19-8374

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

ORIGINAL

PETITION FOR WRIT OF MANDAMUS

TO THE FEDERAL BANKRUPTCY COURT

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

CASE NUMBER: 3:15-BK-02371-CJJ

SHA'RON A. SIMS

PRO SE

9519 ARBOR OAK LANE

JACKSONVILLE, FLORIDA 32208

904-802-9521

PARTIES TO THE CASE

THE FOLLOWING PERSONS ARE PARTIES TO THE CASE:

1: SHA'RON A. SIMS, PETITIONEER. PRIVATE PERSON. 9519 ARBOR OAK LANE, JACKSONVILLE FLORIDA 32208: PHONE 904-802-9521

2. THE HONORABLE JUDGE, CYNTHIA J. JACKSON

UNITED STATES BANKRUPTCY JUDGE

MIDDLE DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

300 NORTH HOGAN STREET

JACKSONVILLE, FLORIDA 32202

3. WELLS FARGO BANK, NA.,

C/O

Stefan Beuge

2001 NorthWest64th Street

Suite 100

Fort Lauderdale, FL 33309- 1844

4. **Trustee, CHAPTER 13**

Douglas W. Neway

P O Box 4308
Jacksonville, FL 32201

QUESTIONS PRESENTED

Since the founding of this Nation, and throughtout this Nation's history, juries have been regarded as, and have been, the guaradian of the citizens from opressive laws and juges. A jury is freedom, prosonified.

In England, the Jury is seen as "little Parliment" and a civil liberty without equal. ("Each jury is a little parliament...No tyrant could afford to leave a subject's freedom in the hands of tweleve of his countrymen. So that a trial by jury is more than an instrument of justice and more than one one whell of the consistution: it is the lamp that shows that freedom lives." Sir Patrick Delvin, Trial By Jury 164 [1956])

In ***The Federalist Papers : No. 78: The Judiciary Department*** (https://avalon.law.yale.edu/18th_century/fed78.asp) Hamilton, writing under the name of PUBLIUS, Wrote: *"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No . . . act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. .....It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority..... A constitution is, in fact, and must be regarded by the judges, as a fundamental law. ....Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; the judges ought to be governed by the latter [the Constitution] rather than the former[acts of congress]. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental... Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress...That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission."*

When Hamilton wrote of "*That inflexible and uniform adherence to the rights of the Constitution, and of individuals*", Hamilton was speaking about the command within the Constitution, directed to the Judges of the new nation: *"every judge in every state shall be bound"*. This is an explicit limitation on the power of judges, with lifetime tenure and who, because of that lifetime tenure, cannot face reelection by the people, to be bound by the limits of our charter. Hamilton's statement "*There is no position which depends on clearer principles,*

than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No . . . act, therefore, contrary to the Constitution, can be valid." make this clear.

QUESTION: DO DEBTORS IN THIS NATION HAVE A RIGHT TO JURY TRIAL, WITHIN THE CHAPTER 13 CONTEXT, WHEN DISPUTING ISSUES WITH RESPECT TO A CLAIM ON A PRIMARY RESIDENCE?

QUESTION 2: ARE DEBTORS' RIGHTS TO DUE PROCESS, UNDER THE 5TH AND 14TH AMENDMENTS, WITHIIN THE FEDERAL CONSITUTION, DENIED WITHIN THE CHAPTER 13 BANKR. CONTEXT, WHEN A BANKR. COURT DECIDE THAT SECTION 1322(B)(2) PROTECTS A CLAIM AGAINST THE DEBTOR'S HOME WITHOUT A FULL HEARING, ALLOWING THE DEBTOR TO PRESENT EVIDENCE, OR SPEEK, TO CHELLANGE THAT CLAIMS' VALIDITY?

QUESTION 3: DO JUDGES USURP THE POLITCAL POWER OF THE CITIZENS BEFORE IT WHEN THE COURTS DENY THAT CITIZEN'S RIGHT TO DU PROCESS, EQUAL PROTECTION OF THE LAW AND A JURY TRIAL, AND THEREFORE ENTER AN ORDER THAT IS CONSITUTIONALLY INVALID.

STATUTORY PROVISIONS

OTHER AUTHORITY

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue to review the judgment of the District Court below.

OPINIONS BELOW

Sims isn't aware if the Bankruptcy Court's orders are published, However, each are attached at App a "A", the original order dismissing Sims Bankr. Case, and "B", Order denying vacature and new trial.

STATUTORY AND CONSITUTIONAL PROVISONS

The 5th and 14th Amendments' Due Process Clauses. The 7th Amendment Right to a Jury Trial. The 14th Amendment's Equal Protection, including the Equal Application, of laws. US Federal Bankruptcy Code, Section 1322(b)(2).

JURISDICTION STATMENT

THIS COURT has jurisdiction over this petition for Mandamus under **28 U.S. Code § 1651**, the **All Writs Act.** The Bankr. Court entered its opinion on April 28, 2717. The Bankruptcy Court entered its opinion, dismissing the case on Feb___, 2020. The Bankruptcy Court entered its decision, denying Sims Motion for vacatur and rehearing on Feb.___, 2020 Additionally, this court has jurisdiction over this matter because Sims's Claim, in part, rest on a deprivation of her Constitutional rights. "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))***

The All Writs Act confers jurisdiction to this Court, as an aide to this Court's jurisdiction. It is appropriate to issue this writ, because this court has jurisdiction of **Appeal No: 19-7612,** which is an appeal directly related to the main bankruptcy case. **Appeal No: 19-7612** deal with Claim No. 3, the Wells Fargo Claim, in that Sims is contesting, through an Adversarial Proceeding, the Amount, Secured Nature and the ownership of the Claim. **(See F.R. of Bankr. Procedure: *Rule 7001. Scope of Rules of Part VII: (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);)***

The bankruptcy Court's action directly hinders, or threatens to hinder, this Court's proper appellate and supervisory role within the Federal Judicial system, by rendering, or potentially rendering, moot the matters on appeal properly before this Court in **Appeal No: 19-7612.**

In *Marbury v. Madison, 5 U.S. 137, 2 L.Ed. 60, 2 L.Ed. 2d 60 [US S.Ct. 1803]*, this Court held that *"To enable this court, then, to issue a mandamus, it must be shown to an exercise of appellate jurisdiction, or to be necessary to enable them to, exercise appellate jurisdiction".* **(see *Roche v. Evaporated Milk Assn., 319 US 21, 63 S. Ct. 938, 87 L. Ed. 1185 [S. Ct. 1943]*)**

Further, this Court has held that mandamus shall issue in other cases as well. (***"exceptional circumstances amounting to judicial usurpation"*** ***Kerr v. United States District Court for Northern Dist. Of Cali. 426 US 394, 96 S. Ct. 2119, 48 L. Ed. 725 [S.Ct. 1976]***. Sims argues that the actions of the bankruptcy court usurps the authority of this Court, by deciding the matters on dispute within this Court's jurisdiction. The Matter discussed at the hearing, in all substantive respects, are the issues currently before this Court within **Appeal No: 19-7612.**

Finally, Sims argues that the Bankruptcy Judge usurped the power of Sims, as an American Citizen, under the Federal Constitution. When judge Jackson, knowing that the issues were on appeal, or issues that she was about to decide are on appeal, before this very Court, instructed Sims not to testify, the Judge Jackson usurped Sims' constitutional power, based on Our Founding Father's understanding of the Federal Constitution, to demand that Sims' Due Process Rights, under the 5th and 14th Amendments, Equal Protection Rights, under the 14th Amendment and 7th Amendment rights, to a Jury Trial, be respected and to limit the actions of the Federal Government, including the Federal Judiciary.

Judge Jackson, occupying the position of Judge, within our governmental structure, is an agent of the third branch of government, even if she occupies an Article I position. Under either view, Article I or Article 3, of the Federal Constitution, Judge Jackson is nonetheless an agent for the Federal government and is limited by the powers of that government.

Judge Jackson, in deny Sims the right to Speak and to present evidence, usurped the Political Power of Sims, within our Constitutional Structure. In ***The Federalist Papers : No. 78: The Judiciary Department*** (https://avalon.law.yale.edu/18th_century/fed78.asp) Hamilton, writing under the name of PUBLIUS, Wrote: *"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No . . . act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is*

greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. .....It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority..... A constitution is, in fact, and must be regarded by the judges, as a fundamental law. ....Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; the judges ought to be governed by the latter [the Constitution] rather than the former[acts of congress]. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental... Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress...That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission."

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exercised, is void. No . . . act, therefore, contrary to the Constitution, can be valid." make this clear.

Again, a denial of a jury trial, Due Process rights and equal protection and application of law rights, is a denial of Sims' constitutional rights which go far beyond mere judicial concerns. It's a political right. In the words of the **federal farmer and Anti-Federalists**: *"it is essential in every free country that common people should have a part and share of influence in the judicial as well as the legislative department. Period. The trial by jury in the judicial department, and the collection of the people by their representatives in the legislature... Have procured for them, in this country, their true proportion of influence, and the wisest and most fit means of protecting themselves in the community the situation, as jurors and representatives enable them to acquire information and knowledge in the affairs and government of society, and come forward, in turn, are the sentinels and guardians of each other."*

Thomas Jefferson went further, in 1789 Jefferson stated: *"it is necessary to introduce the people into every department of government... Were I called upon to decide whether the people had best be omitted in the legislative or judicial department, I would say it is better to leave them out of the legislative."*

Tocqueeville said it best: *"the jury is, above all, a political and not merely judicial institution... The jury is that portion of the nation to which the exact execution of the law is interested, as the legislature is that part of the nation which makes the laws, and in order that society may be governed in a fixed and uniform manner, the list of citizens qualified to serve as jurors must increase and diminish with a list of electors".*

When Judge Jackson denied Sims' Due Process, equal protection and application of laws and the Right of a Jury to Decide that factual issues of Claim 3, Judge Jackson acted outside of the authority, we the people, granted the Judicial Branch of government. No judge can do that which the constitution forbids. From the founding of this nation, such acts are void ab initio. Invalid and void of any legal effect. According to our founding fathers, because the constitution is fundamental law and that constitution limits the breath and scope of a judge's authority and power.

In the words of one Anti-Federalist pamphlet: *"judges, unencumbered by juries, have been ever found much better friends to government then to the people. Such judges will always be more desirable than juries to would-be tyrants upon the same principle that a large standing army is ever desirable to those who wish to enslave the people." (**An Old Wig, Volume Eight, reprinted in 3 The Complete Anti-Federalist 46, 49; by Herbert Jace touring edition 1981**.)*

BACKGROUND OF CASE AND ISSUES

Sims filed for chapter 13 protection on June 15, 2015, after she was stricken with cancer the first time. Sims has had a second encounter with cancer during these proceedings.

Before the need for Bankruptcy protection, Sims reached out to Wells Fargo, the servicer of Sims' Mortgage, to seek a way to avoid the bankruptcy process all together. Sims made this effort before she missed the first payment, because she knew that the road ahead was going to be tough, and it was.

Wells Fargo agreed, verbally, to work with Sims by modifying the payment arrangement. Sims Asked for, and Wells, verbally agreed, to put one year of the payments on the backend of the note. A modification of, not amount, but of timing of payments. Sims did not wish to not pay the mortgage, but given that the surgeries and chemotherapy was going to take some time, and that Sims had to continue to eat, pay for lights and water, pay for medicines and Co-Pays for hospital stays and office visits and pay for the medications she would need to take at home, Sims wanted to be proactive.

Wells Sent Sims paperwork, outlining the verbally agreed to modification of payments. However, Wells, after Sims did all that she was required to do, by Wells, told Sims that they simple would not modify the loan.

Sims later found out that Wells, according to the PSA, agreed to not modify Sims' mortgage under any circumstance. Agreeing with Sims, even if just verbally, that they would Modify the mortgage payments, just in terms of timing of the payments, but having agreed with the Pass Through Trust, long before the request was even made, was a misleading act and statement. Wells Fargo never intended to Modify Sims's Loan: even though Sims' contract called for at least an honest review of that option, from time to time over the 30 year term of that contract.

During the AP Matter, currently before this Court **(Appeal No: 19-7612), Wells argued before the District Court, within its motion to dismiss the APP Matter, that Wells "could have asked" the trust to modify the loan.** This was an admission that Wells did in fact, as Sims has long claimed, that Wells, when it agreed to modify the payment schedule, had no intent to do so. Wells Didn't say we "asked the Trust" to allow modification, Wells stated that they "Could have asked" the trust, which means they never did ask.

Sims discovered, after the filing of the Bankruptcy Protection action, that Wells Fargo was a guarantor of the Mortgage. This meant that, under Florida Law, pre bankruptcy, Wells Fargo's action of payment of the mortgage, principle and interest, rendered the amount paid by Wells Fargo, a separate and distinct obligation, to Wells, owed by Sims, which was unsecured.

This was a bifurcation, under the operation of law, pre bankruptcy, of the secured note. That is, the amount paid by Wells, as guarantor, was now unsecured and the remaining amount, held by the Trust, remained fully secured. Again, by operation of law, pre-bankruptcy.

As such, the POC filed by Wells, as fully secured, which had arrearages attached thereto, was in fact not a fully secured debt, as presented by Wells Fargo. The Arrearages were/are in fact the unsecured guarantor's obligation, that was no longer secured under Florida Law.

Sims filed a challenge to that POC, through the adversarial process within bankruptcy. This challenged the amount, the extent of the secured nature and the ownership of the claimed debt, under the POC.

In the adversarial process, Sims demanded that all issues of fact be determined by a jury. This is Sims' constitutional right to do so. Several times during the AP Matter, Sims had to fend off attacks within the main Bankr. Case to dismiss that case. Each time, before two different judges, Sims was able to argue her case, and, because

Sims' case is arguable, under the law, and fully supported by law, Sims prevailed in those efforts.

In January of 2020, after this case had been ongoing for five years, or so, Judge Jackson was assigned to this case, after the retirement of the Honorable Judge Glenn. Judge Jackson was presiding on this case for only three weeks before the hearing on February 19, 2020. Sims' case wasn't the only active case on the roster; therefore, Sims asserts that Judge Jackson didn't review the five-year history of the case, nor reviewed the case filings, one such filing by Sims contained 1094 pages alone.

However, Judge Jackson, at the first sitting on this case, after she was assigned this case, conducted the hearing as if she was aware of the persons and personalities, as well as the facts, before her. She simply could not have known these things; it was her first sitting.

At the hearing, Judge Jackson appeared agitated, frustrated and predisposed to dismiss this case.

Judge Jackson refused to allow Sims to speak in her defense, or the defense of Sims' case. Judge Jackson did not allow Sims to introduce evidence in that hearing. And, because Judge Jackson instructed Sims in open Court, multiple times, to not speak on any matter that was on appeal before this Court, Sims could not point the Court to documentary evidence already within the case, including the filing containing 1094 pages I spoke about above.

However, Mr. Freeman, Atty for the standing trustee could speak about all matters that were on appeal and even introduced evidence, including the docket sheet from the district Court and the 11th circuit Court of appeals. Wells could speak, but not Sims.

Not surprising to any, Judge Jackson decided the matter against Sims' position and constitutional rights. This Matter was the validity of the debt, the validity of the amount of the debt and the secured nature of the debt. All things which are properly before this Court on Appeal **(Appeal No: 19-7612)**

Again, Sims Could not speak at all on those matters.

Sims filed a Motion to vacate the Order and have a new trial. Sims Argued that Judge Jackson denied Sims' Due process Rights under the 5th and 14th Amendments. Sims argued that the Court made factual determinations of matters that were a part of the AP Matter and that those factual issues are the issues that Sims demanded a jury to determine. Sims also argued that when Judge Jackson order Sims to not speak on any matter that was on appeal, and the matter discussed at the hearing were all on appeal, that Judge Jackson denied Sims equal protection of the law, by allowing Mr. Freeman and Wells Fargo to speak on those same matters.

Judge Jackson, within two days of the motion being docketed, denied that motion without a hearing. Sims notes that Judge Jackson doubled down on saying, within the order, that she, Judge Jackson, "*explained to Sims*" that Sims couldn't do what Sims was attempting to do with respect to Section 1322(b)(2) of the bankruptcy code.

Judge Jackson, because she didn't Allow Sims to speak, had no idea what Sims' position was: How could she? Sims was silenced. Judge Jackson allowed Wells and Mr. Freeman to "explain" to the Judge what Sims' intention was. Without Surprise, neither explained what Sims' position is, only what their positions are.

Sims also note, that as a matter of fact, and bluntly speaking, Judge Jackson did not deny, in her order denying the motion for retrial, that she did in fact instruct Sims to not speak and that the Judge did in fact refuse any and all evidence Sims wished to present at the hearing. Bluntly speaking, Judge Jackson Could not deny

that, because, as Sims pointed out in Sims' motion for a retrial, the transcripts of the hearing would fully support that charge.

REASONS TO ISSUE WRIT

VOID JUDGMENT

A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. ***Earle v. McVeigh, 91 US 503, 23 L Ed 398.*** See also ***Restatements, Judgments ' 4(b)***. ***Prather v Loyd, 86 Idaho 45, 382 P2d 910***.

The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. ***Hanson v Denckla, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228.***

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. ***30A Am Jur Judgments " 44, 45.***

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. ***Renaud v. Abbott, 116 US 277, 29 L Ed 629, 6 S Ct 1194.*** 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***.

A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. ***Sabariego v Maverick, 124 US 261, 31 L Ed 430, 8 S Ct 461***, and is not entitled to respect in any other tribunal

When Judge Jackson rendered the decision, stemming from the Feb. 19, 2020 hearing, that judgement was void, as a matter of law. Judge Jackson simple refused to allow Sims to speak on any matter that was important to the claim, because that matter was on appeal.

Sims couldn't dispute the narrative as to Sims' AP matter, the merits Sims' claims or what Wells Fargo and Mr. Freeman attributed Sims' actions to (Sims' intentions).

The Court rendered decisions that, given the circumstances, wasn't founded on facts, but mere conjecture of Wells Fargo and Mr. Freeman. Not surprising, neither portrayed Sims' position correctly. Why would they, they are opposed to Sims' position.

The Court, Judge Jackson, only allowed Sims to speak when the Court asked questions. These questions were all predicated on the assumption that Wells Fargo and Mr. Freeman spoke the truth about Sims' position, and therefore, the conclusions drawn by Wells Fargo and Mr. Freeman formed the basis of those questions.

However, asking Sims if she could afford $10,000.00 per month is simply not the same as asking Sims if she owes $10,000.00 per month on a claim that is only suggested, by the POC, as being secured. The answers to that questions move the inquiry into different directions. The direction of the inquiry as to if Sims owes the secured creditor, the Trust that owns Sims' mortgage, $10,000.00 per month will lead to the issues of whether the Amount is valid, whether the secured nature is valid and if there should be two POCs instead of one. (one POC being secured, the other unsecured)

When Judge Jackson, in her order denying retrial to allow Sims to exercise Sims' due process rights, states that Sims agreed that Sims couldn't pay $10,000.00 per month, was little more than a cover, to give a thinly veiled sense of legitimacy to the Judges' actions. But is it most misleading at best?

How could Judge Jackson come to the conclusion that Sims would in fact owe the Trust $10,000.00 per month, if Judge Jackson didn't make factual determinations about the validity of the amount, the secured nature or the ownership of Claim 3, which is on appeal. Furthermore, how could Judge Jackson reach that decision without Sims being allowed to challenge those issues, with testimony or evidence? Finally, how could judge Jackson reach those conclusions of fact, and then law, without destroying Sims right to a jury trial, as Sims has demanded under the federal constitution.

The short answer: Judge Jackson simply couldn't reach those decisions, without destroying Sims' constitutional rights in the first place. Even in a summary motion

hearing, Judge Jackson was required to limit her role to soley determinig if there were issues for a trial. Judge Jackson wasn't allowed to make factual determinations of disputed matters.("*it is clear enough from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. Adickes, supra."* ***((Anderson v. Liberty Lobby, Inc., 477 US 242 - Supreme Court 1986))***

Finally, each judge, before Judge Jackson, held that the issues to be decided on Claim three couldn't be decided while the AP matter, which is already before this Court, was undecided. This is not just because of the constitutional issues at play here, but because the issues are plainly outside of Judge Jackson's jurisdiction to decide. The matter wasn't properly before her. Therefore, Judge Jackson's Order is not merely voidable, but void ab initio.

The Order entered into the record, dismissing the case is also void, because the matter Judge Jackson had to determine, in order to dismiss the case on the grounds which Jude Jackson claims, would deal with matters both on appeal and which are required, based Sims' demand for a jury trial and the 7th Amendment, for Jury to decide.

First, the Court has held multiple times that the issues, determined by the Court, was not properly before the Court because the issues are properly on appeal. (*"filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal."* Griggs v. *Provident Consumer Discount Co.*, 459 U. S. 56, 58 (1982) *(per curiam).)*

Therefore, the matter was simply not within the court's jurisdiction to decide. Next, even if the Court had jurisdiction, which it did not, the matter was to be decided by a jury as Sims demanded. Judge Jackson did not have the authority to deny Sims' demand for a Jury to determine the facts of this matter. This Court has held that no court should directly or indirectly take the jury function. (***Walker v. New Mexico & Southern Pacific Railroad, 165 US 593 [1897]*** 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*"; ***Blakely v. Washington, 526 US 296 [2004]*** *"the right of a jury trial...is no mere procedural formality, but a fundamental reservation of power in*

our constitutional structure")) To that end this Court has consistently held that belief, of the judge should not play a role in any decision and neither should a court make factual determinations on a motion for pleading sufficiency.

When a court has denied the litigant their right to a jury trial, this Court has rightly maintained that a Mandamus should issue to ensure that trial. (***In re Simons, 247 US 231 [1918]; Beacon Theaters Inc. V. Westover, 359 US 500, 511 [1959]*** *"whatever differences of opinion there may be in other types of cases.... the right to grant mandamus to require a jury trial where it [has] been improperly denied is settled."; **Dairy Queen Inc. V. Wood, 369 US 469, 472 [1962]*** Appeals Courts have ""*responsibility .... to grant mandamus where necessary to protect the constitutional right to trial by jury.*") Sims, on no uncertain terms, has demanded a Jury Trial. The 7th Amendment, the rules of the Federal Courts and Federal Statute so guarantees Sims this trial. However, Jue Jackson Simply ignored Sims, and Sims' Constitutional Rights.

SECTION 1322(b)(2)

Judge Jackson spoke of Section 1322(b)(2) of the Bankr. Code, therefore, Sims must address this issue as well, though Sims couldn't speak of this Issue at the hearing before Judge Jackson-because it's on appeal here.

If a creditor files a poc against a debtor's primary residence in a chapter 13 bankruptcy proceeding and that debtor do not challenge the POC in any way whatsoever, then section 1322 (b) (2) prevents any amount on that POC to be removed. This is because, an unchallenged POC it's automatically allowed. However, a challenge POC is not automatically allowed, for there are questions as to the validity of the debt underline that POC. ("*Under the Bankruptcy Code, a proof of claim that is not objected to by the debtor or another party is automatically allowed....Mr. Watson objected to both of the proofs of claims, meaning the claims were not automatically allowed. Instead, the bankruptcy court was required to determine, after notice and hearing, whether the claims would be allowed and **the amount of each.***" ***(Walston v. PYOD, LLC, No. 14-14593 (11th Cir. June 2, 2015))***

Therefore, if you asked the question of does section 1322(b)(2) automatically protect the debt underlining the POC in a chapter 13 case, with that claim being secured to

the debtor's primary home, the answer is **maybe**. Maybe, because the answer depends on if a challenged has been made to the debt's validity and if that challenge was successful or not.

However, if the debtor has not only properly challenged the POC, as to the amount of the claim, the secured nature of the claim and the ownership of the claim, and that challenge is successful, than the answer to the question of does section 1332(b)(2) ,of the bankruptcy code, prevents the removal of any amount of the claim or deny the secured status of a claim, in whole or in part, will be answered **no.**

Under ***Nobleman v. American Sav. Bank (92-641), 508 U.S. 324 (1993)***, Wells Fargo's interest, as a guarantor, isn't recognized as a right with a security interest in Sims' Property. As such, that portion of the claim, even if it is included on a POC which claims to be secured, is allowed, and required, to be removed from that claim, not as a bifurcation of a single claim, but as the removal a claim, which cannot be attached thereto.

There is a loud, deafing, issue present in the actions of both the Bankruptcy Court and the 11th Cir. Courts (the Bankr. Ct., District Court and the 11th Cir. Panel) in this case and the appeal 19-7612. Sims has been subjected to nothing less than a full assault, by the Courts themselves, in a balantly unconstitutional process that defyies logic, reason, fact and the consitutional limits of the federal government.

Sims has alleged, properly within her complaint, and in every single filing that Wells Fargo is a Guarantor of Sims' Mortgage and, as such, her complaint, and challenge, is properly plead. The Courts have either ignored Sims' complaint, didn"t believe Sims' complaint, or, at the 11thh Cir. Panel, and with Judge Jackson, made factual determinations when Sims has bsolutely determined the execerise of her 7th Amendment right to a Jury Trial.

To put to put a fine point on the matter, Wells Fargo is in fact a guarnator of mortgages within securitization. In Wells Fargo's Basil III report to the Securitzation, Wells Fargo clearly states these words: ***"Off-balance sheet securitization exposures include commitments, guarantees, and derivatives to special purpose entities (SPEs)."*** (SeeWells Fargo's Basil III Report toe SEC, APP __.) Sims has produced multiple documents, from Wells itself wherein Wells itself declare Wells as a guarantor.

How then, when Wells Fargo has openly, plainly and repeatedly stated that it provides guarantees in public documents, with respect to securitization, that the Courts have found that there simply isn't a guaranty present within this case. Sims has in fact lived up to her responsibility to properly support her complaint, but the sheer power and influence of bias, in favor of creditors, and against debtors, by the Courts, have created what our founding fathers rejected: A Star Chamber! And, the

Founding Father's answer to that problem, the problem being Courts becoming a "Star Chamber", is denied by the Courts: The 7th Amendment Jury Trial.

This Court has held that a payment, made by a guarantor, keeps an installment loan current. ***(Reynolds v. Douglas, 37 US 497 [1838])*** While the Secured lender (original lender as the case maybe) is satisfied, the debtor owes the guarantor for the payments made by the guarantor to the lender. ***(Putnam v. Commissioner, 352 US 82 [1956])*** *"The familiar rule is that, instanter upon the payment by the guarantor of the debt, the debt's obligation to the creditor becomes an obligation to the guarantor"*; **see also *United States v. Munsey Trust Co., 332 US 234, 242; Aetne Life Ins. Co. Middleport, 124 US 534, 548; Brandt, suretyship and Guaranty (3rd Ed) Sect. 324; 38 C.J.S., Guaranty, ,Sect. 111; and 24 Am. Jur., Guaranty, Sect. 125)*** **See APP- 154-159**

This Court has held that that State law controls the secured nature of a claim. ***(Butner v. United States, 440 U.S. 48, 54-55, 99 S. Ct. 914, 917-18, 59 L. Ed. 2d 136 (1979)***). Under Florida Law a Guarantor of a mortgage do not have a secured interest within the property secured by the mortgage. (*"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))***.

Therefore, it appears that if it's true that a guarantor's payment keep the installment note free from default (***Reynolds v. Douglas, 37 US 497 [1838]***) and that once the guarantor make the payment required by the guaranty, that obligation belong to the guarantor and not the original lender (***Putnam v. Commissioner, 352 US 82 [1956])*** Then Neither the lender, nor its agents, have a claim on the Sims's Property (***American Waterworks, ETC. Co. v. Home Water Co., 115 FED 171 [App Dis. 194 US 639, 24 S.Ct., 48 L.Ed 1162***].

The language in the PSA Guaranty clause clearly states that the guarantor, wells, intended to pay the Mortgage, principle and interest, when, but only when, the borrower fails to pay. (APP___, Para___: *"P&I Advance" Defined as: As to any*

mortgage loan or REO property, any advance made by the applicable Servicer in respect to any remittance date representing the aggregate of all payments of principle and interest, net of the Servicing fee, that were due during the related period on the mortgage loans and that were delinquent on the related due period on the mortgage loan")

State law controls the secured nature of the obligation (***Butner v. United States, 440 U.S. 48, 54-55, 99 S. Ct. 914, 917-18, 59 L. Ed. 2d 136 (1979)***) and under Florida law a guarantor of a mortgage do not have a secured interest within the property secured by the mortgage (***Cukierman v. Bankatlantic, 89 So. 3d 250 (Fla. Dist. Ct. App. 2012***), than it also appears to be true that no default has occurred with respect to the original lender which would allow it to foreclose on Sims Property.

An assignment by the Lender, to anyone, cannot re-attach rights it did not have at the time of the Assignment, because a lender cannot assign greater rights than it possesses at the time of the transfer. (***Parrie State Bank v. United States, 164 US 227 (1896)***). Allowing the secured creditor to receive payment from the guarantor, while maintaining the secured interest within the property, stemming from those payments made by the guarantor, violently confronts the one satisfaction rule. (***Restatement (second) of Torts, Section 885 (3)(1979); In Re National Mortgage Equity Corp Mortgage Pool Certificates, 636 F. Supp 1138 (C.D. Cal. 1986); Zenith Radio v. Halzetine Research, Inc., 401 US 321, 348, 91 S.Ct. 795, 811, 28 L.Ed. 2d 91971); Mac Kethan v. Burrus, Cootes & Burrus, 545 F.2d 1388, 13390-91(4th Cir 1976), Cert Denied, 434 US 826, 98 S.Ct. 103, 54 L.ED 2d 1977)***

Additionally, this Court has held that a secured debt cannot go through the bankruptcy process and become unsecured. "Moreover, we have specifically recognized that "*[t]he justifications for application of state law are not limited to ownership interests," but "**apply with equal force to security interests, including the interest of a mortgagee.**"* ***Butner, supra,*** at 55. (***Nobleman v. American Savings Bank, 508 US 324 - Supreme Court 1993***) **In Florida , a guarantor of a mortgage do not have a security interest in the property subject to the mortgage. ((***"*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)

This Court has held that a Valid payment should be determined in accordance with common law understanding of a payment (***Seminole Nation v. United States, 316 US 286)*** and when Payment is deposited into the accounts of one who was to receive payment, payment has been effectively made. (***United States v. Dann, 470 US 39***)

A valid Payment is also determined by if the payments made benefits the lender. This Court's holding on Guarantors' payments clearly show that lenders are satisfied by such payments. (***Reynolds v. Douglas, 37 US 497 [1838]***); ("***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.)***). Not recognizing the validity of the payment made by the guarantor in this instant case "*ignores* ***Restatement Section 885(3)*** *which provides that a payment made in compensation of a harm diminishes the claim against other tortfeasors "whether or not it is agreed to at the time of payment".* (***In Re National Mortg. Corp. Mortg. Pool Certificates, 636 F.Supp. 1138 (C.D. Cal. 1986)***(**Citing** ***Screen Gems, 453 F.2d at 554***)) (***Prigal v. Kearn, 557 So. 2d 647 (Fla. Dist. Ct. App. 1990). at 649.*** "[*u]nder the facts sub judice, it would be manifestly unjust to allow the original lender to reacquire fee simple title to the land and also recover the full amount of the purchase money mortgage note given to him upon the occasion of the initial sale.*") When this occurs, the one satisfaction rule applies in all cases. However, in this instant case, and cases like this across the country, where debtors assert this rule of law against a creditor, The Courts rule that no such satisfaction has occurred. The sole reason appears to be, is because it's an action against a creditor.

Therefore, by operation of law, Wells, as guarantor, holds a separate and distinct obligation, wholly unsecured under Florida law, and cannot be co-mingled with a secured claim, under the bankruptcy code. Creditors cannot work both sides of the issue at once. Creditors cannot have the Courts protect their secured claim from becoming unsecured claims AND Rely on Courts to elevate their unsecured claim, no matter how they become unsecured, to secured status. Such circumstances treat the debtor as second-class citizens before the Courts: Unequal in protection and application of the laws.

Keeping in mind that the Court Nobleman v. American Sav. Bank (92-641), 508 U.S. 324 (1993) dealt with a SINGLE claim, which had an unsecured portion thereon. Sims is distinguished from Nobleman, because Sims argues, under Florida law, which is pre-bankruptcy law, that Wells Fargo, as the guarantor, has an wholly separate claim, from the trust which owns Sims' mortgage, and that claim is wholly unsecured-pre bankruptcy law. An unsecured claim under Florida law, cannot be secured under the bankruptcy Code.

Courts have held, Since Nobleman, that wholly unsecured claims may in fact be fully avoided. **(In re Pond, 252 F. 3d 122 - Court of Appeals, 2nd Circuit 2001)** *"The United States District Court for the Northern District of New York (Lawrence E. Kahn, Judge) held that plaintiffs could void defendants' lien because the lien was wholly unsecured under 11 U.S.C. § 506 and, therefore, was not "secured" by a residential property within the meaning of Section 1322(b)(2). For the reasons stated below, we affirm."*)

Sims' position is that the Nobleman Court focused solely on the rights attached to the obligation from state law. More importantly, Sims points out that Sims and Wells, as guarantor, do not have a contract, implied or otherwise, which allows Wells to attach a security interest to her home. This is what courts have stated the ruling in nobleman mean. *"Determining that the term "rights" in § 1322(b)(2) refers to rights reflected in the relevant mortgage instrument enforceable by state law, the Court held that § 1322(b)(2) prohibited the debtor from bifurcating the lender's claim into secured and unsecured portions. Id. at 331-32, 113 S.Ct. at 2109-11."*(***Lomas Mortg. v. Louis, 82 F. 3d 1 - Court of Appeals, 1st Circuit 1996*****);** ", In re Hammond, 27 F.3d 52 (3d Cir.1994) (note secured by home and by personal property within the home is outside scope of ant modification provision);(**In re Tanner, 217 F. 3d 1357 - Court of Appeals, 11th Circuit 2000)** *"we find the reasoning of the Third and Fifth *1360 Circuits persuasive and adopt the majority view. We agree with those courts that the only reading of both sections 506(a) and 1322(b)(2) that renders neither a nullity is one that first requires bankruptcy courts to determine the value of the homestead lender's secured claim under section 506(a) and then to protect from modification any claim that is secured by any amount of collateral in the residence.* See *In re Bartee,* 212 F.3d at 290, *In re McDonald,* 205 F.3d at 611. *Any claim that is wholly unsecured, however, would not be protected from modification under section 1322(b)(2). To hold otherwise and extend the ant modification clause to even wholly unsecured claims would vitiate the Nobleman Court's pronouncement that "[debtors] were* correct in looking to § 506(a) for a judicial valuation of the collateral to determine the status of the bank's secured claim." 508 U.S. at 328, 113 S.Ct. at 2110.)

The Court asked Sims if Sims could pay $10,000.00 per month. The honest answer is no. The Court never asked, nor allowed Sims speak, about If the Trustees'

Position was her position, and if not-why not. The Court did not bother to seek Sims' position, Sims' Position simply didn't matter to the Court.

Conclusion

Sims respectfully asks this Court to issue the mandamus reversing the Bankruptcy Court dismissing Sims' main bankr. case and Staying all proceedings in that case until final resolution of the AP Matter. This will reserve Sims right to have the AP matter fully heard by a jury and thusly secure Sims' consitutional rights.

Sims' rights to be heard in a court, and dispute issues of fact, are not mere privileges. These are fundamental rights of Sims' Constitutionally guaranteed civil liberties.

No government official, including a judge, has the constitutional authority, recognized by the text of the constitution, to deny Sims' civil liberties. Such would not be guaranties if that were possible.

As Sims has argued before this Court, in Appeal No. 19-7612, the lower courts appear to favor creditors over the constitutional rights of the American citizens. There can be no constitutionally recognized reason for doing so.

Wells Fargo has put forth multiple promissory notes, each with additions and redactions as to endorsements and dates. Wells only source of proof is, without doubt, forged documents, which they themselves cannot determine which is correct or not.

Before February 14, 2017, when Sims put forth her complaint, Wells Fargo put into evidence one version of their supposed note. This note, claimed by Wells Fargo to have never been sold by them, had four endorsements on it. This Note was resubmitted to the Bankr. Court with their Motion to dismiss the AP Matter.

At the April 12, 2017 hearing, on the dismissal of Sims' AP Matter, Sims introduced a Copy of that Note, filed by Wells Fargo in the Duval County Courts (Jacksonville, Florida). At that hearing, Sims walked the Court through the endorsements, including a date of 11/29/13 above Alton Porter's signature. At the hearing on April 12, 2017, Sims proved that the Signature of Mr. Porter was there years earlier, but the date next to that signature was for 11/23/2013. How is that possible. See APP___

However, at the hearing on February 19, 2020, the note was missing an endorsement from Samuel Shelly, which appeared on the right, upper side, of the endorsements and the date above Mr. Porter's signature is now missing.

So, now the Note that was to be sold just once, to Wells Fargo, from the original lender, has one less endorsement and a missing date. Take this into consideration when you also consider that Wells Fargo has often never served Sims with court filings, they filed within this case (during the AP Matter, Serviced Sims so late with other filings that Sims nearly lost the chance to respond and that Wells twice lied to the 11th Cir. Court of appeals within its filings. These items were the reason Sims filed a Motion for Rule 27 Sanctions against Wells Fargo, at the 11th Cir.

Wells Fargo has attempted to defraud the Courts, every, court within this contest, and they will continue this unless the Courts move to ensure the Court's integrity is not destroyed by Wells. The 5th Cir. Court of Appeals has found, as a judicial fact, that Wells treat every debtor within this nations' bankruptcy process the same. (Jones v. wells Fargo....)

So complete is Wells' disregard for the Nations' Court, every State of the union and the Federal Government itself, has Sued Wells for their violation of citizens of this nation within the Bankr. Process. Yet, nothing stops Wells push to destroy this Court system for their own self-interest. Someone must hold them to account, but who? They, Wells Fargo, enjoy the protection from judges, so it seems.... So, there is no reason for a change in their behavior. The Courts turn a blind eye, when Citizens like Sims show the destructive nature of Wells...

When the Court, at the Feb. 19, 2020 hearing, determined that Section 1322(b)(2) protected Wells Fargo's Claim, the Court made determinations of fact, facts which are disputed, properly, in the AP Matter. All without allowing Sims to participate in a case concerning her property rights.

There is no logical way for the Court to have determined that Section 1322(b)(2) protected Claim three, without the Court reaching a decision on if the Amount of the Claim is Correct, if the Wells Fargo is a guarantor or not and if a portion of that claim, under pre bankruptcy law, had a secured right in Sims' Property. All these things are properly before the Supreme Court on appeal.

And, if the Court decided as to if Section 1322(b)(2) protected the claim, without getting into those issues, then the Courts' Actions were arbitrary, in the absolute sense. Because Court would have to admit that, in reaching the decisions that sect. 1322(b)(2) did protect Claim #3, that it didn't consider any evidence, or testimony at all. In either instance, the Court's Order, dismissing the case is Void, not just voidable.

When determining if a debt is valid, we must consider the amount of the debt, not the sufficiency of a piece of paper used to only claim a debt. ***Wolkoff v. AMERICAN HOME MORTG. SERVICING, 153 So.3d 280 (2014)*** (*"It is axiomatic that the party seeking foreclosure must present sufficient evidence to prove the amount owed on the note. Typically, a foreclosure plaintiff proves the amount of indebtedness through the testimony of a competent witness who can authenticate the mortgagee's business records and confirm that they accurately reflect the amount owed on the mortgage... During discovery, the Wolkoffs attempted to obtain copies of all business records that AHMSI intended to introduce into evidence at trial. Despite these efforts and over four years of litigation, AHMSI never provided the records that established the total amount of indebtedness. The mortgage payment history records introduced through Vent were incomplete, out of date, and failed to reflect the current debt owed on the mortgage. These records do not support the dollar amounts contained in the final judgment. There was no testimony or evidence to support the award of interest, taxes, property inspections, property evaluations, or attorney's fees. Accordingly, we must reverse the final judgment of foreclosure.")...("Similarly, in* ***Kelsey v. SunTrust Mortgage, Inc., 131 So.3d 825 (Fla. 3d DCA 2014)****, the Third District reviewed the trial court's evidentiary ruling. Kelsey objected to admission of the bank's records because the records custodian was unqualified and incompetent to testify. The trial court overruled the objection, and the bank submitted the business records that established the amount due on the mortgage. On appeal, the Third District held that it was error for the trial court to admit the documents over objection without proper authentication and reversed and remanded for a rehearing.* ***Id. at 826.); Beauchamp v. Bank of New York, 150 So. 3d 827, 150 So.3d 827 (4DCA, FL 2014)*** (*"Beauchamp is not personally liable for the debt, the amount of the debt owed is important as it relates to Beauchamp's right of redemption, specifically as to the amount due under the judgment in order to exercise his right to stop the foreclosure sale... Thus, the Bank's failure to provide admissible evidence that would establish the proper amount due on the note was not harmless error. Rather, proof of the amount of debt owed was required to allow the foreclosure, and Beauchamp's ownership rights and right of redemption are substantive rights that were*

adversely affected by the error... We... remand the case for further proceedings to determine that amount. ***See Sas v. Fed. Nat'l. Mortg. Ass'n, 112 So.3d 778 (Fla. 2d DCA 2013)****")* (Remand to determine the Amount of (***Debt. Doyle v. CitiMortgage, Inc., 162 So.3d 340 [2nd DCA, FL 20015])***

Even heirs, to decedent's estate, have standing to challenge the amount due under a mortgage. ***Rouffe v. CitiMortgage, Inc. , 241 So.3d 870 (4th DCA, Fl 2018)*** (*"they*

do have standing to challenge the amount due under the note, because it affects their substantive right of redemption under section 45.0315, Florida Statutes (2016). In this case, there was testimony and evidence in the form of a payment history, sufficient to present a prima facie case on damages. ***Wachovia Mortg., F.S.B. v. Goodwill,*** **199 So.3d 346, 348 (Fla. 4th DCA 2016)** (remanding for further proceedings because *"[t]he payment history and testimony of [the bank]'s witness were sufficient to present a prima facie case on damages and withstand involuntary dismissal"*); ***Ottawa Props. 2 LLC v. Cent. Mortg. Co., 202 So.3d 102, 103 (Fla. 4th DCA 2016)*** (*"Because there was some, but insufficient, evidence of the total amount of indebtedness, we reverse on the issue of damages and remand for further proceedings.")"*

The US Supreme Court held that *"This power to allow or to disallow claims includes "full power to inquire into the validity of any alleged debt or obligation of the bankrupt upon which a demand or a claim against the estate is based. This is essential to the performance of the duties imposed upon it."* ***Lesser*** **v.** ***Gray,*** **236 U. S. 70, 74**."... *"[w]hen objections are made, [the court] is duty bound to pass on them,"* ***Gardner*** **v.** ***New Jersey,*** **329 U. S. 565, 573**. "*The whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed.*" (***Katchen v. Landy,,382 U.S. 323 (1966))***

A debt is only assumed valid, unless its disputed. ***Jerman v. Carlisle, McNellie, Rini, Kramer, 559 US 573 - Supreme Court 2010; Walston v. PYOD, LLC, No. 14-14593 (11th Cir. June 2, 2015)*** *"Under the Bankruptcy Code, a proof of claim that is not objected to by the debtor or another party is automatically allowed.....Mr. Watson objected to both of the proofs of claims, meaning the claims were not automatically allowed. Instead, the bankruptcy court was required to determine, after notice and hearing, whether the claims would be allowed and* ***the amount of each.***")

Not only did the Bankr. Court merely assumed that the debt was valid, in the face of a properly challenged claim, this Court did not take any evidence into consideration, nor testimony from Sims. (***Robinson v. Loyola Foundation, Inc., 236 So. 2d 154 - Fla: Dist. Court of Appeals, 1st Dist. 1970*** *"without the defendant having a chance to be heard violates the due process clause of the Fourteenth Amendment to the United States Constitution and is therefore invalid."... ""At common law the action for debt lies for the recovery of a certain or definite sum of money. This has not always meant a particular, fixed sum, but such a sum as can be ascertained from fixed data by computation, or which is capable of being reduced readily to a certainty..."It also lies on various kinds of contracts, including contracts*

of record such as a judgment or decree on simple contracts, express or implied, on a specialty [sic] or bond in which the demand is for the penalty, and for the recovery of statutory penalties and import duties." ***(12 A.L.R.2d 789, 790, § 2.)")***

The Bank. Court, in deny Sims the right to Speak, to present evidence, usurped the Political Power of Sims, within our Constitutional Structure. In ***The Federalist Papers : No. 78: The Judiciary Department*** (https://avalon.law.yale.edu/18th_century/fed78.asp) Hamilton, Writing under the name of PUBLIUS, Wrote: *"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No . . . act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. .....It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority..... A constitution is, in fact, and must be regarded by the judges, as a fundamental law. ....Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; the judges ought to be governed by the latter [the Constitution] rather than the former[acts of congress]. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental... Considerate men, of every description, ought to prize whatever will tend to beget or fortify that temper in the courts: as no man can be sure that he may not be to-morrow the victim of a spirit of injustice, by which he may be a gainer to-day. And every man must now feel, that the inevitable tendency of such a spirit is to sap the foundations of public and private confidence, and to introduce in its stead universal distrust and distress...That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission."*

When Hamilton wrote of "***That inflexible and uniform adherence to the rights of the Constitution, and of individuals***", Hamilton was speaking about the command within the Constitution, directed to the Judges of the new nation: "***every judge in every state shall be bound***". This is an explicit limitation on the power of judges, with lifetime tenure and who, because of that lifetime tenure, cannot face reelection by the people, to be bound by the limits of our charter. Hamilton's statement *"There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is*

exercised, is void. No . . . act, therefore, contrary to the Constitution, can be valid." make this clear.

When Judge Jackson denied Sims' Due Process, she acted outside of the authority, we the people, granted her. No judge can do that which the constitution forbids. From the founding of this nation, such acts are void ab initio. invalid, and void of any legal effect.

SECTION 1322(b)(2) does not pose a danger, real or imagined, to Sims' position.

Sims expressly argues that 1322(b)(2) protect the rights of secured liens, not secured claims, against Sims Home. The Parties to a case need to analyze ;1) The amount of the Claim

:2) the structure of the claim; and, 3) State law to determine if the asserted liens have a security interest that can be attached to the property. Only after those steps can anyone say that section 1322(b)(2) can operate as Judge Jackson "explained" to Sims.

Sims Position is fully supported by Case law, each of which came after this Court's Ruling in Nobleman. None counter to the holding of Nobleman, and none counter the rational of the Congress when it passed the legislation.

In In re Tanner, 217 F. 3d 1357 (Court of Appeals, 11th Circuit 2000) found that reading Nobleman to include the protection of wholly unsecured claims under section 1322(b)(6) would "vitiate the *Nobleman* Court's pronouncement that "[debtors] were correct in looking to § 506(a) for a judicial valuation of the collateral to determine the status of the bank's secured claim." 508 U.S. at 328, 113 S.Ct. at 2110.".(Any claim that is wholly unsecured, however, would not be protected from modification under section 1322(b)(2). To hold otherwise and extend the antimodification clause to even wholly unsecured claims would vitiate the *Nobleman* Court's pronouncement that "[debtors] were correct in looking to § 506(a) for a judicial valuation of the collateral to determine the status of the bank's secured claim." 508 U.S. at 328, 113 S.Ct. at 2110. Id)

There is no destruction of any secured creditors rights, when the debtor removes a claim from the POC because it does not have a security interest within the primary property of the residence. ""Contrary to FirstPlus's contention, this holding does not derogate the protected rights alluded to by the *Nobleman* Court, but rather

recognizes that only the rights secured by some remaining equity will be protected from modification. Indeed,[a]n analysis of the state law "rights" afforded a holder of an unsecured "lien", if such a situation exists, indicates these rights are empty rights from a practical, if not a legal, standpoint. A forced sale of the property would not result in any financial return to the lienholder, even if a forced sale could be accomplished where the lien attaches to nothing. *Lam v. Investors Thrift (In re Lam),* 211 B.R. 36, 40 (9th Cir. BAP 1997), *appeal dismissed,* 192 F.3d 1309 (9th Cir.1999). Extending section 1322(b)(2)'s protection to wholly unsecured junior mortgages would enlarge the rights afforded to those lenders when the mortgagors are forced to file a Chapter 13 petition, inviting unwelcome, and certainly unintended, consequences. *See id.* at 41. The better reading of sections 506(a) and 1322(b)(2), therefore, protects only mortgages that are secured by some existing equity in the debtor's principal residence."(**In re Tanner, 217 F. 3d 1357 - Court of Appeals, 11th Circuit 2000)**

A right that did not exist pre-bankruptcy, cannot be conjured up during the bankruptcy proceedings.

A guarantor of a mortgage in Florida simply do not have a security interest within the property subject of the mortgage.

Wells Fargo occupies the position of a guarantor of sims' mortgage.

The guarantor payment keeps the installment loan current:

The guarantor's payment, therefore , prevented any arrearages.

The arrearages have then to be the guarantor's obligation., which is unsecured.

The obligation belongs to the trust, not the guarantor.

The guarantor's payment fully satisfied the lender (trust)

The arrearages, under the poc, is wholly unsecured and cannot be protected by section 1322(b)(2) of the bankruptcy Code.

Merely recognizing the structure of the debt is not act counter to the bankruptcy process. Nor is removing an unsecured guarantor's obligation from a secured POC within a Chapter 13 case a violation section 1322(b)(2) or this Court's holding in Nobleman, it would seem.

REASONS TO GRANT THE WRIT OF MANDAMUS

Sims is entitled to the protections of the US Federal Constitution. These Rights were no granted by the government to the people, these Rights were reserved from the Government, by the People.

The Constitution, in the first instance, prohibits all branches of government from impeding the constitutional rights of the people of this nation. Therefore, no branch is permitted to violate those rights in any other instance.

This is especially true for the judicial branch. The judicial branch is expressly prohibited, by the constitution itself, from violation of the constitution. Article IV commands the judicial to be bound to the tenants of the constitution. ("every judge in every state shall be bound thereby")

In 1821, this Court held that this Courts are required to redress constitutional concerns of the citizens when those concerns are brought to the court for redress. The Court held that such was treason to the constitution. (cite)

However, this Court held that Judges cannot be held liable for any injury to the citizens of this country, because such would impede the court's independence. (cite) The Court's reasoning in that case, and subsequent case, within that line of case, is constitutionally infirm.

Court's independence is very important, for this Court's work. However, exactly what the Court is too be independent of has not been determined, at least not correctly. Since the Constitution requires judges to be bound by it, then it will stand to reason the no court can declare that are, in fact, or in practice, independent of the constitutional restraints of the constitution.

If that were the case, that the courts are to be independent from the constitution, which will allow for immunity from liability, then Article IV is rendered inoperative, and absorb. Therefor Sims would assert that the court should revisit that issue.

However, though the constitution requires the courts comply with the document's limitation on government, this Court's holding that Courts are not liable to those who the court has injured leaves the American citizens without remedy. Justice Marshall held in Marbury v. Madison, that the first act of the courts is to furnish the citizens of the Nation a remedy, if that citizen sustains an injury.

Therefore, based on how this Court's inconsistent, internally and constitutionally, law on constitutional injury, by the government, leaves Sims, and every other American Citizen, without a remedy for constitutional injuries created by the judges of America's courts.

Given how the Courts, within this contest between Sims and Wells Fargo, have denied Sims' right to a jury trial, equal protection of the laws of standing and the equal right to actually argue her case before, which denied Sims her due process rights within the Courts themselves, Sims has no other options available for redress.

In short, the Courts have gutted the Constitutional rights of Sims and blocked any meaningful manner to redress them. Simply moving up the chain of the judicial structure isn't a meaningful act, when the 11th Cir. has shown a predisposition to ignore Sims' constitutional rights in toto.

Therefore, Sims is entitled to her constitutional protections, denied by judge Jackson, and likely to be denied by the remainder of the 11th Cir. court system, and because of the immunity granted the courts, by the courts, Sims isn't left any meaningful manner of seeking redress. In short, Sims has no viable manner of securing the rights guaranteed within the constitution.

The Constitution, Article III, grants original jurisdiction to this Court for all matters arising under the Constitution, and the All Writs Act also grant this Court jurisdiction. Therefore, its proper for this Court to issue the Writ and grant the relief requested by Sims.

Therefore, Sims assert that this Court should stay the bankr. Court's order, dismissing Sims' chapter 13 bank. Case, until final resolution of the issues related to claim 3, the Wells Claim, and grant the Mandamus because:

1) The Bankr. Court denied Sims' Due Process rights within the hearing:

2) The Bankr. Court refused to correct the violations of Sims' Due process rights, when Sims motioned the court for a new hearing, and the Bankr. Court denied that motion-without a hearing.

3) The Bankr. Court decided matters, including the validity of claim, amount of the claim and secured nature of the claim, which are outside of this Court's jurisdiction.

4) The Bankr. court made such determinations in item three above, without evidence to support its conclusions. Wells Fargo offered no proof to rebut Sims' proof.

5) Because the Bankr. Court took for itself, what Sims has reserved for a Jury, when the Court decided issues in Item 3 above. This was a violation of Sims' 7th Amendment right to a Jury.

6) The Bankr. Court violated Sims' equal protection rights, under the 14th Amendment, when Judge Jackson instructed Sims not to speak about matters on appeal but allowed Wells Fargo and Mr. Freemen to do so. Such allowed only voices opposed to Sims to speak.

7) The Order made determinations on issues that were not properly before the Court, the Court's order is void, not just voidable.

8) Because the order was rendered by way of hearing that denied Sims here right to speak on the matters before the Court, the Court's order is invalid, and constitutionally infirm.

9) The Bankr. Court's rendering of Section 1322(b)(2) is outside of the US Supreme Court's holding in Nobleman, and against the view of Bankruptcy Judges nationally (based on study commissioned by the national bankr, Judges')

10) The Bankr. Court's rendering of Section 1322(b)(2) threatens the rights of Litigants currently before her and those that will come before her in the future.

11) Sims Is likely to prevail on the Constitutional claims on mandamus to the US Supreme Court.

Therefore, I ask this Court to issue the mandamus and confine Judge Jackson to her constitutional obligation to respect and comply with the constitutional Rights of the American Citizens before her bench and reverse the order dismissing Sims' bankr. Case.

Further I ask this Court to enter an Order staying further proceedings within the Bankr. Court until final resolution of the Issues relative to Claim, because no confirmation can be obtained, in this case or any other Bankr. Case filed by Sims, until the issues relative to claim 3 is settled. This fact renders any refiling of a bankr. Case, by Sims, doomed to repeat the five year track this current case has taken and, therefore, any new Bankr, filing would be a waste judicial time and resources.

DATE: APRIL 18TH, 2020

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SHA'RON A. SIMS

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28 U.S. Code § 1746 AFFIDAVIT FOR CASE NO: 19-7612

I,SHA'RON A. SIMS, do hereby declare, under penalty of perjury, that the following is true and correct.

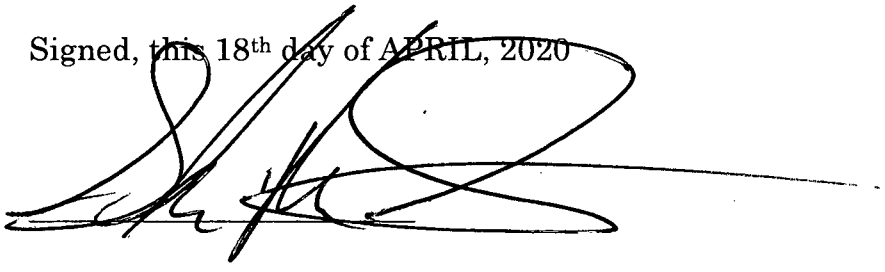
1. I am the debtor in the above case. Having filed this case on June 15, 2015;
2. In accordance with the bankruptcy code, I have filed a challenge to claim no #3, the "Wells Frago' Claim;
3. The Court, in the main Bankr. Case, held a hearing on confirmation on Feb. 19, 2020;
4. Judge Jackson, was newly assigned to this case, just three weeks before the hearing;
5. Judge Jackson, during the hearing, instructed Sims to not speak about any issues on appeal before the US Supreme Court.
6. Judge Jackson, in open Court, refused Sims the right to submit evidence, to support her case.
7. Judge Jackson allowed Wells Fargo Bank N.A. and the Trustee's Atty, Mr. Freeman, to speak and introduce evidence, about Claim #, Which is the Matter on Appeal.
8. The Court, after the hearing, dismissed Sims' case: Without Sims having the ability to speak.
9. Sims Filed a Motion to Vacate the Order, stemming from the hearing. The hearing that sims wasn't allowed to participate in.
10. In this Motion, Sims argued that the hearing was in violations of Sims' Due Process rights, because Judge Jackson instructed Sims to Not Speak on the Claim, or present evidence.
11. Sims argued within the motion to vacate, and for new trial, that Sims 14th Amendment right before the Court was Violated.

12. Sims argued to Judge Jackson, that the order, because of the constitutional infirmities of the hearing, was void, not just voidable.
13. Judge Jackson, within two days of Sims filing the Motion, denied Sims' Motion for a new trial.
14. Judge Jackson indicated that the reason for the denial was that Judge Jackson "explained Section 1322(b)(2) to Sims. This in spite of the fact that Sims, in the motion for a new hearing, informed Judge Jackson that Sims had the same hearing, before the two Previous Judges (Judge Glenn and Judge Funk) and that Sims prevailed. Sims even included Motions and items Sims filed with the Court, during those hearings, before the two previous Judges.
15. Sims understood Sect 1322(b)(2), and her position isnot counter to the Codes, or this Court's holding in Nobelman v. American Sav. Bank (92-641), 508 U.S. 324 (1993).
16. The Court was aware that Claim 3 was challenged in an AP suite, the Atty for the Trustees' office informed the Judge of that. Again, Sims was only allowed to answer questions.
17. This adversarial proceeding was to "*a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but a proceeding under Rule 3012 or Rule 4003(d) (Rule 7001(2)*;
18. Under Rule 3012(1), Debtor is allowed to contest "*the amount of a secured claim under § 506(a) of the Code*";
19. On Feb. 14, 2017, Debtor filed a proper challenge to the Amount of the Secured Claim, within Adversarial Proceeding 3:16-ap-00126.
20. Within that challenge, Debtor argued that Claim three represents two claims, one secured and the other unsecured.
21. The PSA appears to have the language of a guaranty contract, in that Wells Fargo agreed to cover the mortgage, principle and interest, when the debtor failed to so pay. (Dock. No.:___)

22. The US Supreme Court held that a person agreeing to cover the mortgage, principle and interest, engaged in a guaranty. (**Bowers *v. Lawyers Mortgage Co. 285 US 182 [US S.CT. 1932]***)
23. The US Supreme Court has held that when a Guarantor pays the installment loan, so payment keep the loan free from default. (***Reynolds v. Douglas, 37 US 497 (1938)***)
24. The US Supreme Court has held that when the Guarantor pays the debt, the obligation no longer belongs to the lender, but the guarantor. (***Putnam v. Commissioner, 352 US 82 [1956]***)
25. Under Florida law, a guarantor of a mortgage do not have a secured interest with the property subject of the guaranty. (***Cukierman v. Bankatlantic, 89 So. 3d 250 (Fla. Dist. Ct. App. 2012))***
26. This Court has held that States control the rights of a creditor within the bankruptcy process.
27. A debt, that is current, by definition, do not have arrearages. (***Butner v. United States, 440 U.S. 48, 54-55, 99 S. Ct. 914, 917-18, 59 L. Ed. 2d 136 (1979)***
28. If Florida do not recognize a secured right of a guarantor, pre-bankruptcy, the guarantor does not have a secured right within bankruptcy.
29. Nobelman v. American Sav. Bank (92-641), 508 U.S. 324 (1993) was based on a litigant who wanted to strip an unsecured portion of a "single" Lien, secured by their primary residence.
30. Sims is attempting to determine if, pre-bankruptcy, the Secured lender's rights were bifurcated by operation of law. If, by law, the lein was bifurcated, pre bankruptcy, Sims will not be stripping a lien within bankruptcy, but rather requiring the two liens to be listed on separate POC, on secured and one unsecured.
31. It is not Sims' position that the Secured lender is unsecured, or under secured. Sims holds that, at the time of the Petition for Bankruptcy, the Loan, held by the Trust, as secured, was still secured.

32. It is Sims' Position that the Guarantor's interest is unsecured, pre bankruptcy, and therefore must remain unsecured at, and after, the filing of the petition.
33. A debt, without arrearages pre bankruptcy, cannot have arrearages, at the time of the bankruptcy petition.
34. The US Supreme Court in Nobleman held that State laws control the rights of a lender, when in the bankr. Context.

Signed, this 18th day of APRIL, 2020



Sha'ron Sims

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Sha'ron Sims