20-1133

No. 21-

In the
Supreme Court of the United States

Nicholas L. Triantos,

Petitioner

v

Deutsche Bank National Trust Company, as Trustee for Morgan Stanley ABS Capital I Inc., Trust 2004-E4, Mortgage Pass-Through Certificates, Series 2004-HE4, New Century Mortgage Corporation, Bank of America, N. A., Select Portfolio Servicing, Inc., Countrywide Home Loans. Inc., Guaetta &Benson, LLC., Audrey G. Benson, Peter V. Guaetta, and Sarah T. Fitzpatrick

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

Nicholas L. Triantos, Esq.
Lynnfield Woods
200 Broadway Suite 302
Lynnfield, MA 01940
617-828-4848
nltlaw@nltlegal.com

Pro-Se Petitioner, February 15, 2021

QUESTIONS PRESENTED

1. Whether the First Circuit erred in concluding that one Count under the Fair Debt Collection Practices Act was sufficient to confer Federal Jurisdiction over the Petitioner despite the lack of Federal Pre-emption over M.G.L.C. 93A, and in doing so erred in failing to Remand to State Court all in direct conflict with this Honorable Court's Decisions.

2. Whether the First Circuit erred in failing to Remand to State Court for lack of Subject Matter Jurisdiction by refusing to apply the Mandatory Prior Exclusive Jurisdiction Doctrine, requiring Remand, espoused by this Honorable Court in direct conflict with this Courts mandate.

3. Whether the Petitioners Constitutional Right to Due Process and Equal Protection were violated where the District Court in allowing the Respondent's (Deutsche Bank) Counsel to verbally prove its case in open court (later determined as false) and ignoring the Petitioner's documentary proof that Respondent, Deutsche Bank, lacked Standing to Foreclose on Petitioner's Home and therefore lacked standing in any action in any Court, and where the District Court rested its dismissal of Petitioner's case based upon the verbal misrepresentation of the state of the Law in the Commonwealth of Massachusetts by Counsel to Deutsch Bank, that is the exact opposite of the Law of the Commonwealth of Massachusetts.

4. Whether the 1st Circuit violated the Separation of Powers - Federalism by interpreting a Massachusetts Statutes in opposite of the Supreme Judicial Court's interpretation of the Statutes, thereby creating a distortion on the application of the Statutes in violation of the Separation of Powers-Federalism, that has violated the rights of not only the Petitioner but also many citizens of the Commonwealth of Massachusetts similarly situated.

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14 (b) (i), a list of all parties is contained in the caption of the case

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CORPORATE DISCLOSURE STATEMENT

Deutsche Bank National Trust Company, ("DB") is a corporate subsidiary located 1761 E Saint Andrew Place, Santa Ana, CA, 92705-4934, whose parent company is Deutsche Bank Trust Corp. with an address of 60 Wall Street New York, NY 10005 United States.

Select Portfolio Servicing, Inc., ("SPS"),is Corporation organized under the Laws of the State of Utah and a wholly owned subsidiary of Credit Suisse First Boston,(publicly traded). headquartered in Zurich Switzerland and New York.

Bank of America, N.A., ("BOA") is a publicly traded corporation headquartered in Charlotte, North Carolina.

Countywide Home Loans, Inc. ("Countyrwide") is presently a defunct entity and was acquired by Bank of America on July 1, 2008.

New Century Mortgage Corporation, ("New Century") is a defunct corporation formerly located at 350 Commerce Street, Suite 100, Irvine, California 92602 filed for Ch 11 Bankruptcy protection (along with 16 other related corporations) on April 2, 2007, the Estate was closed on August 26, 2016.

Gueatta & Benson, LLC is a privately held limited liability company located in North Chelmsford, MA, and its employees, Audrey G. Benson, Peter V. Guaetta, and Sarah T. Fitzpatrick are individual attorneys licensed to practice law in the Commonwealth of Massachusetts.

OPINIONS & PROCEEDINGS BELOW

United States Court of Appeals for the First Circuit, Docket # 17-1938 decision affirming the dismissal of Petitioners Complaint by the US District Court, reproduced at (A86).

United States District Court, District of Massachusetts,

Docket # 17-CV-10550-WGY , Dismissal of Petitioners Complaint reproduced at (APP)

Northeast Housing Court, Docket # 16H77SOP005308, currently pending.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTES INVOLVED

Fifth Amendment to the Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment to the Constitution

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fair Debt Collection Practices Act, 15 U.S.C 1692 et. seq.

M.G.L.c. 93 Section 49:

Debt Collection in an Unfair, Deceptive or Unreasonable Manner

M.G.L.c. 93A Chapter 93A:

REGULATION OF BUSINESS PRACTICES FOR CONSUMERS PROTECTION

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INTRODUCTION

Petitioner submits this Writ as a result of several Constitutional violations by the 1st Circuit that are directly in conflict with this Honorable Court's decisions. Not only has Petitioner's Constitutional rights been violated, but many citizens of the Commonwealth of Massachusetts as well.

The origin of the Petitioner's assertions stems from the stolen identity of the Petitioner by mortgage servicer, Countywide Home Loans, Inc. ("Countywide"), on or about September 2008, (See Stolen Identity Letter A1). Petitioner immediately ceased any further mortgage payments and informed Countywide that as a result of the stolen identity Petitioner was vested with a right of set off and demanded that Countrywide rectify and compensate the Petitioner. Bank of America, N. A., (BOA), acquired Countrywide on July 1, 2008 (2 months prior) and due to its gross negligence failed to screen Countrywide's employees now in BOA's employ, otherwise BOA would have learned that the individual that had stolen the identity of the Petitioner was convicted of the exact same crime and was incarcerated for 36 months for his conviction.

Petitioner, thereafter, spiraled into financial ruin. Within a week of receiving the Stolen Identity Letter, Petitioner received various stating that purchases or charges were made against Petitioner's financial accounts and further other emails seeking to extort money from the Petitioner as the email falsely stated that Petitioner was a convicted Sexual Offender and had been placed upon a "sexual offender's database", and in order to remove the file and picture of Petitioner from the database, a fee of $99.95 was to be remitted, (See Police Report, Peabody Police Department, A2).

Litigation ensued requiring the Petitioner now to litigate in both Federal and State Court in violation of the Mandatory Prior Exclusive Jurisdiction Doctrine espoused by this Honorable Court in Marshal (infra).

During the litigation no discovery was afforded to the Petitioner but instead evidence was obtained from other sources that demonstrated that DB was not the Real Party In Interest and had no right to any claims against the Petitioner all as a result of the facts described below:

1. New Century (alleged holder) had sold the purported mortgage documents 45 days after the purported closing date in 2004, (A3).
2. The Assignment that DB relied upon for authority to foreclose was dated more than 3 years later allegedly assigning the same mortgage documents that New Century had sold previously, (A12).
3. Notwithstanding, the Petitioner demonstrated the signatures both of the Affiant and the Notary were forgeries rendering the assignment void ab initio.
4. None of the purported mortgage documents were, nor are they assets of the Trust DB alleges to be acting as Trustee therefore.
5. The purported mortgage documents had all expired by operation of law pursuant to M.G.L.c. 260 Sec 33 et seq., M.G.L.c. 106 Sec. 3-118, M.G.Lc. 106 Sec. 3-304 and cases interpreting the aforementioned statutes, Deutsche Nat'l Trust Co. v Fitchburg Capital, LLC, 28 N.E. 3d 416, 471 Mass. 248 (2015) and Premier Capital, LLC v. KMZ, Inc., 464 Mass. 467 (Mass. 2013),.
6. Petitioner's right of set off or recoupment exceeds any amount alleged to be owing to anyone.

PRECEDURAL HISTORY

After the illegal foreclosure of the Petitioner's home, DB, on April 15, 2016, filed its first civil action, (Deutsche Bank National Trust Company v. Triantos, Docket No. 16-CV-10722-IT).

The Honorable Justice Talwani promptly issued a notice to show cause Order to Show Cause to DB to prove that the amount-in-controversy exceeded $75,000.00 (it did not), and to disclose the location of DB's Trustee(s) in order to the confirm "complete diversity" and for DB to disclose the Trust purportedly containing Petitioner's purported mortgage (DB's complaint failed to disclose). DB did not answer the Order to Show Cause, and instead, (presumably to avoid discovery of DB's chicanery), filed a notice of voluntary dismissal.

Next, on or around December 9, 2016, DB filed a Summary Process with the Housing Court in an attempt to illegally evict Petitioner from his home, (Docket No. 1686-SU-77, and later transferred to Northeast Housing Court Docket 16SP5308, currently pending), to which Petitioner answered, counter-claimed and third party claimed against the Respondents. Later amended to include the newly discovered evidence leaving DB and all of the Respondents with nothing but conduct that has violated the rights of the Petitioner in the most abhorrent and egregious manner,

Later Counsel for DB, ("CDB") and then Counsel for Petitioner (now discharged) agreed in writing, that the matter should be litigated in Essex Superior Court, as CDB stated he would be happy to litigate in Superior Court. Unfortunately, Petitioner's inexperienced Counsel was unaware that CBD's scheme was planned from the start in order to get the instant case removed

to Federal Court, as CBD is well aware of the distortion of the law of the Commonwealth that the 1st Circuit has occasioned not only on this Petitioner but also on many other litigants similarly situated (See Separation of Powers infra).

After Removal, a flurry of motions ensued with the Petitioner filing a Motion to Remand after filing an First Amended Complaint (A14) and Respondents, thereafter filing Motions to Dismiss, and Strike. Oppositions were filed by Petitioner along with his Motion to Remand and a hearing on the Motions took place on September 14, 2017. The District Court:

1. Never heard any oral argument and never considered Petitioner's Motion to Remand, despite jurisdiction being a threshold question, and

2. Incorrectly applied the legal standard applicable to a "Plaintiff", to DB and relied upon the open court verbal mis-representations of CDB, who created a fictional story that, "even if the signatures were fraudulent on the Assignment, DB would be entitled to have another Assignment this time with purportedly, "non-fictitious, non-forged signatures", both of the purported authorized signer and the notary. (Also Forged).

DB's Motion to Dismiss was granted to which Petitioner sought an Appeal to the 1st Circuit Court of Appeals. The Court of Appeals affirmed the dismissal and entered Judgement against the Petitioner in violation of Petitioner's Constitutional Rights inter alia and precipitating this Writ of Certiorari to this Honorable Court.

PETITION FOR WRIT OF CERTIORARI

Petitioner Constitutional rights have been violated by the 1st Circuits decisions that are in direct conflict with this Honorable Courts decisions. The internal conflict and variability amongst the Justices within the 1st Circuit results in the Unconstitutional application of Federal Jurisdiction so abhorrent that Federal Jurisdiction in the 1st Circuit depends upon which Justice a litigant comes before. Such a result cannot stand.

A. PRE-EMPTION

A determination of Federal Jurisdiction is not determined by a simple statement that, "one Federal Count" in a Plaintiff's complaint is sufficient to confer jurisdiction, rather in the instant case, Federal Jurisdiction turns on whether the Fair Debt Collection Practices Act pre-empts M.G.L.c. 93A, Regulation of Business Practices for Consumers Protection, which this Court has already held that it does not and therefor no Federal Jurisdiction over the Petitioner existed, (Federal Question incorrectly formed the basis for the 1st Circuit's assertion of Jurisdiction, diversity was not applicable to the instant case).

The First Circuit for the District of Massachusetts is divided,... internally,.. amongst the Justices on the application of Federal Pre-emption and Federal Jurisdiction or lack thereof.

The 1st Circuit summarily concluded (both the District Court and Circuit Court of Appeals) that one federal count in Petitioner's Complaint "anchors" jurisdiction, both of which are in error, (A88 and A86).

Federal Question Jurisdictional analysis does not end by the simple statement that there is, "one count stating a federal claim", **even in the face of an express Pre-emption provision in a Federal Statute**. Federal Jurisdiction is based upon Federal Pre-emption,.. which here there is none, and as such an analysis must be undertaken as a threshold question.

Ruhrgas plainly states this holding:

"The requirement that jurisdiction be established is a threshold matter . . . is 'inflexible and without exception," 523 U.S. at 94-95 (quoting Mansfield, C. & L. M. R. Co. v. Swan, 111 U.S. 379, 382, 28 L. Ed. 462, 4 S. Ct. 510 (1884)); for "jurisdiction is power to declare the law," and "'without jurisdiction the court cannot proceed at all in any cause,'" 523 U.S. at 94 (quoting Ex parte McCardle, 74 U.S. 506, 7 Wall. 506, 514, 19 L. Ed. 264 (1869)). The Court, in Steel Co., acknowledged that "the absolute purity" of the jurisdiction-first rule had been diluted in a few extraordinary cases, 523 U.S. at 101, and JUSTICE O'CONNOR, joined by JUSTICE KENNEDY, joined the majority on the understanding that the Court's opinion did not catalog "an exhaustive list of circumstances" in which exceptions [****9] to the solid rule were appropriate, 523 U.S. at 110."

Ruhrgas Ag v. Marathon Oil Co., 526 U.S. 574, 577 (1999)

The FDCPA, does not pre-empt M.G.L.c. 93A, as this Court has held. Furthermore, the 1st Circuit made this mistaken assumption, thereby ignoring Petitioner's Motion to Remand and (never hearing oral argument) and further ignoring this Honorable Court's Doctrine of the Mandatory Prior Exclusive Jurisdiction.

A chronology of this Jurisdictional variability is provided below:

First, previously Plaintiff Deutsche Bank National Trust ("DB") filed a complaint with the District Court for the First Circuit, (Docket # 16-CV-10722-IT) wherein Justice Talwani ordered a Notice to Show Cause in a proper examination of the Court's Jurisdiction.

The Court correctly examined its Jurisdiction as a threshold matter and ordered a Notice to Show Cause to DB, which resulted in DB withdrawing its complaint.

Every Court must examine its own jurisdiction sue sponte irrespective of whether a litigant asserts the issue,...Justice Talwani adheres to this mandate.

Second, In Dean v Compass Receivables (1st Circuit Dist. Mass.) concluded that:

"Applying the artful pleading doctrine to the instant case, this Court has jurisdiction if the FDCPA preempts Chapter 93A to the extent that it prohibits unfair debt collection practices, see BIW Deceived, 132 F.3d at 831- 32 (artful pleading exception to the well-pleaded complaint rule is compelled by the doctrine of federal preemption), or if resolution of the Chapter 93A claims necessarily turns on a substantial issue arising under the FDCPA.See Franchise Tax Bd., 463 U.S. at 9; see also Kleinerman v. Luxtron Corp., 107 F. Supp.2d 122, 123-24 (D.Mass. 2000) (finding federal

question jurisdiction where patent infringement analysis was necessary to determine whether licensee breached patent license). Because neither condition is present, federal question jurisdiction is lacking.

Dean v. Compass Receivables Management Corp., 148 F. Supp. 2d 116, 118 (D. Mass. 2001)

Third, and prior to the Dean Decision, the Honorable, Judge Nancy Gertner, (1st Circuit, Ret.) in a mere docket entry order, Her Honor stated:

"Even if the Plaintiff had brought a claim under the FDCPA, that statute only preempts state law in limited circumstances(*) not applicable here. As such, the "well-pleaded complaint rule" governs the existence of a federal question for purposes of 28 U.S.C. Sec. 1331 and, under that rule, there is no federal question at issue."

Board of Directors of The Drummer Boy Homes Association, Inc. v. Britton et. al., 1:07cv11826, 1st Circuit, US District Court, (2007).

(*the limited circumstance her Honor was referring to relate to reporting under FDCPA, all of which are inapplicable here as there has been no reporting nor was any required)

Fourth, nor can Federal Question jurisdiction be conjured up by the mention of a federal subject.

The First circuit correctly held that:

"Federal jurisdiction cannot be conjured up by a passing mention of some federal subject. Under the well-pleaded complaint rule, allegations in the complaint that are unnecessary to the statement of the relevant cause of action cannot themselves support [**17] a claim of federal question jurisdiction. See, e.g., Baldwin v. Pirelli Armstrong Tire Corp., 927 F. Supp. 1046, 1053 (M.D. Tenn. 1996); 13D Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 3566 (3d ed. 1999)."

R.I. Fishermen's Alliance, Inc. v. R.I. Dep't of Envtl. Mgmt., 585 F.3d 42, 50 (1st Cir. 2009)

Fifth, a recent 1st Circuit decision in McDermott. Marcus, Errico, Emmer & Brooks, P.C. examining statutes of limitations within the FDCPA and M.G.L.c. 93A concluded that even generally congress did not intend for the FDCPA to pre-empt consistent state law.

"Indeed, "No revealed case law suggests that Chapter 93A and the related Massachusetts statutes and regulations dealing with debt collection practices are inconsistent with, and thus preempted by, the FDCPA." Dean v. Compass Receivables Management Corp.,148 F.Supp.2d 116, 119 (D.Mass.2001) (citing 15 U.S.C. § 1692n); see also Gonzales v. Arrow Financial Services, LLC,660 F.3d 1055, 1067 (9th Cir.2011) (section 1692n "coupled with the FDCPA's express purpose to 'promote consistent State action,' 15 U.S.C. § 1692(e), establishes that Congress did not intend the FDCPA to preempt consistent state consumer protection laws"); see, e.g., Harrington v. CACV of Colorado, LLC,508 F.Supp.2d at 132..."

McDermott v. Marcus, Errico, Emmer & Brooks, P.C., 911 F. Supp. 2d 1, 48 (D. Mass. 2012)

In the face of this avalanche of it's own precedent, the 1st Circuit in the instant case has created an internal jurisdictional variability and proceeded with "Hypothetical Jurisdiction", all in conflict with this Honorable Court's Decisions resulting in effect, that, Federal Jurisdiction in the 1st Circuit is based upon which Judge a litigant appears before,... simply a pure Constitutional violation of Petitioner's (and other litigants similarly situated) right to due process and equal protection.

Clearly, in the instant case, the FDCPA does not pre-empt Chapter 93A, nor does the resolution of the 93A claim turn on a substantial issue arising under the FCDPA. Accordingly, there is no Federal Jurisdiction in this case and this Honorable Court should grant Certiorari and expeditiously reverse the 1st Circuit, and render the dismissal and judgement null and void and without effect and order a Remand.

This Honorable Court's decisions supports Petitioner's position.

In Altria Grp., **even in the face of an express pre-emptions provision in a Federal Statute** and further, that Federal Pre-emption if disfavored.

"Article VI, cl. 2, of the Constitution provides that the laws of the United States "shall be the supreme Law of the Land; ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Consistent with that command, we have long recognized that state laws that conflict with federal law are "without effect." Maryland v. Louisiana, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981).

Our inquiry into the scope of a statute's pre-emptive effect is guided by the rule that " '[t]he purpose of Congress is the ultimate touchstone' in every pre-emption case." Medtronic, Inc. v. Lohr, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (quoting Retail Clerks v. Schermerhorn, 375 U.S. 96, 103, 84 S.Ct.219, 11 L.Ed.2d 179 (1963)). Congress may indicate pre-emptive intent through a statute's express language or through its structure and purpose. See Jones v. Rath Packing Co., 430 U.S. 519, 525, 97 S.Ct. 1305, 51 L.Ed.2d 604 (1977). **If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains.** Pre-emptive intent may also be inferred if the scope of the statute indicates that Congress intended federal law to occupy the legislative field, or if there is an actual conflict between state and federal law. Freightliner Corp. v. Myrick, 514 U.S. 280, 287, 115 S.Ct. 1483, 131 L.Ed.2d 385 (1995).

When addressing questions of express or implied pre-emption, we begin our analysis "with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed. 1447 (1947). That assumption applies with particular force when Congress has legislated in a field traditionally occupied by the States. Lohr, 518 U.S., at 485, 116 S.Ct. 2240; see also Reilly, 533 U.S., at 541–542, 121 S.Ct. 2404 ("Because 'federal law is said to bar state

action in [a] fiel[d] of traditional state regulation,' namely, advertising, we 'wor[k] on the assumption that the historic police powers of the States [a]re not to be superseded by the Federal Act unless that [is] the clear and manifest purpose of Congress' " (citation omitted)). Thus, when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily "accept the reading that disfavors pre- emption." Bates v. Dow Agrosciences LLC, 544 U.S. 431, 449, 125 S.Ct. 1788, 161 L.Ed.2d 687 (2005)."

Altria Grp., Inc. v. Good, 555 U.S. 70, 76-77 (2008)

B. PRIOR EXCLUSIVE JURISDICTION DOCTRINE

Furthermore, Petitioner in his Motion to Remand and Appeal of its denial without argument at either stage, asserted this Honorable Court's Mandatory Prior Exclusive Jurisdiction Doctrine requiring Remand.

Marshall defines the mandatory doctrine as requiring remand based upon the mandatory jurisdictional limitation of the **Doctrine of Prior Exclusive Jurisdiction espoused by the Supreme Court in Marshall v. Marshall, 547 U.S. 293, 311, (2006). "It is not a discretionary abstention rule. It is a mandatory jurisdiction limitation."**

State Eng'r v. S. Fork Band of Te-Moak Tribe of W Shoshone Indians, 339 F. 3rd, 804, 810 (9th Cir. 2003).

This long-standing doctrine was explained by this Honorable Court as far back as 1922:

"Where the action is in rem the effect is to draw to the federal court the possession or control, actual or potential, of the res, and the exercise by the state court of jurisdiction over the same res necessarily impairs, and may defeat, the jurisdiction of the federal court already attached. The converse of the rule is equally true, that where the jurisdiction of the state court has first attached, the federal court is precluded from exercising its jurisdiction over the same res to defeat or impair the state court's jurisdiction."

Kline v. Burke Constr. Co., 260 U.S. 226, 229 (1922).

The 9th Circuit Court, in an excellent analysis of the Doctrine in Chapman v Deutsche Bank, (DB) determined that, unlawful detainer actions (Massachusetts Summary Process) and quiet title actions are both in rem. The Court, responding to DB's arguments by DB (in Chapman) that, summary process (unlawful detainer) and quiet title are not, "in rem", rebuffed this baseless assertion:

"The Chapmans' claim is in rem or quasi in rem because they seek to establish title to property. The nature of their claim does not change because they request monetary damages in addition to the central relief—quiet title—that they request. Here, as in Seitz, the Chapmans' quiet title claim "is quasi in rem or in rem, [and] it does not lose that nature simply because [they] seek[ ] monetary damages in addition to title to property." Seitz, 2012 U.S. Dist. LEXIS 162927, 2012 WL 5523078, at *11."

Chapman v. Deutsche Bank Nat'l Trust Co., 302 P.3d 1103, S. Ct, Nev, 9th Cir. (2013).

In a strikingly similar case, a similarly-seated U.S. District Judge remanded a case back to state court to determine quiet title and declaratory judgment as to ownership of the Property. In fact, the Judge ordered that remand was required pursuant to the Mandatory Prior Exclusive Jurisdiction Doctrine.

(See Podbielancik v. LPP Mortgage, Ltd., (Podbielancik v. LPP Mortgage , Ltd.., No. C13-1934-MJP, 2014 WL 1807049 b (W.D. Wash. May7, 2014)

Clearly, the 1st Circuit, failed to Remand the case back to State Court, in violation of the Mandatory Prior Exclusive Jurisdiction Doctrine, the lack of Federal Questions and failed to correctly apply dispositive state law to Petitioner's case violating Petitioner's Constitutional rights and Separation of Powers Federalism.

C. DUE PROCESS AND EQUAL PROTECTION

Petitioner has asserted that the signatures of both the assignment, endorsements of purported notes, (many versions,) of both the signatories and the notaries were stunningly fraudulent. (Furthermore, years prior to this illegal conduct, the purported Assignee sold (A3) and completely divested itself of any rights in anything related to the instant case, thereby rendering DB as a non-Real Party in Interest obliterating DB's standing.)

The misrepresentation in open court of DB's Counsel, was clear, stating that even if the signatures on the assignment of mortgage of both the affiant and the notary were fraudulent, that DB could simply have another assignment executed post foreclosure! (A66 Transcript, Page 10, line 12-23,)

This is a complete fabrication and misrepresentation of the Law of the Commonwealth.

Justice Long in U.S Bank National Association, v Ibanez held, in the face of US Banks argument, that it could obtain another assignment post foreclosure, (as is DB's position here) was met by a complete rejection by the Court in Ibanez:

"....retroactive assignments, long after notice and sale have taken place, do not cure statutory defects"

U.S Bank National Association v Ibanez Misc 08-384283

The Supreme Judicial Court granted Direct Appellate Review and expanded this simple statement (rendering the foreclosure void), after US Bank recited a title standard in support of its position, holding:

"Third, the plaintiffs initially argued that post-sale assignments were sufficient to establish their authority to foreclose, and now argue that these assignments are sufficient when taken in conjunction with the evidence of a presale assignment. They argue that the use of post-sale assignments was customary in the industry and point to Title Standard No. 58 (3) issued by the Real Estate Bar Association for Massachusetts, which declares: "A title is not defective by reason of . . . [f]he recording of an Assignment of Mortgage executed either prior, or subsequent, to foreclosure where said Mortgage has been foreclosed, of record, by the Assignee." To the extent that the plaintiffs rely on this title standard for the proposition that an entity that does not hold a mortgage may foreclose on a property, and then cure the cloud on title

by a later assignment of a mortgage, their reliance is misplaced, because this proposition is contrary to G.L. c. 183, § 21, and G.L. c. 244, § 14. **If the plaintiffs did not have their assignments to the Ibanez and LaRace mortgages at the time of the publication of the notices and the sales, they lacked authority to foreclose under G.L. c. 183, § 21, and G.L. c. 244, § 14, and their published claims to be the present holders of the mortgages were false. Nor may a post-foreclosure assignment be treated as a pre-foreclosure assignment simply by declaring an "effective date" that precedes the notice of sale and foreclosure,..."**

U.S. Bank National Assoc. v. Ibanez, 458 Mass. 637, 653-54 (Mass. 2011)

Thus, DB's counsel misrepresented the Law to the Court, to which the Court issued an immediate dismissal of Petitioner's case founded upon the exact opposite of the state of the Law in Massachusetts.

Furthermore, the void assignment conveyed nothing as New Century (Assignor) divested itself of any rights in and to the purported note and purported mortgage 3 years prior to any void assignment in question (A3), thereby divesting New Century (purported assigner) of any and all its rights in and to the purported note and purported mortgage, years prior to the void Assignment to DB.

Therefore, even if DB's counsel were correct, that it could obtain another post foreclosure assignment, this time with valid signatures, this hypothetical assignment would convey that very same thing that the initial void Assignment conveyed,...NOTHING !!!

The ages old tenet in our property law that one cannot convey something they do not own nor have any rights to, is something taught in law school. This simple fact entitles Petitioner, as a matter of law that he should prevail in this matter but for the misrepresentations of DB's Counsel to the Court which rested its dismissal on this, tantamount to a fraud upon the Court.

DB's fictional story further ignores the fact that, even if DB were the real party in interest, Assignor had divested itself 3 years prior to the execution of the void Assignment.

Accordingly, any assertion that DB attempts will fail as this fairy tale in opposite of the law of the Commonwealth is, frankly, a legal impossibility.

With nothing more on the subject nor any proof of any sort whatsoever, that DB is in fact the real party in interest, nor acting in behalf of a real party in interest, nor in possession of the subject documents, and that DB would be entitled to such "New Fictional Assignment", the Court accepted the misrepresentations of DB's Counsel dismissed Petitioner's case. A timely Appealed was of course filed.

Thereafter, Petitioner filed his First Amended Answer Counter-Claim and Third Party Complaint with the Northeast Housing Court including the newly discovered evidence demonstrating the complete

divestiture of all rights (Assignor) purportedly had (rendering all of the Respondents conduct as illegal) in the subject purported note and purported mortgage proving that DB is not the real party in interest, nor acting in behalf of same.

Currently, Petitioner's case at the Northeast Housing Court remains active.

D. SEPARATION OF POWERS- FEDERALISM

The 1st Circuit has created a distortion in the law of the Commonwealth of Massachusetts, and unfortunately, the Courts in the Commonwealth have blindly adhered to this distortion in "the Emperor's New Clothes" fashion.

Petitioner has asserted during the entire pendency of this litigation that both the purported note and purported mortgage have expired by operation of law.

This distortion and violation of the Separation of Powers-Federalism concerns the statutes applicable to mortgages and notes, pursuant to:

1. M.G.L.c. 260 Sec. 33 ("33"), mortgages, (A91)
2. M.G.L.c. 106 Sec. 3-118, ("3-118") notes, (A95) and
3. M.G.L.c.106 Sec. 3-304, (3-304")
   overdue instruments (A126)

A. Purported Mortgage:

The origins of the assertion that the purported mortgage is expired by operation of law finds its roots in ("33").

33 was enacted in 1957 to clear titles of old mortgages and later amended in 2005 to add an additional purpose of acting as a statute of limitations on foreclosures (5 years) (actually a statue of repose).

The added purpose in 2005 of limitations on foreclosures was first examined by the Supreme Judicial Court in Deutsche Bank Nat'L Trust Co. v. Fitchburg Capital LLC, 28 N. 3rd 416, 471 Mass. 248, (2015), ("Fitchburg"), (A100) reproduced in full.

Fitchburg is a thorough well-reasoned, intense legal analysis by the Court in Fitchburg which the 1st Circuit, has interpreted incorrectly, and has refused to follow, violating the Separation of Powers – Federalism, thereby creating a distortion of 33 and Fitchburg, which has now caused the lower Courts in the Commonwealth to blindly follow causing injury in fact to this Petitioner as well as many citizens of the Commonwealth of Massachusetts by a taking of their property without due process, without equal protections and tantamount to a taking without just compensation.

Fitchburg in interpreting 33 with its many holdings has effectively overruled the argument that actions on mortgage documents is an action in rem that has no expiry period other than that stated in the document itself. (actions on mortgages are in rem but they can now expire due to the operation of 33, 3-304, and the holdings in Fitchburg, rendering mortgages as automatically discharged within 5 years of being overdue, thus an in rem action by way of foreclosure is extinguished without any action upon the mortgagor whatsoever).

The SJC obliterated this wrongful assumption in two ways:

First, when an underlying debt is accelerated the maturity date is advanced to a new maturity date. Fitchburg did not have acceleration, nor does 33 require acceleration (see acceleration, infra) as the subject documents in Fitchburg were already expired by their own terms.

Second, Court the Court held that the documents were overdue instruments (Pursuant to 3-304) and five years had passed, thereby rendering them expired.

One need only read the Fitchburg case in a very careful fashion as the holdings and implications are many. The holdings are clear leaving no doubt as to the operation of the 5 year statue of repose on foreclosures in 33.

The distortion created by the 1st circuit was as result of the Court being misdirected by litigants citing Fitchburg and 33 as standing for acceleration. In fact, several cases before the first circuit exclaimed that they had reviewed Fitchburg and 33 and found no language of "acceleration!".

This is of course because Fitchburg did not have acceleration in it's fact pattern, the documents had already expired by their own terms, and 33 does not contain language of acceleration as acceleration is not required for the operation of the 33 but is one methodology for its operation. Furthermore, only debts can be accelerated not security documents,.. their maturity dates however can be advanced by acceleration, (see Acceleration, infra).

When the underlying debt is accelerated or if the instrument is overdue by 5 years the statue has been satisfied, extinguishing the mortgage document.

Furthermore, 33 does not require acceleration, (but is in fact one methodology for the running of the statute), nor satisfaction,.. Fitchburg has made this clear. 3-304 defines overdue instruments. Fitchburg held that the subject documents were overdue by their own terms, by 5 years, and therefore had extinguished.

The Court in Fitchburg opined,

"In that regard, Fitchburg does not argue that applicability of the revised limitations period for mortgages in which the term is not stated depends on satisfaction of the underlying obligations. **The obsolete mortgage statute created a limitations period for bringing foreclosure actions against mortgages.** G.L. c. 260, § 33. **Under the amendment, the statute requires the holder of a mortgage to foreclose on the mortgage,** record a document asserting nonsatisfaction, or record an extension before the mortgage has been on record for thirty-five years or **before the secured debt is overdue by five years** (and the due date is stated on the face of the mortgage). See St. 2006, c. 63, § 6. **The statute has never been interpreted to require satisfaction of a mortgage's underlying obligations before the mortgage becomes unenforceable.**

Conversely, the statute provides a mortgagee options to preserve its rights under a mortgage that has not been satisfied by recording an acknowledgment or affidavit asserting nonsatisfaction, or by recording an extension of term. G.L. c. 260, § 33, as amended by St. 2006, c. 63, § 6. Discharge under the obsolete mortgage statute has never rested on satisfaction of a mortgage's underlying obligations, and we decline to adopt a contrary position today."

Deutsche Bank Nat'l Trust Co. v. Fitchburg Capital, LLC, 28 N.E.3d 416, 424-25 (Mass. 2015)

Fitchburg could not be clearer that debts that refer to the underlying note's maturity date are subject to the 5 year statue of limitation, and if accelerated, a new maturity date is created from which the 5 year statute of repose commences, or pursuant to 3-304 the instrument is overdue by 5 years, triggering the Statue of Repose to run.

The Court should note that, acceleration is not required of a mortgagee and is at it's election to do so, and this provision is literally in all residential mortgage documents. Furthermore, mortgages can be accelerated without being overdue as several covenants contained in mortgages in general give a lender rights to "accelerate" even if a mortgagor is not in default with their monthly mortgage payment!

Reasons for this are typically; failure to insure, pay taxes etc. (if not escrowed), or even if the mortgagee deems itself under-secured (undercollateralized).

Furthermore, when an instrument becomes overdue and remains overdue, the 5-year period is satisfied, rendering the mortgage as expired. Nothing more need be done by a mortgagor; the mortgage is automatically discharged by the operation of the self-executing statute.

In either case, Petitioner's assertions that the purported note and purported mortgage expired by operation of law pursuant to 33, and 3-304 are, clearly, not only supported by the statues and the decisions of the Commonwealth but leave no doubt that Petitioners assertions are absolutely accurate. Accordingly, the wrongful foreclosure conducted upon the home of the Petitioner were based upon documents that had expired more than a year with regards to the mortgage, and several months regarding the note.

Additionally, This Honorable Court should note that Massachusetts is an "incident" state and meaning that the mortgage takes its vitality from the underlying debt. The expired note operated as creating the mortgage as a nullity and 33 eliminated any in rem action on the expired mortgage.

Deutsche Bank National Trust Company v Fitchburg Capital, LLC Interpreting 33 as well as 3-304 initially before the Land Court, then appeal to the Mass Appellate Court,.... The Supreme Judicial Court transferred the case on its own initiative from the Appeals Court. Its holdings cannot be more clear.

The Supreme Judicial Court in its analysis concluded that the statute applied to all mortgages, not just to "mortgages that were paid off", as Fitchburg asserted. **The SJC in fact stated that mortgages can't be paid off, only the debt that they secure.** They continued with a well-reasoned analysis that a **"maturity date" as defined by Black's law dictionary, means the date when a debt falls due.**

Here, the debt DB attempts to collect and illegally foreclosed upon Petitioner's Property, where the purported debt had fallen overdue on May 2, 2008 (after default on May 1, 2008, - overdue instrument) and by virtue of the acceleration of the debt in its entirety on September 1, 2008, (upon expiration of the 90 day cure period after default, August 31, 2008) (A89, Notice of intention to Foreclose).

Since the debt had become overdue on May 2, 2008 and then accelerated on September 1, 2008 (creating a new maturity date), the Statutory period commenced at the earlier of the two dates, and notwithstanding DB failed to foreclosure prior to the expiration of the 5 year period...in both instances! Instead they foreclosed on August 5, 2014 at least 5 years and 1 month after the statute had run.

1st Circuit have refused to follow this centuries old law that acceleration advances a maturity date creating a new maturity date.

Acceleration advancing a maturity date creating a new maturity date is overwhelmingly well settled law extending over several centuries supporting the rule that, "acceleration advances the maturity date of any debt creating a new maturity date".

Finally, one need not look too far for the reference to "Acceleration" in our statutes,.. MGLC 106, Section 3-118, (A95), MGLC 244 Section 35 A, (A97)

Continuing, the SJC stated:

"The obsolete mortgage statute created a limitations period for bringing foreclosure actions against mortgages. G. L. c. 260, § 33. Under the amendment, the statute requires the holder of a mortgage to foreclose on the mortgage.... **before the secured debt is overdue by five years (and [**425] the due date is stated on the face of the mortgage**). {as Petitioner's} See St. 2006, c. 63, § 6. The statute has never been interpreted to require satisfaction of a mortgage's underlying obligations before the mortgage becomes unenforceable.

Conversely, the statute provides a mortgagee [***19] options to preserve its rights under a mortgage that has not been satisfied by recording an acknowledgment or affidavit asserting nonsatisfaction, or by recording an extension of term. G. L. c. 260, § 33, as amended by St. 2006, c. 63, § 6. **Discharge under the obsolete mortgage statute has never rested on satisfaction of a mortgage's underlying obligations, and we decline to adopt a contrary position today.**

Deutsche Bank National Trust Company v. Fitchburg Capital, LLC, 471 Mass. 248, 257 (hereinafter the Rule in Fitchburg).

ACCELERATION

The centuries old and valid law that, Acceleration by definition advances the maturity date of a debt creating a new maturity date, is replete in the history of our Jurisprudence. It should be noted that no statute, nor any case has been found by the undersigned that states, in some fashion, that maturity dates on the face of notes or mortgages, are, "etched in stone" and not amenable to change.

Simply put, maturity dates are always subject to change. Courts have consistently applied the principle that acceleration advances the maturity date, including the 1st Circuit.

Senior District Judge for the 1st Circuit, the Honorable Judge Caffrey, in Baybank examined and described the principle clearly:

"**This is so because, absent some express agreement to the contrary, acceleration, by definition, advances the maturity date of the debt** so that payment thereafter is not prepayment, but instead is payment made after maturity. See LHD Realty, 726 F.2d at 330-31; Grozier, 342 Mass. at 106-07; A-Z Servicenter, 334 Mass. at 676, 138 N.E.2d 266. Upon acceleration, the borrower is not choosing to pay early; he is forced to pay because the debt has become due. Thus, when lenders accelerate the maturity [**23] of the debt, they waive their opportunity to earn, and their claim to, interest payable over a period of years in exchange for the immediate payment of the outstanding principal and accrued interest. See LHD Realty, 726 F.2d at 331.

Baybank Middlesex v. 1200 Beacon Properties, Inc., 760 F. Supp. 957, 966 (D. Mass. 1991)

In the case of In Re Energy Future Holdings the Delaware Bankruptcy Court construing repayment after acceleration stated:

"Under New York law, a borrower's repayment after acceleration is not considered voluntary. This is because acceleration moves the maturity date from the original maturity date to the acceleration date and that date becomes the new maturity date. Prepayment can only occur prior to the maturity [*100] date, and acceleration, by definition, advances the maturity date of the debt so that payment thereafter is not prepayment but instead is payment made after maturity."

In re Energy Future Holdings Corp., 540 B.R. 96, 99-100, (2015).

The Court in Energy continued noting that the general rule is acceleration advances the maturity date:

"21 MSCI 2007-IQ16 Retail 9654, LLC v. Dragul, No. 1:14-CV-287, 2015 U.S. Dist. LEXIS 40659, 2015 WL 1468435, at *3 (S.D. Ohio Mar. 30, 2015) ("**Upon default and the acceleration of the loan, the maturity date advances** and any subsequent payment is no longer considered a voluntary prepayment. The lender forfeits the collection of a prepayment premium in such a scenario unless the parties' agreement contains a 'clear and unambiguous' clause requiring payment of the prepayment premium upon default and acceleration. This general rule created the problem that a borrower might actually intentionally default to acquire the right to prepay without penalty, so lenders began including provisions in loan documents to ensure the prepayment penalty would be enforceable after default.") (citations omitted)).

In re Energy Future Holdings Corp., 540 B.R. 96, 104 (2015)

The Gibbon case construing its six-year statute of limitations on the viability of mortgage documents follows the well settled and universally accepted doctrine that acceleration advances the maturity date of the debt, citing Williston on Contracts.

"But if an obligation that is to be paid in installments is accelerated, the entire remaining balance becomes [*435] due and the statute of limitations is triggered for all installments that had not previously become due. 31 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 79:17, at 338, § 79:18, at 347-50 (4th ed. 2004); accord 12 Am. Jur. 2d, Bills and Notes § 581 (2009).

Gibbins continued discussing the actions a lender must take to effect an acceleration.

"To accelerate the maturity date of a promissory note, "'[s]ome affirmative action is required, some action by which the holder of the note makes known to the payors that he intends to declare the whole debt due.'" Glassmaker, 23 Wn. App. at 37 (emphasis omitted) (quoting Weinberg v. Naher, 51 Wash. 591, 594, 99 P. 736 (1909)). "[M]ere default alone will not [**7] accelerate the note." A.A.C. Corp., 73 Wn.2d at 615. "[A]cceleration [of the maturity of the debt] must be made in a clear and unequivocal manner which effectively apprises the maker that the holder has exercised his right to accelerate the payment date." Glassmaker, 23 Wn. App. at 38."

4518 S. 256th, LLC v. Karen L. Gibbon, PS, 195 Wn. App. 423, 435 (2016)

The Court of appeals of North Carolina construing its ten-year statute of limitations follows the principle of advancing the maturity date by acceleration.

"the statute of limitations does not begin to accrue on the date of default (last payment), but instead begins on the date of maturity of the loan, unless the note holder or mortgagee has exercised his or her right of acceleration. However, if payment on a promissory note is accelerated, the power of sale would begin to run on the date of acceleration.

In the case of, In re Foreclosure of Deed of Trust stated and holding:

"When an acceleration clause is absolute, the entire indebtedness becomes due immediately upon default. Such an acceleration is self-executing, requiring neither notice of default nor some further action to accelerate the debt. {automatic Acceleration} Baader v. Walker, 153 So. 2d 51 (Fla. 2d DCA 1963). By contrast, where the acceleration clause is optional (as it is in this case), it is not automatic or self-executing, but requires the lender to exercise this option and to give notice to the borrower that it has done so. Rones v. Charlisa, Inc., 948 So. 2d 878, 879 (Fla. 4th DCA 2007) (quoting Central Home Trust Co. of Elizabeth v. Lippincott, 392 So. 2d 931, 933 (Fla. 5th DCA 1980)) (holding acceleration option was exercised by filing of foreclosure complaint and noting that "to constitute an acceleration after default, where the holder has the option to accelerate, the holder or payee of the note must take some clear and unequivocal action indicating its intent to accelerate

all payments [**7] under the note, and such action should apprise the maker of the fact that the option to accelerate has been exercised."); Greene v. Bursey, 733 So. 2d 1111, 1115 (Fla. 4th DCA 1999) (noting that in an installment contract with an optional acceleration clause, "the entire debt does not become due on the mere default of payment; rather, it become[s] due when the creditor takes affirmative action to alert the debtor that he has exercised his option to accelerate")."

In re Foreclosure of Deed of Trust, 303 N.C. 514 (N.C. 1981)

Clearly, overwhelmingly, jurisdictions throughout this Republic have followed the centuries old law, that, Acceleration of a debt advances the maturity date therefore creating a "New Maturity Date"

Additionally the complimentary statute to 260 Section 33, is that of Section 34, (A92):

Courts are required to give effect to statutes that are not unconstitutional. This "safe harbor" Section 34 would be rendered meaningless without the support and validations that, acceleration advances the maturity date of a debt, and since (as here) the purported mortgage references the date of the underlying note, the maturity date of the mortgage is also advanced, and where (as here) a mortgage holder either fails to foreclose withing the 5 year period of 33 or fails to file an affidavit of no satisfaction pursuant to Sec 34 of 260, then the result is that the mortgage documents is discharged by operation of the self-execution Section 33 of 260.

Furthermore, one need not look too far to find support within the Statues of the Commonwealth for this law.

M.G.L.c. 106 Section 3-118 is the statute applicable to promissory notes and references acceleration. Section 33 references the safe harbor provision. There can be no doubt that the Court in Fitchburg read and understood the interplay amongst these statues and provides a well-reasoned conclusion in Fitchburg, that, debts that are overdue by 5 years are subject to the self-executing statute (260 Sec 33) that renders any mortgage document as a nullity, instantly, at the expiration of the 5 years. No effort on the part of the homeowner is required. Here the safe harbor provision has never been invoked by any of the Respondents, and therefore the purported mortgage in the instant case is a nullity, and every action taken by any one of the Respondents or its agents, attorneys, or servicers is illegal.

Here, the accelerated date or 3-304's overdue instrument provision, starts the clock on the Statute of Repose both under a note (3-118) and under a mortgage that fails to state a maturity date (33) but in fact references the maturity date of the underlying note, thereby rendering the application of the rule in Fitchburg, that, the mortgage documents is now subject to the self-executing 5 year statute of repose at MGLC 260 Section 33.

Further support is found in Gandolfo:

The Court discussed sections 6 and 8 of the Act (260 S 33) and concluded noting that section 8 of the act contains an accelerated discharge provision.

"...this court is of the opinion that the meaning of the word term is clear within the context of the operative provisions, §§ 6 & 8 of the Act. In § 6, the word term appears three times in the first sentence. The first mention of the word is in connection with "a mortgage in which no term of the mortgage is stated." In that instance, foreclosure proceedings may be undertaken within 35 years of the date the mortgage was recorded. **The second and third references appear in connection with a mortgage "in which the term or maturity date...is stated...." In that event, foreclosure proceedings are to be initiated "5 years [**9] from the expiration of the term or from the maturity date...."** In the foregoing instances, term alludes to the stated duration [or lack thereof] as set forth in the mortgage instrument.

In the foregoing instances, the word term is either conflated with the concept of a maturity date or it appears as an alternative to the maturity date. In either event, the Legislative intent can be readily ascertained, See Note 5 infra. In § 8 of c. 63, the word term is possessed of a somewhat different meaning than that found in § 6. **Section 8, provides that the accelerated discharge provisions set out in § 6 are to apply to all mortgages, whether recorded before, on or after the effective date of the Act, October 1, 2006.**"

Gandolfo v. Graham, 18 LCR 517, 518 (Mass. Land Ct. October 8, 2010)

Applying the Rule of Fitchburg

Here the acceleration and the fact that the instrument was overdue pursuant to 3-304 was clear.

The default on May 1, 2008 (confirmed by DB), the maturity date was accelerated to September 1, 2008

New Maturity Date, after expiration of 90 right to cure) bringing the entire amount due immediately in full and upon the expiration of the right to cure (August 31, 2008) the note was accelerated and overdue by 5 years and due in full creating a new maturity date, September 1, 2008.

Simultaneously this triggers the running of 33, Statue of repose, and more importantly 3-304 overdue instruments, commenced the running of 33 on May 2, 2008 upon the mortgage document itself and 3-118 on the purported note.

By operation of the Statutes the purported mortgage document expired on May 2, 2013 or at the very latest, September 1, 2013 and upon such expiration nothing was required for the Petitioner to do in order solidify the end of the legal efficacy of the purported mortgage pursuant to the Statues. 33 is self-executing and requires no action on the part of the Petitioner. There was no safe harbor provision recorded at the registry of deeds, by anyone.

On May 2, 2013 consistent with the holding of Fitchburg, the "secured debt" was overdue by 5 years, therefore Pursuant to 33 the purported mortgage documents expired rendering the debt as a suit upon a promissory note, (by whom it is still unknown). Then as the clock continued to run the purported note expired as well 1 year later on September 1, 2014, (pursuant to 3-118) a month before the illegal foreclosure.

The 1st Circuit (and now the Commonwealth) have thus far not followed the Supreme Judicial Court in it's rulings (again not in Fitchburg, where there was no acceleration) that affirms this centuries old rule that: Acceleration advances the maturity date of a debt, thereby creating a new maturity date

(see Univ. Of Pennsylvania Law Review, Acceleration Clauses in Notes and Mortgages, 1939) (for the historical perspective)

Thus far Petitioner is aware of 7 cases that have been before the 1st Circuit which has refused to apply the rule of Fitchburg to any of the, accelerated and or "overdue secured debts" before it.

Here, Countrywide has failed to foreclose before the mortgage documents had expired by operation of law. Nothing occurred interrupting the running of 33 and no safe harbor provisions were invoked.

Hence both the purported mortgage and the purported note expired rendering them worthless to support any action taken by any of the Respondents over the course of their illegal conduct.

B. PURPORTED NOTE

The Supreme Judicial Court examined the Statute of Limitation on promissory notes and concluded that any promissory note executed after 1998 was subject to the 6 year statute of limitations (3-118) and not the 20 years statute of limitations for a documents under seal (A94).

"...and **that G.L. c. 106, § 3–118, applies to all negotiable instruments, sealed and unsealed."**

Premier Capital, LLC v. KMZ, Inc., 464 Mass. 467, 473 (Mass. 2013)

Since, Massachusetts is an "incident" state the purported mortgage documents have all cease to exist, all in multiple instances pursuant to 33 , 3-304, 3-118 and now the "incident" rule in Massachusetts, which requires that ,where, the note has expired, so too does the mortgage.

Thus any and all documents that Respondents had relied upon to conduct an illegal foreclosure were either fraudulent, expired by operation of acceleration, or even without acceleration, were overdue by 5 years, and the note itself expired 1 year thereafter, and since Massachusetts is an "Incident " state, since the underlying note is extinguished so too was the mortgage, despite any argument that an action upon a mortgage that refers to the underlying debt for its maturity date is separate action in rem with continued vitality,...ignores the fact that 33 cut off such in rem action.

Furthermore, it should be noted that this Honorable Court has held that "foreclosure is the collection of a debt", not once but twice in its recent opinion, (See Obduskey v McCarthy Holthus, LLP, 586 U.S.(2019) (Case No 17-1307)) (A117)

Here, DB along with the Respondents under its charge have attempted to collect a debt that has long extinguished by operation of law well before the wrongful foreclosure, all in violation of Massachusetts Law prohibiting such conduct.

Clearly, the 1st Circuit has ignored the overwhelming law in favor of the Petitioner effectively overruling case law and the statutes of the Commonwealth of Massachusetts all in violation Petitioners ridght to due process and equal protection and in violation of the Separation of Powers.

REASONS FOR GRANTING THE PETITION

I. The Question Presented Is Important and has affected many litigants in the Commonwealth.

Federal Courts are Courts of Limited Jurisdiction. Directly in conflict with this Court's decisions, the 1st Circuit has confused its own Jurisdictional Limitations, even where a multitude of cases within the 1st Circuit should have forced the Court in the instant case to issue a Remand. The internal conflict of 1st Circuit is in direct conflict with this Courts decisions and 1st Circuit Federal Jurisdiction appears to depend upon which Justice a litigant comes before, a clear violation of our Constitutional provisions protecting rights to Due Process, Equal Protection and the Separation of Powers – Federalism.

II. The Question Presented results from a frequently occurring Constitutional violations having affected many Litigants in the Commonwealth of Massachusetts.

The Petitioner is directly aware of at least 7 litigants that have come before Petitioner's case that have suffered the same fate: removal to federal court, distortion applied, back to housing court, res judicata effect applied dispossessing homeowners all the while violation their Constitutionally protected rights.

Petitioner is indirectly aware of many others that have suffered this dame fate. Upon the commencement of litigation, Petitioner conducted a search to assess how many other foreclosure matters were removed from state court and found that DB's Counsel had accomplished over 200 removals to Federal Court within a 12 month period all resulting in illegal dispossessing of their homes.

III. This Court is the Guardian of Separation of Powers.

This Court's vital function as the guardian of separation of powers and that safeguarding its principles is overwhelmingly important (as it should in this case), where reviewing cases raising serious separation of powers violations (here a Federal Court effectively overruling the highest State Court in Massachusetts construing a pure state law matter) should be examined to insure our systems of justice and adherence to the Constitution remain consistent throughout this Republic.

CONCLUSION

For the foregoing reasons, this Court should grant this Petition.

Nicholas L. Triantos
Pro se
Lynnfield Woods
200 Broadway, Suite 302
Lynnfield, MA 01940
617-828-4848
nltlaw@nltlegal.com

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