

No. 19-865

In The  
Supreme Court of the United States

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MARIAN SUSIE ANN TIPP,

*PETITIONER,*

v

JPMC SPECIALTY MORTGAGE, LLC,

*RESPONDENT.*

ON PETITION FOR A WRIT OF CERTIORARI  
TO THE ALABAMA SUPREME COURT

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**PETITION FOR A WRIT OF CERTIORARI**

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SUPREME COURT, U.S.

## QUESTIONS PRESENTED

The Fourteenth Amendment's due process clause declares that No state shall ... deprive any person of ... life, liberty or property, without due process of law; nor deny to any person **within its jurisdiction** the equal protection of the laws." (emp)

Pursuant to **§10-2B-15.02(a)**, Ala.Code 1975, sometimes referred to as "the door-closing statute," foreign corporations "may not maintain a proceeding in this state without a certificate of authority. All contracts or agreements ... shall be held void at the action of the foreign corporation or by any person claiming through or under the foreign corporation by virtue of the contract or agreement;...." (emp)

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Petitioner's reference to "foreign corporations" below are those that failed to comply with state laws to "do business" and are not "**within its jurisdiction**" or "within" the jurisdiction of its courts.

### The Questions Presented Are:

1. Where "life, liberty & property" are fundamental rights equally protected, does a 'decision' with no opinion or legal authority depriving a person of property violate the Fifth and Fourteenth Amendment.
2. Where foreign corporations claims are barred by 'door-closing' statutes, does maintaining a "cause of action" or "affirmative defense" violate the

Fourteenth Amendment.

3. Where Respondent's claims are barred by the 'door-closing' statute, did the court's failure to enforce the statute and barring Petitioner's claims in favor of Respondent violate the Fourteenth Amendment.

4. Where a decision has no facts, evidence or conclusions of law, is that decision sufficient to establish res judicata when there is no evidence claims were adjudicated "on the merit."

5. Where Respondent's foreclosure deed was unexecuted and unrecorded, did the court acquire jurisdiction over Respondent's ejectment claims or Petitioner's complaint to intervene to establish a court of "competent jurisdiction."

6. Where Petitioner was not a party to the ejectment action, does a dismissal as intervenor "trigger" res judicata to bar claims as *successor* pursuant to Rule 25(c) and Rule 17(a).

7. Where Petitioner's claims were adjudicated "on the merits" pursuant to Rule 12(b)(1), did the courts affirmance of those void orders violate the Fifth and Fourteenth Amendments.

8. Where a Rule 60(b)(4) motion to vacate void orders is filed as an independent action, can that action be barred by res judicata and dismissed with prejudice without establishing the validity of the orders to be vacated.

9. Where Respondent did not have a writ of possession or court order, did Respondent's entry and taking of the property constitute criminal trespass and theft of property.

10. Where Respondent failed to establish standing

as the assignee of the mortgage in 2009, does Respondent have a right to proceed as *successor in interest* to bar Petitioner's recovery of the property.

11. Where Respondent did not prove authority to conduct a foreclosure sale, is the foreclosure deed "valid" because it was not "declared" void.

12. Where Respondent's claims were dismissed, can Respondent claim ownership of the property through the foreclosure sale by the order "dismissing" its claims.

13. Where Respondent's claims were dismissed pursuant to Rule 41(a)(2), did that dismissal render the foreclosure sale invalid, and the foreclosure deed void ab initio.

14. Where Petitioner's transfer of interest complied with Rule 25(c) and Rule 17(a), did the denial of the a right to proceed as *successor in title* constitute a denial of due process of the law.

15. Where Petitioner was the legal title holder of record pursuant to Rule 25(c), was she the legal owner with legal possession of the property by the dismissal of Respondent's ejectment claims.

16. Where Respondents claims were dismissed, does Rule 25(c) preclude relitigating those "dismissed claims" in a "separate action" as "affirmative defenses" to bar Petitioner's claims as *successor in title*.

17. Where Respondent did not prove legal title or a "right to possession" in 2009, does Respondent have a "right" to bar Petitioner's claims to recover stolen property.

18. Where Respondent's claims were dismissed by

Rule 41(a)(2), does the court have jurisdiction of those “dismissed claims” to bar Petitioner's claims to recover the property.

19. Where an assignment passes title to the property and all claims to the *successor in title* under Rule 17(a), did Respondent have authority to settle claims and convey the property to the *predecessor in title*.

20. Where Petitioner is the real party in interest under Rule 17(a), did “all parties” have authority to settle claims on behalf of the *predecessor in title* in a “confidential” settlement Petitioner was not a party or “privy” to.

21. Where the “confidential” settlement is contingent on the “validity” of the foreclosure sale, did Respondent have the burden to prove the “foreclosure sale” was adjudicated “on the merits.”

22. Where Respondent unlawfully detained and barred Petitioner's recovery of the property, are Petitioner' claims barred by a statute of limitations where vacating a void judgment will reinstitute those “timely” filed claims.

23. Where Respondent, a foreign corporation, unlawfully detained and disposed of Petitioner's property to bar her recovery, does that constitute a continuing violation and violate the Fourteenth Amendment.

## PARTIES TO THE PROCEEDINGS

JPMC Specialty Mortgage, LLC, *Respondent*

Marian S.A. Tipp, *Petitioner*

## RELATED CASES

1. JPMC Specialty Mortgage, LLC f/k/a WM Specialty Mortgage, LLC v. Carolyn E. Sims Case No. CV-2009-901393 Circuit Court of Mobile County, Alabama filed on July 24, 2009 and dismissed on August 30, 2010 pursuant to Rule 41(a) (2).

2. Marian Tipp v. JPMorgan Chase Bank, N.A.; JPMC Specialty Mortgage, LLC; et al., Case No. CV 2011-0139, Circuit Court of Mobile County, Alabama filed February 9, 2011 and judgment pursuant to Rule 56(c) was entered on September 16, 2011 based on Rule 12(b)(1) and Rule 12(b)(6).

3. *Tipp v. JPMorgan Chase Bank, N.A.*, 156 So. 3d 997 (Table) (Ala. 2012). Affirmed with no opinion.

4. Carolyn E. Sims v. JPMC Specialty Mortgage, LLC, f/k/a WM Specialty, et al., Case No. CV 2013-900439, Circuit Court of Mobile County, Alabama filed February 26, 2013 and Rule 56(c) summary-judgment entered on September 17, 2015 pursuant to based on Rule 12(b)(1) and Rule 12(b) (6) reversed on appeal on August 26, 2016

5. *Sims v. JPMC Specialty Mortgage, LLC*, 218 So. 3d 376 - Ala: Court of Civil Appeals 2016.

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

### **OPINIONS BELOW**

There were no opinions in this case. This appeal was transferred to the Alabama Supreme Court on May 14, 2019, pursuant to §12-3-15, Ala. Code 1975. (App.4)

The Alabama Supreme Court issued a decision without opinion on August 9, 2019, pursuant to Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P. affirming the orders of the court. (App.2)

On September 3, 2019, Petitioner filed a Motion for Leave to File a Petition for Rehearing En Banc (App.7-31) evidencing she did not receive the courts decision and evidencing notice of the August 27, 2019 order by USPS informed delivery. Petitioner's motion was denied on September 27, 2019. (App.1)

### **JURISDICTION**

On September 30, 2019, Justice Thomas granted Petitioner an extension with the due date being January 6, 2020.

This Court has jurisdiction under 28 U.S.C.

§1257(a).

## **CONSTITUTIONAL PROVISIONS**

The Fifth Amendment to the United States Constitution provides, in pertinent part: "No person shall be . . . deprived of . . . life, liberty or property, without due process of law. . . ." U.S. CONST. amend. V

The Fourteenth Amendment's due process clause declares that "No state shall . . . deprive any person of . . . life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV.

## **STATEMENT OF THE CASE**

The property at issue was the subject of the 2009 ejectment action commenced on July 24, 2009 in the Circuit Court of Mobile County, Alabama styled as JPMC Specialty Mortgage, LLC f/k/a WM Specialty Mortgage, LLC v. Carolyn E. Sims, ("Ms. Sims") Case No. CV-2009-901393.

On November 13, 2002, Ms. Sims executed a mortgage in favor of Ameriquest Mortgage Company purportedly foreclosed on by Respondent on July 13, 2009. Petitioner learned of the foreclosure sale after the ejectment action was filed.

The property lost in foreclosure by Ms. Sims was the home of Petitioner's parents Orester and Bessie Tipp ("parents"). On June 7, 2002, Bessie Reus Tipp, a widow, ("mother") conveyed 5.75 acres to her youngest daughter Ms. Sims by Warranty Deed retaining a life estate in the house and one-acre passing to Ms. Sims at her death on February 7, 2002.

Petitioner's parents wanted their property to stay in the family and Petitioner learned there was a "right of redemption" that could possibly be recovered. Ms. Sims took no action to file an answer and refused<sup>1</sup> to give Petitioner a quit claim deed to her parents home that was given to her that she had already lost in a foreclosure she could have prevented.<sup>2</sup>

An answer was due on August 24, 2009. Petitioner didn't want her parents home lost in default and prepared a quit claim deed for \$250.00 and a power of attorney<sup>3</sup> that was executed by Ms.

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<sup>1</sup> "... Elizabeth ... would not give me a deed so I could try to recover the right of redemption. When Paulette, my oldest sister asked her why... she said she didn't want me to 'have it.'..." (R-122)

<sup>2</sup> Petitioner and each of her sisters received an inheritance from their mother's sister the first of the year along with property that was listed for sale.

<sup>3</sup> "...she was going to ... let everything that my parents worked for be lost forever... I did a quit claim deed ... and a power of attorney ... I took the deed, POA and the \$250.00 to

Sims and notarized on August 22, 2009. Petitioner filed a timely answer.

Respondent could not acquire the property through the court and dismissed its complaint pursuant to Rule 41(a)(2) on August 30, 2010.

Petitioner, *successor in title*, was in legal and peaceful possession of the property with signs posted when it was seized by Respondent on December 11, 2010 by forcible entry and trespass.

Petitioner filed a declaratory judgment action as *successor in title* on February 9, 2011 against Respondent, JPMorgan Chase Bank N.A., ("Chase") and Chase Home Finance, LLC, ("CHF") to recover possession of the property.

There was no judgment or writ of possession in favor of Respondent, but by virtue of the Rule 41(a) (2) dismissal of Respondent's claims, summary-judgment was entered in favor of defendant's with no opinion or legal authority barring Petitioner's claims for recovery by res judicata and "standing." That decision was affirmed by the Alabama Supreme Court by a decision with no opinion.<sup>4</sup>

A declaratory judgment action was filed on

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Paulette and called Elizabeth and told her it was there. She took both documents and had them executed and notarized and returned them to Paulette and she gave Elizabeth the money."(R-122)

<sup>4</sup> See *Tipp v. JPMorgan Chase Bank, N.A.*, 156 So. 3d 997 (Table) (Ala. 2012).

behalf of Ms. Sims, the 'original' defendant on February 26, 2013. Respondent argued on April 4 2013, that the complaint "...asks that Ms. Sims be declared the lawful owner of the Property, these requests are technically the same, as a **declaration that Ms. Sims is the lawful owner of the Property would effectively grant Ms. Tipp title to the Property pursuant to the previously executed Quitclaim Deed.**"(emp)

A judgment with opinion was entered in favor of Respondent on September 17, 2015 based on res judicata that was reversed on appeal with an opinion in *Sims v. JPMC Specialty Mortgage, LLC*, 218 So. 3d 376 Ala: Court of Civil Appeals 2016.

In *Sims* Respondent argued "**Sims conveyed any interest that she had in the property to Tipp.**" (emp) On June 13, 2018, all parties entered into a "confidential" agreement settling Ms. Sims' claims against Chase and all claims to Petitioner's stolen property.

Petitioner struggled to pay her mortgage and living expenses and all the legal costs in 3 cases with complaints, appeals, records on appeal, mediations, depositions, etc., using her inheritance, credit cards and personal line of credit to recover the home of her parents that Ms. Sims had already lost in foreclosure.

After bearing **all the costs as successor in title**

with the right to recover the home of her parents, Respondent executed a quitclaim deed on June 19, 2018, purportedly conveying the property to Ms. Sims. Petitioner was sent a letter on June 20, 2019 by the attorney enclosing Ms. Sims' letter formally revoking her power of attorney.(App.32-33)

Ms. Sims got \$250.00, 2 acres<sup>5</sup> and claims against Chase.<sup>6</sup> If not for Petitioner, there wouldn't have been "attorney's" or "a case" because Ms. Sims took no action to respond to the complaint.

Petitioner, *successor in title*, was not made a party to the "confidential" settlement and filed this action on June 27, 2018, amended on July 7, 2018. Copies were delivered to Respondent's attorney Sandy G. Robinson.

Respondent "chose" to proceed with a settlement by **all parties** settling those claims to property with the *predecessor in title*.<sup>7</sup> After almost 9 years and everything she struggled for, Petitioner, *successor in title*, recovered nothing.

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<sup>5</sup> Petitioner recovered 2 acres that Ms. Sims sold in December 2013 for \$30,000.00.

<sup>6</sup> "Sims'[s] claims against Chase in the [2013 action] are based upon Chase having placed a forged endorsement on the purported original of Sims'[s] promissory note two and one-half years after the foreclosure sale. The matter of forgery only came to light in late 2013 when Sims was finally able 387\*387 to obtain discovery from [JPMC and Chase] ...." see *Sims*,

<sup>7</sup> She recovered the property and 'damages' on 6/13/2018 after her second foreclosure on 5/29/2014 at no cost to her.

Petitioner's battle to save and recover the home of her parents stolen from her twice now spans more than 10 years.

Petitioner filed this action with those new claims in lieu of a motion to vacate the void judgment barring her claims and to file for a judgment on the pleadings.

Petitioner relied upon *Skillman v. First State Bank of Altoona*, 341 So. 2d 691 Ala: Supreme Court 1977 where "... relief from judgment is sought in some other court than the court which rendered the judgment, the party should bring an independent proceeding ... courts have consistently treated a proceeding in form an independent action as if it were a motion..." (emp)

In *Satterfield v. Winston Industries, Inc.*, 553 So. 2d 61 Ala: Supreme Court 1989, "[w]hen the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4), discretion has no place..." (emp)

Respondent is not "qualified to do business" in Alabama and Section 10-2B-15.02, Ala.Code 1975, prohibits *all* Respondent's claims. On July 31, 2018, Respondent filed for "affirmative relief" through a Rule 12(b)(6) motion and argued the

**"... motion in the 2011 Case was based on two key arguments. (See Exh. 5). First, JPMC argued Ms. Tipp's claims were barred by the doctrine of *res***

*judicata* because they were the same  
claims dismissed by the Court in the  
2009 Case ...”(emp)

Respondent did not recover the property through the court and its claims were dismissed on **August 30, 2010** pursuant to Rule 41(a)(2).

Respondent asserted "the same claims dismissed by the Court in the 2009 Case" as "affirmative defenses" for "affirmative relief" through the '*backdoor*' as Exhibit 5 because "... Both of these arguments apply equally to the claims in her current Complaint."

**Section 10-2B-15.02, Ala.Code 1975, prohibits all Respondent's claims**, but on August 7, 2018, the court entered an order granting Respondent's "MOTION TO DISMISS, OR IN THE ALTERNATIVE SUMMARY JUDGMENT" (App.6) dismissed with prejudice without Petitioner having an opportunity to respond to Respondent's motion.

In *Lloyd Noland Foundation V. Healthsouth Corp.*, 979 So. 2d 784 Ala: Supreme Court 2007, the court held that

"... Although HealthSouth's motion addressing its defenses of res judicata ... was actually framed as a "motion to dismiss," **the motion should have been treated as one seeking a summary judgment** ... The substance of a motion, not what a party calls it, determines

the nature of the motion." (emp)

Respondent argued Petitioner's claims to recover the property are barred by res judicata by the dismissal of a non-party complaint filed with leave of court and dismissed "PURSUANT TO RULE 12(B)" on July 29, 2010 **prior to the Rule 41(a)(2) dismissal of Respondent's claims on August 30, 2010.**

Respondent argued "... Ms. Tipp ... is not a proper party to this case. Specifically, Ms. Tipp lacks standing ..." Petitioner argued in *Taylor v. Paradise Missionary Baptist Church* Ala: Supreme Court 2017, like Respondent, "... the substance of the motion is one arguing lack of subject-matter jurisdiction under Rule 12(b)(1), ... Accordingly, we will treat this motion as one to dismiss for lack of subject-matter."(emp)

In *Ex parte Capstone Dev. Corp.*, 779 So. 2d 1216 (Ala. 2000), "(a dismissal for lack of subject-matter jurisdiction is treated as a dismissal without prejudice to the plaintiff's right to reinstitute the action...)"(emp) and assert new claims to recover the property. Petitioner was **denied that "right"** that deprived her of property she had legal title to. And

"... **Second, JPMC argued** that Ms. Tipp had **no valid legal interest in the property** which was deeded to her ... after the foreclosure deed had been executed and recorded ... thus, she had no standing to assert her

claims..."(emp)

Petitioner's standing was established in *Chrysler Corp. v. Schiffer*, 736 So. 2D 538 Ala: Supreme Court 1999, where "... Rule 17(a)... applies to issues created by transfers that occur **before** the commencement of the action ... Rule 25(c) ... **governs when an interest is transferred during the pendency of an action...** "(emp)

Petitioner's interest was transferred on August 22, 2009 **after** Respondent's ejectment action commenced on July 24, 2009 **after** the foreclosure on July 13, 2009. And "... in regard to the parties **"standing" issue is the right of the individual to proceed, and Rule 25(c) answers that question in [her] favor.**" *Chrysler* Petitioner was denied that "right" by the courts.

In *Sims*, the court found Respondent cited "... *Williams v. Moore*, 36 So.3d 533, 540 (Ala.Civ.App. 2008), for the proposition "**successors in title are in privity with their predecessors in title**" **because Sims conveyed any interest that she had in the property to Tipp** ... privity existed between Sims and Tipp..." (emp)

The court also found

" ... JPMC and Chase assert that there is no genuine issue of material fact regarding whether the circuit court's dismissal of Tipp's complaint in 2009

action adjudicated the question of JPMC's legal authority to foreclose upon the property ... However, ... the record does not support that assertion, which is inconsistent with the position taken by JPMC in the 2009 action and the 2011 action because it sought relief in those actions, at least in part, based on its repeated contention that the validity of its foreclosure upon the property was not being litigated in those actions ..." (emp)

On remand, Respondent argued on June 30, 2017, that in

"... *Wilmore v. Wilmore*, 91 So.3d 701 (Ala. Civ. App. 2011) like Ms. Sims, the appellants had executed a quitclaim deed ... the appellants had divested themselves of all interest in the property, the Court held that the appellants "ha[d] no legal standing to challenge any action taken by the trial court regarding that property ... Ms. Sims has no standing to challenge JPMC's title to the Property ...

... Ms. Sims lacks standing to assert the claim ... because well before filing this case, she quitclaimed all of her interest in the Property to Ms. Tipp, who is not a party to this action

... even if the foreclosure sale were declared void, Ms. Sims would have no

claim to the Property because she has conveyed all of her interest in the Property to her sister, Ms. Tipp nearly eight (8) years ago ...

... Both Ms. Sims and Ms. Tipp confirmed in their depositions that Ms. Tipp has not deeded the Property back to Ms. Sims, nor has she executed anything transferring any rights to the Property back to Ms. Sims. (Sims depo. at pp. 118; Tipp depo at pp.)" (emp)

Respondent argued in 2013 ".... R.CIV. P. 41 governs dismissal of actions. Rule 41(a)(1) was inapplicable to JPMC's dismissal. Rule 41(a)(2) was the only open road and the ... trial court followed it..."(emp) and those "same claims"

"... could not have accrued after the 2009 action because, after the circuit court had granted its motions to dismiss ... its complaint against Sims, it owned the property ..." (emp) see Sims

Respondent also argued Petitioner "... asks the Court to vacate the summary judgment entered against her in the 2011 Case, which dismissed all of the claims she is now trying to reassert." Specifically, Petitioner requested relief from a "void judgment" and that action was barred by res judicata and dismissed "with prejudice."

Respondent argued on August 4, 2017, that “... *the true facts* are that **the dismissal of the 2009 Case was ... not an adjudication on the merits** as to JPMC’s ejectment claim ... **JPMC could have refiled the ejectment action** in another lawsuit”(emp) but Petitioner’s claims to recover stolen property were barred.

Petitioner’s claims were purportedly adjudicated “on the merits” based on arguments “... Ms. Tipp’s Complaint was barred by res judicata and lack of standing” **because “Ms. Tipp had no valid legal interest in the property.”** (emp) Petitioner cited *Cadle Co. v. Shabani*, 950 So. 2d Ala: Supreme Court 2006, that

“Although the trial court in this case acknowledged that The Cadle Company **did not have title to the property**, it nonetheless resolved the case **on the merits** ... **the trial court lacked subject-matter jurisdiction** over this case, and **its resulting judgment is therefore void.**” (emp)

The “resulting judgment” in 2011 and 2018 were “therefore void” and “under Rule 60(b)(4), discretion has no place...” *see Satterfield* Petitioner’s motion to vacate the August 7, 2018 order that was “therefore void” was denied on September 18, 2018 (App.5) and those “void” judgments were affirmed by the Alabama Supreme Court.

Respondent argued "Ms. Tipp has no basis or standing to object to the settlement. Ms. Tipp was not a party to the 2013 Case" however, "... Sims conveyed any interest that she had in the property..." *see Sims*

Respondent argued Petitioner "... has not deeded ... nor has she executed anything transferring any rights" to the property to Ms. Sims, but

**"JPMC is free to settle with whomever it pleases, however it pleases. Ms. Tipp may not like it and may think that Ms. Sims has no valid claims to be settled, but her opinions are of no factual or legal consequence and cannot constitute grounds to second-guess, much less set aside, the settlement ..."(emp)**

Respondent argued "although this claim relates to the recent settlement between JPMC and Ms. Sims, it too is barred by res judicata because to have any interest in the property, Ms. Tipp would have to show that the July 13, 2009, foreclosure sale was void."(emp) The "law of the case" *in Sims* established "Sims conveyed any interest that she had in the property" to Petitioner.

In Alabama, "... under present law an assignment passes the title to the assignee so that [s]he is the owner of any claim ... under Rule

17(a)..." (emp) *Ex parte Simpson* 36 So. 3d 15 Ala: Supreme Court 2009.

Petitioner was not a 'necessary' party to "adjudicate" Respondent's ejectment claims. In *Maiden v. Federal Nat. Mortg. Ass'n*, 86 So. 3d 368 Ala: Court of Civil Appeals 2011, like Respondent,

"FNMA also states in its brief that Maiden must show that her title to the property is superior to that of FNMA in order to defeat its ejectment action. This is a misstatement of the law. In an ejectment action, the burden is on the plaintiff, not the defendant, to prove superior title to the property in question. *See MacMillan Bloedell, Inc. v. Ezell*, 475 So.2d 493, 49697 (Ala. 1985). If the plaintiff fails to do so, the defendant will prevail in the action without the necessity of proving its title in the property." (emp)

Respondent did not "prove superior title to the property" or "prevail" on its claims **dismissed pursuant to Rule 41(a)(2)**, but like Respondent, in *Adler v. Bank of New York Mellon*, 218 So. 3d 831 Ala: Court of Civil Appeals 2016, Respondent's argument

"... is premised on the conclusion that the ... foreclosure deed is valid because it was never specifically declared void ... the circuit court's ruling ... in the ...

ejectment action rendered the ...  
foreclosure sale invalid, and,  
consequently, the... foreclosure deed  
never validly existed ..." (emp)

All Respondent's "claims" were dismissed in 2010 without possession of the property, but Respondent argued "because the Court in the 2011 Case has already decided that res judicata barred Ms. Tipp's claims in that case, res judicata will also apply to Ms. Tipp's current Complaint" in 2018. (emp) Respondent's argument is contrary to the 'law of the case' established in *Sims* that Respondent's motion in 2011 was based "on two distinct grounds ... The trial court's order ... was general and not limited to the res judicata ground ..." (emp) and "the validity of its foreclosure ... was not being litigated in those actions."

In *Brantley v. Meeks*, 142 So. 3d 567 Ala: Court of Civil Appeals 2012, "the order pertaining to Prudential disposes of any claim against the Scrushys that Brantley might maintain with regard to the original claims ..." (emp) Because "privity existed between Sims and Tipp," (see *Sims*) the dismissal of Respondent's claims against the *predecessor in title* disposed of any claim Respondent "might maintain with regard to the original claims ..." in 2011 and 2018. (emp) and rendered "the ... foreclosure sale invalid ..." *see Adler*

## REASONS FOR GRANTING THE PETITION

Under the constitution, "life, liberty & property" are fundamental rights *equally protected* and no person can be deprived of either without due process of the law based on facts, evidence and prevailing law.

The Fourteenth Amendment guarantees a state cannot "deny to any person within its jurisdiction the equal protection of the laws."

This case involves a foreign corporation that is not "within its jurisdiction" or the jurisdiction of its courts. In *Kutka v. Temporaries, Inc.*, 568 F. Supp. 1527 - Dist. Court, SD Texas 1983, a foreign corporation that fails to comply cannot obtain "...affirmative relief in the courts of Texas on any matter arising out of the transaction of intrastate business. This applies as well to a federal district court sitting in diversity. *Waggener Paint Co. v. Paint Distributors, Inc.*, 228 F.2d 111 (5th Cir.1955)." (emp)

In *Green Tree Acceptance, Inc. v. Blalock*, 525 So. 2d 1366 Ala: Supreme Court 1988, "[t]his section of the Code is part of a statutory scheme" and "foreign corporations cannot circumvent the penal purpose of the statute." (emp)

Petitioner contends "maintaining" an "affirmative defense" is within the scope of state 'door-closing' statutes to obtain "affirmative relief"

through Rule 12(b)(6).

The Court should grant certiorari to address whether a foreign corporation not "within its jurisdiction" or the jurisdiction of its courts asserting "affirmative defenses" circumvents the "penal purpose" of 'door-closing' statutes and violates the due process clause of the Fourteenth Amendment.

In *Shady Grove Orthopedic Associates v. Allstate Ins.*, 559 US 393 Supreme Court 2010, this court held "**What matters is what the Rule itself regulates: If it governs only "the manner and the means" by which the litigants' rights are "enforced,"** it is valid; if it alters "the rules of decision by which [the] court will adjudicate [those] rights," it is not..." (emp)

This case involves the application of the 'law of the case' doctrine and interpretation and application of rules of civil procedure – Rule 12(b)(1), Rule 12(b)(6), Rule 17(a), Rule 25(c), Rule 41(a)(2) and Rule 60(b)(4).

Petitioner's action to vacate void orders and "right to reinstitute the [2011] action" (see *Ex parte Capstone*) were barred by res judicata, dismissed "with prejudice" and affirmed by the Alabama Supreme Court.

The Court should grant certiorari to address whether an independent action pursuant to Rule 60(b)(4) are barred by res judicata and subject to a

dismissal "with prejudice" without opinion.

The facts and law in this case are so simple a cave-man can understand it. "Sims conveyed any interest that she had in the property to" Petitioner. *see Sims* After the dismissal of Respondent's ejectment claims, Respondent seized the property by forcible entry and trespass, barred Petitioner's recovery as *successor in title* and settled those claims and conveyed the property to the *predecessor in title* contrary to Rule 41(a)(2), Rule 25(c) and Rule 17(a).

In *Green Tree*, the purpose of the 'door-closing' statute "... is to provide some power for the State to **protect Alabama residents from possible abuse by uncontrolled foreign corporations.** ...)(emp)

Petitioner was to be "protected" from "abuse," but the courts of this state slammed the courthouse doors in Petitioner's face based on "key arguments" of an unqualified foreign corporation that "governed" Petitioner's "right" to assert her claims.

Petitioner was denied "the right" to proceed as *successor in title* pursuant to Rule 17(a) to recover the home of her parents stolen by an unqualified foreign corporation violating the order of dismissal – a misapplication of the 'door-closing' statute.

The Alabama Supreme Court affirmed the "merits" of Respondent's claim that "... after the circuit court had granted its motions to dismiss ... its complaint against Sims, it owned the property

..." (emp) *see Sims*

The Alabama Supreme Court affirmed "the right" of Respondent to voluntarily dismiss its claims and go onto the property with dumpster's and take the property by forcible entry and trespass and change the locks again because "no writ of possession or court order would have been required to remove abandoned property."

The Alabama Supreme Court affirmed "the right" of Respondent to settle those claims to property Petitioner has title to "with whomever it pleases, however it pleases" and convey the property to the *predecessor in title* where "[u]nder present law an assignment passes the title to the assignee so that [s]he is the owner of any claim ... under Rule 17(a)..."(emp) *Ex parte Simpson*

Due process guarantees Petitioner has a "right" to the application of prevailing law, but the Alabama Supreme Court affirmed with no opinion that prevailing law and "her opinions are of no factual or legal consequence."

This case is the epitome of abuse of judicial power because there is no rule, statute or prevailing law in any state to support *that 'decision'* based on the facts and evidence that was before the Alabama Supreme Court.

The home of Petitioner's parents that she saved from default and a foreclosure not of her doing,

was stolen from her twice and that theft of property was effectuated by the Alabama Supreme Court by 'decisions' with no opinions and without legal authority - a 'non-judicial' decree without jurisdiction over those "dismissed claims."

Due process and equal protection of the law is not a 'privilege' bestowed by the court at will for it to 'decide' whether to apply prevailing law to the facts and evidence. **"Life, liberty & property"** are fundamental rights equally protected by the Fifth and Fourteenth Amendment.

The Court should grant certiorari to finish what our forefathers started in 1776 and guarantee that no person in any state can be deprived of property because the court "decided" without legal authority.

#### **ARGUMENTS IN SUPPORT OF PETITION**

##### **A. Respondent's Claims Are Barred By Statute**

Respondent represented to the court it was "qualified to do business in Alabama." The Secretary of State certified on October 9, 2009 Respondent failed to comply with the laws of this state. (App.34)

In *Sanjay, Inc. v. Duncan Const. Co., Inc.*, 445 So. 2d 876 Ala: Supreme Court 1983, "This provision in the statute does not alter the law ... The law of this state is that a foreign corporation which

has not qualified to do business in Alabama ... cannot use Alabama courts..." (emp) Section 10-2B-15.02, Ala.Code 1975, prohibits *all* Respondent's claims for "affirmative relief."

In *Dept. Of Environmental Management v. Leaf*, 973 So. 2d 369 Ala: Court of Civil Appeal 2007, the court held that "when "the language of a statute is plain and unambiguous ... courts must enforce the statute as written ..."(emp)

**B. Respondent Does Not Have The Right To Proceed As "Assignee"**

Respondent represented to the court Ms. Sims' mortgage was transferred and assigned to "JPMC Specialty Mortgage, LLC f/k/a WM Specialty Mortgage, LLC."

There was no evidence Respondent was "f/k/a WM Specialty Mortgage, LLC" or "assignee" of the mortgage.

**C. "Threshold Issues" Of Jurisdiction Render ALL Orders Void *Ab Initio***

In *Lujan v. National Wildlife Federation*, 497 US 871 Supreme Court 1990, a court "must resolve any factual issues of controversy in favor of the non-moving party" ... where the facts specifically averred by that party contradict facts specifically averred by the movant, the motion must be denied."

Respondent claimed by virtue of a “foreclosure sale on July 13, 2009,” it was the owner of the property. In *MacMillan*,

“... it remains incumbent upon the plaintiff to prove a right to possession at the time of the commencement of the action ...the plaintiff must prevail on the strength of his own legal title or claim to possession ... the defendant is not required to show legal title or a right to possession in himself. Therefore, even against one with no title or right to possession, the plaintiff cannot prevail unless he meets his burden of proof.” (emp)

The court in *Douglass v. Jones*, 628 So. 2d 940 Ala: Court of Civil Appeals 1993, found beneficiaries “lacked standing” because “... that title to the property ... and absolute authority over the property” remained in the estate.

Ms. Sims was the legal title holder of record at “the commencement of the action” and in possession of the property when she conveyed that interest to Petitioner.

Respondent's foreclosure deed was unexecuted and unrecorded (App.35-39) and in *Cadle Co. v. Shabani*, 4 So. 3d 460 Ala: Supreme Court 2008, the court found, like here, “... It is clear ... from the record ... [Cadle] could not prove that it held title ... [Cadle] lacked standing to maintain the ejectment

action, the trial court lacked subject-matter jurisdiction over this case ..."(emp) Respondent argued

"Ms. Tipp spends much of her brief concocting arguments as to why the judgment against her in the 2011 case is void and should be vacated" and ... spends much of her appellate brief arguing that the Circuit Court had no subject-matter jurisdiction over JPMC's ejection claim in the 2009 Case, and that this somehow renders the judgment in the 2011 Case void."(emp)

And,

"... As for her jurisdictional challenge to JPMC's ejection claim in the 2009 Case, Ms. Tipp relies on the case of *Cadle* ... to argue that JPMC lacked standing to maintain an ejection action because it did not have possession of or legal title to the Property, and as a result, the Circuit Court lacked subject matter jurisdiction over the claim ... Ms. Tipp's reliance on *Cadle* is misplaced because it was expressly overruled by the Alabama Supreme Court in *Sturdivant v. BAC Home Loan Servicing, LP*, 159 So. 3d 47 - Ala: Court of Civil Appeals 2013... a plaintiff in an ejection action lacks "standing"

if it cannot prove one of the elements of its claim (namely, legal title or the right to possession of the property) and that the trial court in turn lacks subject-matter jurisdiction over that claim – it and other cases so holding are hereby overruled ...”(emp)

Respondent could not “prevail” on its claims and argued the fact it “did not have possession of or legal title to the Property” to prove “the right to possession of the property,” was not a “standing” issue pursuant to Rule 12(b)(1), but was in fact a “failure to state a claim” pursuant to Rule 12(b)(6) and that does not implicate “subject-matter jurisdiction” but “goes to the merits of an **ejectment claim** ... not to [JPMC's] standing to bring” the 2009 action.(emp) Respondent argues its “dismissed claims” lacked “merit.”

Petitioner's facts and evidence were undisputed but Respondent argued “the Circuit Court had subject-matter jurisdiction over JPMC's ejectment claim in the 2009 Case, as well as Ms Tipp's claims in the 2009 and 2011 Cases, and was a “court of competent jurisdiction” ...” (emp)

The 2011 and 2018 cases were to recover stolen property. Respondent did not have proof of “legal title or the right to possession of the property” but argued that had

“... nothing to do with the Circuit

Court's jurisdiction over the claims she asserted in the 2009 Case in her Complaint in Intervention and she has not argued that the Circuit Court lacked subject matter jurisdiction over her claims. It is the dismissal of her claims as intervenor in the 2009 Case that triggers the res judicata effect barring her attempt to re-litigate those claims in the 2011 Case." (emp)

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Petitioner cited *Hayes v. White*, 579 So. 2d 1340 Ala: Court of Civil Appeals 1990 that it was "... clear from the record that the trial court never acquired jurisdiction of this cause [in 2009] and that its ultimate dismissal was proper. Where no cause is lawfully before the trial court, no intervention is possible." (emp)

Respondent specifically argued Petitioner "had no standing to assert her claims" and in *Gardens at Glenlakes v. Baldwin Sewer*, 225 So. 3d 47 Ala: Supreme Court 2016, "[t]he concept of standing implicates a court's subject-matter jurisdiction. See *52\*52 State v. Property at 2018 Rainbow Drive*, 740 So.2d 1025, 1028 (Ala.1999)" (emp)

Respondent's claims in the 2009 Case were dismissed pursuant to Rule 41(a)(2), but Petitioner's claims to recover the stolen property are barred because of "... the dismissal of her claims as intervenor in the 2009 Case." In *Semtek Int'l Inc. v.*

*Lockheed Martin Corp.*, 531 US 497, Supreme Court 2001, "... a judgment **"on the merits"** triggers the doctrine of res judicata or claim preclusion. See, e. g., *Parklane Hosiery Co. v. Shore*, 439 U. S. 322, 326, n. 5 (1979)."(emp)

In *Sims*, the court found Respondent argued "**the validity of its foreclosure** upon the property was not being litigated" in 2009 or 2011 and Respondent's motion in 2011 was based "**on two distinct grounds** ... The trial court's order ... was general and **not limited to the res judicata ground** ..." (emp) see *Sims*

In *Carroll v. Buttrum*, 758 So. 2d 1097 Ala: Supreme Court 1999, "**A judgment must be clear and unambiguous** in order to stand. *Epperson v. Epperson*, 437 So.2d 571, 572 (Ala.Civ.App.1983)"(emp) and in *Reliance Ins. Co. v. Substation Products*, 404 So. 2d 598 Ala: Supreme Court 1981, "[b]ecause there was no finding of fact ... there is no way to know precisely what he based his determination upon..."(emp)

Respondent's claims were dismissed in 2010, but argued Petitioner had "**no standing to assert her claims**" (emp) to recover the property acquired by forcible entry and trespass and requested "... an Order **dismissing Ms. Tipp's claims ... with prejudice.**" (emp)

In *Lockheed Martin Corporation v. State*

*Department Of Revenue, Ala: Court of Civil Appeals*  
2016, the courts in 2011 and 2018

"... had **no authority but to dismiss the claim**. Any other action taken by a court lacking subject matter jurisdiction is null and void. ...

In this case, the trial court purported to deny the claim, but that action, constituting a ruling on the merits, is a void judgment ... *Hunt Transition & Inaugural Fund, Inc. v. Grenier*, 782 So. 2d 270, 274 (Ala.2000)." (emp)

In *Carlsen v. GameStop, Inc.*, 833 F. 3d 903 Court of Appeals, 8th Circuit 2016 "If the court has no jurisdiction, it has no power to enter a judgment on the merits ..." *Haywood v. Drown*, 556 U.S. 729, 769, 129 S.Ct. 2108, 173 L.Ed.2d 920 (2009)." (emp)

The dismissal "with prejudice" on August 7, 2018 of Petitioner's claims to vacate a void judgment "constituting a ruling on the merits is a void judgment ..." affirmed by the Alabama Supreme Court.

Respondent's arguments to bar Petitioner's claims by res judicata are irrelevant. Respondent's **Rule 41(a)(2) dismissal** of its ejectment action rendered the foreclosure sale invalid and Petitioner's "wrongful foreclosure" claim a "moot" point. Respondent did not recover the property through the

court – Respondent stole the property by forcible entry and trespass.

In *Ferguson v. Commercial Bank*, 578 So. 2d 1234 Ala: Supreme Court 1991, the court held "Mootness is a jurisdictional issue which does not preclude a second action on the same claim if the justiciability problem can be overcome. *McCarney v. Ford Motor Co.*, 657 F.2d 230, 233 (8th Cir.1981)." (emp)

Nonetheless, Petitioner's "rights" as *successor in title* are governed by Rule 25(c) and in *American Credit Co. of Alabama, Inc. v. Bradford*, 414 So. 2d 119 Ala: Court of Civil Appeals 1982, "The most significant feature of Rule 25(c) is that it does not require that anything be done after an interest has been transferred. ... the judgment will be binding on his *successor in interest even though [s]he is not named.*"(emp)

Like in *American*, "This case involves the interpretation and application of ARCP rule 25(c) ...

... Even though Barclays **was never made a party plaintiff**, the judgment is as binding upon them **as if they had been such a party**. *United States v. Griffith Amusement Co.*, 94 F.Supp. 747 (W.D.Okla.1950). Yarber is protected from any separate action of Barclays against Yarber based upon **the same subject matter, controversy, facts, indebtedness or liability** here

**involved ...” (emp)**

Respondent cannot assert a “separate action” as “affirmative defenses” in 2011 or 2018 “based upon the same subject matter, controversy, facts” regarding those same “dismissed claims” on August 30, 2010.

**D. Courts Lacked Jurisdiction Over Those “Dismissed Claims”**

Respondent dismissed its ejectment claims pursuant to Rule 41(a)(2) and in *Walker Brothers Investment v. Mobile*, 252 So. 3d 57 Ala: Supreme Court 2017,

“... a Rule 41(a)(1) **dismissal deprives the trial court of ‘jurisdiction’ over the ‘dismissed claims.’** *Duke Energy Trading & Mktg., L.L.C. v. Davis*, 267 F.3d 1042, 1049 (9th Cir. 2001)

... [t]he effect of a voluntary dismissal without prejudice **is to render the proceedings a nullity and leave the parties as if the action had never been brought.**

... it “**ipso facto** deprived the trial court of the power to proceed further with the action and rendered all orders entered after its filing void.” (emp)

The court did not acquire subject-matter jurisdiction over Respondent's ejectment claims and

the Rule 41(a)(2) dismissal *ipso facto* deprived the courts in 2011 and 2018 "jurisdiction" over those "dismissed claims." All orders adjudicating those dismissed claims "on the merit" to bar Petitioner's claims are void.

And as in *Adler*, the dismissal of Respondent's "... ejectment action rendered the ... foreclosure sale invalid, and, consequently, the... foreclosure deed never validly existed ..." 9 years, 4 months, 8 days ago.

#### **E. Respondent Did Not Acquire "Standing" or Authority To Foreclose On The Property**

Respondent's claims were barred pursuant to Section 10-2B-15.02, Ala.Code 1975. Respondent then argued it was "exempt" from state laws because federal law superseded state law and "on September 25, 2008, the FDIC sold the assets of WaMu to Chase. [JPMC] is a subsidiary of Chase; *the subject mortgage was one of the assets purchased by Chase.*"<sup>8</sup>(emp) Respondent identified "Chase" as being the "real party in interest." In *Sims*,

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<sup>8</sup>"... The Agreement serves to explain how Plaintiff came in possession of the subject mortgage absent any assignments which are not already in the record. Plaintiff merely pointed this Court to a public U.S. government website where the Agreement can be found, and the authenticity of the document is not likely to be called into question." (emp) 5-13-2010

"... JPMC also alleged that its acquisition of the mortgage was proper pursuant to an agreement between the Federal Deposit Insurance Corporation and JPMC's parent company, Chase, and ... JPMC also contended that it had, in fact, had "full authority to conduct foreclosures and initiate ejection proceedings in Alabama" under federal law, contrary to Tipp's assertions."(emp)

Respondent cited *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 11 (2007) as controlling to supersede state law. However, Respondent is not an OCC "licensed operating subsidiary" of Chase with any semblance of "authority" and is not regulated by state or any federal agency. Respondent has no "authority to conduct foreclosures and initiate ejection proceedings" in any state under "federal law."

On December 26, 2008, CHF allegedly acquired Ms. Sims' mortgage from Citi Residential Lending (App.42) and advised the bankruptcy trustee on April 20, 2009, *prior to* the foreclosure on July 13, 2009, it "holds a Deed of Trust on the Property." (App.40)

There was no evidence of a mortgage, an assignment of the mortgage or the note. In *Gray v. Federal Nat. Mortg. Ass'n*, 143 So. 3d 825 Ala: Court of Civil Appeals 2014, the court held "... only the

**holder of the obligation can foreclose.** ' ... "The note is the cow and the mortgage the tail. The cow can survive without a tail, but the tail cannot survive without the cow."... " (emp)

"*Happy cows come from California*" but there was no sighting of the cow or the tail, just a lot of bull because that cow and its tail went to "*Santa Ana*" on November 22, 2002.

Ameriquest endorsed the note in blank and executed an assignment in blank (App.46) transmitting both to Bankers Trust. (App.43)

In *Sturdivant v. BAC Home Loans Servicing, LP*, 159 So. 3d 15 Ala: Court of Civil Appeals 2011

"In *Hrovat v. Bingham*, 341 S.W.2d 365 (Mo.Ct.App.1960), the Missouri Court of Appeals stated: "The general rule is that if the holder of the mortgage has no right or power to foreclose, then the sale under an attempted foreclosure is void and no title is conveyed...." 341 S.W.2d at 368. ... any deed acquired by a purchaser from an unauthorized foreclosure sale is void *ab initio* ..." (emp)

In *Gray*, the court held "... the right of the foreclosing entity to conduct a foreclosure sale must be proven in order to show ... a cause of action to eject the debtor) ..." (emp) Respondent did not have a "cause of action" to eject a church mouse.

**F. The Settlement Agreement Is Void *Ab Initio***

The "validity" of the "confidential" settlement and quitclaim deed conveying the property to Ms. Sims relies upon an adjudication "on the merits" of Respondent's ejectment claims where Respondent had the "burden" to prove "superior title," the "right" to possession and "right ... to conduct a foreclosure sale." *see Gray – Respondent proved nothing.*

In *Liberty Nat. v. Univ. Of Ala. Health Servs.*, 881 So. 2d 1013 Ala: Supreme Court 2003, the court held "Standing, like jurisdiction, is necessary for any valid legal action ... From these rules of law, it's axiomatic that a party who lacks standing cannot be granted relief upon his cause." (emp)

Respondent evidenced "... Ms. Sims lacks standing ... she quitclaimed all of her interest in the Property to Ms. Tipp, who is not a party to this action ..." and Petitioner "has not ... executed anything transferring any rights to the Property back to Ms. Sims..." (emp)

In *Gardens at Glenlakes*, Respondent's "argument" was "in fact, a real-party-in-interest inquiry ... and the trial court can address the issue ... by applying Rule 17(a)..." (emp) Ms. Sims "lacks standing" and the court failed to apply Rule17(a) to acquire jurisdiction.

Respondent was not the assignee of the

mortgage, or the holder of the note therefore “no title is conveyed .... any deed... from an unauthorized foreclosure sale is void *ab initio* ...” (emp) *see Sturdivant*

Respondent's foreclosure deed was unexecuted and unrecorded and Petitioner, *successor in title*, had “absolute authority over the property” when Respondent's claims were dismissed pursuant to Rule 41(a)(2). *see Douglass*

Respondent's “... foreclosure deed never validly existed,” and “Consequently, the ...[quitclaim] deed which depended ... its efficacy upon the validity of the ... foreclosure deed ... was also void ...” (emp) *see Adler*

#### G. Respondent's Claims Are Barred By Res Judicata

In *Sims*, those “same claims” Respondent argued were “adjudicated” in the 2009 case, Respondent

“... contended ... could not have accrued after the 2009 action because, after the circuit court had granted its motions to dismiss Tipp's complaint and its complaint against Sims, it owned the property and, therefore, its actions on the property after that time could not have been torts against Sims.” (emp)

... Furthermore, those claims appear to involve actions that JPMC and Chase allegedly committed after the 2009 action was disposed of. Therefore, it is not apparent from the record that the merits of those claims could have been adjudicated in the 2009 action." (emp)

The court in *Sims* found Petitioner's claims to recover the property could not have been "adjudicated in the 2009 action" The court in *Sims* established Petitioner as *successor in title* because "Sims conveyed any interest that she had in the property to Tipp" and "... ascertained the property rights of the parties .. [that] precluded relitigation of those same issues with regard to their successors in interest." (emp) In *B & B Hardware v. Hargis*, 135 S. Ct. 1293 Supreme Court 2015,

"This Court has long recognized that the determination of a question directly involved in one action is conclusive as to that question in a second suit." *Cromwell v. County of Sac*, 94 U.S. 351, 354, 24 L.Ed. 195 (1877). The idea is straightforward: Once a court has decided an issue, it is forever settled as between the parties," *Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522, 525, 51 S.Ct. 517, 75 L.Ed. 1244 (1931) ... " (emp)

Additionally, in *Holland v. JPMorgan Chase*

*Bank, NA*, Dist. Court, SD New York 2019, the court held

“ ... "it is clear that a dismissal, with prejudice, arising out of a settlement agreement operates as a final judgment for res judicata purposes."

*Marvel Characters, Inc. v. Simon*, 310 F.3d 280, 287 (2d Cir. 2002); *see also Chase Manhattan Bank, N.A. v. Celotex Corp.*, 56 F.3d 343, 345 (2d Cir. 1995).” (emp)

The 'law of the case' and "confidential" settlement between Respondent and Ms. Sims "operates as a final judgment for res judicata purposes" that precluded relitigation of Petitioner's claims as *successor in title* to recover stolen property that not "adjudicated in the 2009 action." *see Sims*

#### H. Respondent's Actions Constitute A Continuing Violation

*In Tenant v. Chase Home Finance, LLC*, , 187 So. 3d 1172 - Ala: Court of Civil Appeals 2015, the court held

"A trespass to property is a wrong against the right of possession or entry." *Boyce v. Cassese*, 941 So.2d 932, 945 (Ala.2006). In order to be actionable, the entry on the land of another must not be authorized; ... Trespass to chattel occurs when "there is a "wrongful taking and carrying

away of the property of another.""  
*Wint v. Alabama Eye & Tissue Bank*,  
675 So. 2d 383, 385 (Ala. 1996)." (emp)

Respondent filed a Motion to Dismiss, or in the alternative, Request for Permission to Secure the Property with an affidavit and report that "... **There is still personal belongings at this location.**"(emp) Respondent's claims were dismissed on August 30, 2010 without permission to enter the property for any purpose.

Previously, on September 24, 2009 there was instructions to "**Close eviction ... Rekey will be complete within 48 hours ... We will need a boardup done.**" (emp)

On September 25, 2009, Petitioner received a call that Ms. Sims was contacted by the SPCA about "abandoned" animals. After contacting the SPCA, Petitioner filed a request for a TRO that Respondent had "taken possession of the property without a court order."

Petitioner spoke with the agent that evening and he went to change the locks and

"... there was animals on the property, and he was instructed to open the door to let the dogs out and open the gate and let the horse out, ... so he called the SPCA ... but he was instructed to open the gate and turn the horse out. I guess it should be noted the horse

wasn't on that property ... Two acres that Elizabeth owned that wasn't under mortgage. (emp)

“... we were in court ... [George] referenced emails regarding their agents contacting the SPCA for the removal of animals ... Judge Graddick asked if I had copies of it, and he said, no, so he told them to give it to me ...”(Tipp's deposition May 24, 2017 Pg 49-50)

Respondent was compelled to produce those emails but Petitioner was provided a document that had been copied and pasted. Respondent facilitated the removal of animals but stated “**The bank did not remove any of the personals or animals.** When I visited the property this morning, The Mobile County Environmental Agency, Human Society and Animal control were all there” and the SPCA. (emp)

Petitioner received a call from a neighbor on September 7, 2010, that the door to her mother's house was open. She called the Sheriff's Department and after a deputy arrived, they entered the house and found a logsheet on the kitchen counter.

Unknown to Petitioner, agents were entering the house at will on June 11, July 1 and July 29, 2010 for the purpose of “GC” – 'grass cutting.' And the house had been winterized sometime *prior to* June 11, 2010 after the locks were changed in

September 2009.

On September 9, 2010, Petitioner posted signs to "KEEP OUT" and "NO TRESPASSING:PRIVATE PROPERTY" and waited for Respondent to attempt to "re-file" its claims. Unknown to Petitioner again, the

- i. "Property inspected on 10/13/2010 and found to be vacant and secure property considered to be **vacant** but not abandoned due to "No Trespassing" and "Keep Out" signs" which were recently posted at this property ..."(emp)
- ii. 11/8/2010 "... this is a post-foreclosure ejectment action. Issues arose when the defendant borrower's sister challenged the foreclosure ... our ejectment case was not needed."(emp)
- iii. 11/24/2010 "... advise if we should send a 134 letter and secure the property. Signs are posted on the property to keep out, no trespassing."(emp)
- iv. 12/1/2010 "vacant ready for trash out no address at street found **vacant house unsecured and visitor log inside** ... rekey scheduled for tomorrow."(emp)
- v. 11/2/2010 "... rekeyed ... if we go

to PP eviction I believe we will be on hold for the affidavit issues ... We will move forward as a Vacant property and ... remove all remaining items left behind ... trash out per evictions coordinator ..."(emp)

Petitioner got a call from a neighbor on Saturday, December 11, 2010, there were people at her mother's house with dumpsters. When Petitioner got there, there was a dumpster in the front and one in the back. Petitioner thought the house had been sold after Respondent's *so-called* "voluntary dismissal" of its claims and was told the "trash-out" was courtesy of "the bank."

They were finishing up in the pantry and kitchen throwing everything into two wheelbarrow's and wheeling it out the front and back doors.

It is indisputable there was a "wrongful taking and carrying away of the property of another" when the personal property of Petitioner's parents in their home was being wheeled out the front and back door in wheelbarrow's into dumpster's that were unlawfully on the property.

On November 17, 2017, Respondent argued Ms. Sims

"... and her attorneys remained silent at that time and allowed the ejection action to be dismissed. Because any personal property remaining in the

Property had been abandoned by [Sims], Defendants submit that no writ of possession or court order would have been required to remove abandoned property." (emp)

Petitioner posted signs to keep people off the property and out of her mother's house and no one but Petitioner had a right to go onto the property.

Respondent voluntarily dismissed its complaint for the sole purpose of going '*beyond the reach of the court*' to acquire by forcible entry and trespass what it could not recover through the court.

Respondent's claims are barred by the 'door-closing' statute but argued Petitioner's claims were barred by "statutes" of limitations after the property was seized by forcible entry and trespass and personal property disposed of – criminal acts. Respondent then disposed of Petitioner's stolen property by fraud and collusion by all parties.

Petitioner specifically stated in the independent action that the "[v]acatur of the judgment entered September 16, 2011 ... will **eliminate any bar to any claims** ... the 2011 case was commenced on February 9, 2011, ... of the unlawful taking of the property by force on December 11, 2010..." (emp)

In *Breland v. City of Fairhope*, 229 So. 3d 1078  
Ala: Supreme Court 2016,

“....No period of limitation at all is applicable to an action for a declaratory judgment ... in cases involving a continuing harm ... the same constitutes at least the equivalent of a continuing invasion of plaintiff's property rights akin to a continuing trespass – a situation in which a new cause of action arises in plaintiff's favor ... each day (id. At 254; see *Dowsey v. Village of Kensington*, 257 N.Y. 221, 228, 177 N.E. 427 [1931]).”(emp)

An “Interior BPO” was done on 10/5/2009 with a “Repaired Amount 104000.00, As Is 94000.00.”<sup>9</sup> Respondent took possession of the property, “rekeyed” the locks, listed the property for sale and had it sold pending closing more than once. At her own expense, Petitioner stopped those sales to save the home of her parents only to have it stolen again.

On February 4, 2013, Respondent “had showings but the dwelling in such bad shape. Serious buyers are only interested in land value. See what you can do.”(emp) The home of Petitioner's parents standing *prior to 1890*, would have been torn down if sold – courtesy of “the bank.”

On September 23, 2014 there was an “Interior BPO ... 30 day value: 0.00.” (emp) The house cannot

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<sup>9</sup> Estimated repairs \$5000-\$7500

be "repaired" – it will have to be restored.

Records evidence on

- i. 11/03/2009 "FU ON EVICTION"
- ii. 11/14/2009 "FU on eviction"
- iii. 12/18/2009 "FC f/u"

Respondent took possession of the property by forcible entry and trespass beginning September 25, 2009 – **3756 days** and "a new cause of action arises in plaintiff's favor ... each day" Respondent unlawfully bars Petitioner's recovery of her property.

### CONCLUSION

Petitioner fought and saved her parents home from a default judgment and a foreclosure not of her doing and it was stole by Respondent after the dismissal of its complaint.

Respondent invaded the privacy of Petitioner's parents, did a 'trash-out' of their personal property and destroyed their home that withstood time and hurricanes since before 1890.

Petitioner had a "right" as *successor in title* to recover the property, but her claims were barred by an "unqualified" foreign corporation and the theft of Petitioner's property was affirmed by the Alabama Supreme Court. That judgment is due to be vacated as void for lack of jurisdiction.

Petitioner is before this court alone after 10 years, but not by accident. This day has been years in the making for a purpose – to stand for those who can't stand for themselves to end deprivation of property by 'decisions' with no opinion so no person in any state will ever have to endure the abuse Petitioner has gone through in the courts of this state to recover the home of her parents.

The facts in this case are so simple and clear evidence how 'decisions' with no opinions and without legal authority depriving a person of property violates the Fifth and Fourteenth Amendment.

The petition for a writ of certiorari should be granted because equal protection of "life, liberty & property" are fundamental rights our forefathers died for.

Respectfully submitted,

*/s/ Marian S. A. Tipp*  
the 6<sup>th</sup> day of January 2020