.R., Inc. and others v. Rivera Schatz*, 180 D.P.R. 920 (2011); *Romero Barceló v. E.L.A.*, 169 D.P.R. 460, 470 (2006).

In response to this **doctrine, criteria of justiciability have been developed** that delimit the powers of the Courts to hear and judge in the matters submitted to them. *Romero Barceló v. E.L.A., supra*. Included among these criteria is that of legal standing. In the absence of law which expressly confers standing to sue, **the party filing an action will have access to the Court if it meets the following requirements:** (1) It has suffered clear and palpable damage; (2) the damage is real, immediate and specific, not abstract and hypothetical; (3) that there is a connection between the damage suffered and the cause of action, and (4) that the cause of action arises under issues covered by the Constitution or law. *Id.* p. 470-471; *Col. Peritos Elec. v. A.E.E.*, 150 D.P.R. 327, 341 (2000).

As is the case of federal jurisdiction, in Puerto Rico, **the exercise of justiciability as self-limitation in the exercise of judicial power**, responds to a large extent to the role assigned to the judiciary in a tripartite distribution of powers. **Judicial review can only be exercised in a case or dispute**. *Asociación de Fotoperiodismo de P.R., Inc. and others v. Rivera Schatz, supra*; *Fundación Surfrider and others v. Administración*, 178 D.P.R. 563 (2010).

Courts can only review those cases which are justiciable. *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR 920 (2011). **A dispute is NOT justiciable when:** (1) the intention is to resolve public policy issues; (2)

one of the parties lacks standing to sue; (3) events subsequent to the commencement of the lawsuit have caused the dispute to become moot; (4) the parties are endeavoring to obtain an advisory opinion, or (5) where attempts are made to promote a lawsuit that is not ripe. *Id. Bhatia Gautier v. Rosselló Nevares*, 2017 TSPR 173; 198 D.P.R. ___ (2017).

Given that the state and federal courts of the United States of North America have taken the lead in the awarding of thousands of cases where it has been stated that the plaintiff, in the action for collection of monies and foreclosure, lacks standing for not being the holder of each promissory note or the mortgage creditor, such conclusions of law will be provided, which for the most part, are quoted in the English language further below.

Prior to this, we should note that, in Spain, a new financial field in matters of **mortgage loan securitization**, if we compare it with the United States, its Courts already suspend 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 loan has been securitized (referred to in the United States as *Securitization*). To the extent eve, 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 loan has been securitized**.

COURT OF FIRST INSTANCE AND PRELIMINARY INVESTIGATION No. 2
VILLACARRILLO
Proceedings: Foreclosure No. 408/2010.

Proceedings No. 10716

Facts

ONE.-In these foreclosure proceedings, the execution debtor presented a brief dated May 5, 2016, concerning the nullity of the enforcement order and the integrity of the proceedings, based on the securitization of the same.

TWO.-With due regard to the action for nullity filed, notice thereof was served to the opposing party in order to submit allegations; leaving the proceedings open for resolution.

THREE.-The legal requirements have been complied with in the processing of this trial.

Legal Basis

ONE.-Article 225 of the LEC provides that: "*Procedural acts shall be null and void by operation of law in the following cases:*

1. *Where these acts occur by or before the Court with lack of jurisdiction or of objective or functional jurisdiction.*
2. *Where these acts are carried out under violence or intimidation.*
3. *Where these acts waive essential rules of procedure, provided that, for that reason, defenselessness has occurred.*
4. *Where these acts are carried out without the intervention of attorneys, in cases where the law requires their presence.*

5. *Where these cases involve hearings without the required intervention of the Court Clerk.*

6. *Where these cases are resolved through court orders or by decree, which, according to law, must be resolved by means of court ruling, order or judgment.*

7. *In all other cases regulated by this law.*

Adding the second section, first paragraph of Article 227 of the same

Legal text: "*Without prejudice to the foregoing, the Court may, ex officio or at the request of a party, prior to issuing any decision to end the process, and provided that remedy is not due, to declare, after hearing the parties, the nullity of all the proceedings or of any in particular.*"

In view thereof, these can be considered possible procedural nullities that cannot be invoked by way of appeal, provided that they have caused defenselessness to the party filing for nullity.

TWO.-Securitization consists of a bank action through which the financial institution or bank divides the loans into homogeneous holdings, grouping these into an Asset Securitization Trust for the purpose of avoiding risk. The Securitization Trust is set up legally as an entity without legal status managed and admin-

istered by a corporation specializing in the management of third-party business, a company specializing in Asset Securitization Trusts, operating with them in the securities market where these shares are acquired by investors.

Law 19/1992, on the regime of companies and real estate investment trusts and on mortgage-backed securities funds, clarifies that through the securitization of a loan, the entity that granted the same, ceases to be the creditor of the loan, even though it retains by law the ownership by registration and continues, unless otherwise agreed, with the management thereof.

Concerning the invocation of the nullity made, certain courts have issued rulings by declaring that, with regard to the securitized loan, the originator loses its condition as creditor, based on the argument "*It expressly means that the creditor of the same has taken the position of creditor in the complaint, as the holder of the loan. Based on these statements, it is inferred therein that it has not been assigned to any Mortgage-Backed Securities Fund. It is clear that if the assignment had taken place, the plaintiff of the proceedings could only act as administrator of the assigned loans and would lack the intended standing. As a result, the creditor is hereby notified that, in the event it does not hold such standing, the nullity of the actions filed will be declared and the complaint will be inadmissible with effects ex tune*" (in that sense, Proceedings of March 6, 2015, of Court No. 1 Fuenlabrada; Proceedings of January 20, of Court No. 8 Málaga; Proceedings of October 5, 2015, of Court No. 7 Granollers; Proceedings of May 12, 2015, of Court No. 6 Arganda del Rey; Proceedings of April 13, 2016, of Court No.5 Gijon; Proceedings of March 15, 2016, of

Court No. 3 Picassent; Proceedings of March 11, 2016, of Court No. 4 Collado Villaba; Proceedings of January 20, 2016, of Court of First Instance No. 2 Barcelona; Judgment of the AP de Valentía, of June 14, 2005 and AAP de Castellón, of July 12, 2012 and July 24, 2012).

As the execution debtor clearly states, the Bank of Spain, in a non-binding document, in reference to consultation, expressed the lack of standing in that case.

Our Supreme Court has already established that the assignee of a mortgage loan that has not registered the assignment of the mortgage in the Property Register, has legal standing to file foreclosure proceedings, given that, in its understanding, the registration of the assignment of the mortgage loan in the Property Registry is declaratory and not constitutive. It understands, therefore, that the assignee is subrogated to the rights of the assignor as creditor and has legal standing to file foreclosure proceedings; all the foregoing, without requiring registration (STS 6/29/1989, 11/23/1993 and 11/23/2007, among others).

THREE.-On the basis of the assumptions outlined above, we will enter into the analysis of this instant case.

The execution creditor refuses the loan securitization by reference to the transaction number recorded in the list provided by the execution creditor, without such reason being sufficient and decisive for the dismissal of the claim of the execution debtor. As can be seen in the list of loans of the Fund "Toncaixa Andalucía Ftempresa 1", Asset-Backed Securities Fund, dated 2/26/2010, specifically the last of the loans, which was concluded in favor of the borrowers, given

that it coincides with the amount of the loan (€27,000), the address of the borrower appearing in the deed of constitution and the date of the deed, February 13, 2006; data which matches with the public instrument provided as an enforceable order with the complaint and which serves as basis for the enforcement thereof. Therefore, it is understood that the loan was securitized; which is the basis for determining that the execution creditor, Caja de Ahorros y Pensiones de Barcelona (La Caixa), lacked standing, by the Fund being subordinated to the position of creditor; which leads to the nullity of the case.

FOUR.-No statement was made on court costs.

In the view of the legal precepts and others of general application to the case;

I HEREBY DECREE

THE NULLITY OF THE ENFORCEMENT ORDER, dated June 8, 2010, AND OF EVERYTHING ACTED UPON THEREAFTER, thus ordering the dismissal of the proceedings, once the final resolution has been issued; all the foregoing, without imposition.

COURT OF FIRST INSTANCE No. OF BENIDORM

[Seal] *Julio Costa*
JUNE,14, 2016
procuradorbenidorm.net

N.I.G. :03031-42-2-2012-005671
Proceedings: Foreclosure - [redacted] 2012-B

From: Mr./Ms. BANKIA S.A.
Attorney Mr./Ms. [redacted]
Against: Mr./Ms. [redacted]
Attorney Mr./Ms. [redacted]

Proceedings No. 000221/2016

Most Illustrious, Mr.: Dr. Alfonso Franco Docavo
In BENIDORM, on the tenth of June of two thousand sixteen.

Findings of Fact

SOLE PROVISION.-Having heard the facts after the execution debtor informed about the loan securitization, subject of this enforcement order, the same was forwarded to the parties for claiming their rights regarding the possible ruling on the lack of standing of the execution creditor, then proceeding, as appropriate, to declare the nullity of the enforcement order and thereafter, the dismissal of the proceedings.

Legal Basis

ONE.-In the instant case, a suit for execution was filed by the entity BANKIA SA, duly verifying that, once the enforcement order was issued, the loan or credit of these proceedings has been securitized, as was admitted by the execution creditor itself.

Loan securitization means that the bank or financial institution, as holder of the same, divides the loans into homogeneous holdings, grouping these shares into an Asset-Backed Securities Fund, which is legally set up as an entity without legal status, which

is managed and administered by a corporation specializing in the management of third-party business matters, a company that manages asset-backed securities funds, operating with them in the securities market where these shares are acquired by investors. In this way, liquid assets are transformed into marketable financial assets, which implies the possibility of cleaning up the balance sheets of financial institutions by releasing the liabilities that served as the basis for the assigned assets. Investment management firms are created with the sole purpose of the constitution, administration and legal representation of the securitization funds and for defending the interests of holders of the securities issued by the funds they manage.

> The first regulation of asset-backed securities funds was issued by Law 15/92, of July 7, on the Regime of Real Estate Investment Trusts and Firms and on Mortgage-Backed Securities Funds. Subsequently, Law 5/15 of April 27, for the promotion of corporate finance, in Article 15, establishes the regulation of securitization funds:
>
> 1. "*I. Securitization funds are separate estates, lacking legal status as such, with null net equity value, integrated*:
>
>   a) *In terms of their assets, by credit claims, present or future, which are grouped together in accordance with the provisions of Article 16 and*,
>
>   b) *in terms of their liabilities, based on fixed-income securities issued and, on the loans, granted by any third party*,

2. *The estate of the securitization funds may, where thus provided in the deed of constitution, be divided into independent sections, out of which different classes of securities may be issued or obligations may be assumed that can be settled independently*."

Art. 16.2 of this rule stipulates that: "*2. Securitization funds may acquire the ownership of the assets by any method, either through their assignment, their purchase, their subscription on primary markets or through any other way permitted by law*."

Based on the above, it should be noted that the aim of the foreclosure procedure is to obtain the payment of the mortgage-backed debt, pursuant to Art. 681 LEC, so that the real property right is not independent, but accessory or related to the loan secured thereby, in which case, Art. 685.2 LEC requires the provision of the negotiable instrument with the suit for execution. In this case, such instrument is the deed of incorporation of the mortgage in favor of *, but indicating that the loan is securitized, thus assigning the assets of* (bank) to the securitization fund. In this sense, it can be said that the legal business of loan securitization is the total assignment of the credit claim subject of these proceedings.

Bankia SA, filed the foreclosure proceedings acting on its own behalf and without indicating, until it was thus requested by the Court, that securitization and assignment of the credit claims had taken place in favor of an Asset-Backed Securities Fund, and without providing, at the beginning, the deed of constitution of the asset-backed securities fund and the assignment of credit claims.

In the full assignment of the credit claims, as appropriate, the ordinary standing for the actions arising out of the mortgage loan would correspond to the participant, in which case, the issuing entity, which is the execution creditor in these proceedings, would not have standing. The issuing entity has not assigned to a third party a part or share of its mortgage rights, but these are grouped into several mortgage loans, and are assigned in their entirety to an Asset-Backed Securities Fund. Therefore, it is not possible to apply Art. 15 of the Mortgage Market Law, nor Art. 61 and 65.3 RD 685/82, which would only have sense, when a portion of the credit claims is assigned, and that, in any case, the share that could correspond to the participant and the assignor should be distributed according to each share.

In cases where the mortgage loan is assigned to a third party, the execution creditor would have lost its status as holder and creditor of the loan, and thus assuming the actions aimed at its restitution, including foreclosure. On the basis of Art 149 LH, the credit or loan secured by a mortgage may be assigned in whole or in part, in accordance with Art. 1,526 Cc, in which case, the assignee is subrogated to all the rights of the assignor. In turn, Art. 1528 Cc, states that the sale or assignment of a loan includes all the accessory rights, such as the bond, mortgage, pledge or lien.

Also, in this regard, the Bank of Spain, in its response, dated March 26, 2015, to a query made through the CNMV, establishes that: "*. . . in accordance with Law 19/1992, on the regime of real estate investment trusts and firms on mortgage-backed securities funds, the securitization of a loan means that the entity that granted the same ceases to be the creditor*

of the loan, even though it retains by law the ownership by registration and continues, unless otherwise agreed, with the management thereof."

In view of the foregoing, the lack of standing of the execution creditor should be noted, given that it lacks the legal standing to request the payment of the claim, subject of this enforcement order, in accordance with Art. 10 LEC. Lack of standing is an irremediable procedural defect, recognizable ex officio at any time in the proceedings, as provided by Art, 9 LEC.

In this sense. Proceedings of Court of First Instance No. 5 Gijori, No. 67/2016, of April 13, 2016, Proceedings of Court of First Instance No. 6 of Arganda del Rey on November 12, 2015, Proceedings of Court of First Instance No. 2 of Arganda del Rey of December 2, 2015, Proceedings of Court of First Instance No. 4 of Collado Villalba, of March 11, 2.016, Proceedings of Court of First Instance No. 8 of Málaga, No. 20/2015, of January 14, 2015, Proceedings of Court of First Instance No. 1 of Fuenlabrada, among others.

As a result, the enforcement order in favor of the party that does not hold legal standing should be declared null and void, by failure to follow the essential rules of procedure in the absence of one of the fundamental requirements of the filed action, i.e., the plaintiff was not the holder of the loan that it intended to enforce, pursuant to Art 225.3 LEC, and based on the above, these proceedings must be dismissed.

In view of the foregoing;

I HEREBY DECREE: That the corporation, BANKIA SA, lacks standing in this foreclosure proceeding to claim the loan subject of the proceedings, in view

of which, the enforcement order is declared null and void, and the proceedings must be dismissed.

Issue the timely order to the Property Registry to proceed to cancel the marginal note placed on the margin of the mortgage under foreclosure, after the issuing of certificate of ownership and liens: notes to be delivered to the execution creditor to use in its presentation and return once these are completed, at which time the documents submitted with the complaint will be examined and returned as appropriate.

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."** *Rigby v. Wells Fargo Bank*, 84 So.3d 1195, 1196 (Fla. 4th DCA 2012) (quoting: *McLean*, 79 So.3d at 173); *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012); **(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"**. *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010); *Verizzo v. Bank of N.Y.*, 28 So.3d 976, 978 (Fla. 2d DCA 2010); *Philogene v. ABN Amro Mortg. "Group Inc.*, 948 So.2d 45, 46 (Fla. 4th DCA 2006); **(3) "[a] plaintiff seeking foreclosure in a mortgage proceeding must establish that it had standing to foreclose at the time it filed suit"**. *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012).

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. *See: New York Mtge. Trust Inc. v. Dasdemir*, 37 Misc. 3d 1226(A) (2012); *GE Capital Mtge. Servs., Inc v. Powell*, 18 Misc. 3d 228 (2007); *Strunk v. New York State Bd. Of Elections*, 35 Misc. 3d 1208(A) (2012); *Bank of NY v. Mulligan*, 28 Misc. 3d 1226(A) (2010); *Aurora Loan Servs., LLC v. Sattar*, 17 Misc. 3d 1109(A)(2007); *Campbell v. Barclays Bank PLC*, 24 Misc. 3d 1210(A); *Indy Mac Fed. Bank, FSB v. Meisels*, 37 Misc. 3d 1206(A)(2012); *JP Morgan Chase Bank, N.A. v. George*, 27 Misc. 3d 1217(A)(2010); GECMC 2007-C1 *Ditmars Lodging, LLC v. Mohola*, LLC, 2010 N.Y. Mic. Lexis 3218 (2010); *Wells Fargo Bank, Natl. Assn. v. Reyes*, 20 Misc. 3d 1104(A)(2008); *United States Bank Natl Assn. v. White*, 22 Misc. 3d 1112(A)(2009); *Indymac Bank v. Bethley*, 22 Misc. 3d 1119(A)(2009); *Matter of Ungar v. Feller*, 24 Misc. 3d 1222(A)(2009); *Deutsche Bank Natl. Trst Co. v. Francis*, 30 Misc. 3d 1241(A)(2011); *Ameriquest Mtge. Co. v. Basevich*, 16 Misc. 3d 1104(A)(2007); *Credit-Based Asset Servicing & Securitization, LLC v. Akitoye*, 22 Misc. 3d 1110(A)(2009); *Deutsche Bank Natl. Trust Co v. Castellano*, 15 Misc. 3d 1134(A)(2007); *Option One Mtge. Corp. v. Duke*, 24 Misc. 3d 1237(A)(2009); *HSBC Bank USA, N.A. v. Valentin*, 2014 N.Y. Misc. LEXIS 1347 (2014); *Indymac Bank, FSB v. Boyd*, 22 Misc. 3d 1112(A) (2009); *Deutsche Bank Natl. Trust Co. v. Bailey*, 22 Misc. 3d 1119(A)(2009).

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 Dep't 2013), quoting: *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 279, 926 N.Y.S.2d 532 (2nd Dep't 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 Dep't 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]; *US 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).

"The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit." *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262, 807 N.E.2d 439, 282 Ill. Dec. 815 (2004).

"A party's standing to sue must be determined as of the time the suit is filed". *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App.3d 783, 786, 521 N.E.2d 1252, 118 Ill. Dec. 559 (1988). "[A] party either has standing at the time the suit is brought or it does not." *Id.*

Prior to the case of Schwartzwald, supra, the Court of Appeals of Ohio, also found that:-**in order to have a real interest in a foreclosure action, a party must be the owner and holder of the note and the mortgage at the time it commences the action**", *U.S. Bank, N.A. v. Richards*, 189 Ohio App.3d 276, 2010 Ohio 3981, ¶ 13, 938 N.E.2d 74 (9th Dist), quoting: *Everhome Mtge. Co. v. Rowland*, 10 Dist. Franklin No. 07AP-615, 2008 Ohio 1282, ¶ 12 ("In foreclosure actions, the real party in interest is the current holder of the note and mortgage"); *Wells Fargo Bank, N.A. v. Sessley*, Franklin App. No. 09AP-178, 188 Ohio App. 3d 213, 2010 Ohio 2902, ¶ 11, 935 N.E.2d 70; *Quantum Servicing Corp. v. Haugabrook*, 9th Dist. Summit No. 26542, 2013-Ohio-3516, ¶ 8; *Wells Fargo Bank N.A. v. Horn*, 9th Dist. Lorain No. 12CA010230, 2013-Ohio-2374, ¶ 10; *BAC Home Loan Serv. v. McFerren*, 9th Dist. Summit No. 26384, 2013-Ohio-3228, ¶ 13; *Wells*

Fargo Bank, N.A. v. Stovall, Cuyahoga App. No. 91802, 2010 Ohio 236.

"**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].

"In order to commence a foreclosure action, a plaintiff must have a legal or equitable interest in the mortgage. **A plaintiff has standing where it is the holder or assignee of both the subject mortgage and of the underlying note at the time the action is commenced**", *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *Aurora Loan Servs., LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 [2011]; *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 207, 887 N.Y.S.2d 615 [2009]; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 [2009]; *Countrywide Home Loans, Inc. v. Gress*, 68 A.D.3d 709, 888 N.Y.S.2d 914 [2009]); *Deutsche Bank Natl. Trust Co. v. Spanos*, 102 A.D.3d 909, 911, 961 N.Y.S.2d 200; *OneWest Bank FSB v. Carey*, 104 A.D.3d 444, 960 N.Y.S.2d 306 [1st Dept 2013]; *Bank of New York Mellon Trust Co. NA v. Sachar*, 95 A.D.3d 695, 943 N.Y.S.2d 893 [1st Dept 2012]; *GRP Loan, LLC v. Taylor*, 95 A.D.3d 1172, 945 N.Y.S.2d 336 [2nd Dept 2012]. The decision in *Bank of New York v. Silverberg*, 86 A.D.3d at 280, (2nd Dep't, 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 promissory 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].

"**The transfer of a mortgage without a note is a nullity and insufficient to confer standing to foreclose**". *See: U.S. Bank N.A. v. Dellarmo*, 94 A.D.3d 746, 748, 942 N.Y.S.2d 122 (2nd Dep't 2012); *Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 637, 931 N.Y.S.2d 630 (2nd Dep't 2011); *Bank of N.Y. v. Silverberg*, 86 A.D.3d at 280. "**An assignment of a mortgage without assignment of the underlying note or bond is a nullity, and no interest is acquired by it**". *Merritt v. Bartholick*, 36 NY 44, 45, 34 How. Pr. 129, 1 Transc. App. 63 [1867]; *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *LaSalle Bank Natl. Assn. v. Ahearn*, 59 A.D.3d 911, 912, 875 N.Y.S.2d 595 [2009].

"**The collateral lien of the mortgage could have no legal existence when separated from the note** and transferred to others than the holder of the note, but so long as the two remain together, owned and possessed by the same person, they operate together and are obligations for the payment of the same

indebtedness." *Matter of Pirie*, 198 NY 209, 91 N.E. 587 (1910). ***A party who only has the mortgage but no note has not suffered any injury given that bare possession of the mortgage does not endow its possessor with any enforceable right absent possession of the note***. *See: Restatement of the Law 3d, Property, Mortgages, Section 5.4(e)*, at 385 (1996) ("[I]n general a mortgage is unenforceable if it is held by one who has no right to enforce the secured obligation.").

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**". *See: US Bank N.A. v. Madero*, 80 A.D.3d 751, 752, 915 N.Y.S.2d 612 [2011]; *US Bank, N.A. v. Collymore*, 68 A.D.3d at 754; *Kluge v. Fugazy*, 145 A.D.2d 537, 538, 536 N.Y.S.2d 92 [1988] [**plaintiff, the assignee of a mortgage without the underlying note, could not bring a foreclosure action**]; *See also: Flyer v. Sullivan*, 284 App Div 697, 698, 134 N.Y.S.2d 521 [1954]; *Beak v. Walts*, 266 App Div. 900, 42 N.Y.S.2d 652 [1943].

"**[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]).

"A plaintiff must demonstrate it has a right to enforce the note and, **absent a showing of ownership, the plaintiff lacks standing**". *Gill v. First Nat. Bank & Trust Co. of Oklahoma City*, 1945 OK 181, 195 Okla. 607, 159 P.2d 717. "**To foreclose a mortgage, a plaintiff must demonstrate that it has a right to enforce the note, and without such ownership, the plaintiff lacks standing**". *Wells Fargo Bank, N.A. v. Ford*, 418 N.J. Super. 592, 15 A.3d 327, 329 (N.J. Super. Ct. App. Div. 2011).

"**[T]he plaintiff failed to demonstrate its prima facie entitlement to judgment as a matter of law because it did not establish that it had standing as the lawful holder or assignee of the subject note on the**

date it commenced this action". *See: Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 931 N.Y.S.2d 630; *U.S. Bank N.A. v. Madero*, 80 A.D.3d 751, 915 N.Y.S.2d 612; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578.

In these actions for collection and foreclosure, the **real party in interest** is the current holder of each promissory note and mortgage. *See: Chase Manhattan Mtge. Corp. v. Smith*, Hamilton App. No. C-061069, 2007 Ohio 5874, at P18; *Kramer v. Millott*, (Sept. 23, 1994), Erie App. No. E-94-5, 1994 Ohio App. LEXIS 4454 ("**because the plaintiff did not prove that she was the holder of the note and mortgage, she did not establish herself as a real party in interest"). "A party who fails to establish itself as the current holder is not entitled to judgment as a matter of law**". *First Union Nat'l Bank v. Hufford*, (2001), 146 Ohio App.3d 673, 677, 679-680, 2001 Ohio 2271, 767 N.E.2d 1206.

"To foreclose upon a promissory note, **the plaintiff must be the 'holder' in order to be the real party in interest**." *Troupe v. Redner*, 652 So.2d 394, 395-96 (Fla. 2d DCA 1995); *Mortg. Elec. Registration Sys. v. Azize*, 965 So.2d 151, 153 (Fla. 2d DCA 2007).

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 a 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 the defendant denies that the party seeking foreclosure has an ownership interest in the mortgage**, the issue of ownership becomes an issue the plaintiff must prove. *Carapezza v. Pate*, 143 So.2d 346, 347 (Fla. 3d DCA 1962).

"**Where standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief**". *See: US Bank N.A. v. Madero*, 80 A.D.3d 751, 752, 915 N.Y.S.2d 612 (2nd Dep't 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 753, 890 N.Y.S.2d 578 (2nd Dep't 2009); *Deutsche Bank Natl. Trust Co. v. Haller*, 100 A.D.3d 680, 954 N.Y.S.2d 551 [2d Dept 2012]. *TPZ Corp. v. Dabbs*, 25 A.D.3d 787, 789, 808 N.Y.S.2d 746 [2006]; *See also: Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 769, 573 N.E.2d 1034, 570 N.Y.S.2d 778 [1991]). *CitiMortgage, Inc. v. Rosenthal*, 88 A.D.3d 759, 931 N.Y.S.2d 638 [2011]. "Where a **plaintiff standing** to commence a foreclosure action **is placed in issue by a defendant, it is incumbent upon the plaintiff to prove its standing to be entitled to relief**". *See: CitiMortgage, Inc. v. Stosel*, 89 A.D.3d 887, 934 N.Y.S.2d 182 [2d Dept 2011].

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. "**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**." *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010). "**It is well-established precedent requiring the party seeking foreclosure to present evidence that it owns and holds the note and mortgage in question** in order to proceed with a foreclosure action. *See: Verizzo*, 28 So.3d at 978; *Philogene v. ABN Amro Mortg. Group Inc.*, 948 So.2d 45, 46 (Fla. 4th DCA 2006).

In the case of collection of monies and foreclosure, "the **plaintiff must plead and prove** as part of its prima facie case that it **owns the note and mortgage and has**

the right to foreclose". *Wells Fargo Bank, N.A.*, 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 *Wells Fargo Bank, N.A. v. Jordan*, Cuyahoga App. No. 91675, 2009 Ohio 1092, it was ruled that: "**a party lacks standing to bring a foreclosure action if the party cannot prove that it owned the note and mortgage on the date the complaint was filed**".

"**It is well established that in a foreclosure action it is plaintiff's burden to provide admissible evidence of its standing as the lawful holder of the subject note and mortgage at the time the action was commenced**". *See: U.S. Bank Nat'l Asso'n. v. Madero*, 80 A.D.3d 751, 915 N.Y.S.2d 612 (2d Dept. 2011); *Aurora Loan Services, LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 (2d Dept. 2011); *Bank of New York v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532, 2011 NY Slip Op 5002 (2d Dept. 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 (2d Dept. 2009).

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].

"A plaintiff's lack of standing at the time a complaint is filed in a foreclosure action **cannot be cured by substituting the real party in interest for an original party**. *Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. No. 91675, 2009 Ohio 1092, ¶ 24. "**[I]n a foreclosure action, a bank that was not the mortgagee when suit was filed cannot cure its lack of standing by subsequently obtaining an interest in the mortgage**." *Id.* at 24; *See also: Deutsche Bank Natl. Trust Co. v. Triplett*, 8th Dist. No. 94924, 2011 Ohio 478, ¶ 12; *Wells Fargo Bank N.A. v. Byrd*, 178 Ohio App.3d 285, 2008 Ohio 4603, 897 N.E.2d 722 (1st Dist.).

"**A plaintiff cannot rely on procedural rules similar to cure a lack of standing at the commencement of litigation**", *Davis v. Yageo Corp.*, 481 F.3d 661, 678 (9th Cir. 2007) ("whether or not Dux was the real-party-in-interest, **it does not have standing, and it cannot cure its standing problem through an invocation of Fed. R. Civ. P. 17(a)**"); *Clark v. Trailiner Corp.*, 242 F.3d 388 (10th Cir. 2000) (table), opinion reported at 2000 U.S. App. LEXIS 29006, 2000 WL 1694299 (**noting that the plaintiff cannot "retroactively become the real-party-in-interest" in order to cure a lack of standing at the filing of the complaint** [emphasis sic]); *State v. Property at 2018 Rainbow Drive*, 740 So.2d 1025, 1027-1028 (Ala. 1999) **(rejecting the argument that a lack of standing can be cured after the filing of the complaint)**; *Consumer Fedn. of Am. v. Upjohn Co.*, 346 A.2d 725, 729 (D.C. App. 1975). *See also: McLean v. JP Morgan Chase Bank Natl. Assn.*, 79 So.3d 170, 173 (Fla. App. 2012) **("a party is not permitted to**

establish the right to maintain an action retroactively by acquiring standing to file a lawsuit after the fact").

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.

"**Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default**." *Green v. Dolphy Constr. Co.*, 187 A.D.2d 635, 590 N.Y.S.2d 238 (2nd Dep't, 1992); *Citigroup Global Mkts. Realty Corp. v. Smith*, 33 Misc. 3d 1234(A); 943 N.Y.S.2d 790; 2011 N.Y.

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.

"If a plaintiff lacks standing to sue, **the plaintiff may not proceed in the action**". *Stark v. Goldberg*, 297 A.D.2d 203, 746 N.Y.S.2d 280 (1st Dept 2002).

"**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 Dep't 1988); *Katz v. East-Ville Realty Co*, 249 A.D.2d 243, 672 N.Y.S.2d 308 (1st Dep't 1998).

"Today, with multiple (and often unrecorded) assignments of mortgage obligations and multiple securitizations often related to the same debt, **the court should carefully scrutinize the status of the parties who claim the right to enforce these mortgage obligations**". *Deutsche Bank National Trust Company v. McRae*, 27 Misc. 3d 247, 894 N.Y.S.2d 720, [Sup Ct, Allegany County, 2010].

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 vs. 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.

III. Essential Material Facts and Expert Evidence as Proof Thereof

Essential Facts

1. On **SEPTEMBER 10, 2015,** the plaintiff filed the action for collection of monies and foreclosure in the above-captioned case.

2. At the filing date of the aforementioned complaint, the plaintiff **was NEITHER the owner, NOR the holder, NOR the possessor of each promissory note in question; nor was it creditor of each mortgage in question and, in addition, each mortgage loan in question was securitized**.

3. The plaintiff **lacked standing** when it filed the complaint in the above-captioned case, because it was NEITHER the owner, NOR the holder, NOR the possessor of each aforementioned note; nor was it the creditor of the mortgage referred to.

4. **Between** the dates of: **MARCH 5, 2003, TO JULY 9, 2009**[4], *i.e.*, between the dates: **covering 6 to 12 years**

4

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003

PRIOR to the filing of the complaint in the above-captioned case, the ORIGINATOR-SPONSOR sold each original PROMISSORY NOTE on the secondary market and each NOTE went through the securitization[5] process in the respective Trusts: **EURO LOAN**

NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

[5] That is to say, **it was converted**, along with other hundreds or thousands of promissory notes ("pool"), **into** any of the following **Securities**: "Mortgage-Backed Securities" ("MBSs"); "Asset-Backed Securities; "DS" ("Debt Securities"); "CDOs" ("Collateralized Debt Obligations"); "CMOs" ("Collateralized Mortgage Obligations"); "Whole Loan CMOs" ("Whole Loan Collateralized Mortgage Obligations"). The foregoing, under the USA "Tax Reform Act, 1986", through the REMICs instrument. These Securities are security instruments arising from the pool generated from the amalgam of hundreds or thousands of original PROMISSORY NOTES.

In a broader sense, **Securitization means the process by which a set of original promissory notes is converted into securities**. **A known fact is that if an original PROMISSORY NOTE is converted**–along with other hundreds or thousands–**into Securities, then the original PROMISSORY 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,

CLO I-EBS OVERSEAS INC III, *infra*. *See* Exhibits 1-19.

5. After the sale of each original promissory note on the secondary market, the ORIGINATOR-SPONSOR collected the amount of each note by third-party payment (Secondary Market investor), plus it obtained profit by selling each NOTE on dates prior to the above-captioned complaint.

6. From the date of the sale of each original promissory note on the Secondary Mortgage Market, **between the dates of: MARCH 5, 2003 TO JULY 9, 2009**, *supra*, the ORIGINATOR-SPONSOR ceased to be the owner, holder, and possessor of each original promissory note and creditor of each MORTGAGE subject of the case for collection of monies and foreclosure.[6] As of each

---

19 L.P.R.A. Sec.501, *et seq.*, Sec. 1701 *et seq.*; Article 3, Article 8 of the Uniform Commercial Code of the United States of America; and the "Tax Reform Act" of 1986-REMICs.

***De facto*, after the "securitization" process of a PROMISSORY NOTE, the "Debt Holders", "Note Holders" cease to exist given that their claim is duly satisfied through the sale of the promissory note on the Secondary Market and its eventual Securitization. After the Securitization process of the promissory 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 Swaps") and charge the insured amount against the failure to pay the performance of the Securities.

[6] It is worth noting that when the promissory notes go through the securitization process-where the mass of these promissory notes is generated (called "Pool") and result in securities-, these promissory 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

sale date, the plaintiff has not been and nor is the owner, nor the holder, nor the possessor of each promissory note in question.

7. After the securitization process of the mortgage loan (**MARCH 30, 2003 TO JULY 15, 2009**[7], in the

---

the securitization process. In accordance with federal regulations, these resulting documents (the former promissory 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 promissory notes subject to Securitization. This is a custody imposed by federal regulations so that, on one hand, the securitized promissory 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 taxation process of the Trust can allow the issuance of the resulting securities**.

7

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006

respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**[8]), each original PROMISSORY NOTE

NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

8

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III

was converted into a new kind of species, called Securities.

8. The plaintiff's claims in the above-captioned case, stating that it is the owner and holder of each promissory note and MORTGAGE creditor constitute false representations.

9. Between the dates of: **MARCH 5, 2003 TO JULY 9, 2009**[9], the ORIGINATOR-SPONSOR sold each original PROMISSORY NOTE in question on the Secondary Market, collecting each amount through third-party payment **PRIOR** to the filing of the Complaint in the above-captioned case (**September 10, 2015**).

10. After the sale of each original promissory note on the secondary mortgage market, each NOTE was subject to "securitization" on the dates between: **MARCH 30, 2003 AND JULY 15, 2009**[10], *i.e.*, it was converted, along with hundreds or thousands of other notes, into "SECURITIES."

11. Each original PROMISSORY NOTE in dispute **lost its original legal entity status** after the securitization process. The "Securities" are the new kind of species resulting from the "pool" of hundreds of notes, including

NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

9 *See* footnote 4.

10 *See* footnote 7.

each original PROMISSORY NOTE subject to Securitization.[11]

12. The Securities are the new legal entity resulting from the promissory note securitization process.[12]

13. After the original promissory note in dispute was batched with other hundreds or thousands of promissory notes and the "pool" was carried out in the securitization process of the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**[13], between the dates of: **MARCH 30, 2003 TO JULY 15, 2009**[14], the resulting "Securities" were circulated and sold to

---

[11] The PROMISSORY NOTES and the Securities are regulated, respectively, by Chapter 2 and Chapter 8 of the Law on Commercial Transactions of Puerto Rico, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); and by Article 3 and Article 8, respectively, of the Uniform Commercial Code of the United States of America, U.C.C. § 3-104; U.C.C. § 8-102(15); and "Tax Reform Act" of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.* "Real Estate Mortgage *Investment Conduits (REMICs) came into existence through the Tax Reform Act of 1986. Under this act, qualified residential and commercial mortgages notes are pooled and securitized*".

[12] Compare: 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.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Article 3 and Article 8 of the Uniform Commercial Code of the United States of America, U.C.C. § 3-104; U.C.C. § 8-102(15); and "Tax Reform Act" of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

[13] *See* footnote 8.

[14] *See* footnote 7.

the general public on global markets ("shares or pieces of the pool").[15]

14. There is no contractual relationship between the defendant in the above-captioned case and the Securities Holders. Investors who are at the end of the "Securitization" chain process have standing to sue, in compliance with the terms of the "Securities" and due to their status as "Securities Holders".[16]

15. **None of the Securities Holders acquired any original PROMISSORY NOTE**. They acquired: "Securities", a negotiable instrument resulting from the securitization process of hundreds or thousands of promissory notes.

16. After the "securitization" process of each original promissory note, **all of the previous "Note Holders & Mortgage Holders" of each original note collected** the amount displayed on each of these when they sold it on the Secondary Mortgage Market.

17. Each original PROMISSORY NOTE under dispute was sold by the ORIGINATOR-SPONSOR to investors acting as intermediaries of the secondary

---

[15] These securities purchasers are at the end of the Securitization Food Chain and are called: Securities Holders.

[16] The "Securities" resulting from the securitization process of the promissory notes are subject to market risks. However, the "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".

The "Securities Holders" do not have standing to claim the principal debt arising from the original PROMISSORY NOTE because they acquired "Securities".

mortgage market. In that transaction, **the ORIGINATOR-SPONSOR collected the amount of each original promissory note through a third-party payment** (first intermediary investor). In turn, the first Intermediary Investment Bank sold it to another Intermediary Investment Bank of greater hierarchy. In this other transaction, the first intermediary investment bank, also collected the amount of each promissory note by third-party payment (second intermediary investor).

18. **The last Investment Bank** that bought and accumulated the PROMISSORY NOTES, including each original NOTE under dispute, **submitted the same to the securitization process to recover its investment** in the acquisition of the NOTES and to **achieve higher profits** by selling the securities resulting from the above securitization process. Each original PROMISSORY NOTE under dispute was batched with hundreds or thousands of NOTES to create the mass ("pool") that generated the new kind of species: "**Securities**", *supra*.[17]

19. Prior to the conversion of each original promissory note, along with other thousands of notes, into Securities, actual sales of each original promissory note in question took place between the "**Originator**" and the "**Sponsor**"; between the "Sponsor" and "**Depositor**"; and between the "Depositor" and "**Trustee**" to generate the "Trust" FREDDIE MAC MULTICLASS 2965 SERIES-REMICs, "Tax Reform Act of 1986"; *U.S.*

---

17 The flow of sales and negotiations of each original promissory note and the specifications and details of the resulting Securities were verified by the corresponding Expert Reports on Securitization, prepared by experts from the United States [Exhibit 1-19].

Bank National Association v. Antonio Ibañez, 941 N.E. 2d 40 (Mass 2011).[18]

20. Under Articles 1777 and 1232 of the Civil Code of Puerto Rico, of 1930, the corresponding instruments had to be granted for the assignment of the mortgage loan between: (i) the original creditor and the investment bank of the secondary market; (ii) between the "Originator" and the "Sponsor"; (iii) between the "Sponsor" and the "Depositor"; and (iv) between the "Depositor" and the "Trustee"-REMICs "Tax Reform Act of 1986". And this did not happen. *See* statement in: *U.S. Bank National Association v. Antonio Ibañez*, 941 N.E. 2d 40 (Mass 2011), 458 Mass 637 (2011).

21. On the filing date of the complaint in the above-captioned case **(September 10, 2015)**, **the plaintiff did NOT have standing** to claim the collection of each original promissory note under dispute, because it was **NEITHER the owner, NOR the holder, NOR the possessor of each aforementioned promissory note; nor, was it a mortgage creditor**, given that the ORIGINATOR-SPONSOR sold each promissory note on the secondary market, collecting the amount of the debt shown on each NOTE, and these were subject to "securitization", *supra*.

22. After the sale of each original promissory note on the *Secondary Mortgage Market*, *supra*, all the previous owners and holders collected their respective

---

[18] At the same time, assignments or transfers of the mortgage loan occur between the "Originator" and the "Sponsor"; between the "Sponsor" and "Depositor"; and between the "Depositor" and the "Trustee"-REMICs, "Tax Reform Act of 1986"; *U.S. Bank National Association v. Antonio Ibañez*, 941 N.E. 2d 40 (Mass 2011).

claims and the **debt shown on each original note, thus, the debt was discharged** through third-party payment. After the discharge of the debt, **the mortgage** that secured it **was also discharged**.

23. **Intermediary Investors** of the secondary market–*i.e.* commercial banks, investment banks, Fannie Mae, Freddie Mac, Goldman Sachs, Morgan Stanley, Lehman Brothers, Merryll Lynch, Bear Stearns, Deutsche Bank, Wells Fargo–**do not have standing** to claim the collection of each original promissory note because NONE of them is the owner and holder of each original note, given that they sold these on the secondary mortgage market and collected the same by third-party payment. In addition, each original PROMISSORY NOTE was subject to "securitization" and, as a result, each original NOTE became, along with other hundreds or thousands of NOTES, a new kind of species: "securities", supra. Thus, each original PROMISSORY NOTE lost its legal entity status.

24. Knowing that each original PROMISSORY NOTE in dispute had already been sold on the secondary mortgage market, and having collected the debt by third-party payment, in the complaint in the above-captioned case, the plaintiff made false representations of being the owner and holder of each original promissory note and creditor of the MORTGAGE.

25. The plaintiff does not have standing to sue in the **above-captioned case. The above-captioned case for collection of monies and foreclosure is not justiciable** due to the plaintiff's lack of standing to sue. Thus, it does not have right to collect each promissory note or enforce the mortgage-backed guarantee since the ORIGINATOR-SPONSOR collected the amount of each original promissory note when it sold them on the

secondary market. By the filing date of the complaint in the above-captioned case, each original PROMISSORY NOTE had already lost its legal entity status due to conversion-along with other hundreds or thousands of NOTES-into "securities", and each mortgage had lost its encumbrance quality by discharge of the debt through third-party payment.

26. Expert Reports on Securitization (Exhibits 1-19) inexorably show that each PROMISSORY NOTE in dispute was sold, transferred, and subject to *Securitization* [together with a "pool" of hundreds of notes] on a date prior to the filing of the complaint in the above-captioned case. Exhibits 1-19 of this Motion for Relief from Judgment contain Expert Reports/Sworn Statements with the Apostille of an Expert from the United States, demonstrating the precedent essential facts in an irrefutable way. Content of Exhibits 1-19, *in toto*, is incorporated herein, these are issued under oath and have the relevant Apostille.

27. The plaintiff's lack of standing to sue at the time of filing its complaint, deprived the Court of First Instance from jurisdiction in the above-captioned case. If there is no jurisdiction, then the above-captioned case for collection and foreclosure is not justiciable.

IV. Case Law on Subject of Relief from Judgments

Rule 49.2 of Civil Procedure, 32 L.P.R.A. Ap. V, R.49.2, establishes the procedural mechanism available for petitioning the lower court **to relieve the effects of a judgment**, order or proceeding when any of the grounds set forth therein is present. This Rule 49.2 of Civil Procedure, sets out the following in relevant matters:

"Through a motion and under fair conditions, the Court may relieve a party or its legal representative from a judgment, order or proceeding, for the following reasons:

(a) Error, oversight, excusable negligence or surprise;

(b) discovery of essential evidence that, despite due diligence, could not have been discovered in time to request a new trial, in accordance with Rule 48 of this Exhibit;

(c) fraud (which until now has been referred to as "intrinsic" and also called "extrinsic"), misrepresentation or other misconduct of an opposing party;

(d) **nullity of judgment**;

(e) judgment has been satisfied, waived or been fulfilled, or the previous judgment on which it was based has been revoked or otherwise left without effect, or it would not be fair for the judgment to continue in force, or

(f) any other reason that justifies the granting of relief against the effects of a judgment."

This precept of civil procedure aims to achieve the fair balance between two (2) principles of utmost importance in our legal system. On one hand, the interest for cases to be resolved by merits through the issuing of substantial justice. On the other hand, that legal disputes come to an end. *Nester v. Ramos, supra; Municipio de Coamo v. Tribunal Superior*, 99 D.P.R. 932, 936-937 (1971). *See also;* J.A. Cuevas Segarra, *Tratado de Derecho Procesal Civil*, San Juan, Publicaciones

J.T.S., 2000, T. II, p. 784; Wright, Miller and Kane, *Federal Practice and Procedure: Federal Rules of Civil Procedure*, St. Paul Minn., West Publishing Co., 1995, Vol. 11, sec. 2857, pp. 256-257.

In turn, subsection (4) of Rule 49.2 of Civil Procedure, *supra*, grants the Court the power to relieve some of the effects of a judgment when determining the nullity thereof. **A judgment is null and void when the same has been rendered without jurisdiction** or when, upon issuing the same, due process of law has been violated. *Figueroa v. Banco de San Juan*, 108 D.P.R. 680, 688 (1979); *Estado Libre Asociado v. Tribunal Superior*, 86 D.P.R. 692, 697-698 (1962); *Rodríguez Figueroa v. Registrador de la Propiedad*, 75 D.P.R. 712, 718 (1953). *See*, R. Hernández Collin, *op. cit.* sec. 4807, p. 354; J.A. Cuevas Segarra, *op. cit.*, T. II, pp. 795-796. *See also, Hoult v. Hoult*, 57 F3d. 1, 6 (1995); *In re: Hunter*, 66 F3d. 1002, 1005 (1995).[19]

It is important to point out that, based on these legal grounds—**subsection (4) of Rule 49.2 of Civil Procedure—There is no margin of discretion** as there is under the other legal grounds of Rule 49.2 of Civil Procedure, supra; if a judgment is null and void, it has to be left without effect, regardless of the merits of the defense or the claim of the injured party.[20] R. Hernández

---

[19] *See also*, J.W. Moore, Moore's Federal Practice, 3ra ed., San Francisco, LexisNexis, 2009, Vol. 12, sec. 60.44(1)(b), pp. 60-150; T.A. Coyne, Federal Rules of Civil Procedure, 2da ed., Minnesota, West Group, 2000, sec. VII-74; H.A. Kooman, Federal Civil Practice, Atlanta, The Harrison Company Pub., 1975, Vol. 4, sec. 60.06, p. 246, when discussing the Federal Rule of Civil Procedure 60(b)(4), which is similar to our Rule of Civil Procedure 49.2(4), *supra*.

[20] As pointed out by author Harold A. Kooman in his work, Federal Civil Practice: "An important distinction must be kept in

Collin, *op. cit.*, sec. 4807, p. 355; Wright, Miller and Kane, *op. cit.*, Vol. 11, sec. 2862, p. 322. On this specific matter, the Supreme Court has stated that:

> . . . the Court's discretion, under the provisions of the above Rule 49.2 of Civil Procedure, to grant relief to one of the parties from the effects of a judgment is inapplicable when it comes to a judgment which is "null and void"; if it is null and void, there is no discretion for relief, thus, there is an obligation to pronounce the nullity thereof.[21] (Citations omitted).
>
> The conclusion is inescapable, accordingly, given the certainty of nullity of a judgment, it is mandatory to declare its lack of legal basis; regardless of the fact that the request to such effects is made after the expiry of the time limit of six (6) months established in the aforementioned Rule 49.2 of Civil Procedure. *Montañez v. Policía de Puerto Rico*, 150 D.P.R. 917, 921-922 (2000). *Véanse, Bco. Santander P.R. v. Fajardo Farms Corp.*, 141 D.P.R. 237, [243-244] (1996); *Figueroa v. Banco de San Juan*, 108 D.P.R. 680, [689] (1979). *See also*, H.A. Kooman, *op. cit.*, sec. 60.6, pp. 246-247.

With regard to the grounds for nullity of judgment for violation of due process of law, Law Professor Rafael Hernández Colón, points out that "there can be as many manifestations of the same as there are

---

mind in considering the voidness of a judgment as a ground for relief. **A void judgment is theoretically no judgment at all, is legally ineffective, and creates no rights or obligations**". H.A. Kooman, *op. cit.*, sec. 60.06, p. 246.

[21] *See*, J.W. Moore, *op. cit.*, Vol. 12, sec. 60.44(5)(a), pp. 60-163.

principles of due process, and which were broken in a particular case." R. Hernández Colón, *op. cit.,* sec. 4807, p. 355. Using similar terms, the expert in procedural law, James William Moore, expresses that: "[t]here is no theoretical limit to the possibilities that a judgment could be void because a court [. . .] has acted in a manner inconsistent with due process of law". J.W. Moore, *op. cit.*, Vol. 12, sec. 60.44(4), pp. 60-161.

V. Application and Conclusion

In view of the aforementioned Law, it is clear that 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 promissory 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 promissory note; nor, was it the creditor of each mortgage** because, prior to the date of filing of the complaint, the ORIGINATOR-SPONSOR sold each promissory note on the Secondary Mortgage Market, and the mortgage loan was securitized. That is to say, it was subject to securitization.

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 promissory 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.

PLEA

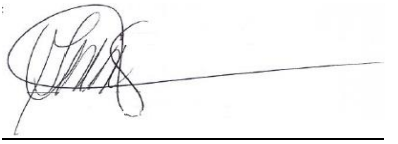
DUE TO ALL THE ABOVE, this Honorable Court is petitioned to decree relief from the judgment in the above-captioned case.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on January 21, 2019.

I CERTIFY: That a true and accurate copy of this Brief was notified by regular mail and/or email and/or registered mail, with acknowledgement of receipt, to all the registered attorneys, at their addresses on record.

MONGE LA FOSSE
ATTORNEY & COUNSELLORS AT LAW, P.S.W.
PO Box 192053
San Juan, Puerto Rico 00919-2053
Telefono: (787) 765-9090
TeleFax: (787) 765-9035
Celular: (787) 413-1135
Lic: 12496
Email: mongelafosselaw@gmail.com



Grace Monge La Fosse

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP F

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of sixty-three (63) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is a Motion under Rule 49.2 (d) of Civil Procedure, 2009, issued by Oriental Bank in the Commonwealth of Puerto Rico, Court of First Instance, Judicial Center of Caguas, Superior Court, Civil Case No. ECD-2015-1017.

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

COMPLAINT FILED IN THE COURT OF FIRST INSTANCE SUPERIOR COURT OF CAGUAS (ENTRY: SEPTEMBER 10, 2015)

THE COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
COURT OF CAGUAS

ORIENTAL BANK,

Plaintiff,

v.

MULTI-VENTAS Y SERVICIOS, INC.; MULTI-VENTAS 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,

Defendants.

Civil Case No.: ECD-2015-1017702

Re: Collection of Monies, Mortgage Foreclosure

TO THE HONORABLE COURT:

COMES NOW the plaintiff, Oriental Bank, represented by its undersigned attorneys and, most respectfully, **STATES, ALLEGES AND PETITIONS**:

I. Parties

Oriental Bank, (hereinafter "Oriental"), is a banking institution duly organized and existing under the Laws of the Commonwealth of Puerto Rico. Their physical and postal address is Oriental Bank, #254 Muñoz Rivera Avenue, corner of Carlos Chardón, San Juan, Puerto Rico 00918; PO Box 364745, San Juan, Puerto Rico 00936-4745.

2. On April 30, 2010, the Office of the Commissioner of Financial Institutions of Puerto Rico issued an order for Eurobank to cease operations and appointed the Federal Deposit Insurance Corporation as trustee for Eurobank's assets. On that same date, April 30, 2010, Oriental acquired and became the holder in good faith of the loans that are the subject matter of this dispute and therefore, it is the creditor that is currently assigned all of Eurobank's rights under the loans granted to the Defendants and holders of the mortgage promissory notes and other securities described in this Complaint and whose foreclosure is being requested.

3. The codefendant, **MULTI-VENTAS Y SERVICIOS, INC.**, is a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico, whose physical address is Road #1, Km. 26.9, Río Cañas, Caguas, Puerto Rico 00726 and whose postal address is PO Box 6012, Caguas, Puerto Rico 00726. It is the debtor in the loan identified with number 2064011568 and the guarantor for the loans

identified with numbers 2064012720, 4201805 and 364000538.

4. The codefendant, **MULTI-VENTAS Y SERVICIOS P.R., INC**., is a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico, whose physical address is Road #1, Km. 26.9, Río Cañas, Caguas, Puerto Rico 00726 and whose postal address is PO Box 6012, Caguas, Puerto Rico 00726; PO Box 6018, Caguas, Puerto Rico 00726. It is the debtor in the loan identified with number 364000538 and the guarantor for the loans identified with numbers 2064011568, 2064012720 and 4201805.

5. The codefendant, **MULTI-BATTERIES & FORKLIFTS, CORP**., is a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico, whose physical address is Borinken Avenue, Villa Blanca Industrial Park, Caguas, Puerto Rico 00726 and whose postal address is PO Box 6012, Caguas, Puerto Rico 00726; PO Box 360827, San Juan, Puerto Rico 00936-0827. It is the debtor in the loans identified with numbers 2064012720 and 4201805, as well as the guarantor for the loan identified with number 364000538.

6. The codefendant, **AWESOME, INC**., is a corporation duly organized and existing under the laws of the Commonwealth of Puerto Rico, whose physical address is in Villa Blanca Industrial Park, Caguas, Puerto Rico 00726 and whose postal address is PO Box 6012, Caguas, Puerto Rico 00726. It is the guarantor for the loans identified with numbers 2064012720, 4201805, 2064011568 and 364000538.

7. The codefendants, **PEDRO RIVERA CONCEPCIÓN**, his wife **MARÍA MERCEDES FELICIANO**

CARABALLO and the Marital Community Partnership constituted by both, are of legal age, married to each other and residents of Caguas, Puerto Rico. They are the guarantors of the loans that are the subject matter of this dispute, identified by Oriental with numbers 206411568, 2064012720, 4201805 and 364000538. Their last known physical address is in Urb. Quintas de San Luis, C-1 Monet Street, Caguas, Puerto Rico 00725 and their postal address is PO Box 6012, Caguas, Puerto Rico 00726-6012.

II. Material Facts

Credit Facilities A and B: Loans number 2064012720 and 4201805

8. Oriental is the legal holder in good faith of the mortgage promissory notes that guarantee the payment of the debt being claimed in this action.

9. On June 7, 2007, Multi-Batteries & Forklifts, Corp., through its President, the codefendant, Pedro Rivera Concepción, granted a Loan Agreement before the failed Eurobank whereby the latter granted them a revolving credit line (loan number 2064012720) for the total sum of $1,500,000.00, accruing interest at the Prime Rate ("Eurobank Prime Rate") until its payment in full. The Parties agreed that the revolving credit line would expire on June 7, 2008. A copy of the Loan Agreement is included as **EXHIBIT 1**.

10. On that same date, June 7, 2007, as evidence of the aforementioned credit facility, Multi-Batteries & Forklifts, Corp. signed a Master Promissory Note payable to Eurobank, or upon demand, for the principal sum of $1,500,000.00, before the notary public Rafael M. Arrillaga Romany, affidavit number 3,100.

A copy of the Master Promissory Note is included as **EXHIBIT 2**.

11. To guarantee the payment of the aforementioned credit facility, on June 7, 2007, Multi-Batteries & Forklifts, Corp. signed a Lien and Secured Interest Agreement. Under said contract, Multi-Batteries & Forklifts, Corp. pledges, yields, assigns and transfers to Oriental, as a secured creditor, a continuous lien and secured interest over any right, title and interest that said codefendant party may have over the following properties (a copy of the Lien and Secured Interest Agreement is included as **EXHIBIT 3**):

a. All current or future accounts of any kind and nature, where the debtor is the creditor;

b. The entire inventory kept by the debtor for sale;

c. All financial Papers;

d. All Contracts, including, but not limited to, any Sale Agreement, and a) all debtor rights regarding monies owed and payable to the debtor, and b) all debtor rights to receive insurance compensation, related indemnifications, compensations or guaranties and damage claims by the debtor and any other right that the debtor may have including to cancel the same and in any other way to exercise all related actions;

e. All Title Certificates;

f. All Intangible Assets;

g. All Instruments;

h. All books, documents, ledgers, records and other documents related to the collateral and the equipment containing said books, documents, ledgers, records and other documents;

i. All deposit or investment accounts kept with the bank, including, but not limited to, the operations and collateral accounts; and

j. The proceeds of all of the above, including, but not limited to, any proceeds from the insurance policies related to the collateral.

12. Likewise, as a guarantee for payment in full of all current and future obligations of Multi-Batteries & Forklifts, Corp., on June 7, 2007, the codefendants, Multi-Ventas y Servicios, Inc., Multi-Ventas y Servicios P.R., Inc., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all current and future Multi-Batteries & Forklifts, Corp. debts. A copy of said Unlimited and Continuous Guaranty Agreements is included as **EXHIBITS 4, 5 and 6**, respectively.

13. Thus, on June 23, 2009, Multi-Batteries & Forklifts, Corp. and the failed Eurobank granted a First Amendment to the Loan Agreement, which extended the termination date for the revolving credit line to August 30, 2010. A copy of the First Amendment to the Loan Agreement is included as **EXHIBIT 7**, and a copy of the "Allonge," as **EXHIBIT 8**.

14. On October 28, 2011, Multi-Batteries & Forklifts, Corp. and Oriental granted a Second Amendment to the Loan Agreement. Through the aforementioned amendment, the defendant acknowledged that it owed Oriental, as of that date and for the revolving credit

line, the sum of $980,911.40. Likewise, the Parties agreed to convert the balance owed of $980,911.40 into a term loan, which was identified with number 4201805. In addition, the signed amendment reduced the limit of the revolving credit line to the sum of $500,000.00 (loan number 2064012720). A copy of the Second Amendment is included as **EXHIBIT 9**.

15. With regard to the term loan for the sum of $980,911.40, identified with number 4201805, Multi-Batteries & Forklifts, Corp. undertook to make thirty (30) consecutive monthly payments of $14,565.98 each, and a final payment on May 31, 2014 for the amount of $669,504.13 plus the interest owed to date. Likewise, the Parties agreed that said loan would accrue interest at a rate of six point five percent (6.5%). A copy of the Term Promissory Note is included as **EXHIBIT 10**.

16. Also, with regard to the revolving credit line (loan number 2064012720), the Parties agreed that the date of termination would be on October 28, 2012 and that it would accrue interest at the Prime Rate plus a two percent (2%) margin until its payment in full. A copy of the Revolving Promissory Note is included as **EXHIBIT 11**.

17. To secure payment of the aforementioned credit facilities, on October 28, 2011, the codefendants, Multi-Ventas y Servicios, Inc. and Awesome, Inc., signed a Property Lien and Pledge Agreement (Mortgage Promissory Notes). Under said contract, the mortgage promissory notes and the mortgages described below are granted in guarantee [a copy of the Property Lien and Pledge Agreement (Mortgage Promissory Notes) is included as **EXHIBIT 12**]:

a. Mortgage promissory note for the sum of $432,000.00 payable to Eurobank, or upon demand, with interest at the Prime Rate and payable upon presentation. Secured with mortgage deed number 55, granted on February 17, 2004, before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "URBAN: Lot located in the Northern Section of the Santurce Ward of this city, San Juan, Puerto Rico, with a surface area of 440.00 square meters. Bounded on the NORTH, for 21.00 meters, by Borinquen Avenue; on the SOUTH, for 20.94 meters, by the property owned by Lorenzo Pimentel Sánchez and Monserrate Torres; on the EAST, for 22.47 meters, by the Bartolomé Las Casas Street; on the WEST, for 19.53 meters, by lands that belong to the Nin-Martínez Estate.
>
> It contains a 2-story house and has an annex on the West side that faces Borinquen Avenue.
>
> Property number 8,120, is registered on Folio 146 of Book 1,114 of North Santurce, San Juan Property Registry, First Section.
>
> A copy of the mortgage promissory note is included as **EXHIBIT 13**; a copy of mortgage deed number 55 is included as **EXHIBIT 14**; and the sworn title search for property number 8,120 is included as **EXHIBIT 15**.

b. Mortgage promissory note for the sum of $900,000.00, payable to Banco Popular de Puerto Rico and endorsed in favor of Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. Secured with mortgage deed number 95, granted on September 28, 1992, before the notary public Luis E. López Correa. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 243 granted on December 20, 2005 before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "RURAL: Plot of land located in the Bairoa Ward in the Caguas Norte Industrial Urbanization of the municipality of Caguas, Puerto Rico, identified as plot #15. Bounded on the NORTH, by Bairoa Avenue; on the SOUTH, by Segura Avenue; on the EAST, by Plot #10 of the same Industrial Urbanization; on the WEST, by Plot #16 of the same Industrial Avenue. It has a surface area of 9,041.79 square meters, equivalent to 2.3005 cuerdas.
>
> Property number 50,228, is registered on Folio 260 of Book 1,430 of Caguas, Caguas Property Registry, First Section.
>
> A copy of the mortgage promissory note is included as **EXHIBIT 16**; a copy of mortgage deed number 95 is included as **EXHIBIT 17**; and the sworn title search

for property number 50,228 is included as **EXHIBIT 18**.

c. Mortgage promissory note for the sum of $700,000.00, payable to Banco Popular de Puerto Rico and endorsed in favor of Eurobank, or upon demand, with yearly interest equal to half a percentage point under the variable prime rate and payable upon presentation. Secured with mortgage deed number 81, granted on December 6, 2000, before the notary public Tomás Correa Acevedo. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 243 granted on December 20, 2005 before the notary public Nelson William González Rosario. The mortgaged property is property number 50,228, as described in Section number 17(c) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 19**; and a copy of mortgage deed number 81 is included as **EXHIBIT 20**.

d. Mortgage promissory note for the sum of $2,443,000.00, payable to Eurobank, or upon demand, with yearly interest at 12.00% and payable upon presentation. Secured with mortgage deed number 246, granted on December 20, 2005, before the notary public Nelson William González Rosario. The mortgaged property is property number 50,228, as described in Section number 17(c) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 21**; and a copy of

mortgage deed number 246 is included as **EXHIBIT 22**.

e. Mortgage promissory note for the sum of $157,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. Secured with mortgage deed number 30, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is property number 50,228, as described in Section number 17(c) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 23**; and a copy of mortgage deed number 30 is included as **EXHIBIT 24**.

f. Mortgage promissory note for the sum of $180,000.00, payable to the Bearer, with yearly interest at 11.5% and payable upon presentation. Secured with mortgage deed number 285, granted on August 27, 1990, before the notary public Moisés Gómez Rjos. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 33 granted on June 22, 2009 before the notary public Rafael M. Arrillaga Romany. The mortgaged property is the following:

> "RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of 5,864.461 square meters. Bounded on the NORTH, for a distance of 83.89 meters by State Road #1; on the SOUTH, for a distance of 70.43 meters by lands owned by Mrs. Antonia Avilés; on the

EAST, for a distance of 54.57 meters by the "Quebrada Arenas" road; and on the WEST, for a distance of 99.35 meters, by lands owned by Mr. Antonio Torrecillas Ruiz and Rafael Torrecillas for a distance of 26.00 meters.

Property number 28,525, is registered on Folio 20 of Book 856 of Caguas, Caguas Property Registry, First Section.

A copy of the mortgage promissory note is included as **EXHIBIT 25**; a copy of mortgage deed number 285 is included as **EXHIBIT 26**; and the sworn title search for property number 28,525 is included as **EXHIBIT 27**.

g. Mortgage promissory note for the sum of $720,000.00, payable to Eurobank and Trust Company, or upon demand, with yearly interest at 12% and payable upon presentation. Secured with mortgage deed number 107, granted on July 29, 1992, before the notary public Nelson William González Rosario. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 33. The mortgaged property is property number 28,525, as described in Section number 17(f) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 28**; and a copy of mortgage deed number 107 is included as **EXHIBIT 29**.

h. Mortgage promissory note for the sum of $300,000.00, payable to Eurobank, or upon

demand, with yearly interest at 12% and payable upon presentation. Secured with mortgage deed number 75, granted on June 26, 1993, before the notary public Nelson William González Rosario. The expiration of the mortgage promissory note and of the mortgage was extended as recorded in deed number 33. The mortgaged property is property number 28,525, as described in Section number 17(f) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 30**; and a copy of mortgage deed number 75 is included as **EXHIBIT 31**.

i. Mortgage promissory note for the sum of $300,000.00, payable to Eurobank, or upon demand, with yearly interest at 12% and payable upon presentation. Secured with mortgage deed number 57, granted on September 3, 1998, before the notary public Janice Marie Bernal Maldonado. The mortgaged property is property number 28,525, as described in Section number 17(f) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 32**; and a copy of mortgage deed number 57 is included as **EXHIBIT 33**.

j. Mortgage promissory note for the sum of $1,500,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. Secured with mortgage deed number 27, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is property number 28,525, as described in Section number 17(f) of this Complaint. A copy

of the mortgage promissory note is included as **EXHIBIT 34**; and a copy of mortgage deed number 27 is included as **EXHIBIT 35**.

k. Mortgage promissory note for the sum of $800,000.00, payable to Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. Secured with mortgage deed number 267, granted on September 29, 2004, before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "RURAL: PARCEL 'C': With a surface area of 3,196.99 square meters, located in the Jiménez Ward of the Municipality of Río Grande, Puerto Rico, bounded, on the North, by State Road #3, known as the 65th of Infantry Avenue; on the South, by land owned by Mrs. Amparo Pérez, widow of Ayala; on the East, by lands belonging to Mr. E. Rivera; and on the West, also by lands owned by Mrs. Amparo Pérez, widow of Ayala.
>
> Property number 2,467, is registered on Folio 114 of Book 51 of Río Grande, Carolina Property Registry, Third Section.
>
> A copy of the mortgage promissory note is included as **EXHIBIT 36**; a copy of mortgage deed number 267 is included as **EXHIBIT 37**; and the sworn title search for property number 2,467 is included as **EXHIBIT 38**.

l. Mortgage promissory note for the sum of $100,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. Secured with mortgage deed number 32,[1] granted on June 22, 2009, before the notary public Nelson Rafael M. Arrillaga Romany. The mortgaged property is property number 2,467, as described in Section number 17(k) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 39**; and a copy of mortgage deed number 32 is included as **EXHIBIT 40**.

m. Mortgage promissory note for the sum of $1,200,000.00, payable to Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. Secured with mortgage deed number 446, granted on November 21, 2002, before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "URBAN: Plot of land identified as Parcel A-2, located in the Caguas Norte Industrial Urbanization, in Caguas, Puerto Rico, with a surface area of 5,256.6362 square meters, equal to 1.3374 cuerdas. Bounded on the NORTH, for a distance

---

[1] Although the mortgage deed is identified with number twenty six (26), the same was corrected through deed number thirty three (33) whose sole purpose is to clarify that the correct number that should identify the aforementioned deed is thirty two (32), instead of twenty six (26).

of 60.3577 meters by Parcel A-1; on the SOUTH, on a curved line for a distance of 2.7518 meters and in several alignments with a total distance of 59.1262 meters by A Street of the Industrial Urbanization; on the EAST, in two alignments with a total distance of 85.419 meters by Lot #15 of the same Industrial Urbanization; and on the WEST, on a curved line measuring 2.7518 meters and for a distance of 82.2306 meters by B Street of the Industrial Urbanization. It contains a building.

Property number 47,657, is registered on Folio 162 of Book 1,342 of Caguas, Caguas Property Registry, First Section.

A copy of the mortgage promissory note is included as **EXHIBIT 41**; a copy of mortgage deed number 446 is included as **EXHIBIT 42**; and the sworn title search for property number 47,657 is included as **EXHIBIT 43**.

n. Mortgage promissory note for the sum of $1,020,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. Secured with mortgage deed number 29, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is property number 47,657, as described in Section number 17(m) of this Complaint. A copy of the mortgage promissory note is

included as **EXHIBIT 44**; and a copy of mortgage deed number 29 is included as **EXHIBIT 45**.

o. Mortgage promissory note for the sum of $600,000.00, payable to Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. Secured with mortgage deed number 302, granted on October 4, 2001, before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "URBAN: Plot of land identified as Parcel A-1, located in the Caguas Norte Industrial Urbanization, in Caguas, Puerto Rico, with a surface area of 4,000.00 square meters, equal to 1.0177 cuerdas. Bounded on the NORTH, in a curved line at a distance of 2.8389 meters and for a distance of 54.31 meters, by the Jardines de Bairoa Avenue; on the SOUTH, for a distance of 60.3577 meters, by the remnant of the plot from which this property is segregated and identified in the plat map as a Parcel A-2, owned by Top Kids; on the EAST, in several alignments for a total distance of 66.2594 meters by Lot #15 of the same Industrial Urbanization; and on the WEST, for a distance of 2.8389 meters and in several alignments, for a distance of 65.5144 meters, by B Street of the said Industrial Park.

Property number 54,178, is registered on Folio 30 of Book 1,629 of Caguas, Caguas Property Registry, First Section.

A copy of the mortgage promissory note is included as **EXHIBIT 46**; a copy of mortgage deed number 302 is included as **EXHIBIT 47**; and the sworn title search for property number 54,178 is included as **EXHIBIT 48**.

p. Mortgage promissory note for the sum of $680,000.00, payable to Eurobank, or upon demand, with yearly interest at 12% and payable upon presentation. Secured with mortgage deed number 244, granted on December 20, 2005, before the notary public Nelson William González Rosario. The mortgaged property is property number 54,178, as described in Section number 17(o) of this Complaint. A copy of the mortgage promissory note is included as **EXHIBIT 49**; and a copy of mortgage deed number 244 is included as **EXHIBIT 50**.

q. Mortgage promissory note for the sum of $550,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. Secured with mortgage deed number 28, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is the following:

"RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area

of 1,561.365 square meters; bounded on the NORTH, for 69.62 meters by the main property from which it was segregated, owned by Antoni Torrecillas Ruiz; on the SOUTH, in 2 alignments, one of 43.70 meters, and the other of 27.34 meters, by lands owned by Catalino Burgos; on the EAST, for 20.00 meters by the Road that leads to Río Cañas Ward; and on the WEST, for 27.28 meters by lands owned by Mr. E.M. Bond. It contains a house.

Property number 10,008, is registered on Folio 59 of Book 376 of Caguas, Caguas Property Registry, First Section.

A copy of the mortgage promissory note is included as **EXHIBIT 51**; a copy of mortgage deed number 28 is included as **EXHIBIT 52**; and the sworn title search for property number 10,008 is included as **EXHIBIT 53**.

r. Mortgage promissory note for the sum of $280,000.00, payable to Banco Financiero de Puerto Rico, or upon demand, with yearly interest at 12% and payable upon presentation. Secured with mortgage deed number 4, granted on March 5, 1999, before the notary public Pedro E. Ortiz Álvarez. The mortgaged properties are the following:

PROPERTY NUMBER 28,522: Secures $140,000.00:

"RURAL: Plot of land based in the Río Cañas Ward of the municipality of

Caguas, Puerto Rico, with a surface area of 1,527.506 square meters, bounded on the NORTH and EAST, for 60.00 meters and 25.00 meters, respectively, by the main property from which it was segregated owned by Antonio Torrecillas Ruiz; on the SOUTH, for 59.49 meters by Plot 'A' of the same property; and on the WEST, for 26.00 meters by the former State Road #1 from Río Piedras to Caguas.

Property number 28,522, is registered on Folio 5 of Book 856 of Caguas, Caguas Property Registry, First Section.

PROPERTY NUMBER 30,533: Covers $140,000.00:

"RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of 1,554.855 square meters, bounded on the NORTH, for 59.49 meters by Plot 'B' of the main property; on the SOUTH, for 58.00 meters by lands owned by Mr. E.M. Bond; on the EAST, for 26.00 meters by the main property from which it was segregated, owned by Antonio Torrecillas Ruiz, today by José Rodríguez Collazo; and on the WEST, for 27.00 meters by Road #1 from Río Piedras to Caguas. It contains a house.

Property number 30,533, is registered on Folio 60 of Book 907 of Caguas, Caguas Property Registry, First Section.

The aforementioned properties were consolidated and the description of the property is as follows:

"RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of 3,082.631 square meters, bounded on the NORTH, for 59.49 meters by Plot 'B' of the main property and for 2.00 meters by the main property from which it was segregated; on the EAST, for 51.00 meters by the main property from which it was segregated; on the SOUTH, for 59.49 meters; and on the WEST, for 52.00 meters by Road #1 from Río Piedras to Caguas.

A copy of the mortgage promissory note is included as **EXHIBIT 54**; a copy of mortgage deed number 4 is included as **EXHIBIT 55**; and the sworn title searches for properties number 28,522 and 30,533 are included as **EXHIBIT 56**.

s. Mortgage promissory note for the sum of $920,000.00, payable to Eurobank, or upon demand, with yearly interest at 15% and payable upon presentation. Secured with mortgage deed number 31, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged properties are properties number 28,522 and 30,533, as described in Section number 17(r) of this Complaint, each of them covering the sum of $460,000.00. A copy of the mortgage promissory note is included as **EXHIBIT 57**; and

a copy of mortgage deed number 31 is included as **EXHIBIT 58**.

18. In addition, to guarantee payment in full of all current and future Multi-Batteries & Forklifts, Corp. obligations, on October 28, 2011, the codefendants, Multi-Ventas y Servicios, Inc., Multi-Ventas y Servicios P.R., Inc., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all current and future Multi-Batteries & Forklifts, Corp. debts. A copy of the Unlimited and Continuous Guaranty Agreements is included as **EXHIBITS 59, 60 and 61**, respectively.

19. Also, to guarantee payment of the aforementioned credit facilities, Multi-Batteries & Forklifts, Corp. signed a Property Lien Agreement on October 28, 2011. Under said contract, Multi-Batteries & Forklifts, Corp. established a preferential lien, payable to Oriental, on all Multi-Batteries & Forklifts, Corp. assets, as well as on all Multi-Batteries & Forklifts, Corp rights, titles and interest on the following assets (a copy of the Property Lien Agreement is included as **EXHIBIT 62**):

a. All Multi-Batteries & Forklifts, Corp. Receivable Accounts and any kind of profit, proceed, product and benefit of the same;

b. The entire inventory of Multi-Batteries & Forklifts, Corp.;

c. Any equipment and machinery of Multi-Batteries & Forklifts, Corp.;

d. Any right, claim and benefit that Multi-Batteries & Forklifts, Corp. may have against

any person arising from or related to the aforementioned assets; and

e. Any benefit, proceeds, income or products of the aforementioned assets.

20. In this state of affairs, on September 13, 2013, Multi-Batteries & Forklifts, Corp. and Oriental granted a Third Amendment to the Loan Agreement, which extended the termination date for the revolving credit line (credit facility number 2064012720) to September 13, 2014. A copy of the Third Amendment to the Loan Agreement is included as **EXHIBIT 63**, and a copy of the "Allonge," as **EXHIBIT 64**.

21. On that same date, September 13, 2013, Awesome, Inc. granted an Unlimited Guarantee Agreement that guaranteed payment in full of all current and future Multi-Batteries & Forklifts, Corp. debts. A copy of the Unlimited Guarantee Agreement is included as **EXHIBIT 65**.

22. The Defendant failed to fulfill their obligations regarding the credit facilities identified with numbers 2064012720 and 4201805, when they stopped paying the amounts owed as agreed, wherefore Oriental declared that the entire debt was due and payable. As of June 5, 2015, the principal debt regarding credit facility number 2064012720 (revolving credit line) amounted to the sum of $507,254.17, of which $500,000.00 corresponds to the balance owed for the principal, $7,000.00 corresponds to the accrued interest which shall continue to accumulate until the debt is paid in full, and $254.17 corresponds to other items owed, plus expenses, costs and fees, plus any other disbursement incurred by the plaintiff for other advances during the

proceedings of this case. A Sworn Statement is included as **EXHIBIT 66**.

23. Regarding loan number 4201805 (term loan), the debt amounted to the sum of $583,505.65, of which $572,030.57 corresponds to the principal owed, $10,018.48 corresponds to the accrued interest which shall continue to accumulate until the debt is paid, and $1,456.60 corresponds other items owed, plus expenses, costs and fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case. A Sworn Statement is included as **EXHIBIT 66**.

24. In strict compliance with the provisions of the Mortgage Law of 1979, Articles 179 and 221 (30 L.P.R.A., 2575-2721), the parties agreed that the properties that guarantee the promissory notes described above are valued at $432,000.00 for property number 8,120, $900,000.00 for property number 50,228, $180,000.00 for property number 28,525, $800,000.00 for property number 2,467, $1,200,000.00 for property number 47,657, $600,000.00 for property number 54,178, $550,000.00 for property number 10,008, $140,000.00 for property number 28,522 and $140,000.00 for property number 30,533. These values shall serve as the minimum bid for the first auction of the mortgages whose foreclosure is requested.

25. Multi-Batteries & Forklifts, Corp., Multi-Ventas y Servicios, Inc., Multi-Ventas y Servicios P.R., Inc., Awesome, Inc., Pedro Rivera Concepción and María M. Feliciano Caraballo are jointly liable to Oriental for the aforementioned sums, where payment of the same has been requested, unsuccessfully, in spite of collection efforts by Oriental through letters and

phone calls. A copy of the collection letter is included as **EXHIBIT 67**.

26. The obligation arising from the aforementioned promissory notes is due, liquid and legally enforceable, in addition to being secured by the voluntary mortgages described above.

Credit Facility C:
Loan number 2064011568

27. Oriental is the legal holder in good faith of the mortgage promissory notes that guarantee the payment of the debt being claimed in this action.

28. On December 20, 2005, Multi-Ventas y Servicios, Inc., acting as the debtor, and Awesome, Inc., Multi-Ventas y Servicios P.R., Inc., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo, acting as the joint guarantors, granted a Loan Agreement before the failed Eurobank whereby the latter granted them a loan for the principal sum of $7,000,000.00, accruing yearly interest at a fixed rate of six and one-half percent (6.50%). Under the terms of the aforementioned Loan Agreement, the defendants undertook to make one hundred nineteen (119) consecutive monthly payments for the sum of $47,264.50 each, and a final payment on December 20, 2016 for the outstanding balance of the principal ("Balloon Payment") of $5,443,556.11, plus any other sum owed as of that date. A copy of the Loan Agreement is included as **EXHIBIT 68**.

29. On that same date, December 20, 2005, in evidence of the above-described loan, Multi-Ventas y Servicios, Inc., through its President, the codefendant Pedro Rivera Concepción, signed a Promissory Note

payable to Eurobank, or on demand, for the principal sum of $7,000,000.00, before the notary public Nelson W. González Rosario, Affidavit number 22,841. A copy of the mortgage promissory note is included as **EXHIBIT 69**.

30. To secure payment of the loan, on December 20, 2005 the codefendants Multi-Ventas y Servicios, Inc. and Awesome, Inc. signed a Lien Agreement and Pledge of Mortgage Promissory Note Agreement. Under said agreement, the mortgage promissory notes and mortgages described in paragraphs number 17(a), 17(b), 17(c), 17(d), 17(g), 17(h), 17(i), 17(k), 17(m), 17(o), 17(p) and 17(r) of this Complaint were granted as securities. A copy of the Lien Agreement and Pledge of Mortgage Promissory Note Contract is included as **EXHIBIT 70**.

31. Likewise, to guarantee payment in full of all current and future Multi-Ventas y Servicios, Inc. obligations, on December 20, 2005, the codefendants, Multi-Ventas y Servicios P.R., Inc., Awesome, Inc., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all Multi-Ventas y Servicios, Inc. debts.

32. The Loan Agreement that was signed by the Parties on December 20, 2005 provides that a breach of said contract shall occur when "[. . .] the debtor fails to meet the payment of the principal, interest or charges under the Promissory Note(s), or the payment of any other sum owed to the Bank under this Contract or under any other Loan Document, on the date when such payment is due [.]" Likewise, the aforementioned agreement stipulates that in the event of noncompliance with the provisions of the same "[. . .]

the Bank's obligations under this Contract shall automatically terminate and the sums for the principal, interest and charges accumulated under the Promissory Note and all other obligations of the debtor under this Agreement and other Loan Documents shall automatically become immediately liquid and enforceable."

33. Faced with the defendant's noncompliance with their obligations regarding loans number 2064012720 and 4201805, Oriental declared that the entire debt regarding loan number 2064011568 was due, as expressly provided in the Loan Agreement.

34. As of July 14, 2015, the debt regarding loan number 2064011568 amounted to the sum of $5,681,215.94, of which $5,627,037.07 corresponds to principal owed, $54,815.64 corresponds to accrued interest, which shall continue to accumulate until the debt is paid in full, $2,363.23 to other items owed, plus costs, expenses and attorneys' fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case. The Sworn Statement is included as **EXHIBIT 66**.

35. Multi-Ventas y Servicios, Inc., Multi-Ventas y Servicios P.R., Inc., Awesome, Inc., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo are jointly liable to Oriental for the aforementioned sum, where payment of the same has been requested, unsuccessfully, in spite of collection efforts by Oriental through letters and phone calls. A copy of the collection letter is included as **EXHIBIT 71**.

36. The obligation arising from the aforementioned promissory note is due, is liquid and legally enforceable.

Credit Facility D:
Loan number 364000538

37. Oriental is the legal holder in good faith of the mortgage promissory notes that guarantee the payment of the debt being claimed in this action.

38. On June 22, 2009, Multi-Ventas y Servicios P.R., Inc. granted a Loan Agreement before the failed Eurobank whereby the latter awarded a loan for the principal sum of $5,860,000.00, accruing interest at the rate of six percent (6%)per annum. Under the terms of the aforementioned Loan Agreement, Multi-Ventas y Servicios P.R., Inc. undertook to make thirty-five (35) consecutive monthly payments for the sum of $35,133.63, and a final payment on June 22, 2012 for the outstanding balance of the principal of $5,637,472.90, plus the interest owed as of that date. A copy of the Loan Agreement is included as **EXHIBIT 72**.

39. On that same date, June 22, 2009, to provide evidence of the above-described loan, Multi-Ventas y Servicios P.R., Inc., through its President, Pedro Rivera Concepción, signed a Promissory Note payable to Eurobank, or on demand, for the principal sum of $5,860,000.00, before the notary public Rafael M. Arrillaga Romany, Affidavit number 3,950. A copy of the Promissory Note is included as **EXHIBIT 73**.

40. To secure payment of the loan, on June 22, 2009 the codefendants Multi-Ventas y Servicios, Inc. and Awesome, Inc. signed a Lien Agreement and Pledge of Mortgage Promissory Note Contract. Under said contract, the mortgage promissory notes and the mortgages described in paragraph number 17 of this Complaint were granted as securities. A copy of the

Lien Agreement and Pledge of Mortgage Promissory Note Contract is included as **EXHIBIT 74**.

41. Likewise, on June 22, 2009, Multi-Ventas y Servicios, Inc., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo granted extensive Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all current and future Multi-Ventas y Servicios P.R., Inc. debts. A copy of the Unlimited and Continuous Guaranty Agreements are included as **EXHIBITS 75 and 76**.

42. On September 13, 2013, Multi-Ventas y Servicios P.R., Inc., acting as the debtor, and Awesome, Inc., Multi-Ventas y Servicios, Inc., Multi-Batteries & Forklifts, Corp., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo, acting as the joint guarantors, granted a Loan Agreement before Oriental Bank whereby the latter granted them a loan for the principal sum of $5,546,014.51, accruing interest at a rate of six percent (6%) per annum. The purpose of this loan was to refinance the loan described in paragraph 37 of this Complaint. Under the terms of the aforementioned Loan Agreement, the defendants undertook to make fifty nine (59) consecutive monthly payments for the sum of $39,733.37 each, and a final payment on September 13, 2018 for the outstanding balance of the principal of $4,724,654.15, plus the interest owed as of that date. A copy of the Loan Agreement is included as **EXHIBIT 77**.

43. On that same date, September 13, 2013, in evidence of the loan described above, Multi-Ventas y Servicios P.R., Inc., through its President, Pedro Rivera Concepción, signed a Promissory Note payable to Eurobank, or on demand, for the principal sum of $5,546,014.51, before the notary public Tatiana Román

Orozco, Affidavit number 885. A copy of the Promissory Note is included as **EXHIBIT 78**.

44. To secure the loan described above, the codefendants Multi-Ventas y Servicios, Inc. and Awesome, Inc. signed a First Amendment to the Property Lien and Pledge Agreement on September 13, 2013. Through said agreement, the aforementioned codefendants amended the Property Lien and Pledge Agreement (Mortgage Promissory Notes) granted on October 27, 2011. The sole purpose of the granted amendment was to extend the mortgage guarantees established in the Property Lien and Pledge Agreement of October 27, 2011 for Multi-Ventas y Servicios P.R., Inc. obligations under the loan described in paragraph 41 of this Complaint. A copy of the First Amendment for the Property Lien and Pledge Agreement is included as **EXHIBIT 79**.

45. In addition, the codefendant, Multi-Ventas y Servicios P.R., Inc. granted a Property Lien Agreement on September 13, 2013. Under said agreement, Multi-Ventas y Servicios P.R., Inc. established a preferential lien payable to Oriental on all Multi-Ventas P.R., Inc. assets and over all Multi-Ventas y Servicios P.R., Inc. rights, titles and interest on the following assets (a copy of the Property Lien Agreement is included as **EXHIBIT 80**):

a. All Multi-Ventas y Servicios P.R., Inc., receivable accounts and any kind of profit, proceeds, products and benefit of the same;

b. The entire inventory of Multi-Ventas y Servicios P.R., Inc.;

c. Any equipment and machinery of Multi-Ventas y Servicios P.R., Inc.;

d. Any right, claim and benefit that Multi-Ventas and Services P.R., Inc. may have against any person arising from or related to the aforementioned assets; and

e. Any benefit, proceeds, income or products of the aforementioned assets.

46. Likewise, to guarantee payment in full of all current and future Multi-Ventas y Servicios P.R., Inc. obligations, on September 13, 2013, the codefendants, Multi-Ventas y Servicios, Inc., Awesome, Inc., Multi-Batteries & Forklifts, Corp., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited Guaranty Agreements that guaranteed payment in full of all current and future Multi-Ventas y Servicios P.R., Inc. debts. A copy of the Unlimited Guaranty Agreements is included as **EXHIBIT 81**.

47. Article VII of the Loan Agreement signed by the parties on September 13, 2013 provides that Oriental "[. . .] may, at their discretion, accelerate its expiration and claim the immediate payment of all sums owed under this Agreement or other Loan Documents and/or refuse to make additional advances under this Agreement or other Loan Documents, if any of the following defaults should occur [. . .]:

(a) That the debtor or any of the Guarantors fails to comply with any other obligation assumed under this Agreement or under the terms of the other Loan Documents or regarding any other debt that the Debtor or any of the Guarantors has with the Bank [.]"

48. Faced with the defendant's noncompliance with their obligations regarding loans number 2064012720 and 4201805, Oriental declared that the

entire debt regarding loan number 364000538 was due, as expressly provided in the Loan Agreement.

49. As of July 14, 2015, the debt regarding loan number 364000538 amounted to the sum of $5,353,532.01, of which $5,296,811.62 corresponds to principal owed, $54,733.72 corresponds to accrued interest, which shall continue to accumulate until the debt is paid in full, $1,986.67 cover other items owed, plus costs, expenses and attorneys' fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case. A Sworn Statement is included as **EXHIBIT 66**.

50. Multi-Ventas y Servicios P.R., Inc., Multi-Ventas y Servicios, Inc., Awesome, Inc., Multi-Batteries & Forklifts, Corp., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo are jointly liable to Oriental for the aforementioned sum, where payment of the same has been requested, unsuccessfully, in spite of collection efforts by Oriental through letters and phone calls. A copy of the collection letter is included as **EXHIBIT 71**.

51. The obligation arising from the aforementioned promissory note is due, is liquid and legally enforceable.

WHEREFORE, this Honorable Court is most respectfully petitioned to grant this Complaint and, accordingly, issue a judgment ordering:

(A) That Multi-Ventas y Servicios P.R., Inc., Multi-Ventas y Servicios, Inc., Awesome, Inc., Multi-Batteries & Forklifts, Corp., Pedro Rivera Concepción and Maria Mercedes Feliciano Caraballo pay Oriental the full amounts owed and claimed in this Complaint.

(B) To order, in case that payment is not made, the Bailiff of this Court to sell the mortgaged properties in public auction, and give material possession to the buyer by evicting the occupants within the term of twenty (20) days from the date of sale in public auction.

(C) That should the proceeds be insufficient to cover the total sum owed, the Court should order a levy of execution in due course upon any other property of the Defendants.

(D) Any other legal recourse that applies.

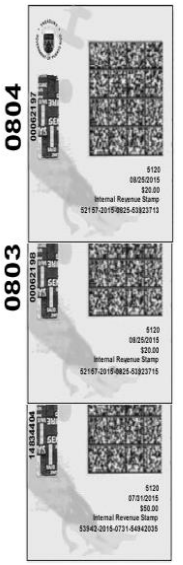
(E) That the Treasury Department and the Municipal Tax Collection Center disclose any tax debt on the properties described herein.

(F) To order the Defendants to pay the sum for attorneys' fees and litigation expenses agreed to by the parties.

(G) Order a levy of execution on all other assets and rights offered and pledged in guarantee of payment for the debt that is the subject matter of this Complaint.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on September 10, 2015.



DELGADO & FERNANDEZ, LLC
P O Box 11750
Fernández Juncos Station
San Juan, Puerto Rico 00910-1750
Tel. [787] 274-1414
Fax [787] 764-8241

/s/ Juan Manuel Cordero Morales
TSPR No. 15,820
jcordero@delgadofernandez.com

/s/ Pedro Hernández Freire
TSPR No. 19,347
phernandez@delgadofernandez.com

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP H

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of one hundred six (106) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is a Counterclaim [Re: Collection of Monies and Civil Procedure] in the Commonwealth of Puerto Rico Civil Case No. ECD-2015-1017; and accompanying documents.

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

ANSWER TO THE COMPLAINT AND AMENDED COUNTERCLAIM (ENTRY: AUGUST 10, 2017)

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
JUDICIAL CENTER OF CAGUAS
SUPERIOR COURT

ORIENTAL BANK,

Plaintiff/
Counterclaim Defendant,

v.

MULTI-VENTAS Y SERVICIOS, INC.; MULTI-VENTAS Y SERVICIOS P.R., INC.; MULTI-BATTERIES & FORKLIFTS, CORP.; AWESOME, INC.; PEDRO RIVERA CONCEPCIÓN; MARÍA MERCEDES FELICIANO CARABALLO; AND THE CONJUGAL PARTNERSHIP

Defendant/
Counterclaimant.

Civil Case No.: ECD-2015-1017

Re: Collection and Monies and Mortgage Foreclosure

Counterclaim: Nonexistence of Promissory Notes; Extinguishment of Promissory Notes; Nonexistence of Pledges; Extinguishment of Pledges; Nonexistence of Mortgages; Extinguishment of Mortgages; Extinguishment of Mortgage Loan Agreement;

Nullity of Auction Upset Price; Claim of Equity of Properties; Nullity of Agreement for Waiver of Future Rights, i.e. Property Equity; Nullity of Loan Repayment Schedules; Nullity of Principal Balances; Nullity of Interest and Other Charges; Application of Excessive Interest; Restitution; Article 80, Property Registry Act; Cancellations of Property Registry Filing Entries; Cancellations of Property Registry Registration Entries; Article 203, Property Registry Act; Unconstitutionality of Art. 104, Property Registry Act, 3rd and 4th paragraphs, etc.

> "Our courts should not be collection agencies for crooks."—John Waihee, Governor of Hawaii, Term 1986-1994
>
> "What are the most dysfunctional parts Of the Global Financial System? . . . America's housing market [for what crooks do to it]"—Magazine: The Economist, August 20TH-26TH 2016

TO THE HONORABLE COURT:

COME NOW the defendants-counterclaimants, through the undersigned attorneys, and they most respectfully, **STATE, ALLEGE AND PETITION**:

First of all, we most respectfully petition that the instant Amended Counterclaim be accepted into the pleadings, since when the complaint for the above-captioned case was filed, it was immediately necessary to file an Answer to the Complaint so that we could exercise the Right of Redemption.

Unfortunately, on this first occasion, the redemption was unsuccessful because the discovery of the *Mortgage*

Loan Price and Purchasing Agreement executed by the plaintiff and a third party, which would have proven the sale of the loan in question, was not allowed.

Parallel to the prolonged appeals phase of this matter, the defendants-counterclaimants moved forward with their defense where the abundant Expert Documentary Evidence attached hereto was produced, consisting of 19 Sworn Expert Reports that precisely establish: (i) the date of sale of each of the 19 promissory notes in controversy on the secondary market by the plaintiff's predecessor, who through said sale satisfied its financial claim *in toto*; (ii) the date on which each of the aforesaid 19 promissory notes were subject to the process of *Securitization, infra*; (iii) the name of the *Trust* that was produced after the process of *Securitization* of the promissory notes; and other fundamental matters that reveal the plaintiff's lack of standing to sue in the instant case.

Thus, this Amended Counterclaim boils down to: (i) the inclusion of the aforementioned specific information of each promissory note in controversy; and (ii) the inclusion of the "Federal Question," *infra*. Let us review the following.

I. Introduction

1.1 The baseless collection action initiated by the plaintiff in the above-captioned case is another unfortunate example of the disconnects that continue to prevail in the Puerto Rican banking industry after the global stock market crash of October 2008 and its effects. As a result of the proliferation of federal economic programs and aid granted to the banks—palliatives for the economic crisis—numerous internal

administrative processes have been created in the banking industry that unfortunately were not coherently implemented or lost their initial coherence.

1.2 As a first example, we point out that there are innumerable collection actions that have been filed in the Courts of Puerto Rico even where consumers are complying with payment of their loans under the Obama plan, *loss mitigation*, payment plans, modifications, *inter alia*; or even when consumers are meeting their payment obligations through a Collection Agency.

1.3 Secondly, there are innumerable collection actions that have been filed in the Courts of Puerto Rico without the consumer having been given the opportunity to benefit from a range of programs: (*i.e.* Obama plan, *loss mitigation*, payment plans, modifications, workouts) despite the billions of dollars that the Puerto Rico banking industry received for these purposes.

1.4 Third, there are countless collection actions that have been filed in the Courts of Puerto Rico: (i) without the plaintiff being the owner, holder or possessor of the ORIGINAL PROMISSORY NOTE; (ii) where said ORIGINAL PROMISSORY NOTE was sold on the Secondary Market by the plaintiff or its predecessor; (iii) where the plaintiff or its predecessor had already collected the amount of the ORIGINAL PROMISSORY NOTE upon selling it on the Secondary Market; and (iv) where said ORIGINAL PROMISSORY NOTE was subject to *Securitization*.

1.5 The instant case falls under this third example. In addition, the counterclaim filed clears the way for the determination of important questions of law that, in ranked order: (i) will require the interpretation of

federal legislation ("Federal Question"); and (ii) will require an examination of the jurisdiction of this Court to adjudicate the action for collection of monies and mortgage foreclosure filed by the plaintiff in the above-captioned case.

1.6 With respect to the examination of jurisdiction, we should mention that the U.S. Courts have heard thousands of cases such as the above-captioned case, and they have dismissed actions for collection of monies and mortgage foreclosure due to the plaintiff's *lack of standing*. From the *rationale* in these cases, rules arise which can be summarized as follows:

> In an action for collection of monies and mortgage foreclosure, *if the plaintiff is NOT the owner, holder or possessor of the promissory note, then the plaintiff does NOT have standing. If the plaintiff does NOT have standing, then the Court does NOT have jurisdiction. If the Court does NOT have jurisdiction, then the complaint should be dismissed because the case is NOT justiciable*.

1.7 With respect to the *Federal Question*, it is important to note that this Court has concurrent jurisdiction to determine it and it will ultimately fall on the U.S. Supreme Court to review your determination. The question is as follows:

> 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*.

1.8 Certainly, the correct answer to that question of law will assist in the process of adjustment that has to be done in the System. It is important to note that, after the global financial crisis of 2008, the worldwide academic community agreed that the capitalist system was in danger. With respect to our capitalist zone, it will fall upon the judicial systems of the United States and Puerto Rico to block the way of ENTITIES that wrongfully manipulate and interfere with the so-called *"Mortgage System"*—"*the huge parallel structure that exists outside the banks and which creates almost as much credit as they do."* These meddling and manipulative ENTITIES are known as "*The Crooks of the Mortgage System"* (hereinafter called the "ENTITIES").

1.9 How did the original Mortgage System (supporter of the *"American Dream"*) morph into the current Mortgage System (supporter of the *"American Nightmare"*)? Simple, thanks to the manipulation and wrongful interference of these ENTITIES in the Mortgage System, managing to obtain their broad deregulation in the 1980s under the Reagan Administration.

1.10 These ENTITIES eviscerated our original good and healthy Mortgage System, where only banks provided money to property buyers; where the banks retained the original promissory note evidencing the debt in their favor; and where banks generated normal profit (term used with its technical meaning in economics) from mortgage loans.

1.11 Everything was going well in our Capitalist System with that normal profit margin, until the ENTITIES disrupted and manipulated the Mortgage System so that, *inter alia*, it would generate abnormal profits (term used with its technical meaning in economics) through a manipulation of monthly interest and principal calculations for mortgage loans where debtors end up paying thirty-three percent (33%) more than what they should, according to the agreed terms, after the 30 years of the mortgage.

1.12 Under the new Mortgage System, firmly established by the ENTITIES, banks are the participants at the bottom of the ladder in the new structure. Banks, as soon as they generate a mortgage note, sell it on the Secondary Market, collect on it and generate profits. In most cases, it takes them less than a month to sell them, collect their financial claim and generate profit. Thus, the original promissory note leaves the hands of the originating bank and circulates in the Secondary Market until it goes through the process of *Securitization*.[1] After this process of *Securitization*, the ENTITIES instantly obtain control over most of the abnormal profit.

---

[1] In other words, the promissory note was converted——together with other hundreds or thousands of promissory notes ("pool")—into the following *Securities*: *"Mortgage-Backed Securities" ("MBSs"); "Asset-Backed Securities; "DS" ("Debt Securities"); "CDOs" ("Collateralized Debt Obligations"); "CMOs" ("Collateralized Mortgage Obligations"); "Whole Loan CMOs" ("Whole Loan Collateralized Mortgage Obligations")*. This was under the U.S. "Tax Reform Act, 1986," through the vehicle of REMICs, 26 CFR § 1.860 F-2, *et seq.* Said *Securities* are instruments of value produced from the pool of the thousands or hundreds of original PROMISSORY NOTES.

In general terms, *Securitization* means the process by which a set of original promissory notes is converted into something of

1.13 The greed of these ENTITIES does not end with the measure of abnormal profit. In addition to using the financial procedure of *Securitization* (converting packages of promissory notes into something of a new nature called *Securities* to sell them on international markets, which allows instant collection and monopolization of abnormal profit), the ENTITIES decide when to downgrade the performance of the *Securities*; to the point that they nullify their value and cause the market to collapse.

1.14 Subsequently, the ENTITIES create new spoils: the extinguished promissory notes that constituted the written—off *Securities*. With them, they do a variety of things, though they do not legally exist as promissory notes after their process of *Securitization,* and the *Securities* have been written off. *Inter alia:*

---

a new nature: *Securities.* It is well known that if an original PROMISSORY NOTE is converted—together with other hundreds or thousands—into Securities, then the original PROMISSORY NOTE ceases to exist due to its conversion into something of a new nature: "Securities"—*Cf.* Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. § 501, *et seq.*, § 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Section 3, Section 8 of the Uniform Commercial Code of the United States of America, UCC § 3-104; UCC § 8-102 (15); and the Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

In fact, after the process of "Securitization" of a PROMISSORY NOTE, the "Debt Holders" and "Note Holders" cease to exist when the "Securities Holders" come into being. These final investors of the chain acquired "Securities." These "Securities" are subject to market risks. However, these "Securities Holders" insure their investment through a "CDS" ("Credit Default Swap"), and they collect the amount insured if their value falls.

(1) they create new financial products (*i.e.* "CDOs") to sell and collect more (*re-securitization*);

(2) they file actions for collection of monies and mortgage foreclosure against the debtors—*whose loans fell into "default" due to the damaged economy that the ENTITIES themselves caused, as their abnormal profit reduces the money supply in circulation, which, in turn, leads to a contraction of the economy*—to take control, without any right, of the properties that were encumbered through the now-extinguished promissory notes. This is despite the fact that they already charged the amount of the promissory notes when they sold them on the Secondary Market and made a prodigious abnormal profit;

(3) they sell loan listings to other types of investors, of a lower rank, at a rate of 3-10 cents on the dollar, and, *inter alia,* they even endeavor to create schemes to frustrate the defendant's chose in action right of redemption.

WHERE WILL THIS END? WHO WILL STOP THIS NIGHTMARE? Our Justice System.

1.15 Meanwhile, there are other deplorable actions by Oriental Bank in the instant case such as extortion, blackmail, conspiracy, illegal acts (declaring so-called loans whose payments were current to be in arrears)—all in violation of federal and state laws. How did these deplorable acts of Oriental Bank begin?

A. First, Oriental Bank filed 3 separate legal actions against the defendants (ECP-2013-0084; ECP-2013-0085; KCD-2013-2657) in

which it claimed that it had lost 3 promissory notes and petitioned for the defendant be ordered to execute 3 new promissory notes. To handle these three actions, Oriental Bank engaged the services of the law firm Bufete McConnell. Multi-Ventas engaged the services of the undersigned for its defense. When we submitted our Answer to the Complaint and Counterclaim in each of the aforementioned cases, together with our Interrogatories, Document Production and Request for Admissions, the law firm Bufete McConnell Valdés WITHDREW from the legal representation of Oriental Bank. McConnell withdrew because, after reviewing our Answer to the Complaint and Counterclaim and Interrogatories, etc., it clearly recognized that the aforesaid promissory notes were in fact NOT LOST but rather had been SOLD on the Secondary Mortgage Market. After the withdrawal of McConnell, the law firm Bufete Delgado and Fernández took its place as Oriental Bank's legal representative. Out of the blue, a lawyer from Delgado and Fernández called and said: "Grace, the promissory notes turned up and we are going to withdraw the 3 lawsuits." We informed them that we would continue with our counterclaims since the promissory notes were not actually lost, and they did not turn up, but rather they were sold on the Secondary Mortgage Market.

B. Secondly, Oriental Bank failed to deduct the direct payment of one of the 4 so-called loans

detailed in the complaint[2] in the above-captioned case, and then, without any valid basis, refused to refinance the "Balloon Payment" of said loan ("Loan B," *infra*). The only extrajudicial explanation that Oriental Bank gave to the defendant was that it would not refinance the Balloon Payment while the counterclaims were being litigated, and, conversely, that it would refinance the Balloon Payment if the defendants withdrew their counterclaims. These acts constitute extortion, blackmail and conspiracy.

C. Thirdly, Oriental Bank created a FICTITIOUS DEFAULT ON PAYMENT with respect to "Loan B" by failing to deduct the direct payments from the defendant's account monthly. In doing so, Oriental Bank committed acts in violation of state and federal laws.

D. Fourth, after Oriental Bank illegally created a fictitious DEFAULT ON PAYMENT with respect to "Loan B," Oriental Bank illegally declared the other 3 loans detailed in the

---

[2] *Grosso modo*, according to the above-captioned complaint, the so-called loans or credit facilities are:

"Loan A"–Revolving Line of Credit #2064012720
Amount: $500,000.00; Monthly Payment: approx. $15,000

"Loan B"–Term Loan #4201805
Amount: $980,911.40; Monthly Payment: $14,565.98
With Balloon Payment

"Loan C"–Loan #2064011568
Amount: $7,000,000.00; Monthly Payment: $47,264.50

"Loan D"–Loan #364000538
Amount: $5,546,014.51; Monthly Payment: $39,733.37

complaint to be due and payable, although their EXTREMELY HIGH MONTHLY INSTALLMENTS WERE CURRENT ON PAYMENT. *Cf.* Paragraphs 33 and 48 of the complaint.

1.16 **DECEPTIVELY**, in the above-captioned case, the plaintiff bank claims to be the owner and holder of the promissory notes in controversy. **IN REALITY**, the plaintiff bank is **NOT** the owner, holder or possessor of the original promissory notes, since its predecessor, **EUROBANK**, sold the original promissory notes on the Secondary Market between the dates of **MARCH 5, 2003 AND JULY 9, 2009**,[3] and the promissory notes

---

3

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009

underwent the process of *Securitization* between the dates of MARCH 30, 2003 AND JULY 15, 2009,[4] in the

NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

4

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

Trusts: EURO LOAN CLO I-EBS OVERSEAS INC III.[5]

1.17 At the time of the sale of the promissory notes (between the dates of **MARCH 5, 2003 AND JULY 9, 2009**, which is **6 to 12 years** BEFORE the filing of the complaint in the above-captioned case

---

5

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

(**SEPTEMBER 10, 2015**), the plaintiff's predecessor collected the amount of the aforementioned PROMISSORY NOTES. The third party (secondary market investor) that acquired them paid the plaintiff's predecessor the amount of the PROMISSORY NOTES.

1.18 Thus, as of the date of filing of the complaint in the above-captioned case (**SEPTEMBER 10, 2015**), the plaintiff was NOT the owner, holder or possessor of the aforementioned promissory notes, nor was it the creditor of the mortgages since its predecessor previously sold the promissory notes (between the dates of **MARCH 5, 2003 AND JULY 9, 2009**) on the Secondary Market, and the promissory notes underwent the process of *Securitization* between the dates of **MARCH 30, 2003 AND JULY 15, 2009**,[6] in the Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.

6

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006

1.19 Thus, the legal action filed by the plaintiff is NOT justiciable because the plaintiff lacked standing at the time it filed its claim. It lacked standing because it was NOT the owner, holder or possessor of the promissory notes in question, nor was it the creditor of the mortgages subject to its legal action of collection and mortgage foreclosure. Therefore, the Trial Court does NOT have jurisdiction to adjudicate the action of collection of monies and mortgage foreclosure filed by the plaintiff.[7] Consequently, it should be dismissed.

NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

[7] As is well known, jurisdiction is the main source of the authority of the courts to interpret and enforce the laws in our system of government. It is governed by the application of the various doctrines that bring the principle of justiciability to life: standing, mootness and political question, *P.P.D. vs. Gobernador I*, 139 D.P.R. 643, 666 (1995).

It is an established rule that our jurisdiction is governed by the constitutional concept of justiciability, which establishes as a requirement the existence of a real case or controversy for the valid exercise of the judicial branch. *Ortiz v. Panel F.E.I.*, 155 D.P.R. 219 (2001).

By virtue of this, the courts must ensure that the matters brought before their consideration are **"justiciable,"** *i.e.*: (1) they do not involve aspects related to public policy to be established by the executive; (2) **the parties have legal capacity or standing to file the lawsuit**; (3) the controversy is not moot nor consultative; (4) the controversy is ripe. *Vilá v. Meléndez Ortiz*, 164 D.P.R., 2005 T.S.P.R. 79, 2005 JTS 80; *Com. de la Mujer v. Srio. de Justicia*, 109 D.P.R. 715, 720-725 (1980).

One of the axioms derived from this prudential approach is what is called **standing, which focuses primarily on the person that files the action** and secondarily on the matters to be adjudicated.

Hernández Torres v. Hernández Colón, 129 D.P.R. 824 (1992). One of the requirements of **justiciability of disputes is that the parties must have the legal capacity to be such parties**. *Hernández Agosto v. Romero Barceló*, 112 D.P.R. 407, 413 (1982). Lack of jurisdiction cannot be remedied nor can a court arrogate jurisdiction, since the courts have the compulsory duty to examine their own jurisdiction. *Pagán Navedo vs. Alcalde Mun. de Cataño*, 143 D.P.R. 314, 326 (1997).

PREPARED ON BEHALF OF:

Pedro Rivera Concepcion

SECURITIZATION ANALYSIS REPORT & AFFIDAVIT

William McCaffrey

William McCaffrey, Declare as follows:

This Affidavit and analysis is based on my own personal knowledge. I have no direct or indirect interest in the outcome of the case at bar for which I offer my observations, analysis, opinions and testimony. My experience in the Banking industry encompasses over 30 years' employment for federally insured institutions including a decade as Business Development Manager, Indy Mac Bank FSB, and currently Consultant, Housing Mortgage Consultants, Inc. I have knowledge and experience to render opinions in the areas related to the securitization of mortgage loans, derivative securities, and the securities industry.

My expertise also includes knowledge of loan origination, underwriting, accounting in the context of securitization, pooling and servicing of securitized loans, assignment and assumption of securitized loans, creation of trusts under deeds of trust, issuance of asset backed securities, specifically mortgage-backed where an entity is named as trustee for holders of certificates, and foreclosure of securitized and non-securitized residential mortgages. I have served as expert witness in numerous civil cases. I have testified in both federal and state courts including Nevada, Arizona, California, Texas, New Jersey, New Mexico, Florida, and South Carolina. Cases include *Marshall and Isley Bank v. Izzo, Slikker v. Kondaur, Brokalakis v. National City Mortgage, and Wells Fargo Bank v. Dutson.* Superior Court Judges' Ronan, García, and Budoff and Federal Bankruptcy

Any material outside of this Affidavit is not produced or verified by Housing Mortgage Consultants. William McCaffrey does not authorize or lend his name for any reason.

judges Markell and Riegle of Nevada, as well as Commissioners' Davis, Ellis, and Hamner have affirmed my expert testimony. I am also a securitization analyst and can access corporate trust documents officially filed with the Securities and Exchange Commission. I find Notes held by named trust-entities, and verify the status at any given time. I have the knowledge and experience to perform these searches with accuracy.

At the request of GRACE MONGE LA FOSSE, I submit this Affidavit and have personal first-hand knowledge of the following facts after thorough review, research, and analysis of the following documents and records:

i. A copy of the disputed **December 20, 2005** Note (Exhibit I).
ii. A copy of the disputed **December 20, 2005** Mortgage (Exhibit II).
iii. The Complaint filed related to Note and Mortgage (Exhibit III).

SECURITIZATION PARTICIPANTS		
ORIGINATOR	SPONSOR	DEPOSITOR
Eurobank	Eurobank	Eurobank Shares
TRUSTEE	ISSUING ENTITY	PRIOR SERVICER
Deutsch Bank	EBS Overseas Inc. II	Eurobank
CUSTODIAN	SOLD TO SECONDARY MARKET	CLOSING DATE
Oriental Bank	December 27, 2005	January 5, 2006

December 20, 2005 the subject Note was executed for $2,443,000 originated by Eurobank. A Mortgage securing the subject property (Mortgage) then followed and was recorded.

December 27, 2005 Eurobank sold the Note on the Secondary Market where it underwent a process of Securitization.[1] Specifically the Note was pooled and mixed with thousands of other Notes (*2,000-5,000 in "non-conforming" loans; hundreds of "conforming" loans*) to turn them into securities and sell them to the general public the end-investors in the "securitization food chain", who thereby become Securities Holders.

January 5, 2006 the Note now assigned to the **EBS Overseas Inc. II Trust** closed. Eurobank was then paid through the sale, and the Note lost its original law identity having been converted into a different law identity called securities. The Note in dispute was withdrawn from circulation and extinguished upon its conversion into a transformed instrument: Security; *Cf.* Article 3, Article 8 del Uniform Commercial Code of the United States, U.C.C. § 3-104; U.C.C. §8-102(15) following the process of securitization of the Note, the former "Note Holder" ceased to exist due to the emergence of "Security Holders". These investors at the end of the food chain purchased securities — financial instruments resulting from the pool generated by the melting pot of the thousands or hundreds of original promissory Notes pooled and mixed together under the aforementioned securitization process. Following the pooling of the subject Note with

1

Securitization is the process by which hundreds or thousands of NOTEs are converted into one of the following types of securities: "Mortgage-Backed Securities" ("MBSs"); "Asset-Backed Securities; "DS" ("Debt Securities"); "CDO" ("Collateralized Debt Obligation"); "CMO" ("Collateralized Mortgage Obligation"); "Whole Loan CMOs" ("Whole Loan Collateralized Mortgage Obligation").

MULTIVENTAS Y SERVICIOS, INC.

19 Notes Securitization Process flowchart

#	1 Note: Amount and Date	2 1st Originator	3 2nd Originator (Who accepted an endorsed Note)	4 Bank Sold Note on Secondary Market (Securitization process)	5 Date Note Sold On Secondary Market (Securitization process)	6 Date Note Securitized (Securitization process)	7 Name and number of the Trust (Securitization process)
C1	$180,000.00 August 27, 1990	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C2	$720,000.00 July 29, 1992	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C3	$900,000.00 September 28, 1992	BPPR	Eurobank	Eurobank	December 5, 1992	December 16, 1992	EURO Max IV MBS
C4	$300,000.00 June 26, 1993	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C5	$500,000.00 September 3, 1998	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C6	$280,000.00 March 5, 1999	Banco Financiero de Puerto Rico	Eurobank	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I

MULTIVENTAS Y SERVICIOS, INC.

19 Notes Securitization Process flowchart

#	1 Note: Amount and Date	2 1st Originator	3 2nd Originator (Who accepted an endorsed Note)	4 Bank Sold Note on Secondary Market (Securitization process)	5 Date Note Sold On Secondary Market (Securitization process)	6 Date Note Securitized (Securitization process)	7 Name and number of the Trust (Securitization process)
C7	$700,000.00 December 6, 2000	BPPR	Eurobank	Eurobank	January 5, 2001	January 30, 2001	Euro Multi Credit CDO
C8	$600,000.00 October 4, 2001	Eurobank	N/A	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C9	$1,200,000.00 November 21, 2002	Eurobank	N/A	Eurobank	March 5, 2003	March 30, 2003	Euro Loan CLO I
C10	$432,000.00 February 17, 2004	Eurobank	N/A	Eurobank	February 28, 2004	October 15, 2004	EBS Overseas Inc. I
C11	$800,000.00 September 29, 2004	Eurobank	N/A	Eurobank	October 7, 2004	October 15, 2004	EBS Overseas Inc. I
C12	$2,443,000.00 December 20, 2005	Eurobank	N/A	Eurobank	December 27, 2005	January 5, 2006	EBS Overseas Inc. II

MULTIVENTAS Y SERVICIOS, INC.

19 Notes Securitization Process flowchart

#	1 Note Amount Date Executed	2 1st Originator	3 2nd Originator (Who accepted an endorsed Note)	4 Bank Sold Note on Secondary Market (Securitization process)	5 Date Note Sold On Secondary Market (Securitization process)	6 Date Note Securitized (Securitization process)	7 Name and number of the Trust (Securitization process)
C13	$680,000.00 December 20, 2005	Eurobank	N/A	Eurobank	December 27, 2005	January 5, 2006	EBS Overseas Inc. II
C14	$1,500,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C15	$1,020,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C16	$920,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C17	$550,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C18	$157,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III
C19	$100,000.00 June 22, 2009	Eurobank	N/A	Eurobank	July 9, 2009	July 15, 2009	EBS Overseas Inc. III

II. Amended Answer to the Complaint

2.1 With the exception of personal information, registration data and the description, date and values specified in the extinguished Original Promissory Notes, all the claims in the Complaint in the above-captioned case as drafted, alleged or interpreted are denied, and any merit of the complaint's prayer for relief is rejected. This comprehensive negation is made under Rule 6.2 of the Rules of Civil Procedure, 32 L.P.R.A. Ap. V. R. 6.2. Below we present the demonstrative material facts that constitute the version of the defendants-counterclaimants, with the legal facts pertaining to our challenge of the plaintiff's standing in accordance with Rule 7.1 of the Rules of Civil Procedure, *supra*, and, therefore, the jurisdiction of this Honorable Court, Rule 3.1 (A)(1) of the Rules of Civil Procedure; and, following that, the presentation of the affirmative defenses meeting the requirements established by the aforesaid Rule 6.2 of the Rules of Civil Procedure, *supra*.

2.2 The PROMISSORY NOTES listed in the complaint were sold by the plaintiff's predecessor on the secondary mortgage market between the dates of: MARCH 5, 2003 AND JULY 9, 2009.[8] Through said

---

8

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003

sales, a third party (secondary market investor) paid the amount of the PROMISSORY NOTES to the plaintiff's predecessor, and the plaintiff collected its financial claim and moreover obtained profit on the sales. Thus, the payment obligation evidenced by each PROMISSORY NOTE was paid by a third party and collected by the plaintiff's predecessor. Neither the plaintiff's predecessor nor the plaintiff is the owner, holder or possessor of the promissory notes in question for their sales on the Secondary Market and their processes of *Securitization*.

2.3 The plaintiff's predecessor and the plaintiff are participants in the secondary mortgage market and other securities markets. Thus, the PROMISSORY NOTES indicated in the complaint were sold by the plaintiff's predecessor on said Secondary Market

NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

between the dates of **MARCH 5, 2003 AND JULY 9, 2009** and the PROMISSORY NOTES underwent the process of "*Securitization*" between the dates of **MARCH 30, 2003 AND JULY 15, 2009**,[9] in the Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.[10]

9

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

10 *See* footnote 1, whose content is adopted here by reference. *See, also,* the Exhibits of the Answer to the Complaint and Amended Counterclaim, the Expert Evidence with affidavit. This

In other words, they were converted[11]——together with hundreds or thousands of other promissory notes[12] ("pool")——into the following *Securities*: "Mortgage-Backed Securities" ("MBSs"); "Asset-Backed Securities"; "DS" ("Debt Securities"); "CDOs" ("Collateralized Debt Obligations"); "CMOs" ("Collateralized Mortgage Obligations"); "Whole Loan CMOs" ("Whole Loan Collateralized Mortgage Obligations"). These Securities are instruments of value produced from the pool of the thousands or hundreds of original PROMISSORY NOTES.

2.4 At the time of sale of each PROMISSORY NOTE listed in the above-captioned complaint, the plaintiff's predecessor collected the amount of each PROMISSORY NOTE. The purchasing third party paid the plaintiff's predecessor the amount of each PROMISSORY NOTE.

2.5 It is well known that if an original PROMISSORY NOTE is converted—together with other hundreds or thousands—into Securities, then the original PROMISSORY NOTE ceases to exist due to

---

Expert Evidence demonstrates: (i) the sale of the indicated promissory note on the secondary market before the filing of the above-captioned case's collection action; and (ii) the conversion of said promissory note into *Securities* along with other thousands of promissory notes through the process of *Securitization*. We reserve the right to append another Expert Report as Exhibit 2 of this pleading, which will take longer than the time granted by this Court to file this Answer to the Complaint and Counterclaim.

11 Under the US "Tax Reform Act, 1986," through the vehicle of REMICs, 26 CFR § 1.860 F-2, *et seq., inter alia.*

12 From 2,000 to 5,000 promissory notes from "non-conforming" loans; hundreds of promissory notes from "conforming" loans;

its conversion to something of a new nature: "Securities."[13] In fact, through the well-known financial engineering process of "Securitization," a PROMISSORY NOTE is pooled and mixed with thousands of other PROMISSORY NOTES (from 2,000 to 5,000/"non-conforming" loans; hundreds of "conforming" loans) to transform them into "Securities," and issue certificates, shares (stock), for their sale to the general public. Those who acquire such certificates or shares are known as the final investors of the chain ("*Securitization Food Chain*"): the "Securities Holders."

2.6 The final investors in the Securitization food chain of any of the aforesaid Securities have standing to sue for compliance with the terms of the "Securities" on account of their being "Securities Holders." It is important to note that they did not acquire any original PROMISSORY NOTE by endorsement—they are not the "Debt Holders" or the "Mortgage Note Holders."

2.7 In fact, after the process of "Securitization" of a PROMISSORY NOTE, the "Debt Holders" and "Note Holders" cease to exist when the "Securities Holders" come into being. These final investors in the food chain acquired "Securities"—instruments of value produced from the pool generated by the amalgam of thousands or hundreds of original PROMISSORY NOTES. The "Securities" are subject to market risks.

---

[13] *Cf.* Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. Sec. 501, *et seq.*, § 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Section 3, Section 8 of the Uniform Commercial Code of the United States of America, UCC § 3-104; UCC § 8-102 (15); and the Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

However, these "Securities Holders" insure their investment through a "CDS" ("Credit Default Swap"), and they collect the amount insured if their value falls.

2.8 None of the Agents or Intermediary Banks of the Secondary Markets—*i.e.* commercial banks, investment banks, Fannie Mae, Freddie Mac, Goldman Sachs, Morgan Stanley, Lehman Brothers, Merryll [sic] Lynch, Bear Stearns, Deutsche Bank, Wells Fargo—have any standing to claim the original obligation that arose from the original PROMISSORY NOTE because they are not the holder of the original PROMISSORY NOTE, and said promissory note, after the process of *Securitization*, has lost its legal identity as such upon becoming, along with others, something of a different nature: *Securities*.

2.9 Each original PROMISSORY NOTE indicated in the complaint was sold by the plaintiff's predecessor to the Intermediary Investment Bank. In this transaction, the Original Bank (the plaintiff's predecessor) collected the amount of each original PROMISSORY NOTE by payment by a third party (investor) with the operation of a discount—thus recovering its financial claim and obtaining profit. In turn, the Intermediary Investment Bank sold it to another, higher ranking Intermediary Investment Bank. In this other transaction, the first intermediate investment bank also collected the amount of the original PROMISSORY NOTE by payment by a third party (second investor) with the operation of a discount—thus recovering its financial claim and obtaining profit.

2.10 Finally, the final Investment Bank that bought and accumulated the PROMISSORY NOTES, including each promissory note subject to the above-captioned action, decided to convert them into *Securities*

to recover their investment in the PROMISSORY NOTES and obtain greater profits upon selling the *Securities*. In this process, each original PROMISSORY NOTE listed in the complaint was pooled and mixed with thousands or hundreds of other PROMISSORY NOTES to create the pool that generates the new type of instrument: *"Securities*." Before the conversion of the "pool" of PROMISSORY NOTES into *Securities*, there had to be real sales of the original PROMISSORY NOTES between the "Originator" and the "Sponsor"; between the "Sponsor" and the "Depositor"; and between the "Depositor" and the "Trustee" with respect to the "Trust"—REMICs, "Tax Reform Act of 1986." *See* discussion in: *U.S. Bank National Association v. Antonio Ibañez,* 941 N.E.2d 40 (Mass 2011), 458 Mass 637 (2011).

2.11 Moreover, under Articles 1777 and 1232 of the Civil Code of Puerto Rico, 1930, the respective deeds of assignment of the mortgage loan had to have been executed between: (i) the original creditor and the secondary market investment bank; (ii) the investment bank and the "Originator"; (iii) the "Originator" and the "Sponsor"; (iv) the "Sponsor" and the "Depositor"; and (v) the "Depositor" and the "Trustee."

2.12 In the above-captioned case, the plaintiff is NOT the owner, holder or possessor of the original PROMISSORY NOTES indicated in the complaint or the creditor of the aforementioned mortgages. As a participant in the secondary and securities markets, the plaintiff's predecessor sold the aforesaid PROMISSORY NOTES on said market and collected the amounts of the PROMISSORY NOTES by payment by third party. Thus, the plaintiff, at the time of filing the above-captioned complaint, lacked standing to collect

what its predecessor already sold and collected—Promissory Notes—through the Secondary Market. Consequently, the above-captioned complaint is not justiciable and this Honorable Court of First Instance lacks jurisdiction to hear its causes of action.

III. Affirmative Defenses

For reference, we incorporate all the facts presented in: (i) the introduction; (ii) in the affirmative allegations of the defendants-counterclaimants contained in the preceding paragraphs; and (iii) the counterclaim, *infra*. Based thereon, the following affirmative defenses are raised:

3.1 **Sale of the PROMISSORY NOTES**. The plaintiff's predecessor sold the original PROMISSORY NOTES on the Secondary Mortgage Market before filing the above-captioned Complaint.

3.2 **Collection of the PROMISSORY NOTES by Payment by Third Party**. After the sale of the PROMISSORY NOTES on the Secondary Market, the plaintiff's predecessor collected the amount of each PROMISSORY NOTE by payment by third party and recovered its financial claim before filing the above-captioned Complaint.

3.3 **Plaintiff is not the Owner, Holder or Possessor of the PROMISSORY NOTES**. Since the plaintiff's predecessor sold and collected each PROMISSORY NOTE indicated in the complaint on the Secondary Market before the filing of the above-captioned complaint, the plaintiff is not the owner, holder or possessor of said PROMISSORY NOTES nor the creditor of the aforementioned mortgages specified.

3.4 **Extinguishment of the debt**. The PROMISSORY NOTES specified in the above-captioned complaint were paid by a third party—Secondary Market Investor—and underwent *Securitization,* before the filing of the above-captioned complaint. By virtue of the payment by a third party, the defendants-counterclaimants owe no money to the plaintiff or its predecessor.

3.5 **Nonexistence/Extinguishment of the PROMISSORY NOTES AND MORTGAGES**. The PROMISSORY NOTES listed in the above-captioned complaint were subject to *Securitization*. Each promissory note was converted—along with other thousands or hundreds of promissory notes—into something of a new nature: *Securities*. After the Securitization process, each PROMISSORY NOTE lost its original legal identity (CREDIT INSTRUMENT) and was extinguished. After the process of *Securitization*, the pool of thousands of PROMISSORY NOTES produced Securities. Promissory notes and *Securities* are different legal vehicles. When a promissory note becomes a security, the two (credit instrument and security) cannot coexist simultaneously. This would constitute a type of securities fraud. In physical terms, the extinguished promissory notes were taken out of circulation on the market and kept under permanent custody of the *Master Documents Custodian* as documents constituting *Securities*. After the extinguishment of each promissory note, the mortgage securing it was also extinguished.

3.6 **Nonexistence of Pledge/Extinguishment of Pledge**. After the trading of the original PROMISSORY NOTES on the Secondary Market, the plaintiff's predecessor extinguished its pledges. Currently, the

pledges are non-existent since each original PROMISSORY NOTE was subject to *Securitization*.

3.7 **Original Promissory Note Subject to *Securitization***. Since the plaintiff and its predecessor participated in the secondary mortgage market and other markets, each original PROMISSORY NOTE indicated in the complaint was sold on said markets and underwent the process of "*Securitization*," *i.e.*, it was converted—together with other hundreds or thousands of promissory notes ("pool")—into one of the following Securities: "Mortgage-Backed Securities" ("MBSs"); "Asset-Backed Securities; "DS" ("Debt Securities"); "CDOs" ("Collateralized Debt Obligations"); "CMOs" ("Collateralized Mortgage Obligations"); "Whole Loan CMOs" ("Whole Loan Collateralized Mortgage Obligations").

3.8 **Nonexistence of Mortgage due to non-registration**. The mortgage deeds indicated in the complaint are not registered in the Property Registry. And if they have been registered, then their registration entries should be canceled, *infra*.

3.9 **Nonexistence of Mortgage, Nullity *ab initio* of Mortgage Deed due to lack of valid auction upset price**. None of the mortgage deeds indicated in the complaint have a valid upset price for the first auction. This defect voids each indicated mortgage deed and prevents foreclosure thereon. In each mortgage deed indicated, the "Property Value" clause fails to state any appraisal price agreed between the parties for the first auction. Instead, the aforementioned clause gives, surreptitiously, a price imposed by the originator based on the credit amount granted without considering the fair value of the property on the market. An upset price surreptitiously and unilaterally inserted by the

originator based on the amount of the loan granted does not constitute a valid upset price for the first auction. This would allow properties worth high amounts to be obtained at auction for ridiculously low prices. The mortgage deeds failed to satisfy the upset price requirement. Each of the indicated mortgage deeds is null and void *ab initio*. Article 80 of the Property Registry Act of the Commonwealth of Puerto Rico.

3.10 **Nonexistence/Nullity of the upset price**. There was no agreement between the parties with respect to the upset price for the first auction (the originator and the defendants). There was no negotiation between the parties with respect to the upset price. The upset price surreptitiously and unilaterally inserted by the Originator in each mortgage deed is null and void.

3.11 Nonexistence/Nullity of Agreement for Waiver of Future Rights. Among them, the equity of each property indicated in the complaint. The defendants-counterclaimants have at no time waived the right to the equity of each property, *inter alia*.

3.12 **Nonexistence/Nullity of "Loan Repayment Schedule."** These repayment schedules contain errors since the principal is not amortized according to the agreed terms. This causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.13 **Errors in the "Loan Repayment Schedule."** These repayment schedules contain errors since the principal is not amortized according to the agreed terms. This causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.14 **Nonexistence/Nullity of the principal balance of the "Loan Repayment Schedule."** These repayment schedules contain errors since the principal is not amortized according to the agreed terms. This causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.15 **Error in the principal balances detailed in the "Loan Repayment Schedule."** These repayment schedules contain errors since the principal is not amortized according to the agreed terms. This causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.16 **Nonexistence/Nullity of the interest detailed in the "Loan Repayment Schedule."** These repayment schedules contain errors since the principal is not amortized according to the agreed terms. This causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.17 **Error in the interest detailed in the "Loan Repayment Schedule."** These repayment schedules contain errors since the principal is not amortized according to the agreed terms. This causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.18 **Wrongful collection of interest**. The repayment schedules contain errors since the principal is not amortized according to the agreed terms. This causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.19 **Application of excessive interest**. The repayment schedules contain errors since the principal is not amortized according to the agreed terms. This

causes, every month, a higher principal balance which leads to the collection of excessive interest, *inter alia*.

3.20 **Nonexistence/Nullity of filing and registration entries in the Property Registry**. The mortgage deeds indicated in the Complaint are vitiated by an irreparable defect: nonexistence of a valid upset price for the first auction. This defect voids each mortgage deed and prevents foreclosure thereon. In the mortgage deeds indicated, the "Property Value" clause fails to state any appraisal price agreed between the parties for the first auction. Instead, the aforementioned clause gives, surreptitiously, a price imposed by the Originator based on the credit amount granted without considering the fair value of the property on the market. An upset price surreptitiously and unilaterally inserted by the originator based on the amount of the loan granted does not constitute a valid upset price for the first auction. This would allow properties worth high amounts to be obtained at auction for ridiculously low prices. The indicated mortgage deeds failed to satisfy the upset price requirement. Therefore, each of the indicated mortgage deeds is void *ab initio*, and their registration in the Property Registry is invalid. If they were registered by mistake or oversight, then such registration entries should be canceled.

3.21 **Extinguishment of personal principal obligations**. After the sale of the original PROMISSORY NOTES on the Secondary Market and the recovery of the financial claims by the plaintiff's predecessor before the filing of the above-captioned complaint.

3.22 **Extinguishment of ancillary obligations**. After the sale of the original PROMISSORY NOTES on the Secondary Market and the recovery of the financial

claims by the plaintiff's predecessor before the filing of the above-captioned complaint.

3.23 **Extinguishment of collateral**. After the sale of the original PROMISSORY NOTES on the Secondary Market and the recovery of the financial claims by the plaintiff's predecessor before the filing of the above-captioned complaint.

3.24 **Unconstitutionality of Article 104 of the Property Registry Act of the Commonwealth of Puerto Rico, 3rd and 4th paragraphs**. These are also contrary to market laws. These articles impose an auction "upset price" in all cases and do not provide alternatives for adjusting the upset price in cases where there is equity. A provision of law authorizing such deprivation of property is unconstitutional.

3.25 **Debt not due and payable**. After the sale of the original PROMISSORY NOTES on the Secondary Market and the recovery of the financial claims by the plaintiff's predecessor before the filing of the above-captioned complaint, there is no debt that is due and payable to the plaintiff. The alleged debt was settled by payment by a third party before the above-captioned complaint.

3.26 **The complaint fails to state a claim** for which relief may be granted to the plaintiff against the defendants-counterclaimants, after the sale of the original PROMISSORY NOTES on the Secondary Market and the recovery of the financial claims by the plaintiff's predecessor before the filing of the above-captioned complaint.

3.27 **The plaintiff lacks standing** for the causes of action stated in the complaint, after the sales of the original PROMISSORY NOTES on the Secondary

Market and the collection of the PROMISSORY NOTES. The plaintiff is not the owner, holder or possessor of the original promissory notes nor the creditor of the mortgages indicated in the complaint.

3.28 **Article 80 of the Property Registry Act of the Commonwealth of Puerto Rico, 2015**. In the mortgage deeds indicated in the complaint, reference is surreptitiously made to an upset price equal to the principal amount of the loan granted. This clause violates the aforementioned Article 80 of the Property Registry Act, *supra;* does not properly satisfy the principle of specialty and certainty that governs our real property law. In point of fact, it does not comply with the aforementioned legal principal since it surreptitiously determines the value of the property as the principal amount of the loan, which is completely disconnected from reality and fair treatment, thus permitting abuse.

3.29 **Lack of Upset Price Agreement**. There was no agreement between the parties (the Originator and the defendants) regarding the upset price for the first auction of the properties indicated in the complaint in the event of foreclosure.

3.30 **Lack of Property Appraisal**. In a mortgage deed, the appraisal of a property must be done validly and in a way that reflects reality. An upset price surreptitiously and unilaterally inserted based on the loan principal amount does not constitute a valid appraisal price. A mortgage deed that contains a clause on "Property Value" that surreptitiously refers to an upset price equal to the principal amount of the loan is vitiated by an irreparable defect—the absence of an upset price valid for the first auction—which voids the

mortgage and, consequently, prevents its registration in the Property Registry.

3.31 **Invalidity of Upset Price**. The upset price contained in each mortgage deed indicated in the complaint is not a valid auction upset price because it was not negotiated nor does it reflect the appraisal value of the property—as of the date of the mortgage deed—plus increase in value (appreciation) that can be ordinarily expected.

3.32 **Upset Price Criteria**. The criteria for the determination of the upset price consists of the property appraisal value—as of the date of the mortgage deed—plus its increase in value (appreciation). The Originator neither agreed on nor adhered to this criteria.

3.33 **Inappropriate Amount Claimed**. The collection of other amounts that appear in each mortgage deed indicated in the complaint is not permitted by Financial Board Regulation 5722 of November 21, 1997, "Regarding interest rates and other charges that may be collected or enforced in certain types of loans and obligations."

3.34 **There is a discrepancy between the multiple charges**—percentages (%) with respect to the principal amount that appears in each mortgage deed and in each extinguished PROMISSORY NOTE indicated in the complaint. The charges of multiple amounts appearing in the aforesaid mortgage deeds and promissory notes indicated in the complaint are not permitted by Financial Board Regulation 5722 of November 21, 1997, "Regarding interest rates and other charges that may be collected or enforced in certain types of loans and obligations."

3.35 **Article 203 of the Property Registry Act of the Commonwealth of Puerto Rico, 2015**. The filing and registration entries of each mortgage deed should be canceled in accordance with Article 203 of the Property Registry Act, *supra*, due to their nullity *ab initio*—the absence of an upset price.

3.36 **Estoppel**. The plaintiff is barred from pursuing the instant complaint on account of the doctrine of estoppel.

3.37 **Abuse of Legal Process**. The plaintiff has committed abuse of legal process by declaring a debt to be due and payable when it had already collected that debt through payment by a third party.

3.38 **Extinguishment of Interest**. The receipt of the principal by the creditor, without any reservation regarding interest, extinguishes the obligation of the debtor with respect to such interest. The receipt of the last installment of a debt, where the creditor does not make any reservations, extinguishes the obligation with respect to the previous installments.

3.39 **There is no Default**. The defendants-counterclaimants are not in default. The alleged debt was collected by the plaintiff's predecessor by payment by a third party at the time of selling each PROMISSORY NOTE indicated in the complaint on the Secondary Market.

3.40 **Statute of Limitations/Expiration of collection action**, negotiable instrument and mortgage action. The cause of action of collection of monies is barred by statute of limitations/expired/extinguished in accordance with the term provided by our commercial laws, which is three years for the collection of a negotiable instrument and for other reasons. On account of the foregoing

and for other reasons, the mortgage action is also barred by statute of limitations/expired/extinguished. *See, inter alia*, subsections 3.5, 3.8, 3.9, 3.10, *supra*.

The defendants-counterclaimants reserve the right to formulate any additional affirmative defense or amendment to this answer and counterclaim once they carry out discovery, and to pursue or file any claim against a future third party or co-party to which it is entitled on the basis of any evidence it discovers.

IV. Counterclaim

A. Parties

Counterclaimants

4.1 The counterclaimants are legal entities and individuals who are of legal age and property owners. Their physical and mailing address is: Highway Number KM 26.9, Rio Cañas, Caguas, Puerto Rico 00726. Their telephone number is: (787) 653-0357.

Counterclaim Defendant

4.2 On information and belief, the counterclaim defendant is a banking institution and/or investor that participates in the Secondary Mortgage and Securities Market.

B. Facts

4.3 All information presented in the foregoing and subsequent sections (answer to complaint, affirmative defenses, facts and causes of action of the counterclaim) is incorporated by reference.

4.4 On **SEPTEMBER 10, 2015**, the counterclaim defendant filed the complaint for collection of monies and mortgage foreclosure in the above-captioned case.

4.5 As of the date of filing of the aforesaid complaint, the counterclaim defendant was NOT the owner, holder or possessor of the original PROMISSORY NOTES nor creditor of the MORTGAGES subject to the above-captioned action.

4.6 The counterclaim defendant lacked standing to sue when it filed the complaint in the above-captioned case, since it is not the owner, holder or possessor of the aforementioned original PROMISSORY NOTES, nor creditor of the MORTGAGES.

4.7 Between the dates of MARCH 5, 2003 AND JULY 9, 2009,[14] *i.e.*, 6 to 12 years BEFORE the filing

14

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005

of the complaint in the above-captioned case, the counterclaim defendant's predecessor sold each original PROMISSORY NOTE on the Secondary Market and each PROMISSORY NOTE underwent the process of *Securitization* in the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.[15]

4.8 After the sale of each original PROMISSORY NOTE on the Secondary Market, the counterclaim defendant's predecessor collected the amount of each PROMISSORY NOTE by payment by third party (Secondary Market Investor) and it obtained profit by selling each PROMISSORY NOTE on dates prior to the above-captioned complaint.

4.9 As of the date of the sale of each original PROMISSORY NOTE on the Secondary Mortgage Market, between the dates of **MARCH 5, 2003 AND JULY 9, 2009**, the plaintiff's predecessor ceased to be

NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

15 *See* footnote 1, whose content is adopted here by reference. *See, also,* attached Exhibits, Expert Evidence and affidavit. These show: (i) the sale of the indicated promissory note on the secondary market before the filing of the above-captioned case's collection action; and (ii) the conversion of said promissory note into *Securities* along with other thousands of promissory notes through the process of *Securitization* before the filing of the above-captioned collection action.

the owner, holder or possessor of each original PROMISSORY NOTE and creditor of each MORTGAGE subject to the collection and foreclosure case.[16] Likewise, since the dates of each sale, the plaintiff has not been nor is the owner, holder or possessor of the promissory notes in question.

4.10 After the process of *Securitization* of each PROMISSORY NOTE (between the dates of **MARCH 30, 2003 AND JULY 15, 2009**,[17] in the respective

---

[16] It is important to note that when promissory notes go through the Securitization process—where the "pool" of these promissory notes is generated and the Securities are produced—said promissory notes are withdrawn from circulation on the market and, in physical terms, they are stored in a vault as documents of the *pool* which precedes the Securities resulting from the Securitization process. In accordance with federal regulations, these constituent documents (the old promissory notes) are placed under the permanent custody of the designated "Master Documents Custodian" of the Secondary Market, and they may not be removed from such custody.

[17]

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004

Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**[18]), each original PROMISSORY NOTE was converted into something of a new nature: *Securities*.

NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

18

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III

4.11 The allegations of the counterclaim defendant in the above-captioned case with respect to being the owner or holder of the PROMISSORY NOTES and creditor of the MORTGAGES are misrepresentations.

4.12 Between the dates of **MARCH 5, 2003 AND JULY 9, 2009**,[19] the counterclaim defendant's predecessor sold each original PROMISSORY NOTE in

NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

19

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009

question on the Secondary Market and collected the amount thereof by payment by a third party **BEFORE** the filing of the Complaint in the above-captioned case (**SEPTEMBER 10, 2015**).

4.13 After the sale of each original PROMISSORY NOTE on the secondary mortgage market, each PROMISSORY NOTE was subject to "Securitization"[20] as of the dates between **MARCH 30, 2003 AND JULY 15,**

NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

[20] In general terms, ***Securitization*** **means the process by which a set of original promissory notes is converted into Securities. It is well known that if an original PROMISSORY NOTE is converted**—together with other hundreds or thousands—**into Securities, then the original PROMISSORY NOTE ceases to exist due to its conversion to something of a new nature:** "Securities"—***Cf.*** Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. § 501, *et seq.*, § 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Section 3, Section 8 of the Uniform Commercial Code of the United States of America, UCC § 3-104; UCC § 8-102 (15); and the Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

In fact, after the process of "Securitization" of a PROMISSORY NOTE, the "Debt Holders" and "Note Holders" cease to exist when the "Securities Holders" come into being. These final investors in the food chain acquired "Securities." These "Securities" are subject to market risks. However, these "Securities Holders" insure their investment through a "CDS" ("Credit Default Swap"), and they collect the amount insured if their value falls.

2009[21]—*i.e.*, they were converted, along with other hundreds or thousands of promissory notes,[22] into "SECURITIES."

4.14 Each original PROMISSORY NOTE in controversy, after its process of *Securitization,* lost its

21

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

22 From 2,000 to 5,000 promissory notes from "non-conforming" loans; hundreds of promissory notes from "conforming" loans;

original legal identity. The "Securities" are the item of a different nature resulting from the "pool" of hundreds of promissory notes, including each indicated original PROMISSORY NOTE subject to *Securitization*.[23]

4.15 The *Securities* are the new legal vehicle resulting from said process of *Securitization* of the promissory notes.[24]

4.16 After pooling each original PROMISSORY NOTE in controversy with other hundreds or thousands of promissory notes, and having subjected the pool to the process of *Securitization* of the respective Trusts: ***EURO LOAN CLO I-EBS OVERSEAS INC III,***[25]

---

[23] The PROMISSORY NOTE and the Securities are regulated, respectively, by Chapter 2 and Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. § 501, *et seq.*, § 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); and by Section 3 and Section 8, respectively, of the Uniform Commercial Code of the United States of America, UCC § 3-104; UCC § 8-102 (15); and the Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.* "*Real Estate Mortgage Investment Conduits (REMICs) came into existence through the Tax Reform Act of 1986. Under this act, qualified residential and commercial mortgages notes are pooled and securitized.*"

[24] *Cf.* Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. § 501, *et seq.*, § 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Section 3, Section 8 of the Uniform Commercial Code of the United States of America, UCC § 3-104; UCC § 8-102 (15); and the Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

[25]

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I

between the dates of ***MARCH 30, 2003 AND JULY 15, 2009,***[26] the resulting "Securities" were circulated and

NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

26

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003

sold to the general public on the global markets ("shares or pieces of the pool").[27]

4.17 There is no contractual relationship between the defendants-counterclaimants in the above-captioned case and the *Securities Holders*. The final investors in the "Securitization" food chain have standing to sue for compliance with the terms of the "Securities" on account of their being "Securities Holders."[28]

NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

[27] These Securities buyers are at the end of the Securitization food chain and they are called: Securities Holders.

[28] The Securities resulting from the Securitization process of the promissory notes are subject to market risks. However, the Securities Holders insure their investment through a "CDS" ("Credit Default Swap"), and they collect the amount insured in the event of nonpayment of the yield of the Securities.

The Securities Holders lack standing to claim the original obligation that arose from the original PROMISSORY NOTE because they acquired Securities.

4.18 None of the Securities Holders acquired any of the original PROMISSORY NOTES in question. They acquired "Securities"—instruments resulting from the process of *Securitization* of hundreds or thousands of promissory notes.

4.19 After the "Securitization" process of each original PROMISSORY NOTE, all previous "Note Holders & Mortgage Holders" of each Original PROMISSORY NOTE collected the amount evidenced on each PROMISSORY NOTE upon selling it on the Secondary Mortgage Market.

4.20 The original PROMISSORY NOTES in controversy were sold by the counterclaim defendant's predecessor to intermediary investors in the secondary mortgage market. In that transaction, the counterclaim defendant's predecessor collected the amount of each original PROMISSORY NOTE by payment by a third party (first intermediary investor). In turn, the first Intermediary Investment Bank sold each promissory note to another, higher ranking Intermediary Investment Bank. In this other transaction, the first intermediate investment bank also collected the amount of each promissory note by payment by a third party (second intermediate investor).

4.21 The final Investment Bank that bought and pooled the PROMISSORY NOTES, including each original PROMISSORY NOTE in controversy, subjected them to the process of *Securitization* to recover its investment in the acquisition of PROMISSORY NOTES and obtain greater profits by selling the Securities resulting from the aforementioned process of *Securitization*. Each original PROMISSORY NOTE in controversy was pooled with other thousands or hundreds of PROMISSORY NOTES which created the "Pool"

that generated the new kind of vehicle: "Securities" of the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**,[29] as of the dates between **MARCH 30, 2003 AND JULY 15, 2009**.[30]

29

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

30 The flow of sales and trades of the original promissory note and the specifications and details of the resulting Securities are

4.22 Prior to the conversion of each original PROMISSORY NOTE, together with thousands of other promissory notes, into *Securities*, there had to be real sales of the original PROMISSORY NOTES in question between the "Originator" and the "Sponsor"; between the "Sponsor" and the "Depositor"; and between the "Depositor" and the "Trustee" to generate the respective "Trusts": **EURO LOAN CLO I-EBS OVERSEAS INC III**[31]—*i.e.* REMICs, "Tax Reform Act of 1986"; *U.S. Bank*

---

evidenced by the respective Securitization Expert Reports prepared by experts from the United States.

31

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III

National Association v. Antonio Ibañez, 941 N.E.2d 40 (Mass 2011).[32]

4.23 Under Articles 1777 and 1232 of the Civil Code of Puerto Rico, 1930, the appropriate deeds of assignment of the mortgage loan had to be executed between: (i) the original creditor and the secondary market investment bank; (ii) between the "Originator" and the "Sponsor"; (iii) the "Sponsor" and the "Depositor"; and (v) the "Depositor" and the "Trustee"—REMICs, "Tax Reform Act of 1986." And this did not happen. *See* discussion in: *U.S. Bank National Association v. Antonio Ibañez,* 941 N.E.2d 40 (Mass 2011), 458 Mass 637 (2011).

4.24 As of the date on which the complaint in the above-captioned case was filed (SEPTEMBER 10, 2015), the counterclaim defendant had NO standing to sue to collect on the original PROMISSORY NOTES in controversy because it was not owner, holder, or possessor of the aforementioned original PROMISSORY NOTES nor creditor of the MORTGAGES indicated in its complaint since its predecessor sold them on the secondary market, collected the amount of each PROMISSORY NOTE, and each was subject to "Securitization," between the dates of **MARCH 30,**

NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

[32] Simultaneously, the assignments or transfers of the mortgage loan take place between the "Originator" and the "Sponsor"; between the "Sponsor" and the "Depositor"; and between the "Depositor" and the "Trustee"—REMICs, "Tax Reform Act of 1986." *U.S. Bank National Association v. Antonio Ibañez*, 941 N.E.2d 40 (Mass 2011)

2003 AND JULY 15, 2009,[33] in the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.[34]

33

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

34

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS

4.25 After the sale of each original PROMISSORY NOTE on the Secondary Mortgage Market (between the dates of **MARCH 5, 2003 AND JULY 9, 2009**[35]),

NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

35

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001

all of their past owners and holders collected their respective financial claims and the debt evidenced by each original promissory note thereto was extinguished by payment by a third party. Upon extinguishment of the debt, each mortgage securing it was also extinguished.

4.26 The secondary market intermediary investors —*i.e.* commercial banks, investment banks, Fannie Mae, Freddie Mac, Goldman Sachs, Morgan Stanley, Lehman Brothers, Merryll [sic] Lynch, Bear Stearns, Deutsche Bank, Wells Fargo—have no standing to sue to collect on the original PROMISSORY NOTES because NONE OF THEM own or hold any of the original PROMISSORY NOTES since they, in turn, sold them on the secondary mortgage market and collected them by third party payment. In addition, each original PROMISSORY NOTE was subject to "Securitization" and, as

NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

a consequence, each original PROMISSORY NOTE became—along with other thousands or hundreds of PROMISSORY NOTES—something of a new nature: "Securities" of the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**,[36] between the dates

36

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

of **MARCH 30, 2003 AND JULY 15, 2009**.[37] Thus, the original PROMISSORY NOTES lost their legal identity.

4.27 Knowing that its predecessor had already sold each original PROMISSORY NOTE in controversy on the secondary mortgage market, and since its predecessor collected its financial claim through payment by a third party, the counterclaim defendant, in

---

37

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

the above-captioned case, made the misrepresentation of being the owner and holder of each original PROMISSORY NOTE and the creditor of each MORTGAGE. The counterclaim defendant very well knew that:

> "*Since the loan was sold, pooled and turned into a security—along with others—the alleged holder, can no longer claim that it is a real party with interest, as the original lender has been paid in full*". "Once the Note was converted—along with others—into a stock, or stock equivalent, it is no longer a Note. If both the Note and the Stock, or Stock equivalent, exist at the same time, that is known as double dipping. Double dipping is a form of securities fraud". "Once a Note has been securitized—*along with others*—it forever loses its security component (i.e. the mortgage), and the right to foreclose through the mortgage is forever lost".

4.28 The counterclaim defendant has no standing to sue in the above-captioned case. The <u>above-captioned collection of monies and foreclosure case is not justiciable</u> due to the counterclaim defendant's lack of standing to sue. It has no right to collect on the PROMISSORY NOTES nor to foreclose on the mortgage since its predecessor already collected the amount of the aforementioned original PROMISSORY NOTES when it sold each on the secondary market. As of the filing date of the complaint in the above-captioned case, the original PROMISSORY NOTES had already been collected and had lost their legal identity due to their conversion—along with thousands or hundreds of other PROMISSORY NOTES—into "Securities," and the Mortgages had lost their status as liens due

to extinguishment of the debt through payment by a third party.

4.29 The abundant sworn Expert Evidence in the case record clearly demonstrates that each PROMISSORY NOTE in controversy was sold, transferred and subject to *Securitization* [together with a "pool" of hundreds of promissory notes] prior to the filing of the complaint in the above-captioned case.

4.30 The counterclaim defendant's lack of standing to sue at the time of filing its claim deprived the Court of First Instance of jurisdiction in the above-captioned case. Since the Court lacked jurisdiction, the above-captioned collection and foreclosure case is not justiciable.

4.31 In the above-captioned case, the counterclaim defendant lacked standing to sue at the time it filed its claim. The counterclaim defendant violated due process by filing a lawsuit without having standing to sue. Therefore, the complaint should be dismissed.

4.32 Furthermore, the mortgage deeds indicated in the complaint are vitiated by an irreparable defect: nonexistence of a valid upset price for the first auction. This defect voids each mortgage deed and prevents foreclosure thereon.

In each mortgage deed indicated, the "Property Value" clause fails to state any appraisal price agreed between the parties for the first auction. Instead, the aforementioned clause gives, surreptitiously, a price imposed by the originator based on the credit amount granted without considering the appraisal value of the property—as of the date of the mortgage—plus its appreciation in value.

4.34 An upset price surreptitiously and unilaterally inserted by the originator based on the amount of the loan granted does not constitute a valid upset price for the first auction. This would allow properties worth high amounts to be obtained at auction for ridiculously low prices. The mortgages failed to satisfy the upset price requirement. Therefore, the indicated mortgage deeds are void *ab initio*, and their registration in the Property Registry is invalid. If they were registered by mistake or oversight, then their respective registration entries should be canceled.

4.35 The principal of each mortgage deed indicated in the instant complaint cannot be a valid auction upset price because it does not reflect the appraisal value of the property—as of the date of the mortgage deed—plus the increase in value (appreciation) that can ordinarily be expected.

4.36 Paragraphs 3 and 4 of Article 104 of the Property Registry Act, 2015, are unconstitutional. These are also contrary to market laws. This article imposes an auction "upset price" in all cases and does not provide alternatives for adjusting the upset price in cases where there is equity. A provision of law authorizing such deprivation of property *equity* is unconstitutional.

4.37 There was no negotiation or agreement between the parties with respect to the upset price of the properties indicated in the complaint. This was surreptitiously inserted by the Originator in each indicated mortgage deed.

4.38 An upset price surreptitiously and unilaterally inserted in the mortgage deed by the originator and based on the amount of the loan granted does not constitute a valid upset price for the first auction. The

mortgages failed to satisfy the upset price requirement. Any such mortgage deed is null and void.

4.39 Defendants "A", "B" and "C" are designated since the identity(ies) and name(s) of the individuals who, acting as agents, attorneys-in-fact, employees, representatives or who in any other way were associated with the co-counterclaim defendants, or who, in concert therewith, violated any legal obligation in prejudice to the counterclaimants or who in any way contributed to the causes thereof, are unknown.

4.40 Defendants "D", "E" and "F" are designated since the identity(ies) and name(s) of the legal entity(ies) who, acting though their officials, agents, attorneys-in-fact, employees, representatives or others, in concert with the co-counterclaim defendants, violated any legal obligation in prejudice to the counterclaimants or who in any way contributed to the causes thereof, are unknown.

4.41 Defendants "X", "Y" and "Z" are designated since the identity(ies) and name(s) of the insurance company(ies) liable for the civil claims filed against the counterclaim defendant legal entities or individuals in the above-captioned counterclaim are unknown.

4.42 With respect to the *Federal Question,* it is important to note that this Court has concurrent jurisdiction to determine it, and it will ultimately fall on the U.S. Supreme Court to review your determination. The question is as follows:

> 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 something of a new nature called *Securities* (defined and regulated by UCC Section 8) after the process of *Securitization*. It CANNOT be so.

The above facts produce the following causes of action:

C. Causes of Action

4.43 On account of the foregoing facts, the defendants-counterclaimants file the following causes of action against the counterclaim defendant: (i) Declaratory Judgment; (ii) Nonexistence/Extinguishment of Promissory Note; (iii) Nonexistence of Pledge; (iv) Extinguishment of Pledge; (v) Nonexistence of Mortgage; (vi) Extinguishment of Mortgage; (vii) Extinguishment of Loan Agreement; (viii) Nullity of Auction Upset Price (ix) Claim of Property Equity; (x) Nullity of Agreement for Waiver of Future Rights, *i.e.* property equity; (xi) Nullity of "Loan Repayment Schedule"; (xii) Nullity of principal balance; (xiii) Nullity of interest and other charges; (xiv) Application of excessive interest; (xv) Restitution; (xvi) Articles 80, 104, Property Registry Act; (xvii) Cancellations of Filing Entries in the Property Registry. (xviii) Cancellations of Registration Entries in the Property Registry; (xix) Article 203, Property Registry Act; (xx) Unconstitutionality of Article 104 of the Property Registry Act, 3rd and 4th Paragraphs.

First Cause of Action:
Declaratory Judgment on the Federal Question and plaintiff's lack of standing

4.44 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.45 In view of the preceding and subsequent discussion of law, The Federal Question raised must be answered in the negative. *I.e.*, in accordance with Uniform Commercial Code (UCC) regulations, a *plaintiff* in an action for collection of monies and mortgage foreclosure CANNOT 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 something of a new nature called *Securities* (defined and regulated by UCC Section 8) after the process of *Securitization*. A declaratory judgment is requested in this regard.

4.46 Jurisdiction is the main source of the authority of the courts to interpret and enforce the laws in our system of government. It is governed by the application of the various doctrines that bring the principle of justiciability to life: standing, mootness and political question, *P.P.D. vs. Gobernador I*, 139 D.P.R. 643, 666 (1995).

4.47 It is an established rule that our jurisdiction is governed by the constitutional concept of justiciability, which establishes as a requirement the existence of a real case or controversy for the valid exercise of the judicial branch. *Ortiz v. Panel F.E.I.*, 155 D.P.R. 219 (2001). By virtue of this, the courts must ensure that the matters brought before their consideration

are "justiciable," *i.e.*: (1) they do not involve aspects related to public policy to be established by the executive; (2) the parties have legal capacity or standing to file the lawsuit; 3) the controversy is not moot nor consultative; and 4) the controversy is ripe. *Acevedo Vilá v. Meléndez Ortiz*, 164 D.P.R. ___, 2005 T.S.P.R. 79, 2005 JTS 80; *Com. de la Mujer v. Srio. de Justicia*, 109 D.P.R. 715, 720-725 (1980).

4.48 One of the axioms derived from this prudential approach is what is called standing, which focuses primarily on the person that files the action and secondarily on the matters to be adjudicated. *Hernández Torres v. Hernández Colón*, 129 D.P.R. 824 (1992). One of the requirements of justiciability of disputes is that the parties must have the legal capacity to be such parties. *Hernández Agosto v. Romero Barceló*, 112 D.P.R. 407, 413 (1982).

4.49 Lack of jurisdiction cannot be remedied nor can a court arrogate jurisdiction, since the courts have the compulsory duty to examine their own jurisdiction. *Pagán Navedo vs. Alcalde Mun. de Cataño*, 143 D.P.R. 314, 326 (1997), *Vázquez vs. A.R.P.E.*, 128 D.P.R. 513, 537 (1991); *Pueblo vs. Miranda Collin*, 115 D.P.R. 511, 513 (1984).

4.50 Regarding the basis of standing to sue, the U.S. Supreme Court illustrated, 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.

4.51 In 1992, the U.S. Supreme Court 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).

4.52 More specifically, "[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), citing *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).

4.53 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 determined 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."

4.54 "A crucial element in any mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose." *Rigby v. Wells Fargo Bank*, 84 So.3d 1195, 1196 (Fla. 4th DCA 2012) (citing: *McLean*, 79 So.3d at 173); *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012).

4.55 "The party seeking foreclosure must demonstrate that it owns and holds the note and mortgage in question—otherwise, the plaintiff lacks standing to foreclose." *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010); *Verizzo v. Bank of N.Y.*, 28 So.3d 976, 978 (Fla. 2d DCA 2010); *Philogene v. ABN Amro Mortg.* "Group Inc., 948 So.2d 45, 46 (Fla. 4th DCA 2006).

4.56 "A plaintiff seeking foreclosure in a mortgage proceeding must establish that it had standing to foreclose at the time it filed suit." *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012).

4.57 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 determined 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.

4.58 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 Dep't 2013), citing: *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 279, 926 N.Y.S.2d 532 (2nd Dep't 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 Dep't 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].

4.59 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].

4.60 In an action for collection of monies and mortgage foreclosure, the plaintiff has standing where "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]; *US 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].

4.61 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) (citing: *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).

4.62 Note that "[t]he doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit." *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262, 807 N.E.2d 439, 282 Ill. Dec. 815 (2004). "A party's standing to sue must be determined as of the time the suit is filed." *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786, 521 N.E.2d 1252, 118 Ill. Dec. 559 (1988). "[A] party either has standing at the time the suit is brought or it does not." *Id.*

4.63 In the Sc*hwartzwald* case, *supra*, the Ohio Court of Appeals, also determined that: "in order to have a real interest in a foreclosure action, a party must be the **owner and holder of the note and the mortgage at the time it commences the action**," *U.S. Bank, N.A. v. Richards*, 189 Ohio App.3d 276, 2010 Ohio 3981, ¶ 13, 938 N.E.2d 74 (9th Dist), citing: *Everhome Mtge. Co. v. Rowland*, 10 Dist. Franklin No.

07AP-615, 2008 Ohio 1282, ¶ 12 ("In foreclosure actions, the real party in interest is the current holder of the note and mortgage"); *Wells Fargo Bank, N.A. v. Sessley*, Franklin App. No. 09AP-178, 188 Ohio App. 3d 213, 2010 Ohio 2902, ¶ 11, 935 N.E.2d 70; *Quantum Servicing Corp. v. Haugabrook*, 9th Dist. Summit No. 26542, 2013-Ohio-3516, ¶ 8; *Wells Fargo Bank N.A. v. Horn*, 9th Dist. Lorain No. 12CA010230, 2013-Ohio-2374, ¶ 10; *BAC Home Loan Serv. v. McFerren*, 9th Dist. Summit No. 26384, 2013-Ohio-3228, ¶ 13; *Wells Fargo Bank, N.A. v. Stovall*, Cuyahoga App. No. 91802, 2010 Ohio 236.

4.64 It is important to note that "[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].

4.65 "In order to commence a foreclosure action, a plaintiff must have a legal or equitable interest in the mortgage. A plaintiff has standing where it is the holder or assignee of both the subject mortgage and of the underlying note at the time the action is commenced," *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *Aurora Loan Servs., LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 [2011]; *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 207, 887 N.Y.S.2d 615 [2009]; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 [2009]; *Countrywide Home Loans, Inc. v. Gress*, 68 A.D.3d

709, 888 N.Y.S.2d 914 [2009]); *Deutsche Bank Natl. Trust Co. v. Spanos*, 102 A.D.3d 909, 911, 961 N.Y.S.2d 200; *OneWest Bank FSB v. Carey*, 104 A.D.3d 444, 960 N.Y.S.2d 306 [1st Dept 2013]; *Bank of New York Mellon Trust Co. NA v. Sachar*, 95 A.D.3d 695, 943 N.Y.S.2d 893 [1st Dept 2012]; *GRP Loan, LLC v. Taylor*, 95 A.D.3d 1172, 945 N.Y.S.2d 336 [2nd Dept 2012]. The decision in *Bank of New York v. Silverberg*, 86 A.D.3d at 280, (2nd Dep't, 2011) held that: "a plaintiff does not have standing to bring a foreclosure action if does not own the note. [*sic*]

4.66 *In Kluge v. Fugazy et al.*, 145 A.D.2d 537; 536 N.Y.S.2d 92 (N.Y, 1988), it was determined 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 supplied]. Essentially, the Kluge decision found that, because the plaintiff was not the holder of the promissory note and the assignee of the mortgage, it lacked standing to file the collection and mortgage foreclosure action. *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].

4.67 "The transfer of a mortgage without a note is a nullity and insufficient to confer standing to foreclose." *See: U.S. Bank N.A. v. Dellarmo*, 94 A.D.3d 746, 748, 942 N.Y.S.2d 122 (2nd Dep't 2012); *Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 637, 931 N.Y.S.2d 630 (2nd Dep't 2011); *Bank of N.Y. v. Silverberg*, 86 A.D.3d at 280. "An assignment of a mortgage without assignment of the underlying note or bond is a nullity, and no interest is acquired by it."

Merritt v. Bartholick, 36 NY 44, 45, 34 How. Pr. 129, 1 Transc. App.63 [1867]; *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *LaSalle Bank Natl. Assn. v. Ahearn*, 59 A.D.3d 911, 912, 875 N.Y.S.2d 595 [2009].

4.68 "The collateral lien of the mortgage could have no legal existence when separated from the note and transferred to others than the holder of the note, but so long as the two remain together, owned and possessed by the same person, they operate together and are obligations for the payment of the same indebtedness." *Matter of Pirie*, 198 NY 209, 91 N.E. 587 (1910).

4.69 In *Carpenter v. Longan*, 83 U.S. 271, 274, 21 L.Ed 313 [1873], the U.S. Supreme Court determined that: "an assignment of the mortgage without the note is a nullity." *See: US Bank N.A. v. Madero,* 80 A.D.3d 751, 752, 915 N.Y.S.2d 612 [2011]; *US Bank, N.A. v. Collymore*, 68 A.D.3d at 754; *Kluge v. Fugazy*, 145 A.D.2d 537, 538, 536 N.Y.S.2d 92 [1988] [plaintiff, the assignee of a mortgage without the underlying note, could not bring a foreclosure action]; *See, also: Flyer v. Sullivan*, 284 App Div 697, 698*,* 134 N.Y.S.2d 521 [1954]; *Beak v. Walts*, 266 App Div 900, 42 N.Y.S.2d 652 [1943].

4.70 Note that "ownership 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).

4.71 In *Deutsche Bank National Trust v. Brumbaugh,* 2012 OK 3, 270 P.3d 151, ¶ 11, it was determined 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.

4.72 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]).

4.73 "A plaintiff must demonstrate it has a right to enforce the note and, absent a showing of ownership, the plaintiff lacks standing." *Gill v. First Nat. Bank & Trust Co. of Oklahoma City*, 1945 OK 181, 195 Okla. 607, 159 P.2d 717. "To foreclose a mortgage, a plaintiff must demonstrate that it has a right to enforce the note, and without such ownership, the plaintiff lacks standing." *Wells Fargo Bank, N.A. v. Ford*,

418 N.J. Super. 592, 15 A.3d 327, 329 (N.J. Super. Ct. App. Div. 2011).

4.74 "The plaintiff failed to demonstrate its *prima facie* entitlement to judgment as a matter of law because it did not establish that it had standing as the lawful holder or assignee of the subject note on the date it commenced this action." *See: Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 931 N.Y.S.2d 630; *U.S. Bank N.A. v. Madero*, 80 A.D.3d 751, 915 N.Y.S.2d 612; *U.S. Bank, N.A. v. Collymore,* 68 A.D.3d 752, 890 N.Y.S.2d 578.

4.75 In the aforesaid collection and mortgage foreclosure actions, the party in interest is the current holder of the note and the mortgage. *See: Chase Manhattan Mtge. Corp. v. Smith*, Hamilton App. No. C-061069, 2007 Ohio 5874, at P18; *Kramer v. Millott,* (Sept. 23, 1994), Erie App. No. E-94-5, 1994 Ohio App. LEXIS 4454 ("because the plaintiff did not prove that she was the holder of the note and mortgage, she did not establish herself as a real party in interest"). "A party who fails to establish itself as the current holder is not entitled to judgment as a matter of law." *First Union Nat'l Bank v. Hufford (2001*), 146 Ohio App.3d 673, 677, 679-680, 2001 Ohio 2271, 767 N.E.2d 1206.

4.76 "To foreclose upon a promissory note, the plaintiff must be the 'holder' in order to be the real party in interest." *Troupe v. Redner*, 652 So.2d 394, 395-96 (Fla. 2d DCA 1995); *Mortg. Elec. Registration Sys. v. Azize*, 965 So.2d 151, 153 (Fla. 2d DCA 2007).

4.77 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 a 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].

4.78 "Where the defendant denies that the party seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the plaintiff must prove. *Carapezza v. Pate*, 143 So.2d 346, 347 (Fla. 3d DCA 1962). "Where standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief." *See: US Bank N.A. v. Madero*, 80 A.D.3d 751, 752, 915 N.Y.S.2d 612 (2nd Dep't 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 753, 890 N.Y.S.2d 578 (2nd Dep't 2009); *Deutsche Bank Natl. Trust Co. v. Haller*, 100 A.D.3d 680, 954 N.Y.S.2d 551 [2d Dept 2012]. *TPZ Corp. v. Dabbs*, 25 A.D.3d 787, 789, 808 N.Y.S.2d 746 [2006]; *See, also: Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 769, 573 N.E.2d 1034, 570 N.Y.S.2d 778 [1991]). *CitiMortgage, Inc. v. Rosenthal*, 88 A.D.3d 759, 931 N.Y.S.2d 638 [2011]. "Where a plaintiff's standing . . . is placed in issue by a defendant, it is incumbent upon the plaintiff to prove its standing to be entitled to relief." *See: Citimortgage, Inc. v. Stosel*, 89 A.D.3d 887, 934 N.Y.S.2d 182 [2d Dept 2011].

4.79 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]. In other words: "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].)

4.80 In a collection and mortgage foreclosure case, "the plaintiff must plead and prove as part of its *prima facie* case that it owns the note and mortgage and has the right to foreclose." *Wells Fargo Bank, N.A.*, 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).

4.81 In *Wells Fargo Bank, N.A. v. Jordan*, Cuyahoga App. No. 91675, 2009 Ohio 1092, it was determined that: "a party lacks standing to bring a foreclosure action if the party cannot prove that it owned the note and mortgage on the date the complaint was filed."

4.82 "It is well established that in a foreclosure action it is plaintiff's burden to provide admissible evidence of its standing as the lawful holder of the subject note and mortgage at the time the action was commenced." *See: U.S Bank Nat'l Asso'n. v. Madero*, 80 A.D.3d 751, 915 N.Y.S.2d 612 (2d Dept. 2011); *Aurora Loan Services, LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 (2d Dept. 2011); *Bank of New York v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532, 2011 NY Slip Op 5002 (2d Dept. 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 (2d Dept. 2009).

4.83 More specifically, lack of standing cannot be remedied after the filing of the complaint. In this regard: "[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.

4.84 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].

4.85 "A plaintiff's lack of standing at the time a complaint is filed in a foreclosure action cannot be cured by substituting the real party in interest for an original party. *Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. No. 91675, 2009 Ohio 1092, ¶ 24. "[I]n a foreclosure action, a bank that was not the mortgagee when suit was filed cannot cure its lack of standing by subsequently obtaining an interest in the mortgage." *Id.* at ¶ 24; *See, also: Deutsche Bank Natl. Trust Co. v. Triplett*, 8th Dist. No. 94924, 2011 Ohio 478, ¶ 12; *Wells Fargo Bank N.A. v. Byrd*, 178 Ohio App.3d 285, 2008 Ohio 4603, 897 N.E.2d 722 (1st Dist.).

4.86 Note that "[a] plaintiff cannot rely on procedural rules similar to cure a lack of standing at the commencement of litigation," *Davis v. Yageo Corp.*, 481 F.3d 661, 678 (9th Cir. 2007) ("whether or not Dux was the real-party-in-interest, it does not have standing, and it cannot cure its standing problem through an invocation of Fed. R. Civ. P. 17(a)"); *Clark v. Trailiner*

Corp., 242 F.3d 388 (10th Cir. 2000) (table), opinion reported at 2000 U.S. App. LEXIS 29006, 2000 WL 1694299 (noting that the plaintiff cannot "*retroactively become* the real-party-in-interest" in order to cure a lack of standing at the filing of the complaint [emphasis sic]); *State v. Property at 2018 Rainbow Drive*, 740 So.2d 1025, 1027-1028 (Ala. 1999) (rejecting the argument that a lack of standing can be cured after the filing of the complaint); *Consumer Fedn. of Am. v. Upjohn Co.*, 346 A.2d 725, 729 (D.C. App. 1975). *See, also: McLean v. JP Morgan Chase Bank Natl. Assn.*, 79 So.3d 170, 173 (Fla. App. 2012) ("a party is not permitted to establish the right to maintain an action retroactively by acquiring standing to file a lawsuit after the fact").

4.87 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.

4.88 "Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default." *Green v. Dolphy Constr. Co.* 187 A.D.2d 635, 590 N.Y.S.2d 238 (2nd Dep't, 1992); *Citigroup Global Mkts. Realty Corp. v. Smith*, 33 Misc. 3d 1234(A); 943 N.Y.S.2d 790; 2011 N.Y.

4.89 "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.

4.90 "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.

4.91 "If a plaintiff lacks standing to sue, the plaintiff may not proceed in the action." *Stark v. Goldberg*, 297 A.D.2d 203, 746 N.Y.S.2d 280 (1st Dept 2002).

4.92 "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 Dep't 1988); *Katz v. East-Ville Realty Co*, 249 A.D.2d 243, 672 N.Y.S.2d 308 (1st Dep't 1998).

4.93 In *U.S. Bank National Association vs. Antonio Ibañez*, 941 N.E.2d 40 (Mass, 2011), it was determined 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*.

4.94 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.

4.95 The civil case of collection of monies and mortgage foreclosure is vitiated by lack of justiciability due to the counterclaim defendant's lack of standing to sue. The counterclaim defendant is not the owner, holder or possessor of the PROMISSORY NOTE nor the creditor of the mortgage indicated in the complaint.

4.96 In the absence of justiciability of the above-captioned case, the Court LACKS JURISDICTION to render judgment for the counterclaim defendant. Given the lack of justiciability in the above-captioned case of collection of monies and mortgage foreclosure, due to the plaintiff's lack of standing at the time it filed its complaint, a judgment issued in its favor would be null and void on account of being issued without jurisdiction (due to the plaintiff's lack of standing), and it would be a violation of due process. Arrogating jurisdiction in a case where the plaintiff lacks standing constitutes a violation of due process. In the above-captioned case, the plaintiff lacked standing at the time it filed its claim. The plaintiff violated due process by filing a lawsuit without having standing to sue. If the Court of First Instance arrogates jurisdiction in the above-captioned collection and mortgage foreclosure case, where the plaintiff lacks standing, this would constitute a violation of due process. Therefore, its judgment would be null and void and maintaining it would be a grave injustice.

4.97 For the foregoing reasons, the counterclaimant files a cause of action for a declaratory judgment on a question of law (*Federal Question*) and on the

plaintiff-counterclaim defendant's lack of standing to sue. The lack of standing to sue deprives the Court of jurisdiction to hear the action for collection of monies and mortgage foreclosure filed by the plaintiff-counterclaim defendant.

Second Cause of Action: Nonexistence of Promissory Notes [due to their Securitization Processes/Third Party Payment/Recovery of Financial Claim] Extinguishment of Promissory Notes

4.98 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.99 Before filing the complaint for collection of monies and mortgage foreclosure, the counterclaim defendant's predecessor sold the original PROMISSORY NOTES on the secondary mortgage market between the dates of **MARCH 5, 2003 AND JULY 9, 2009**[38] and collected their amounts by payment by third party.

38

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003

4.100 After the sale of the original PROMISSORY NOTES on the secondary mortgage market, said PROMISSORY NOTES were subject to "Securitization," in the respective *Trusts*: **MARCH 30, 2003 TO JULY 15, 2009**,[39] *i.e.*, they were converted—along

NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

39

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004

with other hundreds or thousands of promissory notes—into "SECURITIES."

4.101 Each PROMISSORY NOTE in controversy, after its process of *Securitization,* lost its original legal identity. The "Securities" are the new kind of vehicle resulting from the "pool" of hundreds of promissory notes, including the original PROMISSORY NOTE subject to *Securitization*.[40]

NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

[40] The PROMISSORY NOTE and the Securities are regulated, respectively, by Chapter 2 and Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. § 501, *et seq.*, § 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); and by Section 3 and Section 8, respectively, of the Uniform Commercial Code of the United States of America, UCC § 3-104; UCC § 8-102 (15); and the Tax Reform Act of 1986-REMICs, 26 CFR § 1.860 F-2, *et seq.* ""*Real Estate Mortgage Investment Conduits (REMICs) came into existence through the Tax Reform Act of 1986. Under this act, qualified residential and commercial mortgages* [sic] *notes are pooled and securitized."*

4.102 The *Securities* are the new legal vehicle resulting from said process of *Securitization* of the promissory notes.[41]

4.103 After the sale of each original PROMISSORY NOTE on the secondary market, all their past holders collected their respective financial claims and the debt thereto evidenced by each original promissory note was extinguished by payment by a third party. Upon extinguishment of the debt, each mortgage securing it was also extinguished.

4.104 In addition, after the process of *Securitization*, each original Promissory Note in question lost its original legal identity (regulated by Article 2 of the Commercial Transactions Act, *supra*, and UCC Section 3, *supra*). After this Securitization process, each promissory note in question, along with hundreds or thousands of other promissory notes, became something of a new nature: Securities (regulated by Article 8 of the Commercial Transactions Act, *supra*, and UCC Section 8, *supra*).

4.105 For the foregoing reasons, the counterclaimants file a cause of action against the counterclaim defendant on the grounds of Nonexistence-Extinguishment of PROMISSORY NOTES due to their Securitization process and payment by a third party. This cause of action is thus filed.

---

41 *Cf.* Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. § 501, *et seq.*, § 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Section 3, Section 8 of the Uniform Commercial Code of the United States of America, UCC § 3-104; UCC § 8-102 (15); and the Tax Reform Act of 1986-REMICs, 26 CFR § 1.860 F-2, *et seq.*

Third and Fourth Causes of Action: Nonexistence/Extinguishment of Pledge

4.106 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.107 Article 1762 of the Civil Code, 1930, provides, in relevant part: " . . . in order to establish the pledge agreement, it is necessary for possession of the pledge to be given to the creditor, or a third party by mutual agreement.

4.108 The counterclaim defendant is not in possession of the promissory notes indicated in its complaint. The counterclaim defendant's predecessor sold said promissory notes on the secondary market prior to the date on which the instant complaint was filed. After the trading of each of the aforementioned notes on the secondary market, they were each subject to *Securitization*. As a consequence, they lost their legal identity and, together with other thousands or hundreds of promissory notes, they formed a pool that generated a new kind of vehicle: Securities.

4.109 Therefore, causes of action exist for nonexistence/extinguishment of pledges. Said causes of action are thus filed.

Fifth, Sixth and Seventh Causes of Action: Nonexistence of Mortgage, Extinguishment of Mortgage, Extinguishment of Mortgage Loan Agreement

4.110 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.111 Article 1774 of the Civil Code, 1930, provides that "[i]n addition to the requirements laid out in Article 1756, for the mortgage to be validly established it is essential for the instrument in which it is established to be registered in the property registry. In mortgage law, it is known that registration does not validate acts or contracts that are null and void under law, nor does it change the legal relationships of the parties to such acts or contracts. Article 203 of the Property Registry Act of the Commonwealth of Puerto Rico, 30 L.P.R.A. Sec. 2454, provides "total cancellation will be appropriate: . . . 3. When the nullity of the title or entry is declared by a court."

4.112 In the above-captioned case, each mortgage deed indicated in the above-captioned complaint is null and void, *ab initio*. Each mortgage deed indicated fails to state an upset price for the first auction. There was no negotiation or agreement between the parties regarding the upset price for the first auction. The parties to the agreement did not establish the appraisal price of the property in each of the aforesaid deeds. In addition, upon the sale and collection of the amount of each PROMISSORY NOTE by the counterclaim defendant's predecessor and the process of *Securitization* of each PROMISSORY NOTE, the mortgages securing them were extinguished.

4.113 In each deed, surreptitious mention is made of an upset price equal to the loan amount granted, without taking into consideration the property's appraisal value—as of the date of each mortgage deed—plus its increase in value (appreciation). Said clause on the upset price violates the aforesaid Article 80 of the Property Registry Act of the Commonwealth of Puerto Rico, 30 L.P.R.A. Sec. 2575; it does not

properly satisfy the principle of specialty and certainty that governs our real property law. In point of fact, it does not comply with the aforementioned legal principal since it surreptitiously determines the value of each property as the principal amount of the loan, which is completely disconnected from reality and fair treatment, thus permitting abuse.

4.114 In a mortgage deed, the valuation of a property must be done validly and in a way that reflects the property's appraisal value plus the rate of increase in value (appreciation). An upset price surreptitiously and unilaterally inserted based on the loan principal amount does not constitute a valid appraisal price. A mortgage deed that contains a clause on "Property Value" that surreptitiously refers to an upset price equal to the principal amount of the loan is vitiated by an irreparable defect—the absence of an upset price valid for the first auction—which voids the mortgage and, consequently, prevents its registration in the Property Registry. If registration was carried out by mistake or oversight, then such registration entries should be canceled since they are null and void.

4.115 The aforementioned Article 80 of the Property Registry Act provides that, for the foreclosure and collection of a mortgage loan, the mortgage deed must state the value of the property agreed between the parties to serve as upset price at the first auction to be held. Article 104 of the Property Registry Act provides, *inter alia*, the price of the property agreed between the parties in the mortgage deed will serve as the auction upset price.

4.116 Article 1756 of the Civil Code, 1930, provides that a mortgage is established to secure a principal obligation. If the principal obligation is extinguished,

then the mortgage is extinguished and it may not be foreclosed on.

4.117 As of the date on which the complaint was filed in the above-captioned collection and foreclosure case, the plaintiff-counterclaim defendant had no standing to claim foreclosure of the Mortgages since, prior to the complaint, the plaintiff-counterclaim defendant's predecessor sold the PROMISSORY NOTES on the secondary market and collected the amount of each original PROMISSORY NOTE through payment by third party. In said market, each PROMISSORY NOTE was subject to *Securitization*. Upon the completion of this process, each PROMISSORY NOTE lost its original legal identity. The vehicles of a new kind resulting from that process were *Securities*. When the original PROMISSORY NOTE is extinguished, so is the mortgage.

4.118 After the sale of each original PROMISSORY NOTE on the Secondary Mortgage Market, all their past holders collected their respective financial claims and the debt thereto evidenced by each original promissory note was extinguished by payment by a third party, and the promissory notes were converted into something of a new nature: *Securities*. Upon extinguishment of the debt, each mortgage securing it was also extinguished.

4.119 Based on the foregoing, causes of action exist for nonexistence of mortgages, extinguishment of mortgages and extinguishment of Mortgage Loan Agreements. Said causes of action are thus filed.

Eighth Cause of Action:
Nullity of Auction Upset Price

4.120 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.121 Articles 80 and 104 of the Property Registry Act of the Commonwealth of Puerto Rico require that the contracting parties agree upon the value of the property in the mortgage deed so that it may serve as an upset price in the first auction to be held.

4.122 There was no negotiation or agreement whatsoever between the parties regarding the value of the property in each mortgage deed indicated in the complaint. The contracting parties did not establish the value of the property in the aforementioned mortgage deed. The aforementioned mortgage deed clause on "Property Value" for the auction upset price—Articles 80, 104, Property Registry Act of the Commonwealth of Puerto Rico, 2015—does not state the value of the property for the upset price. Instead, the aforesaid clause surreptitiously refers to an upset price equal to the principal amount of the respective loan. This clause violates the aforementioned articles of the Property Registry Act; it does not duly satisfy the principle of specialty and certainty that governs our real property law; and it does not comply with the aforementioned legal principal since it surreptitiously determines the value of the property to be the principal amount of the loan, which is completely disconnected from reality and fair treatment; thus permitting abuse. Hence, the nullity or invalidity of the property value agreed between the parties in each mortgage deed for the first auction upset price.

4.123 In view of the above, cause of action exists for the invalidity of the auction upset price in each Mortgage Deed indicated in the complaint. Said cause of action is thus filed.

Ninth Cause of Action:
Claim of Property Equity

4.124 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.125 A creditor may not appropriate the items given in pledge or mortgage, nor dispose of them. Article 1758 of the Civil Code, 1930. No one may be deprived of their property except by an authority of competent jurisdiction, for good cause of public or social benefit, and with payment of fair compensation to be determined as provided by law. Article 282 of the Civil Code, 1930. The equity of a property belongs to the owner of the property. Article 280 of the Civil Code, 1930. No person may, in advance, waive rights that are not yet held or known. (citations from the case law of the Supreme Court of Puerto Rico omitted.) Nor may nonexistent rights be waived.

4.126 The properties on which the counterclaim defendant seeks to foreclosure on have equity. The creditor cannot deny said right or appropriate such rights of *equity*.

4.127 Consequently, cause of action exists for the equity of each property indicated in the complaint. Said cause of action is thus filed.

Tenth Cause of Action: Nullity of Agreement for Waiver of Future Rights, *i.e.* "Equity" of the Properties

4.128 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.129 A creditor may not appropriate the items given in pledge or mortgage, nor dispose of them. Article 1758 of the Civil Code, 1930. The equity of a property belongs to the owner of the property. Article 280 of the Civil Code, 1930.

4.130 The equity of the asset on which the counterclaim defendant seeks to foreclosure belongs to the counterclaimant. Any alleged agreement to waive the future right to the equity of the asset imposed by any contract or each mortgage deed is null and void. No person may, in advance, waive rights that are not yet held or known. (citations from the case law of the Supreme Court of Puerto Rico omitted.) In regard to acts of waivers, nonexistent rights may not be waived either.

4.131 In view of the foregoing, there is cause of action for nullity of the alleged agreement to waive future rights: equity of each property. Said cause of action is thus filed.

Eleventh Cause of Action: Nullity of Loan Repayment Schedules

4.132 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.133 There is no contract except where the requirements of consent, object and cause are met. Article 1213 of the Civil Code, 1930. Consent is manifested by the tender of the offer and acceptance of the object and the cause that must make up the contract. Article 1214 of the Civil Code, 1930.

4.134 The amortization schedule for each mortgage deed indicated in the complaint, delivered by the Originator to the defendants-counterclaimants, contains incorrect values. Said banking entity calculations of the values detailed in each amortization schedule were inaccurate. Since the values given in each amortization schedule are contrary to the agreed terms, said amortization schedule is invalid. The defendants-counterclaimants file a cause of action for nullity *ab initio* of each amortization schedule.

Twelfth Cause of Action: Nullity of Principal Balance

4.135 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.136 There is no contract except where the requirements of consent, object and cause are met. Article 1213 of the Civil Code, 1930. Consent is manifested by the tender of the offer and acceptance of the object and the cause that must make up the contract. Article 1214 of the Civil Code, 1930.

4.137 The amortization schedule for each mortgage deed indicated in the complaint, delivered by the Originator to the defendants-counterclaimants, contains incorrect values. Among them, the principal balance. Since the values given in each amortization

schedule are contrary to the agreed terms, said principal balance is spurious, inaccurate and invalid. The defendants-counterclaimants file a cause of action for nullity *ab initio* of each principal balance.

Thirteenth Cause of Action:
Nullity of Interest and Other Charges/Restitution

4.138 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.139 There is no contract except where the requirements of consent, object and cause are met. Article 1213 of the Civil Code, 1930. Consent is manifested by the tender of the offer and acceptance of the object and the cause that must make up the contract. Article 1214 of the Civil Code, 1930.

4.140 The amortization schedule for each mortgage deed indicated in the complaint, delivered by the Originator to the defendants-counterclaimants, contains incorrect values. Among them, interest and charges. The Originator's calculations of the values detailed in the aforesaid schedule, including interest and other charges, were inaccurate. Since the values given in each amortization schedule are contrary to the agreed terms, said balances of interest and other charges are spurious, inaccurate and invalid. In addition, any calculation of "charges" that depends on incorrect values will also be incorrect and, therefore, its amount is unenforceable.

4.141 More specifically, there is a discrepancy between the multiple charges—percentages (%) with respect to the principal amount—that appear in each mortgage deed and in each PROMISSORY NOTE.

The sum of the charges according to each mortgage deed amounts to 30% of the principal. The collection of said sum is not permitted by Financial Board Regulation 5722 of November 21, 1997, "Regarding interest rates and other charges that may be collected or enforced in certain types of loans and obligations." The defendants-counterclaimants file a cause of action for *nullity* ab initio of interest and other charges and for the restitution thereof.

Fourteenth and Fifteenth Causes of Action: Application of Excessive Interest/Restitution

4.142 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.143 When something is received for which there was no right to collect, which was unduly delivered as the result of an error, the obligation to return it arises. Article 1795 of the Civil Code, 1930.

4.144 Since the values of each loan repayment schedule are incorrect, the monthly interest amounts paid have been in excess of the agreed interest. Therefore, they should be refunded. The defendants-counterclaimants petition for restitution of interest paid in excess.

Sixteenth Cause of Action: Articles 80, 104 of the Property Registry Act of the Commonwealth of Puerto Rico, 2015

4.145 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.146 Articles 80 and 104 of the Property Registry Act, *supra*, require that the contracting parties agree upon the value of the property to serve as upset price for the first auction. The agreement on said price must be recorded in the mortgage deed in accordance with the aforementioned article.

4.147 Each mortgage deed indicated in the complaint, on which the counterclaim defendant seeks to foreclose, fails to satisfy the upset price requirement. Such mortgages are vitiated by [in]valid auction upset prices. The "pre-printed" clause on "Property Value" of the aforementioned mortgage deeds violates Articles 80 and 104 of the Property Registry Act, *supra*. Said clause does not duly satisfy the principle of specialty and certainty that governs our real property law. Nor it does not comply with the aforementioned legal principal since it surreptitiously determines the value of the property as the principal amount of the loan, which is completely disconnected from reality and fair treatment, thus permitting abuse. There was no negotiation or agreement regarding the property value for the upset price of the first auction. The contracting parties did not establish, in each deed, the value of the property contingent on its appreciation value.

4.148 Therefore, a cause of action is filed under Article 80 of the Property Registry Act to declare the inappropriateness of foreclosure and collection of the mortgage loan.

Seventeenth, Eighteenth and Nineteenth Causes of Action: Cancellations of Filing and Registration Entries, Article 203 of the Property Registry Act of the Commonwealth of Puerto Rico, 2015.

4.149 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.150 Article 1774 of the Civil Code, 1930, provides that "[i]n addition to the requirements laid out in Article 1756, for the mortgage to be validly established it is essential for the instrument in which it is established to be registered in the property registry. In mortgage law, it is known that registration does not validate acts or contracts that are null and void under law, nor does it change the legal relationships of the parties to such acts or contracts. Article 203 of the Property Registry Act, 30 L.P.R.A. Sec. 2454, provides "total cancellation will be appropriate: . . . 3. When the nullity of the title or entry is declared by a court.

4.151 In the above-captioned case, each mortgage deed for which foreclosure is sought is null and void, *ab initio*. Each mortgage deed indicated fails to state an upset price for the first auction. There was no negotiation or agreement between the parties regarding the property value for the upset price for the first auction in each mortgage deed. The contracting parties did not establish, in each deed indicated, the value of the property contingent on the market value.

4.152 In each mortgage deed indicated, a surreptitious reference is made to an upset price equal to the principal amount of the loan. This clause violates the aforementioned Articles 80 and 104 of the Property Registry Act, *supra;* it does not properly satisfy the

principle of specialty and certainty that governs our real property law. In point of fact, it does not comply with the aforementioned legal principal since it surreptitiously determines the value of the property as the principal amount of the loan, which is completely disconnected from reality and fair treatment, thus permitting abuse.

4.153 In a mortgage deed, the appraisal of a property must be done validly and in a way that reflects reality. An upset price surreptitiously and unilaterally inserted by the Originating Bank based on the loan principal amount does not constitute a valid property value. A mortgage deed that contains a clause on "Property Value" that surreptitiously refers to an upset price equal to the principal amount of the loan is vitiated by an irreparable defect—the absence of an upset price valid for the first auction—which voids the mortgage and, consequently, prevents its registration in the Property Registry. If registration was carried out by mistake or oversight, then such registration entries should be canceled since they are null and void. The counterclaimants so petition. A cause of action is filed for the cancellation of the filing and registration entries of each indicated mortgage deed in the Property Registry under Article 203 of the Property Registry Act, *supra*.

Twentieth Cause of Action: Unconstitutionality of Article 104 of the Property Registry Act of the Commonwealth of Puerto Rico, 2015, 3rd and 4th Paragraphs

4.154 The defendants-counterclaimants incorporate each and every one of the allegations contained in the preceding and subsequent subsections.

4.155 The criteria for the determination of a—constitutional—upset price is the appraisal value of the property as of the date of the mortgage deed contingent on its increase in value (appreciation).

4.156 The third and fourth paragraphs of Article 104 of the Property Registry Act, *supra*, are unconstitutional and are contrary to free market laws insofar as they impose an auction "upset price" for all cases and do not provide alternatives for adjustment of the upset price in cases where there is a difference between the upset price agreed between the parties in the mortgage deed for the auction (value of the property) and the property's appreciation value (added value) at the time of foreclosure—they do not protect the consumer's property right with respect to equity.[42]

4.157 As an example, if, in a mortgage, the auction upset price had been agreed between the parties in accordance with the appraisal price of $100,000.00 dollars and the property value at the time of foreclosure (equivalent to the original appraisal price plus the added value for permanent improvements;

---

42 An "upset price" is a regulation that makes it illegal to pay a price below a specified level. The existence of "upset prices" blocks the action of the forces of supply and demand, and could result in the quantity or benefit produced differing from the quantity or benefit determined in a free market free from external changes.

Conversely, the "natural price"—equilibrium price and also fair price—is the price prevailing on the long-term market free from external changes, around which the real price or market price fluctuates randomly, as a consequence of the action of the Law of Supply and Demand, *inter alia*. Simply, the market price is the price at which supply and demand are equalized *céteris páribus*.

constructions of expansions and new structures; normal increase in value that can be expected in the real estate market, *inter alia*) is $175,000 dollars, then the upset price of $100,000.00 deprives the property owner of the property right of $75,000.00 dollars. A provision of law authorizing such deprivation of property is unconstitutional. We petition the court for a declaration to such effect.

V. Prayer for Relief

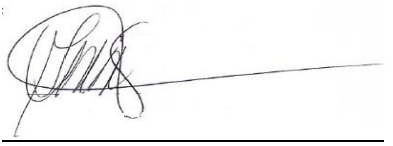
PURSUANT TO THE ABOVE, we petition the Honorable Court to declare: (i) that the Complaint is Denied; (i) that the Counterclaim is granted; (iii) any other pronouncements appropriate under law.

RESPECTFULLY SUBMITTED.

I CERTIFY: That a true and exact copy of this Brief was served by mail on the attorneys of record on the date it was filed.

In San Juan, Puerto Rico, on August 10, 2017.

MONGE LA FOSSE
ATTORNEY & COUNSELLORS AT LAW, P.S.W.
PO Box 192053
San Juan, Puerto Rico 00919-2053
Telefono: (787) 765-9090
TeleFax: (787) 765-9035
Celular: (787) 413-1135
Lic: 12496
Email: mongelafosselaw@gmail.com



Grace Monge La Fosse

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP H

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of one hundred six (106) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is a Counterclaim [Re: Collection of Monies and Civil Procedure] in the Commonwealth of Puerto Rico Civil Case No. ECD-2015-1017; and accompanying documents.

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

JUDGMENT OF COURT OF FIRST INSTANCE SUPERIOR COURT OF CAGUAS, PUERTO RICO (ENTRY: JULY 30, 2018)

NoReply@ramajudi-cial.pr <NoReply@ramajudi-cial.pr>

To: mongelafosselaw@gmail.com

30 July 2018 at 11:45

THE COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
COURT OF FIRST INSTANCE
SUPERIOR COURT OF CAGUAS

ORIENTAL BANK,

Plaintiff,

v.

MULTIVENTAS Y SERVICIOS, INC.,

Defendant.

Case No. E CD2015-1017

Courtroom No. 0702

Re: Mortgage Foreclosure

Before: Annette PRATS PALERM,
Superior Court Judge.

Notice

To: Ms. Monge Lafosse, Grace
mongelafosselaw@gmail.com

Mr. Fernández Martínez, Alfredo
afernandez@delgadofernandez.com

Mr. Hernández Freire, Pedro Antonio
phernandez@delgadofernandez.com

I, THE UNDERSIGNED COURT CLERK HEREBY CERTIFY AND INFORM YOU THAT, IN RELATION TO THE: ABOVE-CAPTIONED CASE THIS COURT ISSUED A JUDGMENT ON JULY 26, 2018.

A COPY IS ATTACHED OR LINK IS INCLUDED:

Tap here to access the corresponding electronic document of this notification. The document will be available through this link for 45 days since the notification was filed in the case records.

/s/ Annette M Prats Palerm
Judge

YOU ARE INFORMED THAT, AS PARTY OR THE PARTY'S LEGAL REPRESENTATIVE IN THE CASE SUBJECT TO THIS JUDGMENT, YOU MAY FILE AN APPEAL, PETITION FOR REVIEW OR PETITION FOR CERTIORARI, IN ACCORDANCE WITH THE PROCEDURE AND WITHIN THE TERM STIPULATED BY LAW, RULE OR REGULATION.

I CERTIFY THAT THE DECISION ISSUED BY THE COURT WAS DULY RECORDED AND FILED TODAY,

JULY 30, 2018, AND THAT A COPY OF THIS NOTIFICATION WAS SENT TO THE AFOREMENTIONED PERSONS TO THEIR ADDRESSES REGISTERED IN THE CASE RECORDS, IN ACCORDANCE WITH THE APPLICABLE LAW. ON THIS SAME DATE A COPY OF THIS NOTIFICATION WAS FILED IN THE CASE RECORDS.

IN CAGUAS, PUERTO RICO, ON JULY 30, 2018.

Lisilda Martinez Agosto, Intern
Name of the Regional Court Clerk

BY: /s/ Maria V. Montañez Marquez
Name and Signature of the
Assistant Court Clerk

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
SUPERIOR COURT OF CAGUAS

ORIENTAL BANK,

Plaintiff,

v.

MULTI-VENTAS Y SERVICIOS, INC.; MULTI-VENTAS 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,

Defendants.

Civil No. ECD2015-1017

Courtroom No. 702

Re: Collection of Monies, Mortgage Foreclosure

Before: Annette Prats PALERM,
Superior Court Judge.

JUDGMENT

Oriental Bank filed the Complaint in the instant case on September 10, 2015. In the filed complaint, Oriental Bank alleged that the defendant failed to

perform its contractual obligations in relation to the credit facilities described below; therefore, it requested that payment be ordered of the amounts owed and claimed therein, which are liquid and enforceable. On October 1, 2015, the defendant filed its Answer to the Complaint and Counterclaim whereby, in essence, it denied the facts alleged in the Complaint and alleged that Oriental Bank lacks standing to justify this claim, given that the mortgage promissory notes, which are the subject matter of the instant case, underwent the securitization process. Meanwhile, Oriental Bank filed the Answer to the Counterclaim on October 16, 2015 and alleged that it was the holder of the mortgage promissory notes that are the subject matter of this case.

On October 2, 2015, the defendant filed a *Motion for the Exercise of the Right of Extinguishment of Litigious Obligation and Petition for Order to Produce Documents to Determine Sales Price for the Extinguisher to Pay the Said Price to the Assignee Together with the other Items Imposed by Article 1425 of the Civil Code.* In the aforesaid Motion, the defendant alleged that Oriental Bank negotiated and sold to a third party the loans that are the subject matter of this case. Under this allegation, the defendant requested the exercise of the "extinguishment of litigious obligation," in accordance with Article 1425 of the Civil Code of Puerto Rico. After various procedural steps, this Court granted the defendant's petition and order the production of the documents requested by said party in relation to the exercise of the extinguishment of litigious obligation. Notwithstanding, the Court of Appeals overturned the decision of this Court, concluding that "it was wrong to authorize the discovery of evidence in

this case without the existence of a litigious obligation. The decision of the Court of Appeals, after the defendant had appealed to the Supreme Court, became final and conclusive.

Subsequently, on May 31, 2017, the defendant filed a *Petition for Urgent Order under Rule 56 of Civil Procedure*, whereby it requested this Court to order Oriental Bank to deposit in the Court vault all the promissory notes that are the subject matter of this litigation. After the defendant's petition had been Granted, Oriental Bank filed a *Motion for Reconsideration*, which was Granted and, consequently, the previous decision of this Court was left without effect. Notwithstanding, the parties were ordered to reach an agreement "within the following 20 days in order to carry out the expert inspection of the promissory notes in question at the plaintiff's offices and to inform the Court once this order is complied with." The defendant exhausted all appeals and the decision of this Court became final and conclusive.

Oriental Bank filed a *Motion for Summary Judgment* on May 24, 2017, in which it alleged that, in the instant case, there are no disputed material facts and that, therefore, the remedies sought in the Complaint must be granted and the Counterclaim filed by the defendant must be dismissed. Specifically, Oriental Bank alleged that it is the holder of the mortgage promissory notes and the creditor of the credit facilities that are the subject matter of this litigation. Likewise, Oriental Bank alleged that there is no dispute as to the defendant's non-performance of its contractual obligations and as to the amounts owed by said party.

On August 14, 2017, the defendant filed an *Opposition and Answer to the Petition for Summary Judgment*. In response to said motion, this Court issued an Order on October 18, 2017, in which it determined that the motion did not comply with that stipulated in *SLG Zapata Rivera v. J.F. Montalvo*, 189 D.P.R. 414 (2013), and it gave the defendant the opportunity to amend its opposition to the *Motion for Summary Judgment*, complying with the requirement of said case.

On April 25, 2018, the defendant filed its *Opposition and Answer to the Petition for Summary Judgment*, in which it alleged that it was improper to issue judgment summarily in the instant case given that there is a dispute as to the standing of Oriental Bank to bring suit. In support of its allegation, the defendant submitted some expert reports in relation to each of the mortgage promissory notes that are the subject matter of this litigation. Subsequently, Oriental Bank filed a reply to the *Opposition and Answer to the Petition for Summary Judgment*, while the defendant filed a rejoinder.

Having considered the *Motion for Summary Judgment* and the opposition filed by the defendant, as well as its arguments and the documents that support each of the alleged facts, this Court is in a position to decide and it issues the following:

Findings of Fact

1. On June 7, 2007, Multi-Batteries & Forklifts, Corp., through its President, the codefendant, Pedro Rivera Concepción, granted a Loan Agreement before the failed Eurobank whereby the latter granted them a revolving credit line (loan number 2064012720) for the total sum of $1,500,000.00, accruing interest at

the Prime Rate ("Eurobank Prime Rate") until its payment in full. The Parties agreed that the revolving credit line would expire on June 7, 2008. On that same date, June 7, 2007, as evidence of the aforementioned credit facility, Multi-Batteries & Forklifts, Corp. signed a Master Promissory Note payable to Eurobank, or upon demand, for the principal sum of $1,500,000.00, before the notary public Rafael M. Arrillaga Romany, affidavit number 3,100.

2. To guarantee the payment of the aforementioned credit facility, on June 7, 2007, Multi-Batteries & Forklifts, Corp. signed a Lien and Secured Interest Agreement. Under said contract, Multi-Batteries & Forklifts, Corp. pledges, yields, assigns and transfers to Oriental, as a secured creditor, a continuous lien and secured interest over any right, title and interest that said codefendant party may have over (a) all current or future accounts of any kind and nature, where the debtor is the creditor; (b) the entire inventory kept by the debtor for sale; (c) all financial Papers; (d) all Contracts, including, but not limited to, any Sale Agreement, and all debtor rights regarding monies owed and payable to the debtor, and all debtor rights to receive insurance compensation, related indemnifications, compensations or guaranties and damage claims by the debtor and any other right that the debtor may have including to cancel the same and in any other way to exercise all related actions; (e) all Title Certificates; (f) all Intangible Assets; (g) all Instruments; (h) all books, documents, ledgers, records and other documents related to the collateral and the equipment containing said books, documents, ledgers, records and other documents; (i) all deposit or investment accounts kept with the bank, including, but not limited

to, the operations and collateral accounts; and (j) the proceeds of all of the above, including, but not limited to, any proceeds from the insurance policies related to the collateral.

3. Likewise, as a guarantee for payment in full of all current and future obligations of Multi-Batteries & Forklifts, Corp., on June 7, 2007, the codefendants, Multi-Ventas y Servicios, Inc., Multi-Ventas y Servicios P.R., Inc., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all current and future Multi-Batteries & Forklifts, Corp. debts.

4. Thus, on June 23, 2009, Multi-Batteries & Forklifts, Corp. and the failed Eurobank granted a First Amendment to the Loan Agreement, which extended the termination date for the revolving credit line to August 30, 2010.

5. On October 28, 2011, Multi-Batteries & Forklifts, Corp. and Oriental granted a Second Amendment to the Loan Agreement. Through the aforementioned amendment, the defendant acknowledged that it owed Oriental Bank, as of that date and for the revolving credit line, the sum of $980,911.40. Likewise, the Parties agreed to convert the balance owed of $980,911.40 into a term loan, which was identified with number 4201805. In addition, the signed amendment reduced the limit of the revolving credit line to the sum of $500,000.00 (loan number 2064012720).

6. With regard to the term loan for the sum of $980,911.40, identified with number 4201805, Multi-Batteries & Forklifts, Corp. undertook to make thirty (30) consecutive monthly payments of $14,565.98

each, and a final payment on May 31, 2014 for the amount of $669,504.13 plus the interest owed to date. Likewise, the Parties agreed that said loan would accrue interest at a rate of 6.5%.

7. Also, with regard to the revolving credit line (loan number 2064012720), the Parties agreed that the date of termination would be October 28, 2012 and that it would accrue interest at the Prime Rate plus a two percent (2%) margin until its payment in full.

8. To secure the payment of the aforementioned credit facilities, on October 28, 2011, the codefendants, Multi-Ventas y Servicios, Inc. and Awesome, Inc., signed a Property Lien and Pledge Agreement (Mortgage Promissory Notes). Under said contract, the mortgage promissory notes and the mortgages described below were granted as securities:

a. Mortgage promissory note for the sum of $432,000.00 payable to Eurobank, or upon demand, with interest at the Prime Rate and payable upon presentation. It is secured with mortgage deed number 55, granted on February 17, 2004, before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "URBAN: Lot located in the North Section of the Santurce Ward of this city, San Juan, Puerto Rico, with a surface area of 440.00 square meters. Bounded on the NORTH, for 21.00 meters, by Borinquen Avenue; on the SOUTH, for 20.94 meters, by the property owned by Lorenzo Pimentel Sánchez and Monserrate Torres; on the EAST, for 22.47

meters, by the Bartolomé Las Casas Street; on the WEST, for 19.53 meters, by lands that belong to the Nin-Martínez Estate.

It contains a 2-story house and has an annex on the West side that faces Borinquen Avenue.

Property number 8,120, is registered on Folio 146 of Book 1,114 of North Santurce, San Juan Property Registry, First Section.

b. Mortgage promissory note for the sum of $900,000.00, payable to Banco Popular de Puerto Rico and endorsed in favor of Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. It is secured with mortgage deed number 95, granted on September 28, 1992, before the notary public Luis E. López Correa. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 243 granted on December 20, 2005 before the notary public Nelson William González Rosario. The mortgaged property is the following:

"RURAL: Plot of land located in the Bairoa Ward in the Caguas Norte Industrial Urbanization of the municipality of Caguas, Puerto Rico, identified as plot #15. Bounded on the NORTH, by Bairoa Avenue; on the SOUTH, by Segura Avenue; on the EAST, by Plot #10 of the same Industrial Urbanization;

on the WEST, by Plot #16 of the same Industrial Avenue. It has a surface area of 9,041.79 square meters, equivalent to 2.3005 cuerdas.

Property number 50,228, is registered on Folio 260 of Book 1,430 of Caguas, Caguas Property Registry, First Section.

c. Mortgage promissory note for the sum of $700,000.00, payable to Banco Popular de Puerto Rico and endorsed in favor of Eurobank, or upon demand, with yearly interest equal to half a percentage point under the variable prime rate and payable upon presentation. It is secured with mortgage deed number 81, granted on December 6, 2000, before the notary public Tomás Correa Acevedo. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 243 granted on December 20, 2005 before the notary public Nelson William González Rosario. The mortgaged property is property number 50,228, as described above.

d. Mortgage promissory note for the sum of $2,443,000.00, payable to Eurobank, or upon demand, with yearly interest at 12.00% and payable upon presentation. It is secured with mortgage deed number 246, granted on December 20, 2005, before the notary public Nelson William González Rosario. The mortgaged property is property number 50,228, as described above.

e. Mortgage promissory note for the sum of $157,000.00, payable to Eurobank, or upon

demand, with yearly interest at 15.00% and payable upon presentation. It is secured with mortgage deed number 30, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is property number 50,228, as described above.

f. Mortgage promissory note for the sum of $180,000.00, payable to the Bearer, with yearly interest at 11.5% and payable upon presentation. It is secured with mortgage deed number 285, granted on August 27, 1990, before the notary public Moisés Gómez Rijos. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 33 granted on June 22, 2009 before the notary public Rafael M. Arrillaga Romany. The mortgaged property is the following:

> "RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of 5,864.461 square meters. Bounded on the NORTH, for a distance of 83.89 meters by State Road #1; on the SOUTH, for a distance of 70.43 meters by lands owned by Mrs. Antonia Avilés; on the EAST, for a distance of 54.57 meters by the "Quebrada Arenas" road; and on the WEST, for a distance of 99.35 meters, by lands owned by Mr. Antonio Torrecillas Ruiz and Rafael Torrecillas for a distance of 26.00 meters.

Property number 28,525, is registered on Folio 20 of Book 856 of Caguas, Caguas Property Registry, First Section.

g. Mortgage promissory note for the sum of $720,000.00, payable to Eurobank and Trust Company, or upon demand, with yearly interest at 12% and payable upon presentation. It is secured with mortgage deed number 107, granted on July 29, 1992, before the notary public Nelson William González Rosario. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 33. The mortgaged property is property number 28,525, as described above.

h. Mortgage promissory note for the sum of $300,000.00, payable to Eurobank, or upon demand, with yearly interest at 12% and payable upon presentation. It is secured with mortgage deed number 75, granted on June 26, 1993, before the notary public Nelson William González Rosario. The expiration of the mortgage promissory note and of the mortgage was extended as established in deed number 33. The mortgaged property is property number 28,525, as described above.

i. Mortgage promissory note for the sum of $300,000.00, payable to Eurobank, or upon demand, with yearly interest at 12% and payable upon presentation. It is secured with mortgage deed number 57, granted on September 3, 1998, before the notary public Janice Marie Bernal Maldonado. The mortgaged

property is property number 28,525, as described above.

j. Mortgage promissory note for the sum of $1,500,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. It is secured with mortgage deed number 27, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is property number 28,525, as described above.

k. Mortgage promissory note for the sum of $800,000.00, payable to Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. It is secured with mortgage deed number 267, granted on September 29, 2004, before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "RURAL: PARCEL 'C': With a surface area of 3,196.99 square meters, located in the Jiménez Ward of the Municipality of Río Grande, Puerto Rico, bounded, on the North, by State Road #3, known as the 65th Avenue de Infantería; on the South, by land owned by Mrs. Amparo Pérez, widow of Ayala; on the East, by lands belonging to Mr. E. Rivera; and on the West, also by lands owned by Mrs. Amparo Pérez, widow of Ayala.
>
> Property number 2,467, is registered on Folio 114 of Book 51 of Río Grande, Carolina Property Registry, Third Section.

l. Mortgage promissory note for the sum of $100,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. It is secured with mortgage deed number 32, granted on June 22, 2009, before the notary public Nelson Rafael M. Arrillaga Romany. The mortgaged property is property number 2,467, as described above.

m. Mortgage promissory note for the sum of $1,200,000.00, payable to Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. It is secured with mortgage deed number 446, granted on November 21, 2002, before the notary public Nelson William González Rosario. The mortgaged property is the following:

> "URBAN: Plot of land identified as Parcel A-2, located in the Caguas Norte Industrial Urbanization, in Caguas, Puerto Rico, with a surface area of 5,256.6362 square meters, equal to 1.3374 cuerdas. Bounded on the NORTH, for a distance of 60.3577 meters by Parcel A-1; on the SOUTH, on a curved line for a distance of 2.7518 meters and in several alignments with a total distance of 59.1262 meters by A Street of the Industrial Urbanization; on the EAST, in two alignments with a total distance of 85.419 meters by Lot #15 of the same Industrial Urbanization; and on the WEST, on a curved line measuring 2.7518 meters

and for a distance of 82.2306 meters by B Street of the Industrial Urbanization. It contains a building.

Property number 47,657, is registered on Folio 162 of Book 1,342 of Caguas, Caguas Property Registry, First Section.

n. Mortgage promissory note for the sum of $1,020,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. It is secured with mortgage deed number 29, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is property number 47,657, as described above.

o. Mortgage promissory note for the sum of $600,000.00, payable to Eurobank, or upon demand, with yearly interest equal to the variable prime rate and payable upon presentation. It is secured with mortgage deed number 302, granted on October 4, 2001, before the notary public Nelson William González Rosario. The mortgaged property is the following:

"URBAN: Plot of land identified as Parcel A-1, located in the Caguas Norte Industrial Urbanization, in Caguas, Puerto Rico, with a surface area of 4,000.00 square meters, equal to 1.0177 cuerdas. Bounded on the NORTH, in a curved line at a distance of 2.8389 meters and for a distance of 54.31 meters, by the Jardines de Bairoa Avenue; on the SOUTH, for a

distance of 60.3577 meters, by the remnant of the plot from which this property is segregated and identified in the plat map as a Parcel A-2, owned by Top Kids; on the EAST, in several alignments for a total distance of 66.2594 meters by Lot #15 of the same industrial urbanization; and on the WEST, for a distance of 2.8389 meters and in several alignments, for a distance of 65.5144 meters, by B Street of the said Industrial Park.

Property number 54,178, is registered on Folio 30 of Book 1,629 of Caguas, Caguas Property Registry, First Section.

p. Mortgage promissory note for the sum of $680, 000.00, payable to Eurobank, or upon demand, with yearly interest at 12% and payable upon presentation. It is secured with mortgage deed number 244, granted on December 20, 2005, before the notary public Nelson William González Rosario. The mortgaged property is property number 54,178, as described above.

q. Mortgage promissory note for the sum of $550,000.00, payable to Eurobank, or upon demand, with yearly interest at 15.00% and payable upon presentation. It is secured with mortgage deed number 28, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged property is the following:

"RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of

1,561.365 square meters; bounded on the NORTH, for 69.62 meters by the main property from which it was segregated, owned by Antoni Torrecillas Ruiz; on the SOUTH, in 2 alignments, one of 43.70 meters, and the other of 27.34 meters, by lands owned by Catalino Burgos; on the EAST, for 20.00 meters by the Road that leads to Río Cañas Ward; and on the WEST, for 27.28 meters by lands owned by Mr. E.M. Bond. It contains a house.

Property number 10,008, is registered on Folio 59 of Book 376 of Caguas, Caguas Property Registry, First Section.

r. Mortgage promissory note for the sum of $280,000.00, payable to Banco Financiero de Puerto Rico, or upon demand, with yearly interest at 12% and payable upon presentation. It is secured with mortgage deed number 4, granted on March 5, 1999, before the notary public Pedro E. Ortiz Álvarez. The mortgaged properties are the following:

Property number 28,522: "RURAL: Plot of land based in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of 1,527.506 square meters, bounded on the NORTH and EAST, for 60.00 meters and 25.00 meters, respectively, by the main property from which it was segregated, owned by Antonio Torrecillas Ruiz; on the SOUTH, for 59.49 meters by Plot 'A' of the same property; and on the WEST, for 26.00

meters by the former State Road #1 from Río Piedras to Caguas.

Property number 28,522, is registered on Folio 5 of Book 856 of Caguas, Caguas Property Registry, First Section.

Property number 30,533: "RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of 1,554.855 square meters, bounded on the NORTH, for 59.49 meters by Plot 'B' of the main property; on the SOUTH, for 58.00 meters by lands owned by Mr. E.M. Bond; on the EAST, for 26.00 meters by the main property from which it was segregated, owned by Antonio Torrecillas Ruiz, today by José Rodríguez Collazo; and on the WEST, for 27.00 meters by Road #1 from Río Piedras to Caguas. It contains a house.

Property number 30,533, is registered on Folio 60 of Book 907 of Caguas, Caguas Property Registry, First Section.

The aforementioned properties were consolidated and the description of the property is as follows:

"RURAL: Plot of land located in the Río Cañas Ward of the municipality of Caguas, Puerto Rico, with a surface area of 3,082.631 square meters, bounded on the NORTH, for 59.49 meters by Plot 'B' of the main property and for 2.00 meters by the main property from which it was

segregated; on the EAST, for 51.00 meters by the main property from which it was segregated; on the SOUTH, for 59.49 meters; and on the WEST, for 52.00 meters by Road #1 from Río Piedras to Caguas.

s. Mortgage promissory note for the sum of $920,000.00, payable to Eurobank, or upon demand, with yearly interest at 15% and payable upon presentation. It is secured with mortgage deed number 31, granted on June 22, 2009, before the notary public Rafael M. Arrillaga Romany. The mortgaged properties are property numbers 28,522 and 30,533, described above.

9. The aforementioned mortgage promissory notes are endorsed in favor of Oriental Bank by the Federal Deposit Insurance Corporation (FDIC), as trustee of Eurobank.

10. In addition, to guarantee payment in full of all current and future Multi-Batteries & Forklifts, Corp. obligations, on October 28, 2011, the codefendants, Multi-Ventas y Servicios, Inc., Multi-Ventas y Servicios P.R., Inc., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all current and future Multi-Batteries & Forklifts, Corp. debts.

11. Also, to guarantee payment of the aforementioned credit facilities, Multi-Batteries & Forklifts, Corp. signed a Property Lien Agreement on October 28, 2011. Under said contract, Multi-Batteries & Forklifts, Corp. established a preferential lien, payable to

Oriental Bank, on all Multi-Batteries & Forklifts, Corp. assets, as well as on all Multi-Batteries & Forklifts, Corp rights, titles and interest on the following assets: (a) all the accounts receivable of Multi-Batteries & Forklifts, Corp. and any kind of profit, proceed, product and benefit of the same; (b) the entire inventory of Multi-Batteries & Forklifts, Corp.; (c) all equipment and machinery of Multi-Batteries & Forklifts, Corp.; (d) any right, claim and benefit that Multi-Batteries & Forklifts, Corp. may have against any person arising from or related to the aforementioned assets.

12. Thus, on September 13, 2013, Multi-Batteries & Forklifts, Corp. and Oriental Bank granted a Third Amendment to the Loan Agreement, which extended the termination date for the revolving credit line (credit facility number 2064012720) to September 13, 2014.

13. On that same date, September 13, 2013, Awesome, Inc. granted an Unlimited Guarantee Agreement that guaranteed payment in full of all current and future Multi-Batteries & Forklifts, Corp. debts.

14. The Defendant failed to fulfill its obligations regarding the credit facilities identified with numbers 2064012720 and 4201805, when they stopped paying the amounts owed as agreed, wherefore Oriental Bank declared that the entire debt was due and payable. As of April 7, 2017, the principal debt regarding credit facility number 2064012720 (revolving credit line) amounts to the sum of $563,254.17, of which $500,000.00 corresponds to the balance owed for the principal, $63,000.00 corresponds to the accrued interest which shall continue to accumulate until the debt is paid in full, and $254.17 corresponds to other items owed, plus expenses, costs and fees, plus any other disbursements

incurred by the plaintiff for other advances during the proceedings of this case.

15. Regarding loan number 4201805 (term loan), the debt amounts to the sum of $652,912.02, of which $572,030.57 corresponds to the principal owed, $79,424.85 corresponds to the accrued interest which shall continue to accumulate until the debt is paid, and $1,456.60 corresponds to other items owed, plus expenses, costs and fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case.

16. In other respects, on December 20, 2005, Multi-Ventas y Servicios, Inc., acting as the debtor, and Awesome, Inc., Multi-Ventas y Servicios P.R., Inc., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo, acting as the joint guarantors, granted a Loan Agreement before the failed Eurobank whereby the latter granted them a loan for the principal sum of $7,000,000.00, accruing yearly interest at a fixed rate of six and one-half percent (6.50%). Under the terms of the aforementioned Loan Agreement, the defendants undertook to make one hundred nineteen (119) consecutive monthly payments for the sum of $47,264.50 each, and a final payment on December 20, 2016 for the outstanding balance of the principal ("Balloon Payment") of $5,443,556.11, plus any other sum owed as of that date.

17. On that same date, December 20, 2005, in evidence of the above-described loan, Multi-Ventas y Servicios, Inc., through its President, the codefendant Pedro Rivera Concepción, signed a Promissory Note payable to Eurobank, or on demand, for the principal sum of $7,000,000.00, before the notary public Nelson W. González Rosario, Affidavit number 22,841.

18. To secure the payment of the loan, on December 20, 2005 the codefendants Multi-Ventas y Servicios, Inc. and Awesome, Inc. signed a Lien Agreement and Pledge of Mortgage Promissory Note Contract. Under said agreement, the mortgage promissory notes and mortgages described in paragraphs number 8(a), 8(b), 8(c), 8(d), 8(g), 8(h), 8(i), 8(k), 8(m), 8(o), 8(p) and 8(r) of this Judgment were granted as securities.

19. Likewise, to guarantee payment in full of all current and future Multi-Ventas y Servicios, Inc. obligations, on December 20, 2005, the codefendants, Multi-Ventas y Servicios P.R., Inc., Awesome, Inc., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all Multi-Ventas y Servicios, Inc. debts.

20. The Loan Agreement that was signed by the Parties on December 20, 2005 provides that a breach of said contract shall occur when "[. . .] the debtor fails to meet the payment of the principal, interest or charges under the Promissory Note(s), or the payment of any other sum owed to the Bank under this Contract or under any other Loan Document, on the date when such payment is due [.]" Likewise, the aforementioned agreement stipulates that in the event of noncompliance with the provisions of the same "[. . .] the Bank's obligations under this Contract shall automatically terminate and the sums for the principal, interest and charges accumulated under the Promissory Note and all other obligations of the debtor under this Agreement and other Loan Documents shall automatically become immediately liquid and enforceable."

21. Faced with the defendant's noncompliance with its obligations regarding loans number 2064012720

and 4201805, Oriental Bank declared that the entire debt regarding loan number 2064011568 was due, as expressly provided in the granted Loan Agreement. Likewise, the defendant failed to fulfill its payment obligations in accordance with the terms agreed by the parties.

22. As of April 7, 2017, the debt regarding loan number 2064011568 amounted to the sum of $6,621, 571.35, of which $5,627,037.07 corresponds to the principal owed, $699,003.05 corresponds to accrued interest, which shall continue to accumulate until the debt is paid in full, $295,531.23 corresponds to other items owed, plus costs, expenses and attorneys' fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case.

23. In other respects, on June 22, 2009, Multi-Ventas y Servicios P.R., Inc. granted a Loan Agreement before the failed Eurobank whereby the latter awarded a loan for the principal sum of $5,860,000.00, accruing interest at the rate of six percent (6%) per annum. Under the terms of the aforementioned Loan Agreement, Multi-Ventas y Servicios P.R., Inc. undertook to make thirty-five (35) consecutive monthly payments for the sum of $35,133.63, and a final payment on June 22, 2012 for the outstanding balance of the principal of $5,637,472.90, plus the interest owed as of that date.

24. On that same date, June 22, 2009, to provide evidence of the above-described loan, Multi-Ventas y Servicios P.R., Inc., through its President, Pedro Rivera Concepción, signed a Promissory Note payable to Eurobank, or on demand, for the principal sum of $5,860, 000.00, before the notary public Rafael M. Arrillaga Romany, Affidavit number 3,950.

25. To secure the payment of the loan, on June 22, 2009, the codefendants Multi-Ventas y Servicios, Inc. and Awesome, Inc. signed a Lien Agreement and Pledge of Mortgage Promissory Note Contract. Under said contract, the mortgage promissory notes and the mortgages described in paragraph 8 of this Judgment were granted as securities.

26. Likewise, on June 22, 2009, Multi-Ventas y Servicios, Inc., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo granted extensive Unlimited and Continuous Guaranty Agreements that guaranteed payment in full of all current and future Multi-Ventas y Servicios P.R., Inc. debts.

27. On September 13, 2013, Multi-Ventas y Servicios P.R., Inc., acting as the debtor, and Awesome, Inc., Multi-Ventas y Servicios, Inc., Multi-Batteries & Forklifts, Corp., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo, acting as the joint guarantors, granted a Loan Agreement before Oriental Bank whereby the latter granted it a loan for the principal sum of $5,546,014.51, accruing interest at a rate of six percent (6%) per annum. The purpose of this loan was to refinance the loan for the sum of $5,860,000.00 described above. Under the terms of the aforementioned Loan Agreement, the defendants undertook to make fifty nine (59) consecutive monthly payments for the sum of $39,733.37 each, and a final payment on September 13, 2018 for the outstanding balance of the principal of $4,724,654.15, plus the interest owed as of that date.

28. On that same date, September 13, 2013, in evidence of the loan described above, Multi-Ventas y Servicios P.R., Inc., through its President, Pedro Rivera Concepción, signed a Promissory Note payable to Oriental Bank, or on demand, for the principal sum of

$5,546,014.51, before the notary public Tatiana Román Orozco, Affidavit number 885.

29. To secure the loan described above, the codefendants Multi-Ventas y Servicios, Inc. and Awesome, Inc. signed a First Amendment to the Property Lien and Pledge Agreement on September 13, 2013. Through said agreement, the aforementioned codefendants amended the Property Lien and Pledge Agreement (Mortgage Promissory Notes) granted on October 27, 2011. The sole purpose of the granted amendment was to extend the mortgage guarantees established in the Property Lien and Pledge Agreement of October 27, 2011 for Multi-Ventas y Servicios P.R., Inc. obligations under the loan for the principal sum of $5,546,014.51.

30. In addition, the codefendant, Multi-Ventas y Servicios P.R., Inc. granted a Property Lien Agreement on September 13, 2013. Under said agreement, Multi-Ventas y Servicios P.R., Inc. established a preferential lien payable to Oriental Bank on all Multi-Ventas P.R., Inc. assets and over all Multi-Ventas y Servicios P.R., Inc. rights, titles and interest on the following assets: (a) all Multi-Ventas y Servicios P.R., Inc., receivable accounts and any kind of profit, proceeds, products and benefit of the same; (b) the entire inventory of Multi-Ventas y Servicios P.R., Inc.; (c) all equipment and machinery of Multi-Ventas y Servicios P.R., Inc.; (d) any right, claim and benefit that Multi-Ventas and Services P.R., Inc. may have against any person arising from or related to the aforementioned assets; and (e) any benefit, proceeds, income or products of the aforementioned assets.

31. Likewise, to guarantee payment in full of all current and future Multi-Ventas y Servicios P.R., Inc. obligations, on September 13, 2013, the codefendants,

Multi-Ventas y Servicios, Inc., Awesome, Inc., Multi-Batteries & Forklifts, Corp., Pedro Rivera Concepción and María M. Feliciano Caraballo granted Unlimited Guaranty Agreements that guaranteed payment in full of all current and future Multi-Ventas y Servicios P.R., Inc. debts.

32. Article VII of the Loan Agreement signed by the parties on September 13, 2013 provides that Oriental Bank "[. . .] may, at its discretion, accelerate its expiration and claim the immediate payment of all sums owed under this Agreement or other Loan Documents and/or refuse to make additional advances under this Agreement or other Loan Documents, if any of the following defaults should occur [. . .]:

> (a) That the obligor or any of the Guarantors fails to comply with any other obligation assumed under this Agreement or under the terms of the other Loan Documents or regarding any other debt that the Obligor or any of the Guarantors has with the Bank [.]"

33. Faced with the defendant's noncompliance with its obligations regarding loans number 2064012720 and 4201805, Oriental Bank declared that the entire debt regarding loan number 364000538 was due, as expressly provided in the granted Loan Agreement. Likewise, the defendant failed to fulfill its payment obligations in accordance with the terms agreed by the parties.

34. As of April 7, 2017, the debt regarding loan number 364000538 amounts to the sum of $6,063, 533.14, of which $5,296,811.62 corresponds to the principal owed, $617,078.55 corresponds to accrued interest, which shall continue to accumulate until the

debt is paid in full, $149,642.97 corresponds to other items owed, plus costs, expenses and attorneys' fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case.

35. In strict compliance with the provisions of the Mortgage Act of 1979, Articles 179 and 221 (30 L.P.R.A., § 2575-2721), the parties agreed that the properties that guarantee the promissory notes described above are valued at $432,000.00 for property number 8,120, $900,000.00 for property number 50,228, $180, 000.00 for property number 28,525, $800,000.00 for property number 2,467, $ 1,200,000.00 for property number 47,657, $600,000.00 for property number 54,178, $550,000.00 for property number 10,008, $140,000.00 for property number 28,522 and $140,000.00 for property number 30,533. These values shall serve as the minimum bid for the first auction of the mortgages whose foreclosure is requested.

36. On April 30, 2010, the Office of the Commissioner of Financial Institutions of Puerto Rico issued an order for Eurobank to cease operations and appointed, on that same date, the Federal Deposit Insurance Corporation as trustee for Eurobank's assets. On that same date, April 30, 2010, Oriental Bank acquired and became the holder in good faith of the loans that are the subject matter of this dispute and therefore, they are the creditor that is currently assigned all of Eurobank's rights under the loans granted to the Defendants and holders of the mortgage promissory notes and other guarantees described herein.

37. Multi-Ventas y Servicios P.R., Inc., Multi-Ventas y Servicios, Inc., Awesome, Inc., Multi-Batteries & Forklifts, Corp., Pedro Rivera Concepción and María Mercedes Feliciano Caraballo are jointly liable to

Oriental Bank for the aforementioned sums, where payment of the same has been requested, unsuccessfully, in spite of collection efforts by Oriental Bank through letters and phone calls.

38. The obligations arising from the aforementioned promissory notes are due, liquid and legally enforceable, in addition to being secured by the voluntary mortgages described above.

39. Oriental Bank is the legal holder in good faith of the promissory notes that guarantee the payment of the debt being claimed in this action.

CONCLUSIONS OF LAW

A. Summary Judgment

The motion for summary judgment is a procedural mechanism provided by our law in order to promote the just, rapid and economical settlement of disputes where it is not necessary to hold a plenary hearing. It may be granted in cases where there are no genuine and substantial disputes as to the material facts, in view of which it only remains for the judiciary to apply the Law. *Oriental Bank & Trust v. Perapi S.E.*, 192 D.P.R. 7 (2014); *SLG Zapata-Rivera v. J.F. Montalvo*, *supra*, on p. 430; *Nieves Díaz v. González Massas*, 178 D.P.R. 820, 847 (2010).

In our law, the summary judgment mechanism is governed by Rule 36 of Civil Procedure, 32 L.P.R.A. App. V, R. 36. In essence, this rule provides that, in order to issue a judgment summarily, it is necessary that, from the allegations, depositions, answers to interrogatories and admissions offered, together with the sworn statements, if any, or other evidence, it

happens that there is no genuine and substantial dispute in relation to any essential or pertinent fact and that, as a matter of law, the court should issue a summary judgment for the plaintiff. Rule 36.3(e) of Civil Procedure, *supra*. *SLG Zapata-Rivera v. J.F. Montalvo*, *supra*; *Const. José Carro v. Mun. Dorado*, 186 D.P.R. 113, 128 (2012).

A summary judgment may only be issued when it clearly happens that, in light of the undisputed material facts, the respondent cannot prevail under the applicable Law and the Court has the truth of all the necessary facts in order to be able to settle the dispute. *Id.*, on p. 129; *Nieves Díaz v. González Massas*, *supra*, on p. 848.

The movant of a motion for summary judgment must establish its right with clarity and must demonstrate that there is no substantial or genuine dispute as to any material fact; that is to say, as to any component of the cause of action. *Mun. de Añasco v. ASES, et al.*, 188 D.P.R. 307, 326 (2013); *Nieves Díaz v. González Massas*, *supra*; *González Aristud v. Hospital Pavía*, 168 D.P.R. 127, 137 (2006). The Supreme Court has determined that a material fact is a fact that may affect the result of the claim pursuant to the applicable substantive law. *Ramos Pérez v. Univisión*, 178 D.P.R. 200, 213 (2010) citing J.A. Cuevas Segarra, *Tratado de Derecho Procesal Civil*, San Juan, Pubs. J.T.S., 2000, V. I, p. 609; *Mun. de Añasco v. ASES, et al., supra*, on pp. 326-327. Rule 36.1 of Civil Procedure of 2009 refers to these facts as "essential and pertinent. . . ." 32 L.P.R.A. App. V, R. 36.1.

The dispute as to the material fact must be genuine, in view of which, any doubt is insufficient to defeat a petition for summary judgment. *Ramos Pérez*

v. Univisión, *supra*, on pp. 213-214. The doubt must be of a nature that permits "the conclusion that there is a genuine and substantial dispute as to the relevant and pertinent facts." *Id.*

In other respects, Rule 36 of Civil Procedure also specifically regulates the formal requirements that must be met by the movant of the motion for summary judgment as well as the party opposing the motion. In *SLG Zapata-Rivera v. J.F. Montalvo*, *supra*, the Supreme Court elaborated on these requirements. In that case, it was discussed that, regarding the list of undisputed facts the petitioner is obliged to set out in its petition, it must "list them in duly numbered paragraphs and, for each one, specify the page or paragraph of the sworn statement and other supporting admissible evidence." *Id.*, on p. 432. In turn, the party opposing the motion for summary judgment is obliged to "specifically cite the paragraphs as numbered by the movant, which it understands to be in dispute; and for each one it intends to contest, it must list the admissible evidence in support of its challenge, citing the pertinent page or section." *Id.*

In accordance with our civil procedure law, both the movant and opposing party of a motion for summary judgment are required to comply with some specific requirements of form in order for their request to be able to be considered. The compliance with this requirement has different repercussions for each party. On the one hand, if the movant of the motion fails to comply with the requirements of form, the Court shall not be obligated to consider its request. On the other hand, if the party opposing the motion fails to comply with the requirements, the court may issue judgment summarily for the movant, if applicable pursuant to

Law. *Id.* Furthermore, if the adversary "fails to abide by the precepts stipulated [in the rule], the court may decide not to take into consideration its intended challenge [of the facts offered by the movant]." *Id.*, on p. 433.

B. Contractual law in Puerto Rico

The Civil Code of Puerto Rico provides that the contract exists from the time where one or several persons consent to bind themselves *vis-à-vis* another or others to give something or to provide a service. Art. 1206 of the Civil Code, 31 L.P.R.A. § 3371. In addition, the contracting parties may establish any covenants, clauses and conditions deemed convenient, provided that they are not contrary to the laws, to morals or to public policy. Art. 1207 of the Civil Code, 31 L.P.R.A. § 3372; *De Jesús v. A.C.*, 148 D.P.R. 255 (1999); *Tastee Freez v. Negociado de Seguridad de Empleo*, 108 D.P.R. 495 (1979); *Irizarry López v. García Cámara*, 155 D.P.R. 713 (2001); *Unisys v. Ramallo Bros.*, 128 D.P.R. 842 (1991); *Trinidad v. Chade*, 153 D.P.R. 280 (2001), *Banco Bilbao Vizcaya v. Municipio de Vega Baja*, 154 D.P.R. 53 (2001); *S.L.G. Irizarry v. S.L.G. García*, 155 D.P.R. 713 (2001).

In addition, contracts are binding, whatever the form under which they have been entered into, provided that they meet the essential conditions for their validity. Art. 1210, 1213 and 1230 of the Civil Code, 31 L.P.R.A. § 3375, 3391 and 3451; *Vélez López v. Izquierdo Stella*, 162 D.P.R. 88 (2004). The mere expression of a purpose or intention is not sufficient to create an enforceable right. In other words, it must not consist of a mere offer to fulfill an obligation without coercive

effects and incapable of creating a binding civil relationship. *Ramírez Ortiz v. Gautier Benítez*, 87 D.P.R. 497 (1963).

Consistent with contractual free will, the Puerto Rico Supreme Court has ruled that contracts are law between the parties, which must abide by the stipulations, unless that agreed upon is contrary to the law, morals or public policy. *Trinidad v. Chade*, 153 D.P.R. 280 (2001). Likewise, once a contract if formalized with the occurrence of the consent of the parties, the object and cause of the contract, the parties are bound to comply with that expressly agreed upon and they are bound by the consequences derived therefrom, in accordance with good faith, customary practice and the law. Thus, the contract is law between the contracting parties and, pursuant to case law, it may not be left without effect or be modified at the will of one of the contracting parties. *Colón Padilla v. San Patricio Corp.*, 81 D.P.R. 242 (1959).

Article 1213 of the Civil Code of Puerto Rico lays down the requirements that must be present for the existence of a contract, to wit: (i) the consent of the contracting parties; (ii) a certain object which is the subject matter of the agreement; and (iii) the cause of the obligation established. Said article reads as follows: "[t]here is no contract unless the following requirements are present: (1) consent of the contracting parties; (2) a certain object which is the subject matter of the agreement; and (3) cause of the obligation established." 31 L.P.R.A. § 3391.

In accordance with our Civil Code, "[c]onsent is manifested by the coincidence between the offer and the acceptance over the thing and the cause which are to constitute the contract." 31 L.P.R.A. § 3401. In order

for a contractual relationship to become legally effective, the will to contract obligations must have been expressly or implicitly activated. Where there is no such will, or reasonable basis to conclude the circumstance of its existence, innumerous relationships may have come into existence, but not a contractual relationship. *Trinidad v. Chade*, 153 D.P.R. 280, 293 (2001).

It is a reiterated rule that for a contract to exist there must be serious, free and spontaneous consent. When all of these qualities are not present, the consent is vitiated and the contract shall be null or nullable, depending on the particular circumstances of each case. *Portela Rodríguez v. Plazoleta Las Cumbres, S.E.*, KLAN200700217.

In turn, Article 1217 of the Civil Code of Puerto Rico provides that consent shall be deemed null if given with any error, duress, intimidation or fraud. 31 L.P.R.A. § 3404; *García Reyes v. Cruz Auto Corp.*, 173 D.P.R. 870 (2008); *Colón v. Promo Motor Imports*, 144 D.P.R. 659 (1997); *Bosques v. Echevarría*, 162 D.P.R. 830, 836 (2004).

Regarding the element of "object," which is necessary in order to constitute a contract, the Civil Code provides that "all things, even future things, which are not beyond the bounds of commerce between men" may be the subject matter of a contract . . . Likewise all services which are not contrary to the laws or to good customs may constitute the subject matter of a contract." In the same manner, the courts have pronounced that "the contract shall be valid if the following requirements are met: (1) it is real and possible, *i.e.*, it is not beyond the bounds of commerce between men; (2) it is determinable in terms of its type; and (3) it is

lawful." *Portela Rodríguez v. Plazoleta Las Cumbres, S.E.*, *supra*.

In order to determine what constitutes the object of a contract, it is fitting to answer the following question: What is due? In other words, what each person gave, did or undertook to give or do, in accordance with the terms of the contractual relationship. *Id.*

With regard to the interpretation of contracts, our Civil Code is clear and provides that "[i]f the terms of a contract are clear and do not leave any doubt as to the intention of the contracting parties, it shall be interpreted as per the literal meaning of its clauses." Art. 1233 of the Civil Code, 31 L.P.R.A. § 3471; *Irizarry López v. García Cámara*, 155 D.P.R. 713 (2001); *National City Bank v. Martínez Llonín*, 41 D.P.R. 163 (1930). In addition, "[h]owever general the terms of the contract are, they must not be deemed to comprise things and cases different from those in respect of which the interested parties proposed to contract." Art. 1235 of the Civil Code, 31 L.P.R.A. § 3473; *Goenaga v. O'Neill de Milán*, 85 D.P.R. 170 (1962). The clauses of a contract must be interpreted "in connection with each other, attributing to any doubtful clauses the meaning resulting from the whole. Art. 1237 of the Civil Code, 31 L.P.R.A. § 3475.

In turn, obligations are extinguished, among other reasons, by their payment or performance. Art. 1110 of the Civil Code, 31 L.P.R.A. § 3151. A debt is not deemed to have been paid until complete delivery of the thing or performance of the undertaking of which the obligation consisted.

By virtue of Articles 1111 and 1123 of the Civil Code, 31 L.P.R.A. §§ 3161 and 3173, in our jurisdiction,

the principle of entirety of the undertaking governs. In accordance with Article 111, *supra*, "[a] debt shall not be deemed to have been paid until complete delivery of the thing or performance of the undertaking of which the obligation consisted."

In turn, Article 1123 provides that "[u]nless the contract should expressly authorize it, the creditor cannot be compelled to receive partially the undertakings of which the obligation consists."

When it is expressly agreed that an obligation is of a joint and several nature, each of the obligors is obligated to provide in full the thing constituting the object of the obligation, regardless of whether or not the joint and several obligor personally benefits from the thing provided. Article 1090 of the Civil Code, 31 L.P.R.A. § 3101; *Mansiones de Park Gardens v. Scotiabank*, 114 D.P.R. 513 (1983).

In case of non-performance of a joint and serval obligation, the obligee may take action against any of the joint and several obligors or against all of them simultaneously. Claims initiated against one of them shall not impede action being taken against the others, until such time the debt is collected in full. Article 1097 of the Civil Code, 31 L.P.R.A. § 3108; *Marrero v. Olmeda*, 69 D.P.R. 217 (1948). In the instant case, the defendants signed some documents, clearly expressing therein that they are the joint obligors with regard to the amounts claimed by the plaintiff.

C. Standing to Bring Suit

It is a consistent principle of our Rule of Law that, "[. . .] courts only exist to resolve genuine disputes that arise between opposing parties with a real interest in

obtaining a remedy, which would affect their legal relationships." *E.L.A. v. Aguayo*, 80 D.P.R. 552, 558 (1958). Likewise, it has been stipulated that, "[t]he courts must be jealous guardians of their jurisdiction, and they are obligated, in addition, to consider said matter *motu proprio*. Jurisdiction, principal source of authority of the courts to impose and enforce the laws of our legal system, is governed by the application of different doctrines that give life to the principle of justiciability [. . .]. Therefore, before getting into the merits of a case, it is necessary to determine whether the dispute is justiciable. *Sánchez v. Secretario de Justicia*, 157 D.P.R. 360 (2002).

In keeping with the above, we see that the doctrine of standing to sue is immersed in the concept of justiciability. This principle imposes on the courts, as a threshold matter, the duty to "examine whether [. . .] [the plaintiff] has [. . .] standing to sue, being a necessary element for a proper decision on the merits of a dispute." *Hernández Torres v. Hernández Colón*, 129 D.P.R. 824 (1992). "As such, we ensure that the plaintiff of the action is one whose interest is such that, in all probability, it will follow its course of action vigorously and bring to the court's attention the issues in dispute." *Id.*

In essence, standing to sue constitutes the capacity of a party to carry out, with efficacy, procedural acts as a litigant and to appear as plaintiff or defendant representing any of such parties. *Col. Ópticos de P.R. v. Vani Visual Center*, 124 D.P.R. 559 (1989). To such end, the Supreme Court has pronounced that the claimant of a right has standing to sue if the following requirements are met: (1) it has suffered a clear and palpable injury; (2) that said injury is real, immediate

and precise; not abstract or hypothetical; (3) that there is a connection between the damage suffered and the cause of action being exercised; and (4) that the cause of action ensues under the Constitution or a law. *Col. Peritos Elec. v. A.E.E.*, 150 D.P.R. 327 (2000); *Coss and U.P.R. v. C.E.E.*, 137 D.P.R. 877 (1995). The determination as to whether or not the party has standing to sue, mainly focuses on the person that brings the action and, secondly, on the matters to be decided. *Hernández Torres v. Hernández Colón*, 131 D.P.R. 593 (1992). When determining whether a claimant has standing to sue, the court must presume to be true its allegations and interpret them in the manner most favorable to such party. *Col. Peritos Elec. v. A.E.E.*, *supra*, *U.S. Bank Nat'l Ass'n v. Durand Sisco*, KLAN201600406.

D. The Negotiable Instruments Act

The Negotiable Instruments Act, in its Section 2-104, provides that a "negotiable instrument" is an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

> (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
>
> (2) is payable on demand or at a definite time; and
>
> (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or

> power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

Likewise, said section provides that "[a]n instrument is a note if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either."

In accordance with the Negotiable Instruments Act, Section 1-201, a "Bearer" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank. Likewise, "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

In other respects, "Holder," in relation to a negotiable instrument, is defined as the person in possession of thereof if the negotiable instrument that is payable to bearer or, in the case of an instrument payable to an identified person, if the person identified is the person in possession.

Pertinent to the instant dispute, Section 2-301 (Person Entitled to Enforce Instrument) of the Negotiable Instruments Act, provides that:

> "[p]erson entitled to enforce an instrument means (i) the holder of the instrument, (ii) a non-holder in possession of the instrument

> who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 2-309 or 2-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

"It has been reiterated that the holder of a negotiable instrument has standing to file an action for collection of monies in relation thereto." *U.S. Bank Nat'l Ass'n v, Durand Sisco*, *supra*.

Likewise, it has been determined that the fact that a party demonstrates it has possession of a note constitutes sufficient proof to enforce it. "Upon filing an action for collection, the complaint does not have to allege that the plaintiff is the owner of the note, being sufficient that it alleges that the plaintiff is the holder of the document. The possession of the document is evidence *prima facie* to demand payment of the document." Basilio Santiago Romero, *Tratado de Instrumentos Negociables*, Second Edition, 1981, p. 163.

E. Rule 6.1 of Civil Procedure

Rule 6.1 of Civil Procedure, 32 L.P.R.A. App. V, R. 6.1, provides the following:

> A pleading that presents a request for relief will contain
>
> (1) a succinct and simple description of the facts demonstrating that the petitioner is entitled to relief, and

(2) a request for relief the petitioner believes it is entitled to. Alternative relief or relief of a different nature may be requested.

Likewise, the Permanent Advisory Committee on Rules of Civil Procedure, in its Report on Rules of Civil Procedure, stipulated that: "the proposal requires that, in the allegations, a statement of facts be provided with the purpose that the parties and the court are able to consider, with greater certainty, the fundamental events of the dispute [. . .] The provisions of this Rule must be analyzed together with Rule 9.1 of Civil Procedure, 32 L.P.R.A. App. V. R. 9.1, which provides, in the pertinent part, that the content of the allegations must be based on the best knowledge, information and belief of the attorney or of the party, which must be formed after a reasonable inquiry; that the brief must be well-founded on the facts and supported by the law in force."

APPLICATION OF THE RIGHT TO THE UNDISPUTED MATERIAL FACTS

The instant case is for collection of monies and mortgage foreclosure, in which the plaintiff alleged that the defendant failed to fulfill its payment obligations in accordance with the terms of the contracts granted, in view of which the claimed debt is due, liquid and enforceable. The plaintiff requested that the defendant be ordered to pay the sums claimed and the foreclosure of the aforementioned guarantees. In turn, the defendant filed an Answer to the Complaint and Amended Counterclaim, in which it included twenty (20) causes of action.

Oriental Bank filed a *Motion for Summary Judgment* in which it alleged that there are no disputed

material facts and that, therefore, summary judgment must be issued, granting the remedies sought in the Complaint and dismissing the Counterclaim filed by the defendant. The defendant filed its Opposition and alleged that Oriental Bank lacks standing to sue given that the promissory notes of this litigation underwent the securitization process; therefore, Oriental Bank is not their holder, apart from the fact that Oriental Bank collected the amount of the promissory notes by means of a payment by a third party. The standing to sue and possession of the promissory notes on the part of Oriental Bank was not the only fact the defendant attempted to dispute in its Opposition.

In relation to the above, it is fitting to mention, firstly, that the mortgage promissory notes signed by the defendants constitute negotiable instruments in accordance with the Negotiable Instruments Act. In the instant case, Oriental Bank demonstrated, with irrefutable evidence, that it is the holder and possessor of the mortgage promissory notes that are the subject matter of this case. Oriental Bank presented a copy of the aforementioned mortgage promissory notes, all endorsed by FDIC in favor of Oriental Bank, Furthermore, the defendant presented at least two (2) sworn statements of authorized officers, certifying that the mortgage promissory notes are in the possession of Oriental Bank and that Oriental Bank is the only party entitled to demand their performance. We reiterate that the Negotiable Instruments Act is clear, where it provides that the "[p]erson entitled to enforce an instrument means (i) the holder of the instrument [. . .]." In the instant case, it is an undisputed fact that Oriental Bank is the entity "entitled to enforce an instrument," to wit, the mortgage promissory notes that are the

subject matter of this case, given that it is currently the possessor of the mortgage promissory notes and that they are duly endorsed in its favor by FDIC. The above not only constitutes the best evidence, but it is also irrefutable evidence of the holding of said negotiable instruments.

In view of the above, there is no dispute as to the fact that Oriental Bank is the only party entitled to enforce said instruments. In fact, Oriental Bank has standing to justify the legal action in the instant case, given that it is the physical and legal possessor of the mortgage promissory notes that accredit and secure the amounts due, claimed in the instant case.

Both in the Answer to the Complaint and Counterclaim, as well as in the Opposition and Answer to the Petition for Summary Judgment, the defendant alleged that the promissory notes underwent the securitization process and that, therefore, Oriental Bank is not their legitimate holder. The defendant's allegations were based on general doctrines, illustrating the process in the secondary mortgage market once the sale of a promissory note is made.

The mere fact that Oriental Bank demonstrated, with irrefutable evidence, that it is the holder of the mortgage promissory notes and that they have not been sold on the secondary market, defeats, on the face of it, the defendant's entire argument regarding the alleged securitization process. The defendant attempted to substantiate its allegations with some expert reports and, having examined them in detail, it is clear that they consist of the same general arguments, illustrating the secondary mortgage market, as the Opposition filed by the defendant.

Said expert reports contain three (3) exhibits each, to wit, copy of each mortgage promissory note, copy of their respective mortgage deeds and copy of the Complaint filed by Oriental Bank in the instant case. Said documents, as admitted in the reports themselves, are the documents examined by the expert in order to issue its opinion. In fact, from an analysis of said expert reports, and of the documents attached to said reports as exhibits, there is not any sufficient evidence in support of the allegation that the mortgage promissory notes, which are the subject matter of this litigation, underwent a securitization process or that Oriental Bank is not their holder. On the contrary, from the documents attached as exhibits of the expert reports, it is shown that, in effect, the mortgage promissory notes are endorsed in favor of Oriental Bank. Said documents do not dispute the evidence submitted by the plaintiff; on the contrary, they support it.

In fact, as with the Opposition to the petition for summary judgment, the expert reports limit themselves to indicating, in a general manner, that "Eurobak [sic] sold the Note on the Secondary Market where it underwent a process of Securitization." The reports do not specify who, allegedly, sold the promissory notes, or for how much, and no document was presented to such end.

In short, both the allegations of the defendant and the conclusions contained in the expert reports are based on general doctrines illustrating the process in the secondary mortgage market once the sale of a promissory note is made, but they lack any concrete and specific references as to the supposed sales made by Oriental Bank (and its predecessors) of the promissory notes that are the subject matter of the instant case.

The defendant presented no specific evidence, in its Opposition to the petition for summary judgment, that disputes the fact that the promissory notes, which are the subject matter of the instant case, are endorsed in favor of Oriental Bank and that Oriental Bank currently has possession of said promissory notes. In summary, there is no doubt that Oriental Bank is the possessor of all the promissory notes, which are the subject matter of this claim, and that Oriental Bank has standing to file this Complaint to enforce the obligations assumed by the defendants.

Regarding the counterclaim filed by the defendant, it was principally based on the alleged securitization process where the defendant alleges that the promissory notes, which are the subject matter of this litigation, underwent such process. The defendant again alluded to the securitization process in an attempt to allege that the mortgage is nonexistent and that both the loan agreement and the mortgage were extinguished. As stated above, the evidence submitted by the plaintiff, in accordance with the applicable law, is sufficient to demonstrate that Oriental Bank is the holder of the mortgage promissory notes. Due to all the aforementioned reasons. we reject all the causes of action based on the alleged securitization process of the promissory notes, which appear throughout the counterclaim filed by the defendant.

In addition, the defendant alleged the unconstitutionality of Article 104 of the Property Registry Act, given that it imposes an upset price for all cases and does not provide for an adjustment for those cases where there is a difference between the agreed upset price and the property's appraisal value. There is a judicial policy of decreeing the unconstitutionality of

a law only when it is indispensable to resolve a case. *Rexach v. Ramírez*, 162 D.P.R. 130, 149 (2004).

In this case, it is not necessary to discuss the unconstitutionality of Article 104 of Act No. 198 of August 8, 1979, as amended, better known as the Mortgage Act and its Regulations, given that it is not indispensable to resolve the dispute before us. The defendant signed the aforementioned mortgage deeds, thereby recognizing that it owes the plaintiff the sums specified therein and promising to pay said debts in installments. It is an established doctrine that a court cannot relieve a party from complying with that stipulated in a contract or agreement: "if the necessary conditions exist for its validity, the courts cannot relieve a party from complying with its undertaking. *Bobé et al. v, UBS Financial Services*, 198 D.P.R. 6, 15 (2017).

Regarding the petition for declaratory judgment, it must also be denied given that the defendant did not demonstrate that the promissory notes in question underwent securitization and the plaintiff produced irrefutable evidence demonstrating that it is the holder of the mortgage promissory notes, which are the subject matter of this litigation. A dispute must be defined and specific, affecting the legal relationships of parties with opposing legal interests. *ELA v. Aguayo*, 80 D.P.R. 552, 584 (1958). It must be genuine and substantial" and permit "a specific remedy by means of a conclusive judgment, as distinguished from an opinion that expresses what law would apply to hypothetical events." *Id.*, on p. 584. Consequently, the declaratory judgment does not involve a genuine and substantial dispute that justifies its granting.

Lastly, the defendant presented various causes of action in the counterclaim, such as "nullity of upset

price," "claim for net value of the asset," "nullity of waiver of future rights," "nullity of amortization schedule," "nullity of principal balance," "nullity of interest and other charges" and "excessive interest charges," in which the defendant limited itself to making groundless, conclusive and general allegations that fail to establish or demonstrate a cause of action that can be adjudicated by this Court. Likewise, apart from the fact that these "causes of action" must be deemed to be affirmative defenses and not independent causes of action, the defendant made no mention about them in its Opposition to the petition for summary judgment.

By virtue of the above, it must be concluded that the allegations outlined in the counterclaim lack sufficient specificity to justify the granting of any remedy; therefore, their dismissal is appropriate.

JUDGMENT

Considering the allegations of the Complaint, the *Motion for Summary Judgment* and the Opposition filed by the defendant, as well as the evidence produced by both parties, the *Motion for Summary Judgment* filed in the instant case is Granted and, consequently, the order is issued to dismiss the counterclaim. The defendant is ordered to pay the following sums to the plaintiff: (a) for credit facility number 2064012720, the sum of $563,254.17, of which $500,000.00 corresponds to the balance owed for the principal, $63,000.00 corresponds to the accrued interest which shall continue to accumulate until the debt is paid in full, and $254.17 corresponds to other items owed, plus expenses, costs and fees, plus any other disbursements incurred by the plaintiff for other

advances during the proceedings of this case; (b) for loan number 4201805, the sum of $652,912.02, of which $572,030.57 corresponds to the principal owed, $79,424.85 corresponds to the accrued interest which shall continue to accumulate until the debt is paid, and $1,456.60 corresponds to other items owed, plus expenses, costs and fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case; (c) for loan number 2064011568 amounted to the sum of $6,621,571.35, of which $5,627,037.07 corresponds to the principal owed, $699,003.05 corresponds to accrued interest, which shall continue to accumulate until the debt is paid in full, $295,531.23 corresponds to other items owed, plus costs, expenses and attorneys' fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case, and (d) for loan number 364000538, the sum of $6,063,533.14, of which $5,296,811.62 corresponds to the principal owed, $617,078.55 corresponds to accrued interest, which shall continue to accumulate until the debt is paid in full, $149,642.97 corresponds to other items owed, plus costs, expenses and attorneys' fees, plus any other disbursements incurred by the plaintiff for other advances during the proceedings of this case.

If said defendant should fail to pay this sum within the term stipulated by Law, the pledges and mortgages will be foreclosed; therefore, the Bailiff of this Court is ordered to sell the mortgaged properties described above, in public auction, in order to use the proceeds thereof to pay the amount owed, and, if the proceeds from the sales are not sufficient for the payment of this claim, the outstanding balance can be collected by other means.

In compliance with the provisions of the Mortgage Act of 1979, Articles 179 and 221 (30 L.P.R.A., § 2575-2721), the parties agreed that the properties that guarantee the promissory notes described above are valued at $432,000.00 for property number 8,120, $900,000.00 for property number 50,228, $ 180,000.00 for property number 28,525, $800,000.00 for property number 2,467, $ 1,200,000.00 for property number 47,657, $600,000.00 for property number 54,178, $550,000.00 for property number 10,008, $140,000.00 for property number 28,522 and $140,000.00 for property number 30,533. These values shall serve as the minimum bid for the first auction of the mortgages whose foreclosure is requested.

Once this Judgment becomes final, conclusive and unappealable, if the defendant should fail to pay this sum, the Clerk of this Court is authorized and ordered to, at the request of the plaintiff, issue an Order to the Bailiff in order to proceed to enforce this Judgment, selling the mortgaged properties described in the Judgment, and enforcing the other guarantees provided by the defendant. Said Order shall state that the amount from the sale of said properties and from the enforcement of the other guarantees shall be paid to the plaintiff, Oriental Bank, at the amount indicated in the Judgment and, in case the aforementioned proceeds are not sufficient to cover the total amount owed, the Judgment on whatsoever other assets of the plaintiff shall be enforced. The Marshall shall also be required to give to the successful bidder or buyer, the material possession of said properties by evicting the occupants within the legal term of twenty (20) days from the date of sale in public auction.

Likewise, the counterclaim filed by the defendant is dismissed with prejudice.

ORDERED TO BE ENTERED AND NOTIFIED.

In Caguas, Puerto Rico, on July 26, 2018.

/s/ Annette Prats Palerm
Superior Court Judge

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP I

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists of thirty-two (32) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is an emailed Notice of Judgment and a Judgment issued by the Judicial Center of Caguas, Superior Court, Civil Case No. ECD2015-1017 [Re: Collection of Monies, Mortgage Foreclosure].

In Cambridge, Massachusetts, on January 19, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com

MOTION FOR RECONSIDERATION AND REQUEST FOR INITIAL AND/OR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW (ENTRY: AUGUST 14, 2018)

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
CAGUAS JUDICIAL CENTER
SUPERIOR COURT DIVISION

_____

ORIENTAL BANK,

Plaintiff/
Counterclaim Defendant,

v.

MULTI-VENTAS Y SERVICIOS, INC.; MULTI-VENTAS Y SERVICIOS P.R., INC.; MULTI-BATTERIES & FORKLIFTS, CORP.; AWESOME, INC.; PEDRO RIVERA CONCEPCIÓN; MARÍA MERCEDES FELICIANO CARABALLO; AND THE CONJUGAL PARTNERSHIP COMPRISED THEREOF,

Defendant/
Counterclaimant.

_____

Civil Case No.: ECD-2015-1017

For: Debt Collection and Mortgage Foreclosure

Counterclaim: Non-Existence of Mortgage Notes; Extinguishment of Mortgage Notes; Non-Existence of

Security Interests; Extinguishment of Security Interests; Non-Existence of Mortgages; Extinguishment of Mortgages; Extinguishment of Mortgage Loan Agreements; Nullity of Auction Reserve Price; Net Asset Value Claim for Property Equity; Nullity of Agreement to Waive Future Rights, i.e. equity of property; Nullity of Loan Repayment Schedules; Nullity of Balances of Principal; Nullity of interest and other charges; Exaction of excessive interest; Restitution; Article 80, Property Registry Act; Cancellations of PR Submission Entries; Cancellations of PR Registration Entries; Article 203, Proper-ty Registry Act; Unconstitutionality of Art. 104, Property Registry Act, Paragraphs 3rd and 4th etc.

In an action for debt collection
and mortgage foreclosure:
if the plaintiff
is not the owner,
or the holder,
Or possessor of the mortgage note,
then the plaintiff has NO standing;
if the plaintiff has no standing,
then the Court has no jurisdiction;
if the Court has no jurisdiction,
then the case is NOT justiciable
and a judgment in favor of
the plaintiff should not be rendered

TO THE HONORABLE ANNETTE PRATS PALERM:

COMES NOW the defendant/counterclaimant, through the undersigned legal counsel, and most res-

pectfully petitions, on the one hand, for Reconsideration of the Judgment of July 26, 2018, filed July 30, 2018, and, on the other, for initial and/or additional findings of fact and conclusions of law. In support of these motions, the defendant/counterclaimant **STATES, ALLEGES AND PETITIONS**:

With the greatest respect and deference to the initial view taken by your Honor in hearing the plaintiff's motion for summary judgment, we set forth the **Errors of Law** that would be committed if, on Reconsideration, your Honor does not overturn the aforesaid judgment. In essence: **(i)** contrary to your original determination, in the instant case a dispute exists over essential material facts of the case, thus prohibiting a summary ruling; **(ii)** the judgment was rendered before the end of the Discovery stage, which was marked by serious conflicts due to the plaintiff's unwillingness to answer our interrogatories, petitions, and the Qualified Written Request (regulated by federal law), a procedural situation that we explained to your Honor during the previous Hearing on the Status of the Proceedings. As a result, your **ruling affected the Due Process of Law and the constitutional rights** of the defendants/counterclaimants; **(iii)** the facts of the Defense and Counterclaim presented by the defendant/counterclaimant were disregarded, as were the 19 Expert Reports on the court record giving evidence of the irrefutable facts of the sale of the disputed mortgage notes on the secondary market and the process of their securitization, *inter alia*.

In view of the above, the Court should have found the plaintiff's motion for summary judgment to be WITHOUT MERIT and proceeded with Discovery to move the above-captioned case onto a TRIAL ON THE

MERITS. In that trial, our expert can show and prove the details of the databases he accesses (i.e. Bloomberg, Securities and Exchange Commission, as stated in his Expert Reports) to find the data on the Sale and Securitization of a given mortgage note. In addition, he can explain the alphanumeric and other codes appearing on the screenshots contained in each Expert Report on the court record, on the last page thereof.

To be able to carry out his investigations on these international financial databases, the expert would explain that he first has to review the documents of the mortgage note, mortgage and complaint provided to him by the defendant in order to locate on those international databases (which cannot be manipulated) the specific data on the date of sale of the mortgage note on the secondary market, the date when the mortgage note was securitized, the names of the participants in that process (i.e. the sponsor who acquired the mortgage notes to subsequently securitize them) and the trust created after the securitization of the mortgage loans, from which the securities were issued.

All these aspects involve questions and concepts so technical that they require the expert's testimony to be heard in a **Trial on the Merits**. It also falls upon the expert to testify with respect to the alleged endorsements of the mortgage notes in dispute by the F.D.I.C., because if the notes were securitized, as in effect they were, BEFORE the intervention of the F.D.I.C. with Eurobank, then those **ENDORSEMENTS ARE INVALID** as they were made in error. This error can be easily corrected, by cancelling the endorsement.

With the benefit of the expert testimony in a **TRIAL ON THE MERITS**, the Essential Fact of the defense and counterclaim brought by the defendant

would be demonstrated irrefutably, which would necessarily result in the dismissal of the complaint with prejudice in view of the fact that the plaintiff IS NOT THE OWNER, OR THE HOLDER, OR THE POSSESSOR of the mortgage notes in dispute, which were subject to securitization.

Based on this irrefutable **Essential Fact**, it would also have to be concluded that this Court **lacks jurisdiction** to hear the instant case.

It is important to clarify that in an action for debt collection and mortgage foreclosure, if the plaintiff is NOT the owner, OR the holder, OR the possessor of the mortgage note, then the plaintiff has NO standing; if the plaintiff has no standing, then the Court has NO jurisdiction; if the Court has no jurisdiction the case is NOT JUSTICIABLE and a judgment should not be rendered in favor of the plaintiff.

Clearly, a judgment rendered without jurisdiction is a void judgment *ab initio*, which does not operate as *res judicata*, which can never be made final and enforceable, and which can be challenged at any time, either in the original suit or by means of a separate suit because it is not subject to any statute of limitations, or to laches.

Moreover, any *post-judgment* proceeding after a void judgment is equally void. In addition, all *pre-judgment* proceedings pursued in a civil case where the Court had no jurisdiction lack legal effect on all points.

Furthermore, it is important to clarify that to be able to adjudicate the federal question of the Counterclaim (Section 4.42 of Counterclaim) a **Trial on the**

Merits must be held for the Court to receive the necessary expert testimony so that, in accordance with **correct adjudicative procedure**, it may in due course adjudicate the federal question *so that the defendant/counterclaimant will be able to exercise its right to appeal to the Federal Supreme Court*.

There is still time for justice to be done by reversing the judgment rendered by your Honor, which does not uphold the image, experience and intelligence of this Honorable Court. Indeed, I, the undersigned, place myself at your Honor's disposal for us to hold hearings prior to the TRIAL ON THE MERITS that is required by justice and due process of law in the instant case. My well-known expositions at hearings (recognized by many judges as highly enlightening) would have assisted this Honorable Court in differentiating the legal institutions of the mortgage note and securities and in establishing the basic premises of the concepts of the secondary mortgage market. I have 28 years of university education, at all levels, in economics, finance, accounting, and international trade, in addition to law, and have been able to clarify many issues related to the secondary market in order to make them accessible to the Courts.

In view of the errors of law affecting the judgment referred to herein, we hereby move for Reconsideration and submit the findings of fact and conclusions of law requested. These are as follows.

THE LAW ON THE MATTER OF JURISDICTION THAT SHOULD BE RECONSIDERED

JUSTICIABILITY AND STANDING OF A PLAINTIFF IN DEBT COLLECTION AND MORTGAGE FORECLOSURE CASES

As is well-known, jurisdiction is the main source of authority of the courts to interpret and enforce the laws in our system of government. Jurisdiction is governed by the application of the various doctrines that underpin the principle of justiciability: **standing**, mootness and political questions, *P.P.D. vs. Gobernador I*, 139 D.P.R. 643, 666 (1995).

It is an established standard that our jurisdiction is governed by the constitutional concept of justiciability, which establishes as a **requirement the existence of a real case or controversy for the valid exercise of judicial authority**. *Ortiz v. Panel F.E.I.*, 155 D.P.R. 219 (2001). With this in mind, the courts must ensure that the matters brought before their consideration are "justiciable", which means that: **(1)** they do not involve aspects related to any public policy determined by the executive branch; **(2) the parties have legal capacity or standing to bring the lawsuit**; **(3)** the controversy is not moot or advisory; and **(4)** the controversy is ripe for adjudication. *Acevedo Vilá v. Meléndez Ortiz*, 164 D.P.R. ___, 2005 T.S.P.R. 79, 2005 JTS 80; *Com. de la Mujer v. Srio. de Justicia*, 109 D.P.R. 715, 720-725 (1980).

One of the axioms derived from this reasonable approach **is that of standing, which relates primarily to the person pursuing the action** and secondarily to the issues to be adjudicated. *Hernández Torres v. Hernández Collin*, 129 D.P.R. 824 (1992).

One of the requirements for the justiciability of controversies is that the parties must have the legal capacity to be parties. *Hernández Agosto v. Romero Barceló*, 112 D.P.R. 407, 413 (1982). **Lack of jurisdiction cannot be cured, and no court may arrogate jurisdiction to itself**, as the courts have the inescapable duty to

examine their own jurisdiction. *Pagán Navedo vs. Alcalde Mun. de Cataño*, 143 D.P.R. 314, 326 (1997).

Given that the state and federal courts of the United States of America have been at the forefront of the adjudication of thousands of cases where it has been shown that the plaintiff in an action for money collection and mortgage foreclosure lacks standing due to Not being the holder of the mortgage note or the holder of the mortgage itself, we set forth below their conclusions of law, cited for the most part in English:

Three essential elements can be drawn from the conclusions of law in the aforementioned decisions at the federal level, which apply to the instant case. 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."** *Rigby v. Wells Fargo Bank*, 84 So.3d 1195, 1196 (Fla. 4th DCA 2012) (citing: *McLean*, 79 So.3d at 173); *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012); **(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."** *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010); *Verizzo v. Bank of N.Y.*, 28 So.3d 976, 978 (Fla. 2d DCA 2010); *Philogene v. ABN Amro Mortg. "Group Inc.*, 948 So.2d 45, 46 (Fla. 4th DCA 2006); **(3) "[a] plaintiff seeking foreclosure in a mortgage proceeding must establish that it had standing to foreclose at the time it filed suit."** *McLean v. JP Morgan Chase Bank Nat'l Ass'n,* 79 So.3d 170, 173 (Fla. 4th DCA 2012).

With respect to the basis for standing, the United States Supreme Court made clear, 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 above, "**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 United States Supreme Court 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).

More specifically, "**[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), citing *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 determined 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 determined 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 Dep't 2013), citing: *Bank of N.Y. v. Silverberg,* 86 A.D.3d 274, 279, 926 N.Y.S.2d 532 (2nd Dep't 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 Dep't 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 a debt collection and mortgage foreclosure action, the plaintiff has standing 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]; *US 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) (citing: *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).

"The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit." *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262, 807 N.E.2d 439, 282 Ill. Dec. 815 (2004). "A party's standing to sue must be determined as of the time the suit is filed." *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786, 521 N.E.2d 1252, 118 Ill. Dec. 559 (1988). "**[A] party either has standing at the time the suit is brought or it does not**." *Id.*

Before the case of Sc*hwartzwald*, *supra*, the Court of Appeals of Ohio also determined that: "**in order to have a real interest in a foreclosure action, a party must be the owner and holder of the note and the mortgage at the time it commences the action**", *U.S. Bank, N.A. v. Richards*, 189 Ohio App.3d 276, 2010 Ohio 3981, ¶ 13, 938 N.E.2d 74 (9th Dist.), citing: *Everhome Mtge. Co. v. Rowland*, 10 Dist. Franklin No. 07AP-615, 2008 Ohio 1282, ¶ 12 ("**In foreclosure actions, the real party in interest is the current holder of the note and mortgage**"); *Wells Fargo Bank, N.A. v. Sessley*, Franklin App. No. 09AP-178, 188 Ohio App. 3d 213, 2010 Ohio 2902, ¶ 11, 935 N.E.2d 70; *Quantum Servicing Corp. v. Haugabrook*, 9th Dist. Summit No. 26542, 2013-Ohio-3516, ¶ 8; *Wells Fargo Bank N.A. v. Horn*, 9th Dist. Lorain No. 12CA010230, 2013-Ohio-2374, ¶ 10; *BAC Home Loan Serv. v. McFerren*, 9th Dist. Summit No. 26384, 2013-Ohio-3228, ¶ 13; *Wells Fargo Bank, N.A. v. Stovall*, Cuyahoga App. No. 91802, 2010 Ohio 236.

"**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].

"In order to commence a foreclosure action, a plaintiff must have a legal or equitable interest in the mortgage. **A plaintiff has standing where it is the holder or assignee of both the subject mortgage and of the underlying note at the time the action is commenced**," *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *Aurora Loan Servs., LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 [2011]; *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 207, 887 N.Y.S.2d 615 [2009]; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 [2009]; *Countrywide Home Loans, Inc. v. Gress*, 68 A.D.3d 709, 888 N.Y.S.2d 914 [2009]); *Deutsche Bank Natl. Trust Co. v. Spanos*, 102 A.D.3d 909, 911, 961 N.Y.S.2d 200; *OneWest Bank FSB v.* Carey, 104 A.D.3d 444, 960 N.Y.S.2d 306 [1st Dept 2013]; Bank *of New York Mellon Trust Co. NA v. Sachar*, 95 A.D.3d 695, 943 N.Y.S.2d 893 [1st Dept 2012]; *GRP Loan, LLC v. Taylor*, 95 A.D.3d 1172, 945 N.Y.S.2d 336 [2nd Dept 2012]. The decision in *Bank of New York v. Silverberg*, 86 A.D.3d at 280, (2nd Dep't, 2011) upheld that: "a plaintiff does not have standing to bring a foreclosure action if [it] 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 determined 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, in the Kluge decision the Court found that since the plaintiff was not the holder of the mortgage note and the assignee of the mortgage, it lacked standing to bring a collection and foreclosure action. *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].

"**The transfer of a mortgage without a note is a nullity and insufficient to confer standing to foreclose**." *See: U.S. Bank N.A. v. Dellarmo*, 94 A.D.3d 746, 748, 942 N.Y.S.2d 122 (2nd Dep't 2012); *Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 637, 931 N.Y.S.2d 630 (2nd Dep't 2011); *Bank of N.Y. v. Silverberg*, 86 A.D.3d at 280. "An assignment of a mortgage without assignment of the underlying note or bond is a nullity, and no interest is acquired by it." *Merritt v. Bartholick*, 36 NY 44, 45, 34 How. Pr. 129, 1 Transc. App. 63 [1867]; *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *LaSalle Bank Natl. Assn. v. Ahearn*, 59 A.D.3d 911, 912, 875 N.Y.S.2d 595 [2009].

"**The collateral lien of the mortgage could have no legal existence when separated from the note** and transferred to others than the holder of the note, but so long as the two remain together, owned and possessed by the same person, they operate together and are obligations for the payment of the same indebtedness." *Matter of Pirie*, 198 NY 209, 91 N.E. 587 (1910). ***A party who only has the mortgage but no note has not suffered any injury given that bare possession of the mortgage does not endow its possessor with any enforceable right absent possession of the note***. *See: Restatement*

of the Law 3d, Property, Mortgages, Section 5.4(e), at 385 (1996) ("[I]n general a mortgage is unenforceable if it is held by one who has no right to enforce the secured obligation.").

In *Carpenter v. Longan,* 83 U.S. 271, 274, 21 L Ed 313 [1873], the United States Supreme Court determined that: "**an assignment of the mortgage without the note is a nullity**." *See: US Bank N.A. v. Madero*, 80 A.D.3d 751, 752, 915 N.Y.S.2d 612 [2011]; *US Bank, N.A. v. Collymore*, 68 A.D.3d at 754; *Kluge v. Fugazy*, 145 A.D.2d 537, 538, 536 N.Y.S.2d 92 [1988] [**plaintiff, the assignee of a mortgage without the underlying note, could not bring a foreclosure action**]; *See also: Flyer v. Sullivan*, 284 App Div 697, 698, 134 N.Y.S.2d 521 [1954]; *Beak v. Walts*, 266 App Div 900, 42 N.Y.S.2d 652 [1943].

"**[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 determined 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]).

"A plaintiff must demonstrate it has a right to enforce the note and, absent a showing of ownership, the plaintiff lacks standing." *Gill v. First Nat. Bank & Trust Co. of Oklahoma City*, 1945 OK 181, 195 Okla. 607, 159 P.2d 717. "To foreclose a mortgage, a plaintiff must demonstrate that it has a right to enforce the note, and without such ownership, the plaintiff lacks standing." *Wells Fargo Bank, N.A. v. Ford,* 418 N.J. Super. 592, 15 A.3d 327, 329 (N.J. Super. Ct. App. Div. 2011).

"[T]he plaintiff failed to demonstrate its *prima facie* entitlement to judgment as a matter of law because it did not establish that it had standing as the lawful holder or assignee of the subject note on the date it commenced this action." *See: Deutsche Bank Nat'l Trust Co. v. Barnett*, 88 A.D.3d 636, 931 N.Y.S.2d 630; *U.S. Bank N.A. v. Madero*, 80 A.D.3d 751, 915 N.Y.S.2d 612; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578.

In these collection and foreclosure actions, the **party in interest** is the current holder of the mortgage note and of the mortgage. *See: Chase Manhattan Mtge. Corp. v. Smith*, Hamilton App. No. C-061069, 2007 Ohio 5874, at P18; *Kramer v. Millott* (Sept. 23, 1994), Erie App. No. E-94-5, 1994 Ohio App. LEXIS 4454 **("because the plaintiff did not prove that she was the holder of the note and mortgage, she did not establish herself as a real party in interest"). "A party who fails to establish itself as the current holder is not entitled to judgment as a matter of law."** *First Union Nat'l Bank v. Hufford* (2001), 146 Ohio App.3d 673, 677, 679-680, 2001 Ohio 2271, 767 N.E.2d 1206.

"To foreclose upon a promissory note, **the plaintiff must be the 'holder' in order to be the real party in interest**." *Troupe v. Redner*, 652 So.2d 394, 395-96 (Fla. 2d DCA 1995); *Mortg. Elec. Registration Sys. v. Azize,* 965 So.2d 151, 153 (Fla. 2d DCA 2007).

Therefore, "**[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 a 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 the defendant denies that the party seeking foreclosure has an ownership interest in the mortgage**, the issue of ownership becomes an issue the plaintiff must prove." *Carapezza v. Pate*, 143 So.2d 346, 347

(Fla. 3d DCA 1962). "**Where standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief**." *See: US Bank N.A. v. Madero*, 80 A.D.3d 751, 752, 915 N.Y.S.2d 612 (2nd Dep't 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 753, 890 N.Y.S.2d 578 (2nd Dep't 2009); *Deutsche Bank Natl. Trust Co. v. Haller*, 100 A.D.3d 680, 954 N.Y.S.2d 551 [2d Dept 2012]. *TPZ Corp. v. Dabbs*, 25 A.D.3d 787, 789, 808 N.Y.S.2d 746 [2006]; *See also: Society of Plastics Indus. v. County of Suffolk,* 77 NY2d 761, 769, 573 N.E.2d 1034, 570 N.Y.S.2d 778 [1991]). *CitiMortgage, Inc. v. Rosenthal*, 88 A.D.3d 759, 931 N.Y.S.2d 638 [2011]. "Where a **plaintiff standing** to commence a foreclosure action **is placed in issue by a defendant, it is incumbent upon the plaintiff to prove its standing to be entitled to relief**." *See: Citimortgage, Inc. v. Stosel,* 89 A.D.3d 887, 934 N.Y.S.2d 182 [2d Dept 2011].

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]. In other words: "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 noted above: "**[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. "**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**." *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010). "**It is well-established precedent requiring the party seeking foreclosure to present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action**. *See: Verizzo*, 28 So.3d at 978; *Philogene v. ABN Amro Mortg. Group Inc.*, 948 So.2d 45, 46 (Fla. 4th DCA 2006).

In a debt collection and foreclosure case, "the **plaintiff must plead and prove** as part of its prima facie case that it **owns the note and mortgage and has the right to foreclose**." *Wells Fargo Bank, N.A.*, 80 A.D.3d 753, 915 N.Y.S.2d 569 (2d Dept 2011); *Argent Mtge. Co., LLC v. Mentesana*, 79 AD3d 1079, 915 N.Y.S.2d 591 (2d Dept 2010); *Campaign v Barba*, 23 AD3d 327, 805 NYS2d 86 (2nd Dept 2005).

In *Wells Fargo Bank, N.A. v. Jordan*, Cuyahoga App. No. 91675, 2009 Ohio 1092, it was determined that: "**a party lacks standing to bring a foreclosure action if the party cannot prove that it owned the note and mortgage on the date the complaint was filed**."

"**It is well established that in a foreclosure action it is plaintiff's burden to provide admissible evidence of its standing as the lawful holder of the subject note and mortgage at the time the action was commenced**." *See: U.S. Bank Nat'l Asso'n. v. Madero*, 80 A.D.3d 751, 915 N.Y.S.2d 612 (2nd Dept. 2011); *Aurora Loan Services, LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 (2nd Dept. 2011); *Bank of New York v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532, 2011 NY Slip Op 5002 (2d Dept. 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 (2d Dept. 2009).

More specifically, lack of standing cannot be cured subsequent to 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].

"A plaintiff's lack of standing at the time a complaint is filed in a foreclosure action **cannot be cured**

by substituting the real party in interest for an original party." *Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. No. 91675, 2009 Ohio 1092, ¶ 24. "[I]n a foreclosure action, a bank that was not the mortgagee when suit was filed cannot cure its lack of standing by subsequently obtaining an interest in the mortgage." *Id.* at ¶ 24; *see also: Deutsche Bank Natl. Trust Co. v. Triplett*, 8th Dist. No. 94924, 2011 Ohio 478, ¶ 12; *Wells Fargo Bank N.A. v. Byrd*, 178 Ohio App.3d 285, 2008 Ohio 4603, 897 N.E.2d 722 (1st Dist.).

"A plaintiff cannot rely on procedural rules similar to cure a lack of standing at the commencement of litigation," *Davis v. Yageo Corp.*, 481 F.3d 661, 678 (9th Cir. 2007) ("whether or not Dux was the real-party-in-interest, it does not have standing, and it cannot cure its standing problem through an invocation of *Fed. R. Civ. P. 17(a)*"); *Clark v. Trailiner Corp.*, 242 F.3d 388 (10th Cir. 2000) (table), opinion reported at 2000 U.S. App. LEXIS 29006, 2000 WL 1694299 (noting that the plaintiff cannot "*retroactively become* the real-party-in-interest" in order to cure a lack of standing at the filing of the complaint [emphasis sic]); *State v. Property at 2018 Rainbow Drive*, 740 So.2d 1025, 1027-1028 (Ala. 1999) (rejecting the argument that a lack of standing can be cured after the filing of the complaint); *Consumer Fedn. of Am. v. Upjohn Co.*, 346 A.2d 725, 729 (D.C. App. 1975). *See also: McLean v. JP Morgan Chase Bank Natl. Assn.*, 79 So.3d 170, 173 (Fla. App. 2012) ("a party is not permitted to establish the right to maintain an action retroactively by acquiring standing to file a lawsuit after the fact").

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.

"**Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default**." *Green v. Dolphy Constr. Co.* 187 A.D.2d 635, 590 N.Y.S.2d 238 (2nd Dep't, 1992); *Citigroup Global Mkts. Realty Corp. v. Smith*, 33 Misc. 3d 1234(A); 943 N.Y.S.2d 790; 2011 N.Y.

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.

"If a plaintiff lacks standing to sue, **the plaintiff may not proceed in the action**." *Stark v. Goldberg*, 297 A.D.2d 203, 746 N.Y.S.2d 280 (1st Dept 2002).

"**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 Dep't 1988); *Katz v. East-Ville Realty Co*, 249 A.D.2d 243, 672 N.Y.S.2d 308 (1st Dep't 1998).

"Today, with multiple (and often unrecorded) assignments of mortgage obligations and multiple securitizations often related to the same debt, **the court should carefully scrutinize the status of the parties who claim the right to enforce these mortgage obligations**." *Deutsche Bank National Trust Company v. McRae*, 27 Misc3d 247, 894 N.Y.S.2d 720, [Sup Ct, Allegany County, 2010].

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 vs. Antonio Ibañez*, 941 N.E.2d 40 (Mass, 2011), it was determined 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*.

In Spain, where the practice of **securitization of mortgage loans** is still relatively new compared to the United States, the Courts already suspend mortgage foreclosures and order dismissal of any debt collection and mortgage foreclosure action when it is demonstrated that the mortgage loan has been "*titulizado*" (known in the United States as securitization). The Courts in

Spain have even declared the nullity of debt collection and mortgage foreclosure judgments when in a nullity of judgment action it has been demonstrated that the mortgage has been securitized.

ADMINISTRATION OF JUSTICE

COURT OF FIRST INSTANCE AND PRELIMINARY INVESTIGATION No. 2 VILLACARRILLO
Proceedings: Foreclosure No. 408/2010.

Proceedings No. 10716

Facts

ONE.-In these foreclosure proceedings, the execution debtor presented a brief dated May 5, 2016, concerning the nullity of the enforcement order and the integrity of the proceedings, based on the securitization of the same.

TWO.-With due regard to the action for nullity filed, notice thereof was served to the opposing party in order to submit allegations; leaving the proceedings open for resolution.

THREE.-The legal requirements have been complied with in the processing of this trial.

Legal Basis

ONE.-Article 225 of the LEC provides that: "*Procedural acts shall be null and void by operation of law in the following cases:*

1. *Where these acts occur by or before the Court with lack of jurisdiction or of objective or functional jurisdiction.*

2. *Where these acts are carried out under violence or intimidation.*

3. *Where these acts waive essential rules of procedure, provided that, for that reason, defenselessness has occurred.*

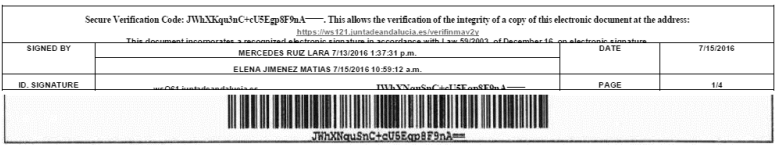
4. *Where these acts are carried out without the intervention of attorneys, in cases where the law requires their presence.*

5. *Where these cases involve hearings without the required intervention of the Court Clerk.*

6. *Where these cases are resolved through court orders or by decree, which, according to law, must be resolved by means of court ruling, order or judgment.*

7. *In all other cases regulated by this law.*

Adding the second section, first paragraph of Article 227 of the same



Legal text: "*Without prejudice to the foregoing, the Court may, ex officio or at the request of a party, prior to issuing any decision to end the process, and provided that remedy is not due, to declare, after hearing the parties, the nullity of all the proceedings or of any in particular.*"

In view thereof, these can be considered possible procedural nullities that cannot be invoked by way of appeal, provided that they have caused defenselessness to the party filing for nullity.

TWO.-Securitization consists of a bank action through which the financial institution or bank divides the loans into homogeneous holdings, grouping these into an Asset Securitization Trust for the purpose of avoiding risk. The Securitization Trust is set up legally as an entity without legal status managed and administered by a corporation specializing in the management of third-party business, a company specializing in Asset Securitization Trusts, operating with them in the securities market where these shares are acquired by investors.

Law 19/1992, on the regime of companies and real estate investment trusts and on mortgage-backed securities funds, clarifies that through the securitization of a loan, the entity that granted the same, ceases to be the creditor of the loan, even though it retains by law the ownership by registration and continues, unless otherwise agreed, with the management thereof.

Concerning the invocation of the nullity made, certain courts have issued rulings by declaring that, with regard to the securitized loan, the originator loses its condition as creditor, based on the argument "*It expressly means that the creditor of the same has taken the position of creditor in the complaint, as the holder of the loan. Based on these statements, it is inferred therein that it has not been assigned to any Mortgage-Backed Securities Fund. It is clear that if the assignment had taken place, the plaintiff of the proceedings could only act as administrator of the assigned loans and would lack the intended standing. As a result, the creditor is hereby notified that, in the event it does not hold such standing, the nullity of the actions filed will be declared and the complaint will be*

inadmissible with effects ex tune" (in that sense, Proceedings of March 6, 2015, of Court No. 1 Fuenlabrada; Proceedings of January 20, of Court No. 8 Málaga; Proceedings of October 5, 2015, of Court No. 7 Granollers; Proceedings of May 12, 2015, of Court No. 6 Arganda del Rey; Proceedings of April 13, 2016, of Court No.5 Gijon; Proceedings of March 15, 2016, of Court No. 3 Picassent; Proceedings of March 11, 2016, of Court No. 4 Collado Villaba; Proceedings of January 20, 2016, of Court of First Instance No. 2 Barcelona; Judgment of the AP de Valentía, of June 14, 2005 and AAP de Castellón, of July 12, 2012 and July 24, 2012).

As the execution debtor clearly states, the Bank of Spain, in a non-binding document, in reference to consultation, expressed the lack of standing in that case.

Our Supreme Court has already established that the assignee of a mortgage loan that has not registered the assignment of the mortgage in the Property Register, has legal standing to file foreclosure proceedings, given that, in its understanding, the registration of the assignment of the mortgage loan in the Property Registry is declaratory and not constitutive. It understands, therefore, that the assignee is subrogated to the rights of the assignor as creditor and has legal standing to file foreclosure proceedings; all the foregoing, without requiring registration (STS 6/29/1989, 11/23/1993 and 11/23/2007, among others).

THREE.-On the basis of the assumptions outlined above, we will enter into the analysis of this instant case.

The execution creditor refuses the loan securitization by reference to the transaction number recorded in

the list provided by the execution creditor, without such reason being sufficient and decisive for the dismissal of the claim of the execution debtor. As can be seen in the list of loans of the Fund "Toncaixa Andalucía Ftempresa 1", Asset-Backed Securities Fund, dated 2/26/2010, specifically the last of the loans, which was concluded in favor of the borrowers, given that it coincides with the amount of the loan (€27,000), the address of the borrower appearing in the deed of constitution and the date of the deed, February 13, 2006; data which matches with the public instrument provided as an enforceable order with the complaint and which serves as basis for the enforcement thereof. Therefore, it is understood that the loan was securitized; which is the basis for determining that the execution creditor, Caja de Ahorros y Pensiones de Barcelona (La Caixa), lacked standing, by the Fund being subordinated to the position of creditor; which leads to the nullity of the case.

FOUR.-No statement was made on court costs.

In the view of the legal precepts and others of general application to the case;

I HEREBY DECREE

THE NULLITY OF THE ENFORCEMENT ORDER, dated June 8, 2010, AND OF EVERYTHING ACTED UPON THEREAFTER, thus ordering the dismissal of the proceedings, once the final resolution has been issued; all the foregoing, without imposition.

COURT OF FIRST INSTANCE No. OF BENIDORM

[Seal] *Julio Costa*
JUNE,14, 2016
procuradorbenidorm.net

N.I.G. :03031-42-2-2012-005671
Proceedings: Foreclosure - [redacted] 2012-B

From: Mr./Ms. BANKIA S.A.
Attorney Mr./Ms. [redacted]
Against: Mr./Ms. [redacted]
Attorney Mr./Ms. [redacted]

Proceedings No. 000221/2016

Most Illustrious, Mr.: Dr. Alfonso Franco Docavo
In BENIDORM, on the tenth of June of two thousand sixteen.

Findings of Fact

SOLE PROVISION.-Having heard the facts after the execution debtor informed about the loan securitization, subject of this enforcement order, the same was forwarded to the parties for claiming their rights regarding the possible ruling on the lack of standing of the execution creditor, then proceeding, as appropriate, to declare the nullity of the enforcement order and thereafter, the dismissal of the proceedings.

Legal Basis

ONE.-In the instant case, a suit for execution was filed by the entity BANKIA SA, duly verifying that, once the enforcement order was issued, the loan or credit of these proceedings has been securitized, as was admitted by the execution creditor itself.

Loan securitization means that the bank or financial institution, as holder of the same, divides the loans into homogeneous holdings, grouping these shares into an Asset-Backed Securities Fund, which is legally set up as an entity without legal status,

which is managed and administered by a corporation specializing in the management of third-party business matters, a company that manages asset-backed securities funds, operating with them in the securities market where these shares are acquired by investors. In this way, liquid assets are transformed into marketable financial assets, which implies the possibility of cleaning up the balance sheets of financial institutions by releasing the liabilities that served as the basis for the assigned assets. Investment management firms are created with the sole purpose of the constitution, administration and legal representation of the securitization funds and for defending the interests of holders of the securities issued by the funds they manage.

> The first regulation of asset-backed securities funds was issued by Law 15/92, of July 7, on the Regime of Real Estate Investment Trusts and Firms and on Mortgage-Backed Securities Funds. Subsequently, Law 5/15 of April 27, for the promotion of corporate finance, in Article 15, establishes the regulation of securitization funds:
>
> "1. *Securitization funds are separate estates, lacking legal status as such, with null net equity value, integrated*:
>
> a) *In terms of their assets, by credit claims, present or future, which are grouped together in accordance with the provisions of Article 16 and*,
>
> b) *in terms of their liabilities, based on fixed-income securities issued and, on the loans, granted by any third party*,

2. *The estate of the securitization funds may, where thus provided in the deed of constitution, be divided into independent sections, out of which different classes of securities may be issued or obligations may be assumed that can be settled independently."*

Art. 16.2 of this rule stipulates that: *"2. Securitization funds may acquire the ownership of the assets by any method, either through their assignment, their purchase, their subscription on primary markets or through any other way permitted by law."*

Based on the above, it should be noted that the aim of the foreclosure procedure is to obtain the payment of the mortgage-backed debt, pursuant to Art. 681 LEC, so that the real property right is not independent, but accessory or related to the loan secured thereby, in which case, Art. 685.2 LEC requires the provision of the negotiable instrument with the suit for execution. In this case, such instrument is the deed of incorporation of the mortgage in favor of *, but indicating that the loan is securitized, thus assigning the assets of* (bank) to the securitization fund. In this sense, it can be said that the legal business of loan securitization is the total assignment of the credit claim subject of these proceedings.

Bankia SA, filed the foreclosure proceedings acting on its own behalf and without indicating, until it was thus requested by the Court, that securitization and assignment of the credit claims had taken place in favor of an Asset-Backed Securities Fund, and without providing, at the beginning, the deed of constitution of the asset-backed securities fund and the assignment of credit claims.

In the full assignment of the credit claims, as appropriate, the ordinary standing for the actions arising out of the mortgage loan would correspond to the participant, in which case, the issuing entity, which is the execution creditor in these proceedings, would not have standing. The issuing entity has not assigned to a third party a part or share of its mortgage rights, but these are grouped into several mortgage loans, and are assigned in their entirety to an Asset-Backed Securities Fund. Therefore, it is not possible to apply Art. 15 of the Mortgage Market Law, nor Art. 61 and 65.3 RD 685/82, which would only have sense, when a portion of the credit claims is assigned, and that, in any case, the share that could correspond to the participant and the assignor should be distributed according to each share.

In cases where the mortgage loan is assigned to a third party, the execution creditor would have lost its status as holder and creditor of the loan, and thus assuming the actions aimed at its restitution, including foreclosure. On the basis of Art 149 LH, the credit or loan secured by a mortgage may be assigned in whole or in part, in accordance with Art. 1,526 Cc, in which case, the assignee is subrogated to all the rights of the assignor. In turn, Art. 1528 Cc, states that the sale or assignment of a loan includes all the accessory rights, such as the bond, mortgage, pledge or lien.

Also, in this regard, the Bank of Spain, in its response, dated March 26, 2015, to a query made through the CNMV, establishes that: "*. . . in accordance with Law 19/1992, on the regime of real estate investment trusts and firms on mortgage-backed securities funds, the securitization of a loan means that the entity that granted the same ceases to be the creditor of the loan,*

even though it retains by law the ownership by registration and continues, unless otherwise agreed, with the management thereof."

In view of the foregoing, the lack of standing of the execution creditor should be noted, given that it lacks the legal standing to request the payment of the claim, subject of this enforcement order, in accordance with Art. 10 LEC. Lack of standing is an irremediable procedural defect, recognizable ex officio at any time in the proceedings, as provided by Art, 9 LEC.

In this sense. Proceedings of Court of First Instance No. 5 Gijori, No. 67/2016, of April 13, 2016, Proceedings of Court of First Instance No. 6 of Arganda del Rey on November 12, 2015, Proceedings of Court of First Instance No. 2 of Arganda del Rey of December 2, 2015, Proceedings of Court of First Instance No. 4 of Collado Villalba, of March 11, 2016, Proceedings of Court of First Instance No. 8 of Málaga, No. 20/2015, of January 14, 2015, Proceedings of Court of First Instance No. 1 of Fuenlabrada, among others.

As a result, the enforcement order in favor of the party that does not hold legal standing should be declared null and void, by failure to follow the essential rules of procedure in the absence of one of the fundamental requirements of the filed action, i.e., the plaintiff was not the holder of the loan that it intended to enforce, pursuant to Art 225.3 LEC, and based on the above, these proceedings must be dismissed.

In view of the foregoing;

I HEREBY DECREE: That the corporation, BANKIA SA, lacks standing in this foreclosure proceeding to claim the loan subject of the proceedings, in

view of which, the enforcement order is declared null and void, and the proceedings must be dismissed.

Issue the timely order to the Property Registry to proceed to cancel the marginal note placed on the margin of the mortgage under foreclosure, after the issuing of certificate of ownership and liens: notes to be delivered to the execution creditor to use in its presentation and return once these are completed, at which time the documents submitted with the complaint will be examined and returned as appropriate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED

The findings of fact requested are as follows:

1. On SEPTEMBER 10, 2015, the counterclaim defendant filed the complaint for debt collection and mortgage foreclosure in the above-captioned case.

2. On the date of filing of the aforementioned complaint, the counterclaim defendant was NOT the owner, holder or possessor of the original MORTGAGE NOTES and was not the holder of the MORTGAGES to which the above-captioned action refers.

3. The counterclaim defendant lacked standing when it filed the complaint in the above-captioned case because it is not the owner, holder or possessor of the aforesaid original NOTES, nor is it the holder of the MORTGAGES.

4. Between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**,[1] *i.e.* within a period between **6 and 12**

1

NOTE #1	($180,000.00):	March 5, 2003

years BEFORE filing the complaint in the above-captioned case, the counterclaim defendant's predecessor sold each original MORTGAGE NOTE on the Secondary Market, and each MORTGAGE NOTE was subject to a securitization process in the respective Trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.[2]

NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

[2] *See* footnote 1 of the Amended Answer to Complaint and Counterclaim, the content of which is incorporated herein by reference. *See also*: Exhibits attached, Expert Reports and affidavits. These documents show: (i) the sale of the aforementioned mortgage

5. After the sale of each original MORTGAGE NOTE on the secondary market, the counterclaim defendant's predecessor collected the amount of each NOTE through payment by a third party (secondary market investor), and made a profit with the sale of each NOTE on dates prior to filing the above-captioned complaint.

6. After the date of sale of each original MORTGAGE NOTE on the secondary mortgage market, between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**, the plaintiff's predecessor ceased to be the owner, holder or possessor of each original NOTE and the holder of each MORTGAGE to which this collection and foreclosure case refers.[3] Since the dates of each sale, the plaintiff has not been the owner, holder or possessor of the notes in question either.

7. After the securitization process of each MORTGAGE NOTE (between the dates of: **MARCH 30, 2003**

---

note on the secondary market before filing of the collection action in the above-captioned case; and (ii) the conversion of that mortgage note into securities, together with thousands of other mortgage notes by means of the securitization process, before the filing of the above-captioned action. *See* the last page of each Expert Report, with the screenshot of the sales and securitization data on each note.

[3] It is worth highlight that when mortgage notes undergo the securitization process—creating the so-called "pool" of these notes, resulting in the securities—the notes are withdrawn from market circulation and, in physical terms, are filed in a vault as constitutive documents of the pool that preceded the securities resulting from the securitization process. In accordance with federal regulations, these constitutive documents (the former mortgage notes) are placed in the permanent custody of the designated Master Documents Custodian of the secondary market and cannot be removed from custody.

AND JULY 15, 2009,[4] in the respective trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**[5]), each original

4

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

5

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I

NOTE was converted into a different type of instrument, called securities.

8. The plaintiff/counterclaim defendant's claim in the above-captioned case to being the owner and holder of the MORTGAGE NOTES and holder of the MORTGAGES constitutes a misrepresentation.

9. Between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**,[6] the plaintiff/counterclaim defendant's

NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

6

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992

predecessor sold each original MORTGAGE NOTE in question on the secondary market and received the amount thereof through a third-party payment **BEFORE** filing of the Complaint in the above-captioned case (SEPTEMBER 10, 2015).

10. After the sale of each original MORTGAGE NOTE on the secondary mortgage market, each NOTE

NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003
NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

was subject to securitization[7] between the dates of: **MARCH 30, 2003 AND JULY 15, 2009**[8]-in other

---

[7] In layman's terms, ***securitization*** **refers to the process whereby a batch of original mortgage notes is converted into securities**. **It is a well-known fact that if an original MORTGAGE NOTE is converted**—together with thousands or hundreds of others—**into securities, then the original MORTGAGE NOTE ceases to exist due to its conversion into a different type of instrument**: "securities"–*Cf.*: Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Article 3, Article 8 of the Uniform Commercial Code of the United States of America, U.C.C. § 3-104; U.C.C. § 8-102(15); and Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

In effect, after the process of securitization of a MORTGAGE NOTE, the debt holders and note holders cease to exist, being replaced by "securities holders". These final investors on the chain acquired "securities". These "securities" are subject to market risks. However, these securities holders insure their investment through CDS (Credit Default Swap), and receive the insured amount in the event of default.

[8]

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004

words, they were converted, together with hundreds or thousands of other notes,[9] into SECURITIES.

11. Each original MORTGAGE NOTE in dispute, following its securitization process, lost its original legal status. The securities are the new type of instrument resulting from the pooling of hundreds of mortgage notes, including each aforesaid original MORTGAGE NOTE, subject to securitization.[10]

NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

[9] 2,000-5,000 notes for "non-conforming" loans. Among hundreds of notes for "conforming" loans.

[10] The MORTGAGE NOTE and securities are regulated, respectively, by Chapter 2 and Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); and by Article 3 and Article 8, respectively, of the Uniform Commercial Code of the United States of America, U.C.C. § 3-104; U.C.C. § 8-102(15); and the Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq. "Real Estate Mortgage Investment Conduits (REMICs) came into existence through the Tax Reform Act of 1986. Under this act, qualified residential and commercial mortgage notes are pooled and securitized."*

12. Securities are the new legal status resulting from the aforementioned process of securitization of the mortgage notes.[11]

13. After batching each original MORTGAGE NOTE in dispute with hundreds or thousands of other notes and pooling them in the securitization process in the respective trusts: ***EURO LOAN CLO I-EBS OVERSEAS INC III***[12] between the dates of: ***MARCH***

---

[11] *Cf.*: Chapter 2, Chapter 8 of the Puerto Rico Commercial Transactions Act, 19 L.P.R.A. Sec. 501, *et seq.*, Sec. 1701 *et seq.*; 19 L.P.R.A. § 504; 19 L.P.R.A. § 1702(15); Article 3, Article 8 of the Uniform Commercial Code of the United States of America, U.C.C. § 3-104; U.C.C. § 8-102(15); and the Tax Reform Act of 1986–REMICs, 26 CFR § 1.860 F-2, *et seq.*

[12]

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III

NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

30, 2003 AND JULY 15, 2009,[13] the resulting securities were circulated and sold to the general public on global markets ("shares or pieces of the pool").[14]

14. No contractual relationship exists between the defendant/counterclaimant in the above-captioned

---

13

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

14 These buyers of securities are at the end of the securitization food chain and are known as Securities Holders.

case and the securities holders. The investors who are at the end of the securitization food chain have standing to demand compliance with the terms of the securities due to their status as securities holders.[15]

15. None of the securities holders purchased any of the original MORTGAGE NOTES in question. They bought "securities"—instruments of value resulting from the process of securitization of hundreds or thousands of mortgage notes.

16. After the process of securitization of each original MORTGAGE NOTE, all of the former note holders & mortgage holders of each original MORTGAGE NOTE received the amount shown on each NOTE when they sold it on the secondary mortgage market.

17. The original MORTGAGE NOTES in dispute were sold by the plaintiff/counterclaim defendant's predecessor to intermediary investors on the secondary mortgage market. In that transaction, the plaintiff/counterclaim defendant's predecessor received the amount of each original MORTGAGE NOTE through payment by a third party (first intermediary investor). In turn, the first intermediary investment bank sold each note to another more senior intermediary invest-

---

[15] The securities resulting from the process of securitization of the mortgage notes are subject to market risks. However, securities holders insure their investment through CDS (Credit Default Swap), and collect the insured amount in the event of default on the credit represented by the securities.

Securities holders do not have standing to demand the original obligation associated with the original MORTGAGE NOTE because what they acquired were securities.

ment bank. In this other transaction, the first intermediary investment bank also received the amount of each mortgage note through payment by a third party (second intermediary investor).

18. The last investment bank that bought and collected the MORTGAGE NOTES, including the original MORTGAGE NOTE in dispute, securitized them in order to recover its investment in the purchase of the MORTGAGE NOTES and to obtain bigger profits by selling the securities that resulted from the securitization process. Each original MORTGAGE NOTE in dispute was batched with thousands or hundreds of other NOTES to create the pool that gave rise to a different type of instrument: "securities" of the respective trusts: **EURO LOAN CLO I-EBS OVERSEAS INC**

III,[16] between the dates of: **MARCH 30, 2003 AND JULY 15, 2009**.[17]

16

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

17 The sales and trading flow of the original mortgage note and the specifications and details of the resulting securities are evidenced by the relevant Securitization Reports prepared by U.S. experts.

19. Prior to the conversion of each original MORTGAGE NOTE, together with thousands of other notes, into securities, there had to be actual sales of the original MORTGAGE NOTE in question between the originator and the sponsor; between the sponsor and the depositor; and between the depositor and the trustee to create the respective trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**[18]—*i.e.* REMICs under

---

18

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

the Tax Reform Act of 1986; *U.S. Bank National Association v. Antonio Ibañez,* 941 N.E.2d 40 (Mass 2011).[19]

20. Under Articles 1777 and 1232 of the Puerto Rico Civil Code, 1930, the relevant deeds of assignment of the mortgage loan had to be exchanged between: (i) the original mortgagee and the secondary market investment bank; (ii) the originator and the sponsor; (iii) the sponsor and the depositor, and; (v) the depositor and the trustee (REMICs, Tax Reform Act of 1986). And this did not occur. *See* statement in: *U.S. Bank National Association v. Antonio Ibañez,* 941 N.E.2d 40 (Mass 2011), 458 Mass 637 (2011).

21. On the date of filing of the complaint in the above-captioned case (**SEPTEMBER 10, 2015**), the plaintiff/ counterclaim defendant did NOT have standing to sue for collection of the original MORTGAGE NOTES in dispute because it was not the owner, holder or possessor of the aforesaid original MORTGAGE NOTES, nor was it holder of the MORTGAGES listed in its complaint because its predecessor had sold them on the secondary market and received the amount of each MORTGAGE NOTE, and each one was subject to securitization, between the dates of: **MARCH 30, 2003**

---

[19] At the same time, the mortgage loan was assigned or transferred between the originator and the sponsor; between the sponsor and the depositor; and between the depositor and the trustee—REMICs, Tax Reform Act of 1986; *U.S. Bank National Association v. Antonio Ibañez,* 941 N.E.2d 40 (Mass 2011).

AND JULY 15, 2009[20] in the respective trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**.[21]

20

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

21

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS

22. After the date of sale of each original MORTGAGE NOTE on the secondary mortgage market (between the dates of: **MARCH 5, 2003 AND JULY 9, 2009**[22]), all of its past owners and holders received the

NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

22

NOTE #1	($180,000.00):	March 5, 2003
NOTE #2	($720,000.00):	March 5, 2003
NOTE #3	($900,000.00):	December 5, 1992
NOTE #4	($300,000.00):	March 5, 2003
NOTE #5	($300,000.00):	March 5, 2003
NOTE #6	($280,000.00):	March 5, 2003

amounts they were respectively owed and the debt thereto evidenced by each original mortgage note was extinguished through a third-party payment. With the extinguishment of the debt, the mortgage that secured it was likewise extinguished.

23. The secondary market intermediary investors—*i.e.* commercial banks, investment banks, Fannie Mae, Freddie Mac, Goldman Sachs, Morgan Stanley, Lehman Brothers, Merrill Lynch, Bear Stearns, Deutsche Bank, Wells Fargo—do not have legal standing to demand payment of the original MORTGAGE NOTES because NONE of them is the holder of any of the original MORTGAGE NOTES, because they all in turn sold them on the secondary mortgage market and received payment for them from third parties. Moreover, each original MORTGAGE NOTE was subject to

NOTE #7	($700,000.00):	January 5, 2001
NOTE #8	($600,000.00):	March 5, 2003
NOTE #9	($1,200,000.00):	March 5, 2003
NOTE #10	($432,000.00):	February 28, 2004
NOTE #11	($800,000.00):	October 7, 2004
NOTE #12	($2,443,000.00):	December 27, 2005
NOTE #13	($680,000.00):	December 27, 2005
NOTE #14	($1,500,000.00):	July 9, 2009
NOTE #15	($1,020,000.00):	July 9, 2009
NOTE #16	($920,000.00):	July 9, 2009
NOTE #17	($550,000.00):	July 9, 2009
NOTE #18	($157,000.00):	July 9, 2009
NOTE #19	($100,000.00):	July 9, 2009

securitization, and consequently each original MORTGAGE NOTE was converted-together with thousands or hundreds of other NOTES-into a different type of instrument: "securities" of the respective trusts: **EURO LOAN CLO I-EBS OVERSEAS INC III**[23] between the

23

NOTE #1	($180,000.00):	EURO LOAN CLO I
NOTE #2	($720,000.00):	EURO LOAN CLO I
NOTE #3	($900,000.00):	EURO MAX IV MBS
NOTE #4	($300,000.00):	EURO LOAN CLO I
NOTE #5	($300,000.00):	EURO LOAN CLO I
NOTE #6	($280,000.00):	EURO LOAN CLO I
NOTE #7	($700,000.00):	EURO MULTI CREDIT CDO
NOTE #8	($600,000.00):	EURO LOAN CLO I
NOTE #9	($1,200,000.00):	EURO LOAN CLO I
NOTE #10	($432,000.00):	EBS OVERSEAS INC I
NOTE #11	($800,000.00):	EBS OVERSEAS INC I
NOTE #12	($2,443,000.00):	EBS OVERSEAS INC II
NOTE #13	($680,000.00):	EBS OVERSEAS INC II
NOTE #14	($1,500,000.00):	EBS OVERSEAS INC III
NOTE #15	($1,020,000.00):	EBS OVERSEAS INC III
NOTE #16	($920,000.00):	EBS OVERSEAS INC III
NOTE #17	($550,000.00):	EBS OVERSEAS INC III
NOTE #18	($157,000.00):	EBS OVERSEAS INC III
NOTE #19	($100,000.00):	EBS OVERSEAS INC III

dates of: **MARCH 30, 2003 AND JULY 15, 2009**.[24] Thus, the original MORTGAGE NOTES lost their legal status.

24. In the knowledge that its predecessor had already sold each original MORTGAGE NOTE in dispute on the secondary mortgage market and received the amount owed thereto through a third-party payment,

---

24

NOTE #1	($180,000.00):	March 30, 2003
NOTE #2	($720,000.00):	March 30, 2003
NOTE #3	($900,000.00):	December 16, 1992
NOTE #4	($300,000.00):	March 30, 2003
NOTE #5	($300,000.00):	March 30, 2003
NOTE #6	($280,000.00):	March 30, 2003
NOTE #7	($700,000.00):	January 30, 2001
NOTE #8	($600,000.00):	March 30, 2003
NOTE #9	($1,200,000.00):	March 30, 2003
NOTE #10	($432,000.00):	October 15, 2004
NOTE #11	($800,000.00):	October 15, 2004
NOTE #12	($2,443,000.00):	January 5, 2006
NOTE #13	($680,000.00):	January 5, 2006
NOTE #14	($1,500,000.00):	July 15, 2009
NOTE #15	($1,020,000.00):	July 15, 2009
NOTE #16	($920,000.00):	July 15, 2009
NOTE #17	($550,000.00):	July 15, 2009
NOTE #18	($157,000.00):	July 15, 2009
NOTE #19	($100,000.00):	July 15, 2009

the plaintiff/counterclaim defendant, in the complaint in the above-captioned case, misrepresented itself as the owner and holder of each original MORTGAGE NOTE and holder of each MORTGAGE. The plaintiff/counterclaim defendant was perfectly aware that:

> "*Since the loan was sold, pooled and turned into a security—along with others—the alleged holder can no longer claim that it is a real party with interest, as the original lender has been paid in full.*" "Once the Note was converted—along with others—into a stock, or stock equivalent, it is no longer a Note. If both the Note and the Stock, or Stock equivalent, exist at the same time, that is known as double dipping. Double dipping is a form of securities fraud." "Once a Note has been securitized—*along with others*—it forever loses its security component (i.e. the mortgage), and the right to foreclose through the mortgage is forever lost."

25. The plaintiff/counterclaim defendant has no standing to sue in the above-captioned case. The above-captioned debt collection and foreclosure case is not justiciable due to the plaintiff/counterclaim defendant's lack of standing. The plaintiff/counterclaim defendant has no right to receive payment for the MORTGAGE NOTES or foreclose the mortgage because its predecessor already received the amount of the aforesaid original NOTES when it sold each one on the secondary market. On the date of filing of the complaint in the above-captioned case, the original MORTGAGE NOTES had already been paid for and had lost their legal status through conversion—together with thousands or hundreds of other NOTES-into securities, and the

mortgages lost their lien status due to extinguishment of the debt through third-party payment.

26. The ample sworn testimony of experts on the court record inexorably proves that each MORTGAGE NOTE in dispute was sold, transferred and securitized (together with a pool of hundreds of notes) on a date prior to the filing of the complaint in the above-captioned case.

27. The plaintiff/counterclaim defendant's lack of standing at the time of filing the complaint deprived the Trial Court of jurisdiction in the above-captioned case. In the absence of jurisdiction, the above-captioned collection and foreclosure case is not justiciable.

28. In the above-captioned case, the plaintiff/counterclaim defendant did not have standing at the time of filing its complaint. The plaintiff/counterclaim defendant violated due process of law by filing a complaint without having standing to sue. Therefore, the case should be dismissed.

29. Moreover, the mortgage deeds listed in the complaint on the court record suffer from an irremediable defect: absence of a valid reserve price for the first auction. This defect renders each mortgage deed void and each mortgage unenforceable.

30. In each of the aforementioned mortgage deeds, the clause related to the "Value of the Property" did not mention any appraised price agreed between the parties for the first auction. Instead, the clause in question underhandedly listed a price imposed by the originator based on the amount of the loan granted without considering the appraised value of the property—on the date of the mortgage—plus its appreciation in value.

31. A reserve price inserted underhandedly and unilaterally by the originator based on the amount of the loan granted does not constitute a valid reserve price for the first auction. This would allow the awarding of valuable properties for ridiculous amounts. The mortgage thus did not meet the essential reserve price requirement. Therefore, the mortgage deeds in question are void *ab initio*, and should not have been entered in the Property Registry. If they were erroneously or inadvertently registered, the respective entries should be canceled.

32. The principal of each Mortgage Deed listed in the complaint on the court record cannot be a valid auction reserve price because it does not reflect the appraised value of the property-on the date of the mortgage deed-plus the increase in value (appreciation) that would ordinarily be expected.

33. The 3rd and 4th paragraphs of Article 104 of the Property Registry Act, 2015, are unconstitutional. They also run contrary to market laws. The aforesaid article imposes an auction "reserve price" for all cases and does not provide options for adjusting the reserve price in cases where there is a net asset value ("equity"). Any legal provision authorizing such a loss of property equity is unconstitutional.

34. There was no negotiation or agreement between the parties with respect to the reserve price of the properties listed in the complaint. The price was inserted underhandedly by the originator on each of the aforementioned mortgage deeds.

35. A reserve price inserted underhandedly and unilaterally into the mortgage deed by the originator based on the amount of the loan granted does not

constitute a valid reserve price for the first auction. The mortgage thus did not meet the essential reserve price requirement. Such a mortgage deed is null and void.

The Conclusions of Law requested are as follows:

1. "A **crucial element in any mortgage foreclosure proceeding is that the party seeking foreclosure must demonstrate that it has standing to foreclose**." *Rigby v. Wells Fargo Bank*, 84 So.3d 1195, 1196 (Fla. 4th DCA 2012) (citing: *McLean,* 79 So.3d at 173); *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012).

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**." *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010); *Verizzo v. Bank of N.Y.*, 28 So.3d 976, 978 (Fla. 2d DCA 2010); *Philogene v. ABN Amro Mortg.* "*Group Inc.*, 948 So.2d 45, 46 (Fla. 4th DCA 2006).

3. **"A plaintiff seeking foreclosure in a mortgage proceeding must establish that it had standing to foreclose at the time it filed suit."** *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012).

4. With respect to the basis for standing, the United States Supreme Court made clear, 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 above, "**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.

5. In 1992, the United States Supreme Court 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).

6. More specifically, **"[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), citing *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).

7. 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 determined 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."

8. 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 determined 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.

9. 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 Dep't 2013), citing: *Bank of N.Y. v. Silverberg,* 86 A.D.3d 274, 279, 926 N.Y.S.2d 532 (2nd Dep't 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 Dep't 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].

10. 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 [2nd 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].

11. In a debt collection and mortgage foreclosure action, the plaintiff has standing 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]; *US 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].

12. 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) (citing: *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).

13. "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit." *Raintree Homes, Inc. v. Village of*

Long Grove, 209 Ill. 2d 248, 262, 807 N.E.2d 439, 282 Ill. Dec. 815 (2004). "A party's standing to sue must be determined as of the time the suit is filed." *Village of Kildeer v. Village of Lake Zurich*, 167 Ill. App. 3d 783, 786, 521 N.E.2d 1252, 118 Ill. Dec. 559 (1988). "**[A] party either has standing at the time the suit is brought or it does not.**" *Id.*

14. Before the case of *Schwartzwald*, *supra*, the Court of Appeals of Ohio also determined that: "**in order to have a real interest in a foreclosure action, a party must be the owner and holder of the note and the mortgage at the time it commences the action.**" *U.S. Bank, N.A. v. Richards*, 189 Ohio App.3d 276, 2010 Ohio 3981, ¶ 13, 938 N.E.2d 74 (9th Dist.), citing: *Everhome Mtge. Co. v. Rowland*, 10 Dist. Franklin No. 07AP-615, 2008 Ohio 1282, ¶ 12 ("**In foreclosure actions, the real party in interest is the current holder of the note and mortgage**"); *Wells Fargo Bank, N.A. v. Sessley*, Franklin App. No. 09AP-178, 188 Ohio App. 3d 213, 2010 Ohio 2902, ¶ 11, 935 N.E.2d 70; *Quantum Servicing Corp. v. Haugabrook*, 9th Dist. Summit No. 26542, 2013-Ohio-3516, ¶ 8; *Wells Fargo Bank N.A. v. Horn*, 9th Dist. Lorain No. 12CA010230, 2013-Ohio-2374, ¶ 10; *BAC Home Loan Serv. v. McFerren*, 9th Dist. Summit No. 26384, 2013-Ohio-3228, ¶ 13; *Wells Fargo Bank, N.A. v. Stovall*, Cuyahoga App. No. 91802, 2010 Ohio 236.

15. "**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].

16. "In order to commence a foreclosure action, a plaintiff must have a legal or equitable interest in the mortgage. **A plaintiff has standing where it is the holder or assignee of both the subject mortgage and of the underlying note at the time the action is commenced**", *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *Aurora Loan Servs., LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 [2011]; *Wells Fargo Bank, N.A. v. Marchione*, 69 A.D.3d 204, 207, 887 N.Y.S.2d 615 [2009]; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 [2009]; *Countrywide Home Loans, Inc. v. Gress*, 68 A.D.3d 709, 888 N.Y.S.2d 914 [2009]); *Deutsche Bank Natl. Trust Co. v. Spanos*, 102 A.D.3d 909, 911, 961 N.Y.S.2d 200; *OneWest Bank FSB v. Carey*, 104 A.D.3d 444, 960 N.Y.S.2d 306 [1st Dept 2013]; *Bank of New York Mellon Trust Co. NA v. Sachar*, 95 A.D.3d 695, 943 N.Y.S.2d 893 [1st Dept 2012]; *GRP Loan, LLC v. Taylor*, 95 A.D.3d 1172, 945 N.Y.S.2d 336 [2nd Dept 2012]. The decision in *Bank of New York v. Silverberg*, 86 A.D.3d at 280, (2nd Dep't, 2011) maintained that: "a plaintiff does not have standing to bring a foreclosure action if [it] does not own the note."

17. In *Kluge v. Fugazy et al.*, 145 A.D.2d 537; 536 N.Y.S.2d 92 (N.Y., 1988), it was determined 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, in the Kluge decision the Court found that since the plaintiff was not the holder of the mortgage note and the assignee of the mortgage, it lacked standing to bring a collection and foreclosure

action. *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].

18. "**The transfer of a mortgage without a note is a nullity and insufficient to confer standing to foreclose.**" *See: U.S. Bank N.A. v. Dellarmo,* 94 A.D.3d 746, 748, 942 N.Y.S.2d 122 (2nd Dep't 2012); *Deutsche Bank Nat'l Trust Co. v. Barnett,* 88 A.D.3d 636, 637, 931 N.Y.S.2d 630 (2nd Dep't 2011); *Bank of N.Y. v. Silverberg,* 86 A.D.3d at 280. "**An assignment of a mortgage without assignment of the underlying note or bond is a nullity, and no interest is acquired by it.**" *Merritt v. Bartholick,* 36 NY 44, 45, 34 How. Pr. 129, 1 Transc. App. 63 [1867]; *Bank of N.Y. v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532 [2011]; *LaSalle Bank Natl. Assn. v. Ahearn*, 59 A.D.3d 911, 912, 875 N.Y.S.2d 595 [2009].

19. "**The collateral lien of the mortgage could have no legal existence when separated from the note** and transferred to others than the holder of the note, but so long as the two remain together, owned and possessed by the same person, they operate together and are obligations for the payment of the same indebtedness." *Matter of Pirie*, 198 NY 209, 91 N.E.587 (1910). ***A party who only has the mortgage but no note has not suffered any injury given that bare possession of the mortgage does not endow its possessor with any enforceable right absent possession of the note***. *See*: *Restatement of the Law 3d, Property, Mortgages, Section 5.4(e)*, at 385 (1996) ("[I]n general a mortgage is unenforceable if it is held by one who has no right to enforce the secured obligation.").

20. In *Carpenter v. Longan,* 83 U.S. 271, 274, 21 L.Ed 313 [1873], the United States Supreme Court determined that: "**an assignment of the mortgage without the note is a nullity.**" *See: US Bank N.A. v. Madero*, 80 A.D.3d 751, 752, 915 N.Y.S.2d 612 [2011]; *US Bank, N.A. v. Collymore*, 68 A.D.3d at 754; *Kluge v. Fugazy*, 145 A.D.2d 537, 538, 536 N.Y.S.2d 92 [1988] [**plaintiff, the assignee of a mortgage without the underlying note, could not bring a foreclosure action**]; *See also*: *Flyer v. Sullivan,* 284 App Div 697, 698, 134 N.Y.S.2d 521 [1954]; *Beak v. Walts*, 266 App Div 900, 42 N.Y.S.2d 652 [1943].

21. "**Ownership 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 (2nd Dept 2010); *Campaign v. Barba*, 23 A.D.3d 327, 805 N.Y.S.2d 86 (2nd Dept 2005).

22. In *Deutsche Bank National Trust v. Brumbaugh,* 2012 OK 3, 270 P.3d 151, ¶ 11, it was determined 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.

23. 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]).

24. "A plaintiff must demonstrate it has a right to enforce the note and, **absent a showing of ownership, the plaintiff lacks standing.**" *Gill v. First Nat. Bank & Trust Co. of Oklahoma City,* 1945 OK 181, 195 Okla. 607, 159 P.2d 717. "**To foreclose a mortgage, a plaintiff must demonstrate that it has a right to enforce the note, and without such ownership, the plaintiff lacks standing.**" *Wells Fargo Bank, N.A. v. Ford,* 418 N.J. Super. 592, 15 A.3d 327, 329 (N.J. Super. Ct. App. Div. 2011).

25. As in the instant case, "**the plaintiff failed to demonstrate its *prima facie* entitlement to judgment as a matter of law because it did not establish that it had standing as the lawful holder or assignee of the subject note on the date it commenced this action.**" *See: Deutsche Bank Nat'l Trust Co. v. Barnett,* 88 A.D.3d 636, 931 N.Y.S.2d 630; *U.S. Bank N.A. v. Madero,* 80 A.D.3d 751, 915 N.Y.S.2d 612; *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578.

26. In these collection and foreclosure actions, the **party in interest** is the current holder of the mortgage note and the mortgage. *See: Chase Manhattan Mtge. Corp. v. Smith*, Hamilton App. No. C-061069, 2007 Ohio

5874, at P18; *Kramer v. Millott* (Sept. 23, 1994), Erie App. No. E-94-5, 1994 Ohio App. LEXIS 4454 **("because the plaintiff did not prove that she was the holder of the note and mortgage, she did not establish herself as a real party in interest"). "A party who fails to establish itself as the current holder is not entitled to judgment as a matter of law."** *First Union Nat'l Bank v. Hufford* (2001), 146 Ohio App.3d 673, 677, 679-680, 2001 Ohio 2271, 767 N.E.2d 1206.

27. "To foreclose upon a promissory note, **the plaintiff must be the 'holder' in order to be the real party in interest.**" *Troupe v. Redner*, 652 So.2d 394, 395-96 (Fla. 2d DCA 1995); *Mortg. Elec. Registration Sys. v. Azize*, 965 So.2d 151, 153 (Fla. 2d DCA 2007).

28. Therefore, "**[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 a 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].

29. As in the instant case, "**[w]here the defendant denies that the party seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the plaintiff must prove**. *Carapezza v. Pate*, 143 So.2d 346, 347 (Fla. 3d DCA 1962). "**Where standing is put into issue by a defendant, the plaintiff must prove its standing in order to be entitled to relief.**" *See: US Bank N.A. v. Madero*, 80 A.D.3d 751,

752, 915 N.Y.S.2d 612 (2nd Dep't 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 753, 890 N.Y.S.2d 578 (2nd Dep't 2009); *Deutsche Bank Natl. Trust Co. v. Haller*, 100 A.D.3d 680, 954 N.Y.S.2d 551 [2d Dept 2012]. *TPZ Corp. v. Dabbs*, 25 A.D.3d 787, 789, 808 N.Y.S.2d 746 [2006]; *See also: Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 769, 573 N.E.2d 1034, 570 N.Y.S.2d 778 [1991]). *CitiMortgage, Inc. v. Rosenthal*, 88 A.D.3d 759, 931 N.Y.S.2d 638 [2011]. "Where a **plaintiff standing** to commence a foreclosure action **is placed in issue by a defendant, it is incumbent upon the plaintiff to prove its standing to be entitled to relief.**" *See: Citimortgage, Inc. v. Stosel*, 89 A.D.3d 887, 934 N.Y.S.2d 182 [2d Dept 2011].

30. 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]. In other words: "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].)

31. "**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 noted above: "**[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. "**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.**" *Lizio v. McCullom*, 36 So.3d 927, 929 (Fla. 4th DCA 2010). "**It is well-established precedent requiring the party seeking foreclosure to present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action**. *See: Verizzo*, 28 So.3d at 978; *Philogene v. ABN Amro Mortg. Group Inc.*, 948 So.2d 45, 46 (Fla. 4th DCA 2006).

32. In a debt collection and foreclosure case, "the **plaintiff must plead and prove** as part of its prima facie case that it **owns the note and mortgage and has the right to foreclose.**" *Wells Fargo Bank, N.A.*, 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).

33. In *Wells Fargo Bank, N.A. v. Jordan*, Cuyahoga App. No. 91675, 2009 Ohio 1092, it was determined that: "**a party lacks standing to bring a foreclosure action if the party cannot prove that it owned the note and mortgage on the date the complaint was filed.**"

34. "It is well established that in a foreclosure action it is plaintiff's burden to provide admissible evidence of its standing as the lawful holder of the subject note and mortgage at the time the action was commenced." *See: U.S. Bank Nat'l Asso'n. v. Madero*, 80 A.D.3d 751, 915 N.Y.S.2d 612 (2nd Dept. 2011); *Aurora Loan Services, LLC v. Weisblum*, 85 A.D.3d 95, 923 N.Y.S.2d 609 (2nd Dept. 2011); *Bank of New York v. Silverberg*, 86 A.D.3d 274, 926 N.Y.S.2d 532, 2011 NY Slip Op 5002 (2d Dept. 2011); *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752, 890 N.Y.S.2d 578 (2d Dept. 2009).

35. More specifically, lack of standing cannot be cured 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.

36. 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].

37. "A plaintiff's lack of standing at the time a complaint is filed in a foreclosure action cannot be cured by substituting the real party in interest for an original party." *Wells Fargo Bank, N.A. v. Jordan,* 8th Dist. No. 91675, 2009 Ohio 1092, ¶ 24. "[I]n a foreclosure action, a bank that was not the mortgagee when suit was filed cannot cure its lack of standing by subsequently

obtaining an interest in the mortgage." *Id.* at ¶ 24; *See also*: *Deutsche Bank Natl. Trust Co. v. Triplett*, 8th Dist. No. 94924, 2011 Ohio 478, ¶ 12; *Wells Fargo Bank N.A. v. Byrd*, 178 Ohio App.3d 285, 2008 Ohio 4603, 897 N.E.2d 722 (1st Dist.).

38. "**A plaintiff cannot rely on procedural rules similar to cure a lack of standing at the commencement of litigation,**" *Davis v. Yageo Corp.*, 481 F.3d 661, 678 (9th Cir. 2007) ("whether or not Dux was the real-party-in-interest, it does not have standing, and **it cannot cure its standing problem through an invocation of *Fed. R. Civ. P. 17(a)***"); *Clark v. Trailiner Corp.*, 242 F.3d 388 (10th Cir. 2000) (table), opinion reported at 2000 U.S. App. LEXIS 29006, 2000 WL 1694299 **(noting that the plaintiff cannot "*retroactively become* the real-party-in-interest" in order to cure a lack of standing at the filing of the complaint** [emphasis sic]); *State v. Property at 2018 Rainbow Drive*, 740 So.2d 1025, 1027-1028 (Ala. 1999) **(rejecting the argument that a lack of standing can be cured after the filing of the complaint)**; *Consumer Fedn. of Am. v. Upjohn Co.*, 346 A.2d 725, 729 (D.C. App. 1975). *See also*: *McLean v. JP Morgan Chase Bank Natl. Assn.*, 79 So.3d 170, 173 (Fla. App. 2012) **("a party is not permitted to establish the right to maintain an action retroactively by acquiring standing to file a lawsuit after the fact")**.

39. 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.

40. "**Where a valid cause of action is not stated, the party moving for judgment is not entitled to the requested relief, even on default.**" *Green v. Dolphy Constr. Co.* 187 A.D.2d 635, 590 N.Y.S.2d 238 (2nd Dep't, 1992); *Citigroup Global Mkts. Realty Corp. v. Smith*, 33 Misc. 3d 1234(A); 943 N.Y.S.2d 790; 2011 N.Y.

41. 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.

42. "**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.

43. "If a plaintiff lacks standing to sue, **the plaintiff may not proceed in the action.**" *Stark v. Goldberg*, 297 A.D.2d 203, 746 N.Y.S.2d 280 (1st Dept 2002). "**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 Dep't 1988); *Katz v. East-Ville Realty Co*, 249 A.D.2d 243, 672 N.Y.S.2d 308 (1st Dep't 1998).

44. In ***U.S. Bank National Association vs. Antonio Ibañez*, 941 N.E.2d 40 (Mass, 2011)**, it was determined 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*.**

45. "Today, with multiple (and often unrecorded) assignments of mortgage obligations and multiple securitizations often related to the same debt, **the court should carefully scrutinize the status of the parties who claim the right to enforce these mortgage obligations.**" *Deutsche Bank National Trust Company v. McRae*, 27 Misc3d 247, 894 N.Y.S.2d 720, [Sup Ct, Allegany County, 2010].

46. 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.

47. **In Puerto Rico, jurisdiction is the primary source of authority of the courts** to interpret and enforce the laws in our system of government. Jurisdiction is governed by the application of the various doctrines which give life to the principle of justiciability: standing, mootness and political questions, *P.P.D. vs. Gobernador I*, 139 D.P.R. 643, 666 (1995).

48. It is an oft-repeated standard that our jurisdiction is governed by the constitutional concept of justiciability, which establishes as a requirement the

existence of a real case or controversy for the valid exercise of judicial authority. *Ortiz v. Panel F.E.I.*, 155 D.P.R. 219 (2001). With this in mind, the courts must ensure that the matters brought before their consideration are "justiciable", which means that: (1) they do not involve aspects related to any public policy determined by the executive branch; (2) **the parties have legal capacity or standing to bring the lawsuit;** 3) that the controversy is not moot or advisory; and 4) the controversy is ripe for adjudication. *Acevedo Vilá v. Meléndez Ortiz*, 164 D.P.R. ___, 2005 T.S.P.R. 79, 2005 JTS 80; *Com. de la Mujer v. Srio. de Justicia*, 109 D.P.R. 715, 720-725 (1980).

49. One of the axioms derived from this reasonable approach **is that of standing, which relates primarily to the person pursuing the action** and secondarily to the issues to be adjudicated. *Hernández Torres v. Hernández Colón*, 129 D.P.R. 824 (1992). One of the requirements for justiciability of controversies is that the parties must have the legal capacity to be parties. *Hernández Agosto v. Romero Barcelli*, 112 D.P.R. 407, 413 (1982).

50. **Lack of jurisdiction cannot be cured, and no court may arrogate jurisdiction to itself**, as the courts have the inescapable duty to examine their own jurisdiction. *Pagán Navedo v. Alcalde Mun. de Cataño*, 143 D.P.R. 314, 326 (1997), *Vázquez v. A.R.P.E.*, 128 D.P.R. 513, 537 (1991); *Pueblo v. Miranda Collin*, 115 D.P.R. 511, 513 (1984).

IN VIEW OF THE DISPUTE OVER KEY MATERIAL FACTS, THE DISCOVERY STAGE IN PROCESS AND THE EXPERT EVIDENCE ON THE COURT RECORD, we respectfully petition the Honorable Court to overturn its Judgment and order the

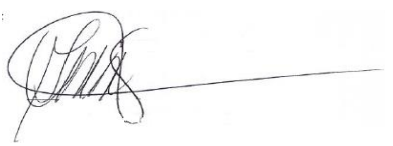
continuation of the proceedings in the above-captioned case.

RESPECTFULLY REQUESTED.

In San Juan, Puerto Rico, on August 14, 2018.

I CERTIFY: That a true and exact copy of this document was served by certified mail and/or email to all the attorneys and parties on record to their addresses on the court record.

MONGE LA FOSSE
ATTORNEY & COUNSELLORS AT LAW, P.S.W.
PO Box 192053
San Juan, Puerto Rico 00919-2053
Telefono: (787) 765-9090
TeleFax: (787) 765-9035
Celular: (787) 413-1135
Lic: 12496
Email: mongelafosselaw@gmail.com



Grace Monge La Fosse

==========

CERTIFICATE OF TRANSLATOR
 # JF-2020-001_APP J

I am a United States court-certified interpreter, and I CERTIFY that the above is a faithful translation of the Spanish source, which I have performed to the best of my ability. It consists sixty-one (61) pages, including this certification sheet, and contains no changes or erasures.

The content of this translation is a Motion to Reconsider in the Commonwealth of Puerto Rico Civil Case No. ECD2015-1017 [Re: Collection of Monies, Mortgage Foreclosure].

In Cambridge, Massachusetts, on January 20, 2020.

/s/ Joaquín Font
Joaquín Font
Font Translations
Calle Calaf 400, Suite 268
San Juan, PR 00918
Toll-Free Tel. & Fax: 1-877-JOAQUIN (562-7846)
e-mail: fonttranslations@gmail.com