NO. 19-7612

IN THE SUPREME COURT OF THE UNITED STATES

SHA'RON A. SIMS,

APPILICANT

V.

WELLS FARGO BANK, N.A, WELLS FARGO AND COMPANY, INC. AND THE UNNAMED PASS THROUGH TRUST

EMERGENCY MOTION FOR STAY OF MAIN BANKRUPTCY CASE PENDING THIS COURT'S REVIEW OF PETITION FOR CERTIORARI

SHA'RON A. SIMS
PRO SE
9519 ARBOR OAK LANE
JACKSONVILLE, FLORIDA 32208
904-802-9521

Sims has filed an Application for Stay with the Bankruptcy Court. That Court denied the Motion, without prejudice, to allow the 11th Cir. To determine if a Stay should issue. The 11th Cir. Denied that Motion with a single word: DENIED

The 11th Cir. Gave no reasons as to why the motion was denied, Sims now make this motion with this Court.

Sims asserts that time is off the essence, because the Court below shall be holding a confirmation hearing on the underlying case. Sims' case has been ongoing for 5 years, without resolution to the main case because the AP Matter, which is the subject of Sims' Writ For Certiorari No. 19-7612, filed on Jan 23, 2020.

The AP Matter goes to the heart of the Main Bankr. Case, in that the matter deals with a central matter which prevents any confirmation of the plan. This because the AP Matter concerns the Amount and the secured status of Claim 3 (The Wells Fargo Claim).

All parties agreed, within the Bankruptcy setting, that Confirmation of the plan cannot be had, until this instant matter is resolved. The first person to make the Argument, on Dec. 6, 2016, was Marcia Brown, Atty for the Standing Chapter 13 Trustee. Sims, since that time, has asked for a continuance on multiple occasions, upon the same grounds, and each time it was granted.

Inexplicably, to Sims, because the history of the case, based on the continuance, the Motion for Stay was denied. Again, no confirmation may be had on this matter until the Claim is settled.

This case has been ongoing, and Sims has never failed to fully prosecute her case, either the AP Matter, or the Main case. However, it has been suggested, in open court at the bankr. Level, that failure to secure a Stay is likely to end in a dismissal of the case, and as such, a mooting of this AP Appeal.

A Stay is akin to an injunction, but not the same. The standards for each are similar, as are the reasons for issuing both.

"An appellate court's power to hold an order in abeyance while it assesses the order's legality has been described as inherent, and part of a court's "traditional equipment for the administration of justice." ***Scripps-Howard Radio, Inc. v. FCC, 316 U.S. 4, 9-10, 62 S.Ct. 875, 86 L.Ed. 1229****. That power allows a court to act responsibly, by ensuring that the time the court takes to bring considered judgment to bear on the matter before it does not result in irreparable injury to the party aggrieved by the order under review."(****Nken v. Holder, 556 US 418 - Supreme Court 2009)*
Therefore, Sims urges that the Stay issue to ensure this Court's ability to exercise

its appellate jurisdiction. (This Court holds that it will issue injunctive relief when it is "a reasonable measure to preserve the status quo pending final determination of the questions raised by the bill," (*Deckert* v. *Independence Shares Corp.*, 311 U. S. 282 (1940)) and to preserve its ability to invoke its supervisory role. ((***Nken v. Holder, 556 US 418 - Supreme Court 2009***)

Furthermore, Sims' Petition, before this Court, centers on the depervation of Sims' 5th and 14th Amendments' right to due process , 14th Amendment right to equal application of the law and Sims' 7th Amendment Right to a jury trial. This Court has held that a citizen has a right to a meaningful hearing, when such deprivation is at hand. This hearing should come before the deprivation, not after. ("A claim to a predeprivation hearing as a matter of constitutional right rests on the proposition that full relief cannot be obtained at a post deprivation hearing. See ***Regional Rail Reorganization Act Cases, 419 U. S. 102, 156 (1974). In light of the Court's prior decisions, see, e. g., Goldberg v. Kelly, 397 U. S. 254 (1970); Fuentes v. Shevin, 407 U. S. 67 (1972), (MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE v. ELDRIDGE, 424 U.S. 319 (1976))***

ARGUMENT

I. DEBTOR IS SUBSTANTIALLY LIKELY TO SUCCEED ON APPEAL.

The Sims respectfully argues that Sims is substantially likely to succeed on the Current Appeal of the AP Matter. The Court's Order Dismissing the AP Matter on a FRCP Rule 12(b)(6) Motion was predicated, in part, on "Belief", impermissible factual determinations and failure to consider the Guaranty within the PSA among other items.

First, The Court were to assume that all factual allegations were true. ("***We are bound for the purposes of this review to take the well-pleaded factual allegations in the complaint as true***". ***Bell Atlantic Corp. v. Twombly, 550 U. S. 544*** (2007) ; ***Ashcroft v. Iqbal, 556 U. S. 662*** (2009) *Miree v. DeKalb County, 433 U. S. 25* (1977); ***Kugler v.Helfant, 421 U. S. 117*** (1975); *Scheuer v. Rhodes, 416 U. S. 232* (1974); ***Cruz v.Beto, 405 U. S. 319*** (1972); ***Gardner v. Toilet Goods Assn., 387 U. S. 167*** (1957)) However, the Court explictly stated that Debtor's Claim could not be ***believed***, Even if it happened the way the Debtor claims. This requires the understanding that the claims made by the Debtor were plausible, because the Court stated that even "if" it happened as Debtor claimed, but that the

Court merely didn't believe those claims. This disbelief within the Court's Order violates the Supreme Court's governing law on if a court's belief may be the foundation for an order dismissing a case. In determining whether a complaint states a claim that is plausible, the court is required to proceed **"on the assumption that all the [factual] allegations in the complaint are true."** ***Twombly, 550 U.S. at 555, 127 S.Ct. 1955 (emphasis added).*** Even if their truth seems doubtful, ***"Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations," id. at 556, 127 S.Ct. 1955 (internal quotation marks omitted).***

Second, The Court made a factual determination that, because of it's belief, a guaranty contract wasn't present. This determination was made in the face of Debtor's explict claims of a guaranty within the complaint, in the written response to the Motion To Dismiss and in oral presentation. This factual determination is also in violation of the Untied States Supreme Court's governing law on a FRCP Rule 12(B)(6) Motion, because :(1) The Court did not base it's consideration on the allegations, the guaranty, as is required ***((Erickson v. Pardus, 551 US 89 - Supreme Court 2007)*** "***Petitioner based his claim on the following allegations, which we assume to be true for purposes of review here***"); and (2) factual determinations on a Rule 12(B)(6) Motion is repugnant to the rule.

Because plausibility is a standard lower than probability, a given set of actions may well be subject to diverging interpretations, each of which is plausible. **See generally** ***Anderson v. Bessemer City, 470 U.S. 564, 575, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985)*** *("two or more witnesses" may tell mutually inconsistent but "coherent and facially plausible stor[ies]").* The choice between or among plausible inferences or scenarios is one for the factfinder, ***see id.; Monsanto, 465 U.S. at 766 & n. 11, 104 S.Ct. 1464*** (the meaning of documents that are ***"subject to" divergent "reasonable ... interpret[ations]" either as "referring to an agreement or understanding that distributors and retailers would maintain prices" or instead as referring to unilateral and independent actions, is "properly ... left to the jury"); id. at 767 n. 12, 104 S.Ct. 1464 ("The choice between two reasonable interpretations of... testimony properly [i]s left for the jury.").*** The choice between two plausible inferences that may be drawn from factual allegations is not a choice to be made by the court on a Rule 12(b)(6) motion. *"[F]act-specific question[s] cannot be resolved on the pleadings."* ***Todd v. Exxon Corp., 275 F.3d 191, 203 (2d Cir.2001) ("Todd")***. A court ruling on such a motion may not properly dismiss a complaint that states a plausible version of the events merely because the court finds a different version more plausible.

Therefore, when the Court held that, even "if" the actions complained of in Debtor's AP complaint happened as alleged, that was a choice between plausible choices which is properly left to the fact finder (Jury in the instant matter) and not the Court. Therefore, even if the Court could conclude that, in light of the facts alleged, that there were an alternative, and plausible, inference to be made from the facts, such wasn't the function of the Court on a Rule 12(B)(6) Motion. This is true even when contracts, such as the PSA, are involved. (***Monsanto, 465 U.S. at 766 & n. 11, 104 S.Ct. 1464***)(the meaning of documents that are ***"subject to" divergent "reasonable ... interpret[ations]" either as "referring to an agreement or understanding that distributors and retailers would maintain prices" or instead as referring to unilateral and independent actions, is "properly ... left to the jury")*** This is because on a rule 12(B)(6) Motion, the Court were to assume that the facts alleged by the Debtor-Plaintiff were in fact true, even if doubtful, and then apply the law thereon. ***((Erickson v. Pardus, 551 US 89 - Supreme Court 2007)*** ***"Petitioner based his claim on the following allegations, which we assume to be true for purposes of review here"***) ; ***Twombly, 550 U.S. at 555, 127 S.Ct. 1955*** ***"Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations,")***

The Court made this determination by construing the PSA, and not interpreting the words of the contract. Instead of interpreting the meaning of the words of the PSA, the Court determined the parties' intentions. ***(Restatement of Contracts [Second], section 14, Note 1 (1981)***). This would be a fact intensive review and, because this step comes after the interpretation of the words' meaning, this is properly reserved for the jury. This is because there is an ambiguity present within the PSA that renders the terms to have two reasonable, but different, interpretations. Sims has alleged that this contract, central to securitization, has the language of a guaranty within it. The record, in the AP Matter, supports both the proposition that Securitization is centered on a guaranty of the mortgages and that wells fargo engages in guarantying mortgages, within securitization, within its regular course of business. The court, solely on cases materially different form this one (without the consideration of the guaranty), chose to read the contract as something other than a guaranty as alleged by the Debtor. In so doing, the Court determined the Parties intention. This required a jury to determine the meaning of the contract in questions, based when ***"usage and industry standards"*** are to be used to determine the meaning of the terms, this is a question of fact. (" ***But sometimes, say when a written instrument uses "technical words or phrases not commonly understood," ... those words may give rise to a factual dispute.***

If so, extrinsic evidence may help to "establish a usage of trade or locality." And, in that circumstance, "***determination of the matter of fact" will "preced[e]" the "function of construction.***" (***Great Northern R. Co. v. Merchants Elevator Co., 259 U.S. 285, 291, 42 S.Ct. 477, 66 L.Ed. 943 (1922).).; see also 12 R. Lord, Williston on Contracts §§ 34:1, p. 2, 34:19, p. 174 (4th ed. 2012)*** (In contract interpretation, the existence of a "***usage***" — a "***practice or method***" in the relevant industry — "***is a question of fact***" (internal quotation marks omitted))(***Teva Pharmaceuticals USA v. Sandoz, Inc., 135 S. Ct. 831 - Supreme Court 2015).***

As for the guarantee provisions, In Anderson v. Trade Winds Enterprises, Corp., 241 So.2d 174 (Fla. 4th DCA 1970), the court explained:

"*The law recognizes a distinction between an absolute guarantee and a conditional guarantee. One who undertakes an absolute guarantee of payment by another becomes liable immediately upon default in payment by the other. One who undertakes to conditionally guarantee another's payment does not become liable until the occurrence of the conditions.* ***Scott v. City of Tampa, 1947, 158 Fla. 712, 30 So.2d 300, 302; Fegley v. Jennings, 1902, 44 Fla. 203, 32 So. 873****. Whether a contract of guaranty is absolute or conditional depends on the intent of the parties as expressed in their contract. If a written contract in unambiguous terms expresses an unconditional guarantee, then the guaranty is absolute and the guarantor's liability cannot be limited or qualified by parole evidence as to a prior or contemporary understanding.* ***Bryant v. Food Machinery And Chemical Corporation Niagara Chemical Division, Fla.App. 1961, 130 So.2d 132, 134, 135.*** *In our opinion, the language of the present written contract is not legally ambiguous and, as a matter of law, creates an absolute guaranty of payment.*"

Therefore, "*where the guaranty is absolute, the guarantor becomes liable upon non-payment by the principal, and the person in whose favor the guaranty runs has no duty to first pursue the principal before resorting to the guarantors.* ***Id [Emphasis added].*** This the nature of the guaranty within the PSA. Not only does the language give way to an absolute requirement of Wells Fargo, as a guarantor, Wells Fargo's owns words, in public statements, make certain that they are required, as guarantors, to pay the principal and interest of mortgages they have guaranteed within the securitization context.

It is settled law that Florida Law controls the secured status of liabilities of contracting parties. ((Bankruptcy Code depends on state law for the definition of numerous rights relevant to proceedings under its authority (e.g., the definition of

property rights). See ***Butner v. United States, 440 U.S. 48, 54-55, 99 S. Ct. 914, 917-18, 59 L. Ed. 2d 136 (1979)***)) It is also settled law that a guarantor of mortgages do not have any interest in the property secured by the mortgage they have guaranteed.

It is also settled law that a guarantor waives both legal and equitable rights to subrogation when it agrees to not pursue the primary obligor for payment. A guarantor also loses the right to subrogation, both legal and equitable, when they interfere with the contractual rights of the parties to the contract so guaranteed.

Finally, it has been settled that a volunteer guarantor can never pursue the primary obligor for any payments, because the primary obligor never asked the volunteer to pay his/her obligations. (

In the complaint, Debtor factually alleged that Wells Fargo became the guarantor of her mortgage in 2012, while Debtor entered her mortgage in 2007. This five-year span between mortgage creation and the guaranty shows that the Debtor need a guarantor at the time she entered the mortgage, and the Debtor never asked for Wells Fargo to be a guarantor at any time, This make Wells Fargo a volunteer guarantor of the debtor's mortgage. Further, Wells Fargo agreed with the PTT (TRUST) which owns Debtor's mortgage to deny, any request to modify the mortgage. This was in spite of the fact that Debtor entered a mortgage contract that allowed for at least an honest review of Debtor's chances to modify. This is an interference with the rights of the parties to the contract that Wells Fargo Guaranteed. In all, Wells Fargo do not have any legal or Equitible rights to subrogation, or reimbursement.

Because A guarantor only promises to pay the Mortgage, and has no other rights to the property subject to the loan guaranteed, and Wells Fargo has no rights to legal or equitable subrogation as a function of law, Wells Fargo's claim, as guarantor, must be separate and distinct from the PTT's claim. While the PTT's claim is still Secured, Wells Fargo's claim is unsecured and must be listed separately from the PTT's secured claim under the Bankr. Code.

Securitization, which is what Wells Fargo and the Court, siting in the AP Matter, have rested their beliefs on is based on a guarantee of Mortgages. Put differently: Today's Securitization is yesterday's guaranteed Mortgages, only the name has changed. It's the same process. (*See* ***Kenneth A. Snowden, Mortgage Companies and Mortgage Securitization in the Late Nineteenth Century 31–32 (Aug. 2007) (unpublished manuscript) [hereinafter Snowden, Mortgage]***, available at http://www.uncg.edu/bae/people/snowden/Wat_jmcb_aug07.pdf.); (of Econ.

Research, Working Paper No. 15650, 2010), available at http://www.nber.org/papers/w15650; ***Kenneth A. Snowden, The Anatomy of a Residential Mortgage Crisis: A Look Back to the 1930s 11–12*** (Nat'l Bureau of Econ. Research, Working Paper No. 16244, 2010) [hereinafter Snowden, Anatomy], available at http://www.nber.org/papers/w16244.) and (***compare United States v. Dilliard, 101 F. 2d 829 - Circuit Court of Appeals, 2nd Circuit 1938*** *"The company was organized in the year 1927 for the purpose of selling guaranteed mortgages: sometimes it sold these outright; sometimes it sold "participation certificates" in a single mortgage, which it held in trust for certificate holders; sometimes it set up as security a pool of mortgages, which it either assigned to a trustee, or itself held in trust".* ***To BlackRock Financial Management Inc. v. Segregated Account of Ambac Assurance Corp., 673 F.3d 169, 173 (2d Cir.2012)*** *("Residential mortgage loans, rather than being retained by the original mortgagee, may be pooled and borrowers. The right to receive trust income is parceled into certificates and sold to investors,sold "into trusts" created to receive the stream of interest and principal payments from the mortgage called certificate holders. The trustee hires a mortgage servicer to administer the mortgages by enforcing the mortgage terms and administering the payments. The terms of the securitization trusts as well as the rights, duties, and obligations of the trustee, seller, and servicer are set forth in a Pooling and Servicing Agreement...."). .*

Each time securitization was tried, it forced a collapse in the national economy, *1880, 1890 , 1929 and 2007.* (***Simkovic, Michael (2013) "Competition and Crisis in Mortgage Securitization," Indiana Law Journal: Vol. 88: Iss. 1, Article 4***. Available at: http://www.repository.law.indiana.edu/ilj/vol88/iss1/4)

Even Modern Courts recognize the Guarantee within the "modern" securitization process.

Based on disbelief, that court didn't apply the laws of guarantee and suretyship to the case, which is what the Debtor had rested her case on. This was against longstanding mandates from the United States Supreme Court.

In determining the meaning of the clause giving rise to the Guaranty issue within this case, it seems a disconnect to not consider the ultimate purpose of the document: To place Mortgages into securitization and the requirements for a guaranty therein. (*"When construing ambiguous language, courts will approve that construction which comports with logic and reason."* ***Wright & Seaton, Inc. v. Prescott, 420 So.2d 623 (Fla. 4th DCA 1982).*** *"[T]he court should arrive at an interpretation consistent with reason, probability, and the practical aspect of the*

transaction between the parties." Id. at 629 (citing ***Bay Management, Inc. v. Beau Monde, Inc., 366 So.2d 788, 791 (Fla. 2d DCA 1978***) *"In construing a contract, the court must consider the objects to be accomplished, and to this end should place itself in the position of the parties when the contract was entered into.* ***Florida Power Corp. v. City of Tallahassee, 154 Fla. 638, 18 So.2d 671 (1944).*** *A corollary to this is that the court should arrive at an interpretation consistent with reason, probability, and the practical aspect of the transaction between the parties.* ***Blackshear Manufacturing Co. v. Fralick, 88 Fla. 589, 102 So. 753 (1925).).***

Therefore, if the Court applied the assumption of truth, without embracing it's disbelief or making factual determinations, the Court would have found that the following arguments, made by the Debtor, was plausible and just not merely possible:

(1) Had the Court assumed as true that the Defendant's (Wells Fargo) provided the Guaranty to the Trust, and not the Certificate Holders, to ensure the TRUST, which owns the Debtor's mortgage, would have continuing income, as alleged in the Debtor's Complaint, the Court would have found that such is how securitization works. (***"As borrowers (i.e., homeowners) make payments on the mortgages, the trust uses the payments to pay the investors, the holders of the mortgage-backed securities. "Thus, the [trust's] ability to continue making payments to the ... investor depends on the entity's continuing receipt of mortgage payments from the homeowners. If the mortgages are not paid, the [trust's] income stream decreases, undermining the entity's ability to pay the ... investors."*** ***In re Citigroup Inc. Sec. Litig., 753 F.Supp.2d 206, 214*** (S.D.N.Y.2010)." ***In re Lehman Bros. Holdings Inc., 513 BR 624 - Bankr. Court, SD New York*** 2014)) ;

(2) The Defendant's provided the guaranty to ensure sales of the certificates of the trust, by gurantying the Trust, but not the certificate holders, of a guaranteed income stream;

(3) When Wells Fargo, as the Guarantor, paid the trust, principal and interest as the guarantee requires, that payment satisfied the Trust, for those payments made and those payments no longer were owed to the Trust but to Wells Fargo as Guarantor.("***The familiar rule is that, instanter upon the payment by the guarantor of the debt, the debtor's obligation to the creditor becomes an obligation to the guarantor***" (***Putnam v. Commissioner, 352 US 82 - Supreme Court 1956***) see (***United States v. Munsey Trust Co., 332 U. S. 234, 242; Aetna Life Ins. Co. v. Middleport, 124 U. S. 534, 548; Howell v. Commissioner, 69 F.***

2d 447, 450; Scott v. Norton Hardware Co., 54 F. 2d 1047; Brandt, Suretyship and Guaranty (3d ed.), § 324; 38 C. J. S., Guaranty, § 111; 24 Am. Jur., Guaranty, § 125.) This would require the understanding that the Trust does not have any additional claims against Sims for the Payments covered by the guarantor's payment: Put differently, the Guarantor satisfied the requirement for Sims to make payment to the PTT for those, but only those payments. This kept the installment note current.(Reynolds v. Doglas....) ;

(4) Wells Fargo, as a guarantor, do not have a secured property interest within the Debtor's Property because of the Guarantee contract with the Trust ("*A person who guarantees a promissory note does not acquire any interest in the mortgaged property. In Florida, a mortgage creates a special lien against the collateral property,* ***see § 697.02, Fla. Stat. (2001); Hemphill v. Nelson, 116 So. 498 (Fla. 1928)*** *.....****Conversely, a guaranty of a mortgage note is simply a promise to answer for the debt should the mortgagor fail to pay****. **See West Flagler Assocs., Ltd. v. Dep't of Revenue, 633 So. 2d 555 (Fla. 3d DCA 1994)*** (holding that note guaranty was not subject to intangible personal property tax in light of secondary nature of liability which arises only upon default by note maker); ***New Holland, Inc. v. Trunk, 579 So. 2d 215, 216-17 (Fla. 5th DCA 1991)*** (*"A guaranty is a promise to pay some debt (or to perform some obligation) of another on the default of the person primarily liable for payment or performance."); **see generally Black's Law Dictionary at 634*** (*defining guaranty as a "promise to answer for the payment of some debt, or the performance of some duty, in case of the failure to another who is liable in the first instance"*)" ***Cukierman v. Bankatlantic, 89 So. 3d 250 (Fla. Dist. Ct. App. 2012)) .***

(5) Because the Payments by the guarantor to the Trust terminated the rights of the Trust to those payments, Those payments, even if the were owed by the Debtor, were no longer secured by the mortgage, or note .("***The familiar rule is that, instanter upon the payment by the guarantor of the debt, the debtor's obligation to the creditor becomes an obligation to the guarantor" (Putnam v. Commissioner, 352 US 82 - Supreme Court 1956***) see (***United States v. Munsey Trust Co., 332 U. S. 234, 242; Aetna Life Ins. Co. v. Middleport, 124 U. S. 534, 548; Howell v. Commissioner, 69 F. 2d 447, 450; Scott v. Norton Hardware Co., 54 F. 2d 1047; Brandt, Suretyship and Guaranty (3d ed.), § 324; 38 C. J. S., Guaranty, § 111; 24 Am. Jur., Guaranty, § 125.)***) ;

(6) Because those payments were no longer secured, and Wells Fargo, in it's capasity as guarantor, wanted to make a claim, that claim would have to be unsecured and seperate from the Trust's secured claim. 11 U. S. C. § 1322(b)(2)

protects on secured claims, which a claim guarantor of a mortgage isn't under Florida law. Bearing in mind that Florida law controls the secured nature of a claim in Federal bankruptcy Court Proceedings. (Bankruptcy Code depends on state law for the definition of numerous rights relevant to proceedings under its authority (e.g., the definition of property rights). See ***Butner v. United States, 440 U.S. 48, 54-55, 99 S. Ct. 914, 917-18, 59 L. Ed. 2d 136 (1979)***); ***In Re SMEC, Inc., 160 B.R. 86, 89 (M.D. Tenn. 1993)***"bankruptcy laws rely on state law for definitions of many rights important in bankruptcy proceedings, the Bankruptcy Code") Therefore, to the extent that Claim #3 isn't secured, that claim, in accordance with the Bankr. Code, **is void, not just voidable.** (***Section 506 – Determination of secured status:*** (d) "*To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void*")

Because Wells Fargo, as guarantor, agreed to seek reimbursement from the Trust which owns Debtor's Mortgage, there isn't any subrogation agreement that may be enforced through **Section 510 of the Bankruptcy Code**. Again, legal and equitable subrogation is not applicable to this case. At least not one where Debtor would be the source of any funds to the Guarantor. The PSA states that the Trust will reimburse the Guarantor. Settled law mandates that the once the Guarantor paid the trust, that debt (or portion thereof) is no longer owned by the Trust. Therefore, only the Trust, through what remains of the secured debt, may reimburse the Guarantor. Neither the Trust nor the guarantor has an enforceable claim against the debtor stemming from the Guarantor's payment to the Trust covering the principle and interest of the Debtor's mortgage.

From there, the claims of the Debtor would be wholly plausible, even if not the only plausible version. However, there isn't a need for the Debtor's claim to be the only plausible one, or one that the Court find to be most plausible on a Rule 12(b)(6) Motion;

Wells Fargo cannot make a legally sufficient claim that it do not provide Guarantees on the Mortgages it services for Trust that owns those Mortgages. Not only do the PSA details the guarantee, but Wells Fargo's Public Statements in Security and Exchange Commission filings detail that they do in fact make guarantees to those entities, and are in fact guarantors.

Considering the foregoing, Debtor asserts that The POC as filed by Wells Fargo is in fact a POC that co-mingles a secured and unsecured debt on a single secured claim and that the Amount of that secured claim is significantly less than what the claim states. There is no doubt that Wells Fargo hindered the availability of the

PSA and the accounting of it's services activities from this Court, and continues to do so. And, there is no doubt that Wells Fargo knew that the secured debt owed to the Trust was absent the amount it claimed on the POC as arreages. (***The Wells Fargo Atty Manual, page 57, filed in the AP Matter Instructs the outside attys to merge the two distinct amount on the Wells Fargo System and complete the POC as a single debt***) .

Additionally, the Debtor argued that Subrogation, legal and equitable, are denied the Guarantor in this matter. If the Court assumed that the Reimbursement language was related to the guarantee portion of the PSA, as alleged by the Debtor, the Court would have found that that was forbearance on the part of the guarantor, wells Fargo, to pursue the debtor. (cite) Further, if the Court assumed as true, and pointing out the Creditor never denied the truthfulness of this claim, that Wells Fargo agreed with the Trust to not modify the loan at any given time, though the mortgage contract allowed for such, was an interference in the underlying contract guaranteed, then equitable subrogation would be denied the Guarantor(Wells Fargo). This would forestalled any and all claims that wells Fargo was entitled to either legal or equitable subrogation. Though, in the bankruptcy setting they could have still filed a disputed unsecured claim for the amounts they paid as guarantor. Therefore, while under Bankruptcy law, Wells Fargo, as guarantor, may make a claim, Wells Fargo may not have any rights to enforce that claim. (***Matter of DG Acquisition Corp., 188 B.R. 918, 922 (Bankr. D. Del. 1995)*** (*"A creditor may possess a bankruptcy claim and not possess a cause of action on that claim."*))

Finally, I would like the court to focus on the issue of third party beneficiary standing, which the Court sitting in the AP Matter ruled prevented the Debtor, in part, from recovery. Had the court viewed the language in the PSA as a guaranty contract, Third Party Beneficiary standing wouldn't have been an issue in that matter.

Even in a complex Contractual agreement such as a PSA, the Parties may intended that they contract to benefit themselves, but that intent do not mean that they did not also intend to benefit a third party as well. And, Such Third party need not be listed, or named, as an intended beneficiary.

Therefore, even if Wells Fargo argues that they did not intended to benefit the Debtor, by operation of law (Suretyship and guarantees) and case law (as noted above) The Debtor is still an intended beneficiary-notwithstanding Wells Fargo's later statements to the contrary.

The Guaranty provision creates a Triparte contractual arrangement between Wells Fargo (as Guarantor), The PTT (The Trust that Owns Debtor's Mortgage) and the Debtor herself.

Furthermore, as the Debtor has argued before the 11Th Circuit Court of Appeals, Courts have allowed Creditors to enforce a promissory Note (A Contract) which that creditor could not prove ownership of, therefore the creditor could not possibly prove it had a property interest within that promissory note, but to disallow the Debtor to have standing, based on Debtor's known-unchallenged property right within her home, which is a recognized constitutional property right, creates a circumstance where the Courts are applying the law of standing based solely on the characteristic of "creditor". This would be a violation of the Constitution's equal protection clause.

Therefore, Debtor argues that it is substantially plausible for her to succeed on appeal at the 11th Cir level or the US S.Ct. level and at trial after that appeal is concluded.

II. DEBTOR WILL BE IRREPARABLY INJURED ABSENT A STAY.

Debtor will be irreparably injured if this Stay do not issue because: (1) without the stay, the clock on the Debtor's Chapter 13 case will continue to run while the Appeal, and the AP matter is continuing. This case has shown that it will take some time to resolve, and the Chapter 13 clock is only for 60 months, without Court action to extend such proceedings. If the clock continues, this case will be subject to dismissal and such will require that Debtor will have to restart the process, refile the AP Matter and re-incur costs that will deplete more of Debtor's already strained resources. The Debtor would have spent thousands of dollars, on the plan and in pursuing the AP Matter, that would simply not be able to be recouped; (2) The Failure to issue this Stay will result in a manifest injustice with respect to Debtor's Constitutional Right to have the AP Matter decided by a Jury, or be meaningfully heard in that matter.; (3) The deprivation of a Constitutional Right cannot be merely compensated by money because it will be a denial of Debtors "Broad reservation of Power within our constitutional structure". (cite) a reservation that is fundamental to each citizen and deemed inestimable by our founding fathers; (4) Debtor's Constitutional Right to defend her property will be limited by the mere passage of time and not the Debtor's failure to timely act to protect that property right. The Debtor filed for protection under the Laws in time to prevent injury to Debtor's property interest: and, The Debtor timely filed the AP Matter, challenging the Creditor's claim; The Debtor actively prosecuted, and continues to prosecute, that AP Matter. Notwithstanding those facts, merely because of time, the Debtor's

case and claims may be subject to dismissal because the AP Matter and Apeals Process has, as is typical, taken a bit longer to conclude.

Finally, The 11th Circuit Court of Appeals has soundly rejected the notion that a denial of a jury trial is "*harmless error*".*(Burns v, 53 . LawtherF.3d 1237 (11th Cir. 1995)*) Finding that Litigant's in a civil trial have a right to a jury trial under the 7th Amendment, this Court held that such a denial *requires "the exacting review" before this Court. Further this Court held that " In cases like this, where the district judge carefully weighed the evidence and found it lacking, it's tempting to search for ways to affirm the district court. "but jurries are not bound by what seems inescapable logic to a judge" we therefore hold that the district Court's decision cannot stand. Appellant has a right to a jury trial..."*" The United States Supreme Court agrees.(***Walker v. New Mexico & S.P.R.R., 165 U.S. 593***,; and ***Am. Publishing Co. v. Fisher, 166 U.S. 464***)*"the right to jury trial which the Seventh Amendment secures is a substantial one in that it exacts a substantial compliance");* (***Walker v. New Mexico & Southern Pacific R. Co., 165 US 593 - Supreme Court 1897***) *"The 7th Amendment's "aim is not to preserve mere matters of form and procedure but substance of right"*) The right to a jury trial is not contingent on if the matter is before the District Court or the Bankruptcy Court. *"[L]egal claims are not magically converted into equitable by their presentation issues to a court of equity,"* ***Ross v. Bernhard, 396 U. S. 531, 538 (1970),*** *nor can Congress conjure away the Seventh Amendment by mandating that traditional legal claims be brought there or taken to an administrative tribunal"* (***Granfinanciera, SA v. Nordberg, 492 US 33 - Supreme Court 1989)*** *" We do hold, however, that whatever the answers to these questions, the Seventh Amendment entitles petitioners to the jury trial they requested". Id*

A fact determined by the Court, sitting in the AP Matter, is the absence of a guarantee. Debtor pointed out the guarantee language, the Debtor even stated within the complaint that it was a guarantee of revenue to the PTT. Debtor even argued, with citations, how the language fit the common law understanding of a guarantee contract, but the court determined that it wasn't a Guarantee, without reasons as to why it was not, nor could not be, a guaranty.

If the Court engaged in only interpretation of the contested guaranty terms of the PSA's in this case, as the U.S. S. Ct. directs, Sims suggests that such an interpretation will yield a reasonable inference of a guaranty contract. However, Sims also suggests that a four-corner test would yield that the PSA is reasonably viewed as either a guarantor or obligor contract. At that point an ambiguity would be present that renders the terms to have two reasonable, but different,

interpretations. This would require a jury, not a Court, to determine the meaning of the contract in questions. Also, if the Court determines that *"usage and industry standards"* are to be used to determine the meaning of the terms, this to is a question of fact. (" *But sometimes, say when a written instrument uses "technical words or phrases not commonly understood," ... those words may give rise to a factual dispute. If so, extrinsic evidence may help to "establish a usage of trade or locality." . And in that circumstance, "determination of the matter of fact" will "preced[e]" the "function of construction."* (Great Northern R. Co. v. Merchants Elevator Co., 259 U.S. 285, 291, 42 S.Ct. 477, 66 L.Ed. 943 (1922).).; see also)***12 R. Lord, Williston on Contracts §§ 34:1, p. 2, 34:19, p. 174 (4th ed. 2012*** (*In contract interpretation, the existence of a "usage" — a "practice or method" in the relevant industry — "is a question of fact" (internal quotation marks omitted)*)***(Teva Pharmaceuticals USA v. Sandoz, Inc., 135 S. Ct. 831 - Supreme Court 2015).***

This determination of a fact, even though contract interpretation, is against the tenants of a ruling on a **Rule 12(B)(6) Motion.** Factual determinations are for the Jury in the AP Matter, as demanded by the Debtor. The 7th Amendment *"is not to preserve mere matter of form and procedure but substance of right. This requires that questions of fact in common law actions shall be settled by a jury, and Courts shall not assume directly or indirectly to take from the jury or for itself such prerogative"*. (***Walker v. New Mexico & Southern Pacific Railroad co., 165 US 593 (1897)***;(*"the right of jury trial ... is no mere procedural formality, but a fundamental reservation of power in our constitutional structure."*(***Blakely v. Washington, 542 US 296 - Supreme Court 2004***))

Again, nothing monetary shall be able to rectify the denial of this right-this broad reservation of power.

III. A STAY WILL NOT SUBSTANTIALLY INJURE CREDITOR.

The Creditor will not be substantially injured by the issuance of this stay. The stay would keep the parties in the same position that they have been since this case's inception. The Court has ruled twice that the Creditor is adequately protected during the pendency of AP Matter and there isn't reason to believe that such protection would be lessened by the issuance of the stay of proceedings now.

At the time of this case, the Property located at 9519 Arbor Oak Lane, Jacksonville Florida, 32208, which is secured by the purported claim (Claim 3), has increased in value from $90, 000.00 in July 1995 to an estimated value of $171,000.00 today.

Therefore, the Creditor will not be substantially injured by maintain the current status que, which will be the result of issuing the stay of proceedings order in this matter.

IV. THE PUBLIC INTEREST WOULD BE SERVED BY A STAY.

confusion, about governing law, from the united states supreme court will be problematic insofar as it threatens to undermine public confidence in, and understanding of, the role of the United States Supreme Court in establishing governing law on both F.R.C.P. Rule 12(b)(6) and the "Broad reservation of power" for a jury to determine facts in a civil case.

Additionally, Debtor's case will have impact on how mortgages are to be treated in the Bankruptcy setting, with respect to a claim of a guaranty, and in foreclosure actions. Having the higher Courts determine if the laws of suretyship and grantees apply to securitization, as a whole, will have the impact of realigning the "new case law", which was based solely on the fact the a single litigant didn't cite case law from the 1920's, 30's, 40's and 50's which would have prevented a diversion from that settled law, with the historically correct case law.

This case has the potential to impact every residential mortgage in the United States.

CONCLUSION

Debtor asserts that Debtor is substantially likely to succeed on Appeal and in Debtor's AP complaint before a jury.

Debtor asserts that **Debtor will prevail** on her immediate Appeal. First, The Court's basing it's ruling on disbelief is counter to settled law. (Neitzke v. Williams, 490 US 319 - Supreme Court 1989)("What Rule 12(b)(6) does not countenance are dismissals based on a judge's disbelief of a complaint's factual allegations");Bell Atlantic Corp. v. Twombly, 550 U.S. 544.); Second, factual determinations, even when based on documents like the PSA, are repugnant to Rule 12(B)(6) purposes. (Because plausibility is a standard lower than probability, a given set of actions may well be subject to diverging interpretations, each of which is plausible. See **generally Anderson v. Bessemer City, 470 U.S. 564, 575, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985)** (*"two or more witnesses" may tell mutually inconsistent but "coherent and facially plausible stor[ies]"*). The choice between or among plausible inferences or scenarios is one for the factfinder, see id.; ***Monsanto, 465 U.S. at 766 & n. 11, 104 S.Ct. 1464*** (***the meaning of documents that are "subject to"***

divergent "reasonable ... interpret[ations]" either as "referring to an agreement or understanding that distributors and retailers would maintain prices" or instead as referring to unilateral and independent actions, is "properly ... left to the jury"); id. at 767 n. 12, 104 S.Ct. 1464 *("The choice between two reasonable interpretations of... testimony properly [i]s left for the jury."));* And, Third, Debtor demanded a Jury trial and the factual determinations by the Court abridged Debtors "Broad reservation of power within our constitutional" Structure.

The Debtor will be irrepable harmed if a stay isn't issued, because Debtor Bankruptcy Case is currently approaching a point in which the time for a discharge is required is approaching and there isn't a resolution of the issues. There are several issues here: (1) Denial of a Jury Trail on the matter, which will be a denial of the exercise of a broad reservation of power under our constitutional form of government. This reservation of power, instituted by oour founding fathers, was specifically, even if not solely, for the citizens' rights to protect their property interests from creditors. This Right is not an economic right that can be compensated for by a check, money or exchange of value. Debtor's Constitutional right is in violate; (2) The Debtor may in fact lose her home, which is more than an economic interest under our constitutional form of government. As such, money alone cannot compensate for such a lose; and, (3) Debtor has a constitutional right to be meaningfully heard in a Court within this nation. This right means more than merely showing up in court and having a right to speak, but require that the Court actually hear the Debtor. When the Court ignored the allegations of the guarantee and decided the Case on "disbelief", the Court did not meaningfully hear the Debtor, even though Debtor was allowed to speak. No amount of money may compensate the Debtor for such loss of a fundamental right to due process.

Debtor asserts that **Wells Fargo will not be substantially harmed** by the stay, because: (1) Wells Fargo's action, in filing a claim that mixed an unsecured claim with a secured claim, cannot be supported by law; (2) Wells Fargo actively denied the Courts the resources that the Court, the Trustee's Office and Debtor needed to complete this case in a timely manner. Wells Fargo alone is responsible for any delay; Wells Fargo's unsecured claim, as a guarantor, cannot be protected, under the Bankruptcy Code, as a secured debt; (4) This Court has issued an adequate Protection Order that protects the Interest of Wells Fargo, there isn't a need for any additional protection. This Order was issued on motion from Wells Fargo itself; and, (5) The property secured by the Mortgage has increased in value from $90,000.00 (based on an appraisal at the time)at the time Debtor filed her Petition for

protection to more than $145,000.00 based on online property value search today. The mortgage is more secured now than at any time during this bankruptcy proceeding.

Finally, **Public interest will be served** for the following reasons: (1) This action has the potential of impacting every mortgage within the bankruptcy courts within the circuit and nation, because it could result in a clearer understanding of what securitization is and impact the rights of every homeowner; (2) This case presents a question for the courts as to which case law is the correct case law to apply to mortgage cases. In the 1920's, 1930's, 1940's and 1950's Court's recognized securitization as a guarantee of mortgages. This basis provides better protection to homeowners than the newer case law that was founded in the mid 2000's. This newer case law was created solely because the debtor didn't cite legal authority for their position, not because legal authority wasn't present. Further, this case will give the Courts an opportunity to determine if the new case law was founded correctly and determine if well settle law can be uprooted by the failure of a single litigant to cite past precedents; and, (3) Reproduction of effort and time spent, if Debtor has to refile her bankruptcy case and the AP Matter, will impact judicial economy in both this Court and, without doubt, the 11th Circuit Court of Appeals. It will be far fairer to the public to let this case move on its current tract without duplication of efforts.

Additionally, the Debtor has argued before the 11Th Circuit Court of Appeals, that Courts have allowed Creditors to enforce a promissory Note (A Contract) which that creditor could not prove ownership of, therefore the creditor could not possibly prove it had a property interest within that promissory note, but to disallow the Debtor to have standing, based on Debtor's known-unchallenged property right within her home, which is a recognized constitutional property right, creates a circumstance where the Courts are applying the law of standing based solely on the characteristic of "creditor". This would be a violation of the Constitution's equal protection clause. The answer to that question (*Are Courts violating the equal protection clause within the US Constitution when ruling on the issue of standing, with the result being dependent on if the plaintiff is a "Creditor" or not?)* is of immense importance to the general public and the proper administration of justice in cases involving creditors and homeowners.

Finally, The Appeal asks this Court to determine if the application of third-party beneficiary standing, as applied, violate the 14th Amendments requirement for equal protection and application of the law. In that, in cases between home mortgage borrowers and lenders, courts allow lenders standing to sue on a contract

when, as is the circumstance in this instant case, the lender cannot establish they either own, or have an agency relation with the person that owns, the contract. However, through the application of third party beneficiary standing, the home owner, who has an unchallenged constitutional property interest in their home, cannot rely on their irreducible Article III standing, or statutory standing under the Federal RICO laws, in defense of their constitutional property interest.

This question, as to the constitutionality of the application of the third party standing laws, will impact every home borrowers right to seek redress in this nations court. The resolution of this question shall have far reaching impact, in either limiting the constitutional rights of borrowers or in recognizing their constitutional rights in, courts, in defense of their homes.

For the foregoing reasons, Debtor respectfully asserts that it is both need and proper to issue a stay in this matter.

Therefore, Debtor asks this Court to Issue a stay of all actions within the main bankr. case, until the AP Matter is resolved. The Debtor also asks this Court to schedule periodic status hearings to keep this Court, and all parties, informed as to the status of the Appeal and AP Matter.

Sims prays that this Stay issue, on an emergency basis, because the Confirmation hearing is scheduled for **Feb 19, 2020**. Without a Stay, this Court may lose its ability to exercise its appellate role.

Date: February 13, 2020

Sha'ron Sims

CASE : 19-7612

IN THE SUPREME COURT

OF THE UNITED STATES

DECLARATION OF SERVICE

28 U.S. CODE, SECT. 1746, UNSWORN DECLARATION UNDER PENALTY OF PERJURY.

I, SHA'RON A. SIMS, declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct:

I have served a copy of this emergency motion on Wells Fargo Bank.Na., through their counsel of record, McGuireWoods, llc at the following address: 50 N. Laura Street, Ste 3300, Jacksonville, Fla. 32202

Service was made by mailing the motion to them, by first class mail, will reach the parties within 72 hours.

EXECUTED THIS 13TH DAY OF FEB. 2020

SHA'RON A. SIMS

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13123-DD

In re:

SHA'RON A. SIMS

Debtor.

SHA'RON A. SIMS,

Plaintiff - Appellant,

versus

WELLS FARGO BANK N.A.,
WELLS FARGO & COMPANY,
THE UNNAMED PASS TRUSTS,
a.k.a. Mortgage Loans Trusts,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before: MARTIN, ROSENBAUM, and NEWSOM, Circuit Judges.

BY THE COURT:

Appellant's "Motion to Stay Main Bankruptcy Case" is DENIED.