19-650

No.

In the Supreme Court of the United States

MELISSA L. BARNETTE, PETITIONER

v.

PROF-2013-M4 LEGAL TITLE, BY U.S. BANK, NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR WRIT OF CERTIORARI

MELISSA L. BARNETTE, Petitioner
2010 13th Street NW
Washington, DC 20009-4435
(202) 460-8825

QUESTIONS PRESENTED

On August 21, 2019, the District of Columbia Court of Appeals (alternatively, "DCCA"), affirmed the Superior Court's August 27, 2018 order denying Petitioner's Super. Ct. Civ. R. 60(b)(3), 60(b)(4) and 60(d)(2) motion to vacate its void order granting Respondents' motion for summary judgment entered on April 20, 2017, in a fraudulent foreclosure of Petitioner's residence of sixteen years.

The judgment is entirely incongruent with the record evidence, rules of civil procedure, impartiality, constitutional rights and other laws. In fact, the judgment expresses approval for the superior court's utter and profound cruel treatment it openly demonstrated against Petitioner's rights, *inter alia*, Fourteenth Amendment that states in pertinent part:

> "No State shall make or enforce any law which all 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."

Here is a summary of the profound unconstitutional abuse exercised by DC Court of Appeals in its unfounded review against Petitioner's constitutional rights, but not limited to, other civil rights violations:

1. For a period of nearly fifteen (15) months — from the date the Complaint for Judicial Foreclosure was filed on December 21, 2015 through March 6, 2017, the court literally permitted the Respondents' attorneys to conceal from Petitioner the payee's identity of the underlying June 25, 2007 deed of trust and promissory note (negotiable instruments) by intentionally defacing the note's endorsement stamp, other sections of the note and other documents filed with the complaint that were defaced.[1] *See* **Appendix E-1** and **E-5**

2. The Respondents' attorneys were permitted to misrepresent every applicable Super. Ct. R. Civ. P. and other laws, *inter alia*, contending that Petitioner was ignorant to the rules of the court and the spoliation to the note and other documents are considered "redactions" and are required under the Super. Ct. R. Civ. P. and accepted by the court.

3. The complaint alleged that the original Lender, NovaStar Mortgage, Inc., assigned its rights under the Note and Deed of Trust to US National Association, Not in its Individual Capacity, But Solely as Trustee for the RMAC Trust, Series 2013-1T.

4. The Respondents' attorneys were permitted to fabricate an allegation contrary to evidence that on May 1, 2014, Petitioner caused a default under the note. The evidence not only shows that the May 1, 2014 payment was intentionally placed in a bogus suspense

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[1] Deface. To mar or destroy the face (that is the physical appearance of written or inscribe characters as expressive of a deface (that is, the physical appearance of a definite meaning) of a written instrument, signature, inscription, etc., by obliteration, erasure, cancellation, or superinscription, so as to render it illegible or unrecognizable. To mar, injure or spoil. *State v. Kasnett*, 30 Ohio App.2d 77, 282 N.E.2d 636, 638.

account as well as the June 1, 2014 payment totaling $5,515.83. *See* **Appendix G** and **Appendix H-3.**

Among other things, nowhere is it discussed as a finding in DCCA's judgment nor in any superior court orders that the "$5,515.83" is wrongfully or otherwise being held in a suspense account with Specialized Loan Servicing, LLC. Instead, the $5,515.83 is disguised as "surplus proceeds." Petitioner is not only being falsely accused of causing a default, but also causing a default under the June 25, "2007" negotiable instruments to a bogus unregistered trust, namely, "RMAC Trust, Series 2013-1T," purportedly formed in the year of "2013." At first glance, among the totality of genuine issues of material fact emanating from all four corners of the frivolous complaint, the 2013 Trust presents serious REMIC (Real Estate Mortgage Investment Conduit) securitization issues and violations.

5. On February 10, 2017, approximately fourteen (14) months after the complaint was filed, the Respondents filed a frivolous "motion to substitute party plaintiff," U.S. Bank, N.A..., as Trustee for RMAC Trust Series 2013-1T to Prof-2013-M4 Legal Title, By U.S. Bank, N.A., as Legal Title Trustee. The unlawful transfer of Petitioner's property was simultaneously being committed while the note and other documents remained under spoliation.

6. Nearly fifteen months after the complaint was filed (December 21, 2015), on March 6, 2017, the Respondents' attorneys reluctantly produced to Petitioner a copy of an undefaced note. The note identified that the original lender, NovaStar Mortgage Inc., assigned its rights, title and interest under the

negotiable instruments to Wells Fargo Bank, N.A., Successor by Merger to Wachovia Bank, N.A. *See* **Appendix F-12.**

7. On March 6, 2017, Petitioner discovered that the concealment was to prevent Petitioner from discovery, and among other things, that she had been fraudulently induced into sending her mortgage payments to imposter mortgage servicers that filed false bankruptcy claims against Petitioner using unregistered bogus trusts as creditors.

8. Even after reluctantly disclosing Wells Fargo Bank, N.A., as the payee, owner and noteholder to Petitioner's residence, on March 20, 2017, the court granted the motion to substitute party plaintiff and claimed to find that the grant did not impose any prejudice to Petitioner.

9. From the onset, the court knew it lacked subject matter jurisdiction. The court continued to issue void orders and judgments purported to find that NovaStar transferred its interest in the Property's deed of trust and Note to U.S. Bank, N.A..., as Trustee for RMAC Trust Series 2013-1T —— and U.S. Bank, N.A., *et al*, transferred its interest over to Prof-2013-M4 Legal Title, By U.S. Bank, N.A., as Legal Title Trustee.

10. The Respondents and their attorneys were permitted to violate Petitioner's right to acquire discovery. Every applicable Super. Ct. Civ. Rule, D.C. Codes and other laws that demands for individuals to be identified were waived by the court. In fact, in its place, the court permitted the attorneys to identify

Petitioner and co-defendant John Reosti as fact-witnesses. On December 15, 2016, Counsel filed a Praecipe to Take Notice of Fact Witnesses. Among the discovery, Petitioner served twenty-five (25) interrogatories and all 25 were two-part boilerplate objections, ending with "Defendant Barnette has no standing to challenge the assignment of the Note and Deed of Trust." The same two-part boilerplate objections were received in Petitioner's document and admission requests.

11. On April 20, 2017, the court issued a void order granting motion for summary judgment.

12. Mr. Reosti never occupied Petitioner's residence nor contributed toward any of the sixteen (16) years of mortgage payments made by Petitioner. Mr. Reosti neither filed an answer to the complaint nor appeared at any of the hearings. On April 20, 2017, the court entered a default judgment against Mr. Reosti. In spite of Petitioner's repeated objections to prevent further injury, the court then permitted Respondents' attorneys to obtain Mr. Reosti's consent to two frivolous motions, promising Mr. Reosti that Respondents would agree to remove the derogatory rating from his credit profile if he consents to two motions. On September 14, 2017, and November 17, 2017, the court granted partial consent orders with the latter granting the motion to ratify accounting, release the bond and close the case.

The District of Columbia Court of Appeals August 21, 2019 judgment was issued having no foundation or basis in fact in its entirety and it is a clear violation of innumerable rights and laws not only to the detriment of petitioner, Melissa L. Barnette, but also to the public.

PARTIES TO PROCEEDING AND RELATED CASES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Melissa L. Barnette, Petitioner.
2. John Reosti was also named a defendant.
3. US Bank, National Association, Not In Its Individual Capacity, But Solely as Trustee for the RMAC Trust, Series 2013-1T
4. Prof-2013-M4 Legal Title, By U.S. Bank, N.A., as Legal Title Trustee, Respondent
5. The attorneys for the two entities identified in numbers three and four are as follows:

   Linda M. Barran, Esq.
   Kevin Hildebeidel, Esq.
   Stern & Eisenberg Mid-Atlantic, P.C.
   9411 Philadelphia Road, Suite M
   Baltimore, Maryland 21237
   (410) 635-5127

There are no related cases.

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In the
Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Petitioner, Melissa L. Barnette, respectfully prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The judgment of the District of Columbia Court of Appeals Circuit appears at **Appendix A** to the petition and is unpublished.

The opinion of the Superior Court for the District of Columbia appears at **Appendix B** to the petition and is unpublished.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on August 21, 2019. A copy of that decision appears at **Appendix A.**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Every applicable right and protection afforded to Petitioner under the United States Constitution, the right to due process and the right to protect her property against a manifest foreclosure fraud scheme, were profoundly and openly barred by the Superior Court for the District of Columbia and District of Columbia Court of Appeals.

Fourteenth Amendment

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 all 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.S. Code 42 U.S.C. § 1983 — Civil Action for Deprivation of Rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to

the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Fifth Amendment—Due Process Clause

The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause. Due process with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law. The Supreme Court furthered the protections of this amendment through the Due Process Clause of the Fourteenth Amendment. Supreme Court has interpreted the due process clauses to provide four protections: procedural due process (in civil and criminal proceedings), substantive due process, a prohibition against vague laws, and as the vehicle for the incorporation of the Bill of Rights.

Fraud on the Court

Rule 60. Relief from a Judgment or Order

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding; or

(2) set aside a judgment for fraud on the court.

STATEMENT OF THE CASE

Factual Background

Petitioner, Melissa L. Barnette (hereafter, "Petitioner") and co-defendant John Reosti ("Reosti") are the legal title owners of the real property known as 1110 Q Street NW, Washington, D.C. 20009-4313, Lot 809, Square 310 (the, "Property"). Petitioner's property has been her residence for more than sixteen (16) years, from 2000 through April 10, 2016.

Petitioner inquired into refinancing her home for the purpose of making necessary repairs. On June 25, 2007, NovaStar Mortgage Inc., ("NovaStar"), encumbered the Property with a Deed of Trust secured by an Adjustable Rate Note ("Negotiable Instruments"), in the principal amount of $300,000.00. The high-cost terms of the ARM loan are as follows:

> 8.900% interest rate for the first twenty-four months, the monthly principal and interest (PI) payment $2,393.31, with taxes and insurance, total monthly PITI payment of 2,716.81. Thereafter, the subprime ARM interest rate changes one percent (1.000%) per annum until it reaches its maximum fully indexed interest rate of 15.900% over the life of the loan, resulting in monthly PI payment of $3,934.07, PITI payment of $4,258.57.

Petitioner accepted NovaStar's loan terms with every intention of modifying or refinancing after twelve to twenty-four months into an affordable fixed rate loan. NovaStar was also the servicer of the loan and received Petitioner's mortgage payments until 2008 when Petitioner received a notice of transfer of loan servicing from HomEq Servicing Corporation, doing business as, Barclay Capital Real Estate, Inc., ("HomEq"), requesting that payments be sent to HomEq.

During the height of the 2007-2008 financial crisis, Petitioner sought to modify out of the subprime ARM loan into an affordable fixed rate loan, to no avail. HomEq alleged that it was not a participant in any affordable fixed rate programs nor would it be offering any fixed rate programs. At the time, unbeknownst to Petitioner, HomEq's notice of transfer of loan servicing to receive payments was fabricated and sent in violation of RESPA, 12 CFR § 1024.33(b)(1).

In December 2009, Petitioner filed a Chapter 13 Bankruptcy in the United States Bankruptcy Court for the District of Columbia, Case No: 09-01130. (App. 356-358). The following loan servicers filed bankruptcy creditors' claims and received Petitioner's post-petition and bankruptcy trustee's payments: **(1)** HomEq/Barclays; **(2)** Quantum Servicing Corporation ("Quantum"); **(3)** Specialized Loan Servicing, LLC (alternatively, "SLS"); and, **(4)** Rushmore Loan Management Services, LLC ("Rushmore"). Petitioner also sought to obtain an affordable fixed rate modification loan through each of the purported servicers, to no avail.

Petitioner's May 1, 2014 and June 1, 2014 post-petition and trustee's payments were made while under the plan. After nearly five years (4.6), Petitioner completed the plan. On June 18, 2014, an order was entered, discharging the chapter 13 trustee, and the case was closed. (App. 356-358).

Shortly after completing the plan, Rushmore contacted Petitioner via telephone and informed her that her May 1, 2014 and June 1, 2014 post-petition payments were placed in a suspense account and the same would occur to future payments. Petitioner questioned Rushmore's unconscionable actions as to why her payments had been placed in a suspense account. The representative did not provide an explanation since no valid explanation could be given.

Instead, Rushmore provided Petitioner with the name of "RMAC Trust, Series 2013-1T." At that point, Petitioner requested RMAC's contact information. Rushmore neither had a contact name, address, nor telephone number for RMAC. At no time, did Rushmore utter the name and contact information of U.S. Bank, National Association as a source of contact.

Meanwhile, Rushmore maintained to unlawfully hold Petitioner's payments in a bogus suspense account while illegally reporting adverse credit ratings against Petitioner and Reosti's credit profiles. Petitioner contacted Rushmore representative, Jaime Munoz ("Munoz"), and demanded that Rushmore cease and desist from reporting adverse credit ratings against her and Reosti's credit profiles.

In fact, RMAC Trust, Series 2013-1T did not exist; the bogus trust was not registered with the following required authorities: (1) Securities and Exchange Commission (SEC); (2) Internal Revenue Service

(IRS); (3) District of Columbia Office of Tax and Revenue; (4) D.C. Department of Consumer and Regulatory Affairs Corporation Division; (5) nor, registered as trust formed under any state of the U.S.

The foreclosure complaint subsequently commenced when Petitioner contacted Munoz requesting that Rushmore provide her with the appropriate address to send a "Qualified Written Request" (QWR), pursuant to the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605(e)(1)(B), for information concerning Rushmore, and RMAC Trust, Series 2013-1T.

REASONS FOR GRANTING THE PETITION

I. D.C. Superior Court Knew from the Onset It Lacked Subject-Matter Jurisdiction

While litigating parties may waive personal jurisdiction, they cannot waive subject-matter jurisdiction. "The standing requirement, as governed by Article III, section 2, of the Constitution, permits courts to adjudicate only cases or controversies. A case or controversy must comprise an actual injury that can be redressed. *See Lujan v. Defenders of Wildlife* at p559. Subject-matter jurisdiction does not exist in the absence of constitutional standing."

The D.C. Circuit has provided a test to determine when a court can decide an issue before adjudicating jurisdiction: a court can decide an issue before jurisdiction if the issue does not involve "an exercise of a court's law-declaring power..." See *Kramer v. Gates*,

481 F.3d 788 (D.C. Cir. 2007). A court exercises it law-declaring power when a ruling has an effect on "primary conduct." *See id.* (citing *Hanna v. Plumer*, 380 U.S. 460, 475 (1965) (*Harlan, J.*, concurring) (classifying rules affecting "primary decisions respecting human conduct" as substantive for purposes of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938))."

"A void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, *People ex rel Brzica v. Village of Lake Barrington*, 644 N.E.2d 66 (Ill-App. 2 Dist. 1994)." See *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999) A void judgment is one which, from its inception, was a complete nullity and without legal effect. *Thompson v. Thompson*, 238 S.W.2d 218 (Tex.Civ.App.-Waco 1951). A void judgment is one that has been procured by extrinsic or collateral fraud or entered by court that did not have jurisdiction over subject matter or the parties; *Cockerham v. Zikratch*, 619 P.2d 739 (Ariz. 1980) procured through fraud, and such judgments may be attacked directly or collaterally.

II. D.C. Court of Appeals Judgment Is In Stark Conflict with Petitioner's Constitutional Rights, Record, Evidence, Procedural Rules and Other Laws

On April 20, 2017, the Superior Court entered an order granting the motion for judgment and decree of sale. On April 20, 2018, Petitioner sought grounds

for relief from the court's void order by timely filing a motion to reinstate civil action under D.C. Super. Ct. Civ. Rule 60(b)(3), which provides for "fraud (whether previously called intrinsic or extrinsic)," Rule 60(b)(4), provides that "the judgment is void," and Rule 60(d)(2), "set aside a judgment for fraud on the court." Petitioner also filed a motion for leave to exceed the twenty-page limit to forty pages. On May 18, 2018, Petitioner filed an amended motion to vacate the Superior Court's order under the same grounds for relief (Rule 60(b)(3), 60(b)(4) and 60(d)(2)), and a motion to exceed the twenty-page limit to seventy-six pages. On June 4, 2018, Respondents filed an unfounded conclusory opposition.

On June 29, 2018, the court issued an order, which states in pertinent part that, "The Court grants the May 18, 2018 Motion for Leave to Exceed the Twenty Page limitation. An Order is forthcoming on the May 18, 2018 Amended Motion to Reinstate Civil Action to Vacate Trial Court's Void Orders..." See June 29, 2018 Order at **Appendix D, (D-2)**. On August 27, 2018, the court issued an order, denying Petitioner's motion to vacate its void order. Contrary to the record evidence, the court not only denied Petitioner's relief filed under Rule 60(b)(3), 60(b)(4) and 60(d)(2), but rather, the court contended to find that Petitioner filed an untimely Rule 60(b)(6), which provides for, "any other reason that justifies relief." The court cites the standard for relief under Rule 60(b)(6)," which provides in pertinent part:

> "The rule is reserved for "extraordinary situations justifying an exception to the overriding policy of finality." (citations

omitted). "A necessary condition to such relief is that circumstances beyond the moving party's control prevented timely action to protect its interest..."

Rule 60(c)(1) addresses "Timing and Effect of the Motion," filed under Rule 60(b), which provides that a motion "must be made within a reasonable time—and for reasons (1), (2), and, 60(b)(3), "no more than a year after the entry of the judgment or order or the date of the proceeding," Under Rule 60(b)(4) and 60(d)(2), sets no time limit in which to seek relief on void orders and judgments procured in the commission of fraud on the court.

On March 23, 2019, Respondents filed an untimely motion for summary affirmance to Petitioner's (appellant) brief and suggested that DCCA mirror-image its appellate review by issuing findings having no foundation or basis in fact and to simply turn a blind eye to the totality of Petitioner's genuine issues of material fact of foreclosure fraud, orchestrated default, intentional spoliation of evidence, discovery abuse and the like, and find that Petitioner (appellant) only offered conclusory allegations of fraud and forgery and failed to present a prima facie adequate defense to the default. On August 21, 2019, DCCA issued its judgment, affirming the court's August 27, 2018 order, which states in pertinent part:

"The trial court did not abuse its discretion in denying appellant's Super. Ct. Civ. R. 60(b) motion when, among other things, appellant only offered conclusory allegations of fraud and forgery and did not present a

> prima facie adequate defense to the default. (citations omitted)... To the extent she alleges appellee prevented her from curing the default, appellant never offered any evidence to support these claims. (citations omitted). In light of this disposition, we need not address any remaining issues raised by appellant on appeal." See **Appendix A, 2-3.**

DCCA's findings in its entirety are contrary to evidence and the record, specifically, asserting that Petitioner "alleges appellee prevented her from curing the default," is not an allegation nor a defense made by Petitioner and cannot be found in any records filed by Petitioner in superior court nor in her appellant brief and appendix. The erroneous finding is to present a false conclusion that Petitioner actually caused a default and that a known unregistered bogus trust, U.S. Bank, N.A., et al., is recognized by Petitioner as a real party in interest that is before the courts.

Fraud on the Court

"In order to meet the necessarily demanding standard for proof of fraud upon the court...there must be (1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court. We further concluded that a determination of fraud on the court may be justified only by "the most egregious misconduct directed to the court itself," and that it "must be supported by clear, unequivocal and convincing evidence." *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 538 F.2d 180, 195 (8th Cir. 1976), *In re Addams*, 579 A.2d 190, 191 (D.C. 1990) (en banc);

mail or wire fraud, *In re Bond*, 519 A.2d 165, 166 (D.C. 1986); felony theft of federal funds, *In re Patterson*, 833 A.2d 493 (D.C. 2003), and other felony theft offenses, *see id.* (citing cases)."

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself... It is where the court or a member is corrupted or influenced or influence is attempted...thus where the impartial functions of the court have been directly corrupted... or where the judge has not performed his judicial function — thus where the impartial functions of the court have been directly corrupted."

"The amendment...[makes]... fraud an express ground for relief by motion; and under the saving clause, fraud may be urged as a ground for relief by independent action insofar as established doctrine permits... And the rule expressly does not limit the power of the court to give relief under the saving clause. As an illustration of the situation see *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, [322 U.S. 238 (1977)]."

A. Complaint for Judicial Foreclosure Fraught with Fraud

On December 21, 2015, Matthew McGovern, Esq., formerly with the law office of Stern & Eisenberg, P.C., Mid-Atlantic, ("S&E"), knowingly and willfully filed a frivolous Complaint for Judicial Foreclosure against Petitioner, her Property and Mr. Reosti, contending that the complaint was filed pursuant to D.C. Code § 42-816, on behalf of U.S. Bank, National Association, Not in Its Individual Capacity, But Solely as Trustee

for RMAC Trust, Series 2013-1T (alternatively, U.S. Bank, N.A. et al., and/or RMAC Trust, Series 2013-1T).

(i) Orchestrated False Mortgage Default of May 1, 2014

The orchestrated default of May 1, 2014 is part of the foreclosure fraud scheme. Petitioner's Post-petition Payments were intentionally placed in a bogus suspense account for the months of May 1, 2014 and June 1, 2014 in the amount of $5515.83. The court and Respondents have disguised these payments as surplus proceeds. *See* **Appendix G** and **Appendix H-3**.

(ii) Intentional Spoliation of the Promissory Note and Other Documents

The Complaint's unfounded allegations, *inter alia*, that NovaStar, (a 2008 defunct Lender), assigned its rights and interest under the Property's June 25, 2007 deed of trust and note to an unregistered "2013" trust under the guise of fiduciary trustee of U.S. Bank, N.A., as alleged:

> "The original Lender [NovaStar], assigned its rights under [June 25, 2007] Note and Deed of Trust to Plaintiff [U.S. Bank, N.A... as Trustee for the RMAC Trust, Series 2013-1T], see Exhibit D attached and incorporated hereto by reference. The Plaintiff is the current holder of the Note and beneficiary of the Deed of Trust aforesaid." (Brief, at 12)

While the unfounded allegations of Respondent's ownership of the negotiable instruments were being

asserted in motions, pleadings and other papers—simultaneously, the note's indorsement stamp, other sections of the note and other documents were intentionally defaced and filed as exhibits, attached to the Complaint and incorporated by reference. (Motion to Vacate Order, App. 388–390).

On January 18, 2016, Paul D. Hunt, Esq., entered his appearance on behalf of Petitioner and co-defendant Reosti. According to Hunt, on the day of entering his appearance, he spoke with Hildebeidel concerning, *inter alia*, the requests to produce undefaced copies of the purported note and other documents. On January 18, 2016, Hildebeidel also entered his appearance in place of Matthew McGovern, Esq.

After reasonable time and inquiries Petitioner made to Mr. Hunt relating to the status of acquiring an undefaced copy of the note and other documents including the request to review the original note, it was to no avail. Subsequently, on February 5, 2016, the Petitioner and Mr. Reosti decided that it would be in their best interest to end the attorney-client relationship with Mr. Hunt. On February 5, 2016, Mr. Hunt filed a "motion to withdraw from representation of both co-defendants."

Coupled with the depravity of a fraudulent foreclosure, compounded with a deliberate spoliation of the note, on April 10, 2016, Petitioner's residence of more than sixteen years (2000 to April 10, 2016) suffered fire damage. Then on May 23, 2016, Petitioner's father passed away. Since she was the only child from her father, the depravity of the foreclosure prevented Petitioner from handling her father's

business affairs and to quietly grieve over his untimely passing.

On August 9, 2016, Linda Barran Esq. ("Barran" and or "Respondent"), with Stern & Eisenberg, entered her appearance on behalf of U.S. Bank, N.A., *et al.* On August 12, 2016, during the initial scheduling conference held before Magistrate Shana Matini, the parties present were Barran, Hunt and Petitioner. The court granted Hunt's consent motion to withdraw as counsel for the defendants. During this initial hearing, Petitioner desperately informed the court that counsels intentionally filed a spoliated note and other documents attached to the December 21, 2015 complaint. Petitioner's plea to the court was to no avail; the judge stared at Petitioner and said nothing.

On September 2, 2016, Petitioner filed her answer, including affirmative defensives, which entailed, *inter alia*, fraud on the court; court lacking subject-matter jurisdiction; and, spoliation of promissory note with images of spoliations. Petitioner denied the allegations relating to the default of May 1, 2014 contained in paragraph 9 of the complaint. (App. 100-116).

Petitioner made every reasonable effort to retain new counsel in hopes that new representation would demand Stern & Eisenberg to produce an undefaced copy of the note and other documents and perhaps Petitioner would receive impartial treatment from the court. Furthermore, new counsel would have provided the Petitioner the opportunity to settle her father's affairs and to quietly mourn over his passing.

The task of retaining new counsel on a deliberate defaced note rendered impossible. The Petitioner consulted with numerous attorneys, and each wanted

absolutely nothing to do with the case after literally verifying in the case docket that the court actually permitted Respondents to misrepresent standing on a spoliated promissory note and on an obvious orchestrated May 1, 2014 default.

On October 21, 2016, Barran and Petitioner appeared before the magistrate court for a second Scheduling Conference. Again, Petitioner raised the critical issue regarding the spoliated note. Reosti did not appear for the hearing due to miscommunication and the inappropriate manner in which he received the summons and complaint. In spite of the fact that the court was in possession of spoliated evidence, the court granted Barran's oral motion to issue a default against Reosti. (Brief, at 12).

III. The Superior Court Permitted the Spoliation of the Promissory Note and Other Documents

For a period of nearly FIFTEEN (15) MONTHS (December 15, 2015—March 6, 2017), the note's indorsement stamp and other documents remained under defacement. In spite of Petitioner's many requests to produce a copy of an undefaced note, it was to avail. On February 10, 2017, Petitioner made another plea to Respondent to produce an undefaced note through her requests for discovery. On the same day, of February 10, 2017, Respondents filed a motion to substitute party plaintiff, still contending that NovaStar assigned its rights under the negotiable instruments.

Under District of Columbia law, the elements to prove intentional spoliation of evidence are (1) the party having control over the evidence had an

obligation to preserve it when it was destroyed or altered; (2) the destruction or loss was accompanied by a "culpable state of mind;" and, (3) the evidence that was destroyed or altered was "relevant" to the claims or defenses of the party that sought the discovery of the spoliated evidence, to the extent that a reasonable factfinder could conclude that the lost evidence would have supported the claims or defense of the party that sought it. *Mazloum v. District of Columbia Metro. Police Dep't*, 530 F. Supp. 2d 282, 291 (D.D.C. 2008); *Bolger v. District of Columbia*, 608 F. Supp. 2d 10, 30 (D.D.C. 2009).

Among the profound prejudices and unconstitutional acts committed against Petitioner, the egregious nature of these lawless acts include, *inter alia,* that for a period of nearly fifteen (15) months, commencing from the date the complaint was filed on December 21, 2015 through March 6, 2017, the court authorized the Respondents to conceal the identity of the true owner and holder of the promissory note and deed of trust by manner of intentional spoliation and defacement of the promissory note's indorsement stamp and other areas of the note, including other fabricated and forged instruments (e.g., three fraudulent Assignments of Deed of Trust and three undated and unaffixed Allonges to Note).

Black's Law Dictionary, 5th Edition, defines spoliation and defacement (Deface) of evidence as:

> "Spoliation of evidence. The destruction of evidence. It constitutes an obstruction of justice. The destruction, or the significant and meaningful alteration of a document or instrument. *Application of Bodkin*, D.C.

N.Y., 165 F. Supp. 25 30. Any change made on a written instrument by a person not a party to the instrument."

A. Spoliation of the Promissory Note Was Confirmed with Check Marks

The culpable state of mind of the Respondents reveal more than just malicious intent to deprive Petitioner of her residence by procurement of foreclosure fraud. The magnitude of the spoliation further reveals the likelihood that the note may have been additionally misused to commit foreclosure fraud against other victims. The spoliation included defacing the signatures and preprinted names of Petitioner, Melissa L. Barnette and John Reosti and the address of property. More pointedly, Respondents placed check (√) marks alongside the spoliated areas to confirm specific sections of the note to obliterate. In fact, the spoliation to the note's indorsement stamp was twice confirmed by placing both a check (√) mark and a partial circle overtop the defaced indorsement stamp. See **Appendix E, page E-5**.

The preselected spoliated areas of the note are as follows: (1) the mortgage origination date (June 25, 2007); (2) the City and State of the Lender (Independence Ohio); (3) the Property Address (1110 Q Street NW, Washington, DC 20009); (4) the Principal loan amount ($300,000.00); (5) the name of the originating Lender (NovaStar Mortgage, Inc.); (6) the initial Adjustable Interest Rate (8.900%); (7) the due date of the last Balloon payment (July 1, 2037); (8) the initial monthly ARM payment ($2,392.31). See

Appendix E, page E-1; (9) Borrowers' signature and their pre-printed names; and (10) the indorsement stamp. See **Appendix E-5**.

The lower courts and Respondents were and are fully cognizant of the fact that security instruments, such as promissory notes and allonges are not instruments recorded in land registries, at least not filed with the D.C. Recorder of Deeds. However, in order to discern what relevant information that had been intentionally defaced from the assignments, for a fee, Petitioner was forced to acquire certified true copies of the three assignments of deed of trust from D.C. Recorder of Deeds.

In *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself... It is where the court or a member is corrupted or influenced or influence is attempted...thus where the impartial functions of the court have been directly corrupted... or where the judge has not performed his judicial function — thus where the impartial functions of the court have been directly corrupted." See *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, [322 U.S. 238 (1977)]."

B. Chain of Fraudulent Assignments of Deed of Trust (Filed False Bankruptcy Claims)

Intentional Spoliation of the Three Assignments of Deed of Trust and Allonges to Note

The Chain of Fraudulent and Forged Assignments of Deed of Trust (Filed False Bankruptcy

Claims) and spoliation of assignments were argued in Petitioner's motion to vacate (App. 409-417), and Appellant's brief, at 19–25.

(1) The chain of fraudulent assignments and filing false bankruptcy claims against Petitioner's Chapter 13 bankruptcy plan began with two employees transferring the deed of trust in the names of bogus trusts owned by one of the employees. The following is a summary of the argument presented:

On May 14, 2008, Barclays Capital, doing business as, HomEq Servicing Corp., hired Robert E. Mattesky (alternatively, "Mattesky"), as its "Whole Loan Trader." (App. 359). Mattesky is also the owner of Arch Bay Holdings, LLC-Series 2009B, and Arch Bay Asset-Backed Securities Trust 2010-2.

On April 15, 2010, Noriko Colston ("Colston"), purportedly, an employee of HomEq, perpetrated under the false pretenses as the Assistant Secretary of "Mortgage Electronic Registration Systems, Inc., ("MERS"), as Nominee for NovaStar Mortgage Inc., Its Successors and Assigns," forged an assignment of the Property's deed of trust over to Arch Bay Holdings-Series 2009B.

The allonge was apparently fabricated sometime after the assignment had been forged on April 15, 2010. In that, Colston perhaps failed to remember that he/she falsely perpetrated authority in the assignment as the Assistant Secretary of MERS while Colston had later forged the allonge as the Assistant Secretary and "Attorney in Fact" for "Wells Fargo Bank, N.A., Successor by Merger to Wachovia Bank, N.A., By Barclays Capital Real Estate Inc., DBA Homes Servicing Its Atty in Fact." On May 13, 2010, the assignment of deed of trust was unlawfully recorded

with D.C. Recorder of Deeds, Document No. 2010044119. (App. 360-362).

The following information was intentionally defaced from the assignment with confirmation check (√) marks placed alongside the spoliated areas: (1) the name of Arch Bay Holdings-Series 2009B; (2) the date of April 15, 2011; (3) the name of "Mortgage Electronic Registration Systems, as Nominee for NovaStar Mortgage Inc., Its Successors and Assigns;" (4) Noriko Colston's forged signature and title; (5) the assignment was intentionally reduced to an unreadable, grainy-like minuscule font size. (Spoliated Assignment, App. 65-67).

The following spoliation made to the allonge was confirmed with a single check (√) mark: (1) "Pay to the order of: Assignee: Arch Bay Holdings, LLC-Series 2009B (without recourse);" (2) "By: Assignor: Wells Fargo Bank, N.A., Successor By Merger to Wachovia Bank, N.A. By Barclays Capital Real Estate Inc., DBA Homes Servicing Its Atty in Fact;" and (3) Noriko Colston's name, title and signature. (App. 41).

(2) On January 18, 2011, the Property's Deed of Trust was once again fraudulently transferred from Arch Bay Holdings, LLC-Series 2009 over to Arch Bay Asset-Backed Securities Trust 2010-2, owned by Mattesky. (App. 412-413). On April 1, 2011, the assignment was unlawfully recorded in the D.C. Recorder of Deeds, Document No. 2011040064. (App. 363-364).

The following information was intentionally defaced from the assignment with check (√) marks placed alongside the spoliated areas: (1) the name of Arch Bay Holdings-Series 2009B; (2) Arch Bay Asset-

Backed Securities Trust 2010-2; (3) the date of 3/9/2011. (App. 68-69).

The spoliation intentionally made to the undated and unaffixed allonge was confirmed with a single check (√) mark as follows: (1) Arch Bay Holdings, LLC - Series 2009B; (2) Robert Mattesky (App. 42, see also, App. 221).

(3) On December 28, 2012, another unlawful assignment of the Property's Deed of Trust was transferred from "Arch Bay Asset-Backed Securities Trust 2010-2" over to "U.S. Bank, N.A., Not in its Individual Capacity, But Solely as Trustee for the RMAC Trust, Series 2013-1T." (App. 413-414). Approximately four months later, on April 22, 2013, the assignment was fraudulently recorded with the D.C. Recorder of Deeds, under Document No. 2013046444. (App. 365-366).

The following information was intentionally defaced from the assignment with check (√) marks placed alongside the spoliated areas: (1) U.S. Bank, N.A., as Trustee for...RMAC Trust, Series 2013-1T; (2) Arch Bay Asset-Backed Securities Trust 2010-2; (3) the date of 12/28/2012. (App. 70-71).

IV. Filed Frivolous Motion to Substitute Party Plaintiff While the Promissory Note Remained Under Spoliation

On January 29, 2016, following the filing of the December 21, 2015 complaint, RMAC Trust, Series 2013-1T, perpetrating under the guise of fiduciary trustee of U.S. Bank, N.A., unlawfully transferred the Property's deed of trust to yet another fake trust, Prof-2013-M4 Legal Title, By U.S. Bank, N.A., as Legal Title Trustee. Approximately, three months later, on April

25, 2016, the void *ab initio* Assignment of Deed of Trust was recorded in the D.C. Recorder of Deeds, Document No. 2016040296. (App. 367-370).

Then, on February 10, 2017, approximately fourteen (14) months after the December 21, 2015 complaint was filed, Respondents willfully and knowingly filed a frivolous "Motion to Substitute Party Plaintiff." While counsels feigned that the motion was filed "pursuant to Super. Ct. Rules 17(a) and 25(c) — simultaneously, the note's indorsement stamp and other documents remained under spoliation. Rule 17(a) and Rule 25(c) provides for the following:

> **Rule 17. Plaintiff and Defendant; Capacity; Public Officer**
>
> (a) REAL PARTY IN INTEREST. (1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an administrator; (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

> **Rule 25. Substitution of Parties**
>
> (c) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be

> substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

The purpose of Rule 17(a), *inter alia*, is to establish subject matter jurisdiction. The fraudulent foreclosure also violated every applicable Rule and other laws that demand for an individual to be identified. "[I]t is fundamental that a party commencing litigation must have standing to sue in order to present a justiciable controversy and invoke the jurisdiction of the common pleas court.

Even if Petitioner caused a default under the negotiable instruments, although, that is not the case here, however, Superior Ct. Civ. Rule 17(a) does not change this principle, and a lack of standing at the outset of the litigation, as the one here, with U.S. Bank, N.A., as Trustee for RMAC Trust, Series 2013-1T cannot transfer interest it never legally acquired in the first place over to Prof-2013-M4 Legal Title Trust by U.S. Bank, N.A., as Legal Title Trustee. See, *Davis v. Yageo Corp.*, 481 F.3d 661, 678 (9th Cir. 2007); *Clark v. Trailiner Corp.*, 242 F.3d 388 (10th Cir.2000)(table), opinion reported at 2000 WL 1694299 (noting that the plaintiff cannot "retroactively become the real-party-interest" in order to cure a lack of standing at the filing of the complaint).

Rule 17(a) is intended to "protect a defendant against a subsequent claim for the same debt underlying a previously entered judgment. *See, United Fed'n of Postal Clerks, AFL-CIO v. Watson*, 709 F.2d 462, 470-71 (D.C. Cir. 1969). (Motion to Vacate, at App. 414-415, 427-431 see also, Appellant's Brief, at 29-32).

V. Counsels Identified the Spoliation of Promissory Note and Other Documents as Redactions Required Under Super. Ct. Civ. Rules and Accepted by the Court

On March 6, 2017, Respondents reluctantly produced an undefaced copy of the note and other documents through Petitioner's requests for discovery served on February 10, 2017. After maliciously withholding critical evidence of legal entitlement to the underlying negotiable instruments through spoliation in a fraudulent foreclosure action, counsels attempted to blame *pro se* Petitioner for her alleged ignorance of not understanding Super. Ct. Civ. Rules, contending that the spoliation of the promissory note's indorsement stamp and other documents are "**redactions**" required under Superior Court Rule (Rule 5.2(a)(1)) and was accepted by the court (Rule 5.2(e)(1)). (See **Appendix J**, for Rule 5.2.).

In response to Petitioner's 15-month request, counsels replied by saying the following:

> "Defendant Barnette apparently lacks understanding of the DC Superior Court requirement that personally identifiable information must be redacted in documents filed with the Court, and that redacted documents, such as those filed with the Complaint, are accepted by the Court. Plaintiff is producing a replacement copy of the Note and related documents that are unredacted." (Brief, 41–42), (App. 166-167 and 423-424).

The note reveals that NovaStar specially indorsed the underlying negotiable instruments over to Wells Fargo Bank, N.A., as shown herein:

Pay to the order of:

WELLS FARGO BANK, N.A., SUCCESSOR BY MERGER TO WACHOVIA BANK, N.A.
WITHOUT RECOURSE

NovaStar Mortgage, Inc.
A Virginia Corporation

David A. Pazgan
David A. Pazgan, President/CEO

Greg Metz
Greg Metz, SVP/CFO

See Promissory Note, **Appendix F-12.**

Petitioner served the following admission discovery request relating to the payee's identity behind the defaced note.
Counsels responded with boilerplate objections, ending with "Defendant Barnette has no standing to challenge the assignment of the Deed of Trust as stated:

> **Admission No. 32**: Admit that the original Lender did not assign its rights under the Note and Deed of Trust to Plaintiff RMAC Trust, Series 2013-1T., alleged in paragraph 8 of the Complaint." (App. 155, ¶ 32).
> **Response**: Objection. Plaintiff objects to this request as not reasonably calculated to

lead to the discovery of admissible evidence. Plaintiff additionally objects on the grounds that Defendant Barnette has no standing to challenge the assignment of the Note and Deed of Trust." (Brief, at 39-41).

VI. Order Granting Motion to Substitute Party Plaintiff is Void *Ab Initio*

On March 20, 2017, the court consciously issued a void "Order Granting Motion to Substitute Party Plaintiff," entered on March 21, 2017. The court permitted the spoliation of the note and the Respondents to concoct a false mortgage default and disguise those payments as "surplus proceeds:"

> "No Opposition has been filed. On December 21, 2015, Plaintiff filed a Complaint for Judicial Foreclosure seeking to foreclose upon a Deed of Trust secured by the property located at 1110 Q Street NW, Washington, D.C. 20009 against Defendant. Thereafter, Plaintiff transferred its interest in the Note and Deed of Trust secured by the property to Pro-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee, successor in interest to U.S. Bank National Association, Not its Individual Capacity, But Solely as Trustee for the RMAC Trust Series 2013-1T... The Court finds that there will be no prejudice to Defendant by granting the Motion to Substitute Party Plaintiff. Upon consideration

> of the motion, the entire record herein, and good cause shown, Plaintiff's Motion to Substitute Party Plaintiff is granted." (App. 243-244).

Pursuant to Super. Ct. Civ. Rule 82, the Rules of Civil Procedure do not extend the jurisdiction of the courts, and a common pleas court cannot substitute a real party in interest for another party if no party with standing has invoked its jurisdiction in the first instance. "Because standing is a threshold question, courts have stated that a defect in standing cannot be waived; it must be raised, either by the parties or by the court, whenever it becomes apparent" (*Froehle*, 2011, pp. 1729-1730, FN 57-61)."

Pursuant to Super. Ct. Civ. Rule 12(h)(3), provides that, "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action. The court knew from the onset that Wells Fargo Bank is the successor in interest to NovaStar, yet the court issued false findings while contending through another false finding that "[t]he Court finds that there will be no prejudice to Defendant by granting the motions." Thus, conveying another false finding that the court has subject-matter jurisdiction completed.

"Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398."

The foregoing argument was presented in Petitioner's motion to vacate (App. 440-443), and in appellant's brief, at 42–44.

VII. Motion for Summary Judgment Fabricates Three Different Entitlements To Foreclose

On March 20, 2017, Respondents filed a fraudulent *Motion for Judgment and Decree of Sale Against Melissa L. Barnette and John Reosti.* Even after reluctantly providing Petitioner with an undefaced copy of note, in which case, the payee of the note is identified as Wells Fargo Bank, N.A., in spite of that fact, Respondents not only continued to move forward with an unlawful foreclosure, but also continued to falsely represent that NovaStar assigned its interest in the underlying negotiable instruments over to U.S. Bank, N.A., et al, further falsifying additional standing for Prof-2013-M4 to foreclose. As part of the foreclosure fraud scheme, Respondents fabricated three different types of entitlement of standing to foreclose as filed in the motion for summary judgment:

(1) Successor in Interest

> "In support of this motion filed herewith, Prof-2013-M4 Legal Title Trust by US Bank, National Association, as Legal Title Trustee, successor in interest to US Bank, N.A... as Trustee for RMAC Trust, Series 2013-1T." (App. 186).

(2) Pro-2013-M4 Legal Title Trust as the Original Lender of the July 25, 2007 Deed of Trust and Note

> "Plaintiff, [Pro-2013-M4 Legal Title Trust by US Bank, N.A., as Legal Title Trustee] encumbered the Property with a Deed of Trust securing a Note in the original principal amount of Three Hundred Thousand and 00/100 Dollars ($300,000.00)." (App. 191, ¶ 3).

In furtherance of the foreclosure scheme, the Respondents purposely omitted to include an alleged date when Pro-2013-M4 encumbered Petitioner's residence.

(3) Negotiable Instrument Indorsed in Blank

The conclusory allegation of standing to foreclose that is advanced here alleges that Pro-2013-M4 Legal Title Trust is entitled to enforce an imaginary original note indorsed in blank, as falsely alleged:

> "The law in the District is clear on this point – a noteholder can foreclose:
>
> > Under District of Columbia law, the holder of a negotiable instrument indoor [indorsed] in blank is normally entitled to enforce the instrument, including through foreclosure proceedings. See D.C. Code §28:3-301 (2012 Repl.) (holder of negotiable instrument may enforce instrument) ..." (App. 193-194).

The foregoing argument was presented in Petitioner's motion to vacate (App. 440-443), and in appellant's brief, at 42–44.

Standard Review

The District of Columbia Court of Appeals reviews a grant of a motion for summary judgment under "*de novo*" standard. See *Molla v. Sanders*, 981 A.2d 1197, 1199 (D.C. 2009). Under Rule 56(c), summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits" show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Super. Ct. Civ. R. 56(c); *Byrd v. Allstate Insurance Company*, 622 A.2d 691, 692 (D.C. 1993) citing *Holland v. Hannan*, 456 A.2d 807, 815 (D.C. 1983). *Sturdivant v. Seaboard Serv. Sys.*, 459 A.2d 1058 (D.C. 1983). *Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321 1324 (D.C. 1995); *Nader v. de Toledano*, 408 A.2d 31 (D.C. 1979), cert. denied 444 U.S. 1078, 100 S.Ct. 1028 62 L.Ed. 2d 761 (1980).

"A genuine issue of material fact exists if the record contains 'some significant probative evidence... so that a reasonable fact-finder would return a verdict for the non-moving party.'" *Brown v. 1301 K St. Ltd P'ship*, 31A.3d 902, 908 (D.C. 2011) (citing *1836 S St. Tenants Ass'n v. Estate of Battle*, 965 A.2d 832, 836 (D.C. 2009)).

One who seeks summary judgment may discharge his burden of proof by demonstrating that if the case proceeded to trial the opponent could produce no competent evidence to support a contrary position. *Nader v. de Toledano*, 408 A.2d 31 (D.C. 1979); cert denied, 44 U.S. 1078 (1980). The moving party has the

burden of establishing the absence of any genuine issues of material facts and the right judgment as a matter of law. *Ferguson v. District of Columbia*, 629 A.2d 15, 19 (D.C. 1993). Once the movant satisfies this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. *Bruno v. Western Union Fin. Servs., Inc.*, 973 A.2d 713, 717 (D.C. 2009).

VIII. Order Granting the Motion for Summary Judgment Entered on April 20, 2017 is Void *Ab Initio*

The court erroneously cites the standard of review that mandates the entry of Rule 56(c) for summary judgment, thus contending that its review of the entire record determined that Respondents discharged its burdened. The evidence is clear that Wells Fargo Bank is successor in interest to NovaStar (**Appendix F-12**).

Regardless of the evidence presented to the court and to DCCA, the foreclosure court's following false findings are affirmed by DCCA:

1. "The original Lender assigned its rights under the Note and Deed of Trust to Plaintiff and Plaintiff is the current holder of the note." *See* **Appendix I-2**.

2. "The Court granted Plaintiff's Motion to Substitute Party Plaintiff on March 21, 2017, after Plaintiff established that the Note had been assigned to another party in interest. These arguments do not raise a genuine dispute of material fact." *Id.* at I-6.

3. "Plaintiff's submissions establish that it is the holder of the Note and is entitled to judicial foreclosure pursuant to § 42-816 of the D.C. Code." *Id.* at I-6.

IX. False Finding of May 1, 2014 Default—Non-Real Party In Interest Holds No Legal Entitlement Under the Negotiable Instruments

The orchestrated false mortgage default of May 1, 2014 was part of committing the foreclosure fraud scheme. The imposter mortgage servicers calculatedly waited until Petitioner completed her Chapter 13 Bankruptcy Plan and concocted the May 1, 2014 default. When RMAC Trust, Series 2013-1T, unlawfully transferred the property's negotiable instruments over to Prof-2013-M4 Legal Title, interest that was never legally acquired by RMAC, the $5,515.83 was transferred from Rushmore over to Specialized Loan Servicing. Both unregistered bogus trusts perpetrated under the guise of U.S. Bank, N.A. *See* **Appendix G.**

In addition, the $5,515.83 is also shown in "Plaintiff's Accounting and Distribution of Funds" attached to the "motion to ratify accounting, release the bond and close the account" and listed as a line item under "suspense balance" and "credit." See **Appendix H-3.** Moreover, the court permitted Respondents to conceal their fraudulent activities committed against Petitioner over the course of several years and their lack of ownership under the negotiable instruments by permitting the spoliation of the promissory note.

Contrary to evidence, DCCA's unfounded findings of a May 1, 2014 default to a known non-real party in interest is purely despicable, discriminating and unsettling:

1. "On May 1, 2014, Defendants defaulted on the Note by failing to make the required payments due under the Note." Id. at I-2.

2. "[W]hether or not Defendants are in default, which Defendant Barnette does not dispute." MSJ, Id. I-6.

3. "Moreover, Defendant Barnette has failed to present any prima facie defense to the default and instead makes the same conclusory allegations of fraud that are unsupported by the record in this case." MSJ, **Appendix C-4.**

4. "To the extent she alleges appellee prevented her from curing the default, appellant never offered any evidence to support these claims." DCCA's Order, **Appendix A 2–3.**

"In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself... It is where the court or a member is corrupted." And the rule expressly does not limit the power of the court to give relief under the saving clause. As an illustration of the situation see *Hazel-Atlas Glass Co. v. Hartford Empire Co.*, [322 U.S. 238 (1977)]."

X. Respondents Bribed Co-Defendant John Reosti to Procure His Illegal Consent to Two Fraudulent Motions

As previously discussed, Reosti did not file an answer to the complaint, nor did he enter his appearance at any of the hearings. On April 20, 2017, the court entered an unjustified default judgment against Reosti purporting to find the following:

> "On September 1, 2016, Defendant Reosti was personally served. Defendant Reosti did not file an Answer or responsive pleading and on October 21, 2016, the Court entered an order of default against Defendant Reosti. Plaintiff now moves for judgment by default pursuant to Super. Ct. Civ. R. 55(b)(2). To date, Defendant Reosti has failed to file an Answer or appear before the Court at any proceedings in this matter. The Court concludes that Defendant Roesti was personally served with the Complaint and properly served with the instant motion and did not respond. Plaintiff filed a Servicemembers Affidavit on April 11, 2017, which demonstrates that Defendant Reosti is not on active military duty. The Court concludes that Plaintiff has satisfied the requirements to obtain judgment by default in this case, and is entitled to a judgment against Defendant Reosti." *See* **Appendix H-3–4.**

To further prejudice and cause injury to Petitioner, after the court entered a default against Reosti, the court authorized Respondents to inappropriately communicate with Reosti in order to unlawfully obtain his consent under Rule 12-I(a)(1), to two fraudulent motions. The Respondents bribed Reosti, agreeing to remove any derogatory mortgage ratings from his credit profile in exchange for his consent to two motions.

On September 14, 2017, the Superior Court issued an order granting *partial* consent to a motion to continue the September 15, 2017 hearing on the motion to ratify accounting to November 17, 2017. On November 17, 2017, Barran and Petitioner were present at the status hearing. Among the genuine issues of material fact raised and argued by Petitioner, she strongly opposed the court granting the motion to ratify accounting and the unlawful means used to acquire Reosti's void consent to further cause injury to Petitioner. On December 7, 2017, an "order granting *partial* Consent Motion to Ratify Accounting, Release the Bond and Close the Case" was entered. (Brief, 47-49, App. 325–327).

XI. Ali Pahlavani Is Not a Bona Fide Purchaser of Petitioner's Property

Petitioner, Melissa L. Barnette and John Reosti are the legal title owners of the Property known as 1110 Q Street NW, Washington, DC 20009-4313. Subsequent to the court's April 20, 2017 order granting the motion for summary judgment, on May 4, 2017,

Petitioner filed a Notice of Pendency of Action, *Lis Pendens*, with D.C. Recorder of Deeds, Document No. 2017049535. On the same day, of May 4, 2017, Petitioner filed a certified true copy of the *lis pendens* with the Superior Court. The *lis pendens* was filed more than two months prior to the unlawful scheduled June 15, 2017 foreclosure sale.

On June 15, 2017, at 12:17 PM, at the office of Alex Cooper Auctioneers, Inc., Petitioner's Property was unlawfully sold to Ali Pahlavani, Trustee of The Ali Pahlavani Amended and Restated Revocable Living Trust dated July 25, 2016 for $430,000.00. Ali Pahlavani ("Pahlavani") is not an innocent purchaser; the *lis pendens* timely placed Pahlavani on notice of the egregious foreclosure fraud.

The twenty-three page *lis pendens* includes, *inter alia*, (i) scanned images of the spoliated note, void assignments of deed of trust; (ii) fabricated allonges; (iii) the orchestrated May 1, 2014 default; (iii) deliberately concealed identity of the true noteholder for approximately fifteen months in order to conceal the totality of the fraud perpetrated against Petitioner.

On September 15, 2017, a void *ab initio* Court Appointed Trustees' Deed of Petitioner's residence of sixteen years was unlawfully conveyed to Ali Pahlavani, Trustee of The Ali Pahlavani Amended and Restated Revocable Living Trust, dated July 25, 2016 and recorded with D.C. Recorder of Deeds on September 19, 2017, Document No. 2017103147.

Prof-2013-M4 Legal Title Trust by U.S. Bank, N.A., as Legal Title Trustee cannot transfer the interest under the Property's negotiable instruments it never legally acquired in the first place over to Ali Pahlavan, Trustee. On January 12, 2018 and on

August 23, 2019, Petitioner notified the court via email and carbon copied all parties involved requesting that the court not authorize any disbursement from that illegal sale of her home that occurred on June 15, 2017.

It is well-settled that a forged deed, such as the one here [Document No. 2017103147], is void *ab initio*, meaning a legal nullity, entirely without effect from inception, see, e.g., *M.M. & G., Inc. v. Jackson*, 612 A.2d 186, 191 (D.C. 1992) ("It is well settled that a forged deed cannot validly transfer property and that even a bona fide purchaser takes nothing from that conveyance"); *Harding v. Ja Laur Corp.*, 20 Md. App. 209, 214, 315 A.2d 132, 135 (D.C. 1974)) ("A forged deed obtained, through fraud, deceit or trickery, is void ab initio"). ["A forged deed...is void ab initio"] *Scott D. Erler, D.D.S. Profit Sharing Plan v Creative Fin. & Investments, L.L.C.*, 349 Mont 207, 214 [2009] ["forged conveyances are void ab initio and do not transfer title"]; *Brock v Yale Mortg. Corp.*, 287 Ga 849, 852 [2010] ["we have also long recognized that a forged deed is a nullity and vests no title in a grantee"]; *Akins v Vermast*, 150 Or App 236 n 7 [Or Ct App 1997].

The violations of Petitioner's Fifth and Fourteenth Amendments not only profoundly deprived her of the right to due process, the right to defend her home of sixteen years against a known foreclosure fraud scheme, but also, the courts' unashamed stark discrimination against the Petitioner fraudulently conveyed substantial property value over to an investor, Ali Pahlavani, Trustee... — and, further demonstrated their gratitude to imposter mortgage servicers for filing false bankruptcy claims against Petitioner's residence by rewarding them with even more ill-gotten gains.

"EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.'"

"The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Carey v. Pjphus*, 435 U. S. 247, 254-257 (1978)."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ Melissa L. Barnette, Petitioner

November 18, 2019