No. 19-8311

IN THE

SUPREME COURT OF THE UNITED STATES

John Dalen,

Petitioner,

v.

Federal National Mortgage Association et. al,

Respondents.

Petition for Rehearing of Court's Denial Of Writ of Certiorari

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

OTHER AUTHORITIES

STATEMENT OF THE CASE

John Dalen respectfully moves this court to revisit his submission in the interests of justice and not for purpose of delay. I, John Dalen, have been fighting this foreclosure for almost ten years, and I have been unable to get any court to carefully look at the facts of this case. Most of the judges that I have been before have acted on a presumption that this was a simple foreclosure. Upon close examination it becomes clearly evident that this *not* a simple foreclosure for many reasons. There are laws regarding the sale and transfer of notes that are there to protect homeowners/borrowers. For one thing, the bank is required by law to produce a proper chain of title, and in the Dalen case the facts show the bank's purported chain of title is in fact a fraud. The Dalens presented a mountain of evidence to show that the chain of title as presented by the bank cannot be true.

The securitization of the note is another reason we are *not* dealing with a simple foreclosure. Most of the judges I have been before do not understand securitization, and some even admitted that in open court. Securitization forever changes the note. Through securitization the banks have received payment on the note. If investors lost money on their mortgage-backed securities, they were able to write these losses off on their taxes. Fifty States Attorneys General filed suit against numerous banks, including the bank involved in this case – Bank of America, N.A. That suit labeled many of the

actions of Bank of America and other banks in their foreclosure processes as "unlawful." Many of the same complaints in that suit are complaints that I made in my case. We documented several of these unlawful actions in our Record on Appeal, such as the undated transfer of the note, the robo-signing of the Assignment of Mortgage as admitted to by the notary, and also the discovery process wherein the bank initially denied having securitized the note and later admitted to the securitization. I have provided this court with an explanation of securitization in my previous brief. Securitization of the note makes it impossible for the bank's version of the chain of title to be anything other than fraud.

REASONS FOR GRANTING THE WRIT

Regardless of whether a court ruled in my favor, this is in fact an unlawful foreclosure. I would like to reiterate some of the points that I raised during these last ten years:

1) Banks do not loan money. Banks create money out of "thin air" which they credit to the borrower's account, which is then called a loan. Then they charge interest on the loan, interest which is not created money, making loans mathematically impossible for the population to ever fully repay. It's like a game of musical chairs – someone must lose because there are not enough chairs. And the banks have no money to lose. The

banks "put up" nothing in this contract but expect everything in return. This practice and this contract are unconscionable.

2) Through securitization, the note that was created by the banks and backed by nothing was sold. Through this chicanery, the bank was paid on the note. The true parties in interest are the shareholders of the certificates that contain the notes. The Federal Reserve buys troubled notes and mortgage-backed securities, and thereby the banks are paid again. After being paid for the note, the bank brings the note into court to get paid again through foreclosure whereby they get a deficiency judgment and seize the property. And if all this isn't enough, the banks were given billions of dollars of taxpayer money to "bail them out" on the premise that the money would be used to help homeowners holding troubled loans. Instead, shortly after receiving this bail-out money, the banks paid their top executives huge bonuses and reported record profits.

3) Regarding the bank's standing to enforce the note, the note that was presented to the court is undated and therefore there is no way to know when the bank acquired the note. As the Hawaii court noted in a case that parallels this case, *(Bank of America v. Grisel Reyes-Toledo,* Sup. Ct. of Hawaii, SCWC-15-0000005, dated Feb. 28, 2017*)* without a date on the note showing when it was acquired, the bank cannot prove it had the note before it filed the foreclosure.

4) Again regarding the bank's standing, the Florida court found that the bank in that case *(Certo v. Bank of N.Y. Mellon,* Court of Appeal of Florida, First District, April 3, 2019, Decided, No. 1D17-4421, *Reporter,* 2019 Fla. App. LEXIS 5128*)* failed to prove standing in claims similar to those made by Bank of America in this case. Acquisition by merger was not proof of standing.

5) The Dalens presented a Record of Appeal of over 1,100 pages documenting the unlawfulness and the fraud perpetrated on the Dalens by Bank of America and FNMA. In one of the bank's reply briefs to the South Carolina Appellate Court, the attorney for Bank of America stated that "even if it was fraud, we have the note." In my reply I noted to the court that fraud does indeed matter. If a bank can use fraud to obtain money and property that the bank is not rightfully due, and the courts do nothing to stop them, then the rule of law is broken and our justice system no longer functions, and the people have nowhere to turn.

6) In the Dalen's answer to the bank's complaint, we demanded a jury trial as is our right. This right was denied by the court on statutory grounds, in violation of the U.S. Constitution and numerous Supreme Court rulings. *(U.S. Constitution, 7th Amendment)*

The case of *Builderama v. Morton,* 307 S.C. 440, 415 S.E.2d 796, 1992, involves a collection action that was referred to the Master where the defendant had demanded a jury trial. The court ruled that the trial

judge erred in denying a jury trial. A "substantial right" should not be lost by a failure of the appellant(s) to follow procedure. For my wife and me to lose a substantial right due to procedural error is antithetical to the American concept of justice.

In *Miranda v. Arizona,* 384 U.S. 436 (1966) the Supreme Court, referring to the rights guaranteed by the Constitution of the United States, stated that there shall be no rule-making that would abrogate it. The Dalens believe that the outcome of this case would have been much different had we been able to present our case to a jury of our peers.

7) The Christian Bible speaks of unjust weights and measures, and this is what we have today with our fiat currency and our Federal Reserve banking system.

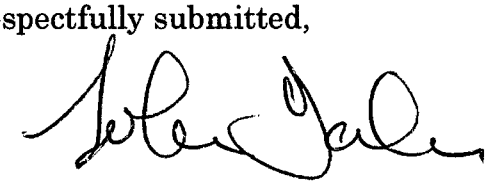
CONCLUSION

Over ten years of court hearings and briefs, I believe that I have provided the courts with overwhelming evidence of the fraudulent and unlawful foreclosure activities engaged in by the bank(s). The courts have failed in their core duty to protect the rights and property of the citizens. I am not the only one who has been a victim of an unlawful foreclosure. The Hawaii court case is the perfect example of another homeowner who has been victimized by Bank of America, N.A., in the same way that I have been.

In 2008, after the financial crisis, Congress set up a commission to study the cause of the economic collapse. This commission found that the blame rests squarely with banking and financial institutions. The Fifty States Attorneys General filed suit against these institutions and listed the unlawful activities in their complaint. Many of these activities occurred in our case. The banks settled this lawsuit out of court for millions of dollars, and then the banks continued with their unlawful practices. Obviously this lawsuit did not stop the banks from engaging in unlawful foreclosures. Here is an opportunity for the court to step up as Statesmen and hear this case to give clarity to the lower courts as to how these cases should be decided.

The Petitioner moves the Court to grant this rehearing on the petition for writ of certiorari.

Respectfully submitted,



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Dated: June 29, 2020

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CERTIFICATION BY PETITIONER FOR PETITION FOR REHEARING

John Dalen hereby certifies that this petition for rehearing complies with Paragraph 2 of Rule 44, and is made in good faith and not for delay.

Dated: June 29, 2020

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