Number 20-6507

ORIGINAL

In the Supreme Court of the United States

DARRELL BERRY; CONSTANCE LAFAYETTE

Petitioners,

v.

WELLS FARGO BANK, N.A.; FEDERAL HOME LOAN MORTGAGE CORPORATION, "Freddie Mac" as trustee for securitized trust; LOANCITY; FREDDIE MAC MULTICLASS CERTIFICATES SERIES 3113 TRUST; MORTGAGE ELETRONIC REGISTRATION SYSTEM, "MERS"; DOES 1 through 100 "inclusive", et al.
Respondents.

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

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

Question 1 – Whether the Berrys' Fifth Amendment Rights to Due Process were Violated.

Question 2 - Whether the federal court should have remanded under the Rooker-Feldman Doctrine, because taking foreclosure issues from state to federal court deprives the State of the opportunity to apply and further refine their common law in these areas of quintessential state interest.

Question 3 – Whether Middle District Court violated 28 U.S. Code §636 and Rule 73 by issuing an order/assigning this case to a United States Magistrate Judge (USMJ).

Question 4 - Whether the Order to Dismiss with Prejudice the Petitioners' case is an Absolute Nullity according to LA CC Art 2033, and 2030.

Question 5 - Whether the Court made an error in its ruling to Dismiss with Prejudice Petitioners' claims in light of Fraud Rule 60 b3.

Question 6 - Whether the Berrys' Constitutional rights were violated. Wrongful seizure, under Louisiana law, conversion, and due process violations under federal law 42 U.S.C. 1983.

Question 7 - Whether the purported refinance note/ Mortgage is non-negotiable under UCC 9 Article 203b and also doctrine of ultra vires

Question 8 - Whether any Respondents have a legitimate interest in the note and mortgage. Whether the Promissory Note from Freddie Mac 3113 was properly securitized and assigned into *Trust* or *MERS?*

Question 9 - Whether the Court ruled in err based on subject matter jurisdiction, in light of 28 USC §1447 and 1441, and Doctrine of Abstention

Question 10 – Whether The federal court lacks jurisdiction under Article III of the Constitution over the present state-filed, wrongful foreclosure lawsuit.

PARTIES

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Defendants/ Appellees

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- April 17, 2017 – Wells Fargo file Executory Process
- April 18, 2018 – Wells Fargo has Sheriff Department Serve Writ of Seizure to Home a year after Executory Process was filed.

Darrell Berry, et al vs LoanCity, et al C-672792

- September 6, 2018 Hearing for Temporary Restraining Order/Preliminary Injunction set Petitioner showed Respondents did not show.
- October 24, 2018 Hearing set Temporary Restraining Order/Preliminary Injunction Petitioner showed Respondents did not show hearing was not cancelled.
- October 5, 2018 Respondents removed case to Federal Court.

Darrell Berry, et al vs LoanCity, et al 3:18-cv-00888

- April 11, 2019 Status Hearing Set. April 10, 2019 Status Hearing Cancelled
- July 3, 2019, Judge John deGravelles Dismissed with Prejudice for Failure To State A Claim The Berrys claims against Wells Fargo (LoanCity).
- Also, on July 3, 2019 Judge John deGravelles Ordered the Use of a United States Magistrate Judge (USMJ) for all dispositive issues. Consent option was not presented.
- August 30, 2019, USMJ Richard Bourgeois issued a report and order to Dismiss with Prejudice the Berrys' claims using the exact same words from the July 3, 2019.

- September 17, 2019 Judge deGravelles issues the Order to Dismiss based on USMJ Report.
- November 6, 2019, Plaintiffs' Motion to Reconsider Final Rule and Order from July 3, 2019 against Wells Fargo was Granted in Part and Denied in Part.
- November 7, 2019, Plaintiffs' Motion to Reconsider Final Rule and Order from September 17, 2019 was Granted in Part and Denied in Part.

Darrell Berry, et al vs LoanCity et al 19-30610

- October 22, 2019, Petitioners were given the case number 19-30836 for the appeal. Petitioners did not realize case number 19-30610 existed until it was Dismissed for Want of Prosecution (DWOP) on June 25, 2020.
- Respondents were late, in making an appearance in the 5th Circuit. Freddie Mac, MERS and the Trust were three days late and Wells Fargo was four months late as prescribed by 5th Circuit RULE 46.3.
- July 2, 2020 Petitioners submitted Motion to File a Brief Out of Time – motion was denied
- July 13, 2020 Motion to Reinstate the Case – motion was denied
- August 7, 2020 Motion to Reinstate and file Brief Out of Time curing all Deficiencies, within prescribed time in accordance with FED. R. APP. P. WITH 5TH CIR. R. & IOPs GENERAL STANDARDS FOR RULING ON MOTIONS; REINSTATEMENT OF CASES DISMISSED BY THE CLERK. Motion was denied stating Record of Excerpts was not included BUT it was emailed on August 7, 2020 along with Motion to Reinstate, and Appellants' Brief.

- According to Rule 42.4 Dismissal Without Prejudice should have allowed for *Any party desiring reinstatement, or an extension of the time to seek reinstatement, must notify the clerk in writing within the time period allowed for reinstatement.*
- When the Judge ruled on the November 7, 2019 Final Order Petitioners appealed on December 5, 2019. The Judge requested the Transcript of Record for 19-30836 to be sent to the 5th Circuit. This links the November 7, 2019 Ruling to 19-30836 not to the alleged 19-30610. **Please note 19-30610 does not appear anywhere in the record until April 8, 2020.**

JURISDICTION

The Property that is the subject this Writ is located in Baton Rouge, LA; East Baton Rouge (EBR) parish (hereinafter "Property"). EBR is in the territory of the USDC Middle District (hereinafter Middle District) and USCA for the Fifth Circuit (hereinafter 5th Circuit). The causes of action raised by Petitioners were disposed of via the rulings, orders and judgment including the Opinion and Order on July 3, 2019, which Dismissed claims against Wells Fargo with Prejudice; November 6, 2019 which Granted in Part and Denied in Part Appellants' Motion to Reconsider Claims against Wells Fargo; and November 7, 2019 which Granted in Part and Denied in Part Motion to Reconsider Claims against Freddie Mac, MERS, and Freddie Mac Multiclass Series 3113 (hereinafter the Trust) It is important to note, the November 7th ruling is based upon the August 30, 2019 *Report and Recommendation* of a United States Magistrate Judge (USMJ) Richard Bourgeois

which was based upon the July 3, 2019 Ruling by Judge deGravelles. The Berrys filed their Notice of Appeal within the 30 days required. The 5th Circuit asserted these three Appeals were assigned an Appeals Court Case number 19-30610; however, no reference is made to this number until April 8, 2020 in the Middle District Docket 3:18-cv-00888-JWD-RLB. The case 19-30610 was Dismissed For Want Of Prosecution (DWOP) although 1) Petitioners believed 19-30836 was the case number for all appeals and did not realized 19-30610 existed until it was DWOP. 2) Petitioners only requested activity for the known case 19-30836. 3) The 5th Circuit did not send the 15 day notice that 19-30610 would be Dismissed for Want of Prosecution as outlined in FIFTH CIRCUIT RULE 42.3.1.2. 4) The case was not reinstated although Petitioners cured the deficiencies of 19-30610 within prescribed time according to FED. R. APP. P. WITH 5TH CIR. R. & IOPs GENERAL STANDARDS FOR RULING ON MOTIONS; REINSTATEMENT OF CASES DISMISSED BY THE CLERK.

Jurisdiction of the Court is invoked under Rule 10(a)

> (a) a United States court of appeals... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The 5th Circuit and Middle District have acted so far outside the normal proceedings of the Court that it has jeopardized the integrity of the Judicial System. They acted in such a way as to deprive Petitioners of the ability and therefore, the

right to file an appeal which conflicts with the rulings and relevant decisions of this

Court and the standing rules and laws of Our land. If Petitioner did not file the Appellant Brief without the Official Record being transmitted with the correct ROA Citations time would have prescribed and the Berrys would have lost the ability to appeal or obtain justice through the Judicial system. Even so 19-30610 was DWOP and Petitioners are forced to trust the Watchful Eyes of this Court to assure Justice is achieved.

The jurisdiction of the Court is invoked under 28 U.S.C. Section 1254(1) and under Article III of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Art. III, section 2: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, ... In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. CONSTITUTIONAL AMENDMENT V

No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The Berrys' are the legal and rightful owners of the subject property. Petitioners hereby verifies that they attempted to work with Wells Fargo to resolve

Chain of Title Issues prior to a Law Suit being filed, but Wells Fargo's response was to pay for and execute another Writ of Seizure in April 2018 threatening to seize Petitioners property and evict them. On October 31, 2002, Appellants purchased their home. **Equifirst was the originator of the loan.** On or about December 27, 2005, The Berrys were defrauded by LoanCity. On or about January 18, 2006, Equifirst and MERS designated that the original note was lost, **that the mortgage and note were not sold, transferred, assigned and deemed Paid in Full.** Therefore, **LoanCity did not refinance the Berrys note** and **mortgage because you cannot refinance something that is deemed Paid in Full with nothing owing.** What is there to refinance? As a result, every relative action connected to LoanCity's 2005 refinance represents fraud in dictum and fraud in factum.

On or about November 2012 MERS made and assignment from LoanCity to Wells Fargo. This assignment is suspect on its face[1] because 1) the original note and mortgage were cancelled, not sold, assigned, or transferred but deemed Paid in full with nothing owing and 2) LoanCity dissolved in 2008, the assignment was in 2012; a dead company cannot transfer its rights; 3) the note was allegedly placed in the Freddie Mac Multiclass series 3113 in 2006 if this really took place than the assignment should have been from the alleged owners - Freddie Mac on behalf of

[1] Consent Orders, including Cease and Desist Orders, were entered by Board Of Governors Of The Federal Reserve System; Federal Deposit Insurance Corporation; Office Of Comptroller Of The Currency; and Office Of Thrift Supervision against MERS and all its members, including Respondents, pursuant to section 7(d) of the Bank Service Company Act (12 U.S.C. 1867(d)), and Cease and Desist Orders, under section 8(b) of the FDI Act (12 U.S.C. § 1818(b)) following a federal investigation on April 13, 2011. The **Cease and Desist Order found that MERS and others engaged in "unsafe and unsound banking practices," including exactly the type of actions complained of here, as a matter of routine practice. These Orders required MERS and the member banks to correct the violations, but none of those federal Orders were heeded in this case.**

the Trust. LoanCity had no rights to transfer and even if they did, they were no longer in business to do so.

On April 11-13, 2017, Wells Fargo Obtained and Paid for a Judgment of Foreclosure in State Court but told the Sheriff to hold the Writ. On or about March 19, 2018, Wells Fargo allegedly transferred its right to Specialized Loan Servicing, in which according to the PSA, it cannot transfer its fiduciary duties to a non-payor bank. Again, this appears to suspect on its face because every relative document to the foreclose is in the name of Wells Fargo. On April 12, 2018, Wells Fargo again paid the fee and obtained updated Writ of Seizure and Sale in State Court. On October 17, 2018 the foreclosing attorneys Dean Morris, sent notice that foreclosure sale would occur on October 31, 2018. Petitioners filed suit on August 16, 2018. A hearing was set for September 6, 2018 in State Court. The Berrys showed but the Respondents did not. Another hearing was set in State Court for October 24, 2018, just seven days before the foreclosure sale date. Again, the Berrys showed but the Respondents did not and no notice was sent to the Berrys that the hearing was cancelled. On October 24, 2018, the State Court Judge explained that on October 5, 2018, Wells Fargo moved the case from State Court to Federal Court. Therefore, the very next day October 25, 2018, the Petitioners filed ***Motion for Verified Emergency Petition for Temporary Restraining Order and Preliminary Injunction*** in the Middle District - six days before the sale of the home was scheduled. The Middle District did not set a hearing prior to the sale of the home. The foreclosing proceedings were not rescinded by Wells Fargo, no protection from eviction was

offered. Therefore, the Berrys were forced to file bankruptcy on October 30, 2018 to stop the sale of their home set for the very next day.

A Status Hearing was set for April 11, 2019. However, Judge deGravelles cancelled the hearing and requested a written Status Report. The Berrys filed their response on April 12, 2019 Wells Fargo (LoanCity) filed their response on April 17, 2019, Freddie Mac, The Trust, and MERS did not file a response. On April 23, 2019, Motion for Temporary Restraining Order and Preliminary Injunction were denied. It is important to note a decision was not rendered in the "Original Court" in which the foreclosure activity was brought, nor was it done prior to the Sheriff sale date, October 31, 2018, but **rather six months after** the Berrys filed for an **Emergency Hearing.**

On July 3, 2019, Judge John deGravelles Dismissed with Prejudice for Failure To State A Claim the Berrys claims against Wells Fargo (LoanCity). **On the same day** he "Ordered" the Use of a USMJ. The Clerk never sent the standard form used to inform litigants of their rights to have the case assigned to a USMJ according *28 U.S. Code §636 (b)(1)(a) and standard procedures.* Petitioners were focused on the Ruling to Dismiss with Prejudice their claims against Wells Fargo. On August 30, 2019, USMJ, Richard Bourgeois issued a report and order to also Dismiss with Prejudice their claims against Freddie Mac, the Trust and MERS the Order was issued on September 17, 2019. The Berrys filed a Motion to Reconsider for the July 3, 2019 judgement on August 1, 2019, and the September 17, 2019 order, on October 4, 2019. It is important to note that the Berrys filed a Motion to

Amend their Original Complaint on July 26, 2019, but the Court did not allow them to amend their complaint. On November 6 and 7, 2019, Plaintiffs' Motion to Reconsider Rule and Order from July 3, 2019, against Wells Fargo and Motion to Reconsider Rule and Order from September 17, 2019 was Granted in Part and Denied in Part. The denied in part removed complaints against Freddie Mac, MERS and the Trust.

The 5th Circuit Court of Appeals and Middle District have left the Berrys without any recourse except to appeal to this Honorable Court. The actions of the Courts of concern and requested to review are listed under Question 1 below.

Plaintiffs' were led to believe there was only one appeal number 19-30836 until the case 19-30610 was DWOP on June 25, 2020.

Question 1 – Whether the Berrys' Fifth Amendment Rights to Due Process were Violated.

The Fifth Amendment of the Constitution requires "due process of law" before any person can be "deprived of life, liberty, or property' and the concept of property includes statutory entitlements. Johnson v. U.S. Dep't of Agric.,734 F.2d 774 (11th Cir. 1984). The Berrys' have a statutory entitlement to challenge the validity of documents used to foreclose on their home.

> **"By the federal court's failure to remand to the state court the wrongful-foreclosure lawsuit, by taking jurisdiction over the case and dismissing the lawsuit based on fraudulent information presented to the Court has not only deprived the state of Louisiana of the opportunity to resolve important state issues, it has deprived the Berrys' due process right under the Fifth Amendment."**

Respondents filed for foreclosure on the subject property utilizing a fabricated, fraudulent Assignment of Deed, filed several years after the closing of the subject trust in contravention to the trust's PSA, **and** several years after LoanCity dissolved and could not legally transfer any rights all of which constitutes "injury in fact" to the Berrys'.

The Middle District Orders are void for want of jurisdiction. Allowing their Orders to stand deprives the Berrys' of their due process right to challenge the wrongful foreclosure of their home by **Respondents who have provided absolutely no legally enforceable proof of ownership of the Mortgage to Secure Debt or ownership of the subject property. Proof which is incumbent upon Respondent.** Loss of one's home without due process would clearly cause irreparable harm; and is unconstitutional.

In addition, the Middle District seemed to deploy deceptive efforts to dismiss Petitioners' case with prejudice multiple times including activities surrounding Appeal case number 19-30610 the subject of this Writ. Their actions have itself tainted and seemingly worked diligently to deprive Petitioners of their rights to due process. Petitioners do not make this claim lightly, nor take delight in making this assertion. Petitioners desired a fair Judicial Process which has been denied them. In the interest of Justice, the following occurred, is documented, and we respectfully request this Court to determine legality, and enforceability. The Middle District:

1. Did not make any ruling or take any action to protect the Berrys' from eviction or due process.

2. Failed to rule on Emergency Temporary Restating Order And Injunctive Relief prior to the sale date of the home on October 31, 2018.
3. Cancelled the Status hearing.
4. Ruled on the untruths of Wells Fargo provided in their Response to Status Update.
5. Ordered the use of the USMJ in a case that requested Injunctive Relief.
6. Failed to provide Consent notice regarding the use of a USMJ.
7. Order all "dispositive" motions in the case be handled by a USMJ.
8. Created a façade that the Report from the USMJ was different from the presiding Judge.
9. Dismissed with Prejudice for Failure to State a Claim several times.
10. Denied Petitioners the ability to amend their Original Complaint prior to Motion to Reconsider.
11. Failed to send the Official Record with proper ROA citations to Petitioners even though it was requested four times in writing, one time verbally, and finally by the 5th Circuit once verbally and once in writing.
12. Sent the Berrys' notice that 19-30610 was DWOP on June 25, 2020, only to bring to Petitioners' attention there were two appeal case numbers 19-30836 and 19-30610.
13. Although the Official Record with ROA citations was requested multiple times it wasn't until Petitioner filed the 1) Brief and Record of Excerpts for 19-30836 that it was mailed on August 5, 2020 and 2) **the Brief, Record**

of Excerpts, Motion to Reopen with Motion to File Brief out of time for 19-30610 via email to pro_se@ca5.uscourts.gov on August 7, 2020 that a 3rd and 4th CD were in the same FED-EX package. This CD was sent August 21, 2020 to Petitioner showing the Official Record for 19-30610 and 19-30836 with proper ROA citations. **Petitioner inferred that because the Record of Excerpts contained a Notice that Petitioners did not receive the Official Record with proper ROA citation and requested the right to make adjustment to the ROA citations as needed, in the future. Petitioners were instructed to remove the Notice from the Record of Excerpts.** Had Petitioners not sent the Brief and Record of Excerpts regardless of not receiving the Official Record with proper ROA citation time would have prescribed to file the brief. The end result therefore would have been the loss of their ability to appeal and maintain their home has prescribed by the Fifth Amendment not based on merit or truth but technicalities created in this case.

14. Confusion over Appeal Case Numbers seemingly was riddled with errors by the Court which deprived Petitioners of due process. Creating and maintaining two separate Appeals number 1) 19-30836 the first and only one Petitioners were fully aware of prior to June 25, 2020 DWOP of 19-30610. Case number 19-30610 did not appear in any of the Middle District Docket until April 8, 2020.

15. Petitioners requested clarification for the focus of 19-30836 and 19-30610 on July 9, 2020 to make sure the correct Appellant Brief would be drafted.

16. On July 16, 2020, the 5th Circuit responded and stated *19-30610 includes the notices of appeal filed in the district court on August 1, 2019 (doc. 45) and December 5, 2019 (docs. 72 and 73). These appeals were dismissed on June 25, 2020 for failure to file a brief and record excerpts. 19-30836 includes the notices of appeal filed in the district court on October 4, 2019 (doc 62). Your appellant's brief is presently due for filing by August 5, 2020.*

17. When you look at the Docket for 19-30610 the Official Record ends on Doc 94 which states *USCA Case Number 19-30610 for 62 (p626) Notice of Appeal filed by Darrell Berry, Constance Lafayette. (SWE) (Entered: 40/08/2020.* When you compare this to the clarification requested and answered by the 5th Circuit 19-30610 there is a significant discrepancy. *Doc 62 is the Appeal filed for the Order of Dismissal based upon the USMJ Report.* It does not reference the three appeals allegedly included under 19-30610.

18. When you look at Docket 19-30836. Doc 94 has been amended to change 19-30610 to reference Doc 45 (July 3, 2019 Order to Dismiss). Doc 95 has been added to state that *19-30836 is for 62(p.626) Notice of Appeal filed by Darrell Berry, Constance Lafayette. (SWE) (Entered: 04/08/2020).*

19. In Effect these actions substituted 19-30610 for the original case number 19-30836.

20. **Both Official Records provided to the 5th Circuit and to Petitioners for 19-30610 AND 19-30836 stated that item 62 - the September 17, 2019 appeal of the USMJ Report - is the only subject of either Appeal. This represents another significant error and denial of due process.**

21. **Nowhere** in either CD 1 mailed May 20, 2020, CD 2 mailed July 28, 2020, or CD 3 and CD 4 that were mailed in the same Fed-Ex on August 21, 2020, which provided **the Official Record to the Petitioners for both 19-30610 and 19-30836 indicated an Appeal of the Final Rule and Order dated November 6, 2019 (Doc 72) and November 7, 2019 (Doc 73) which allegedly was included under 19-30610 and DWOP.**

22. Again, Petitioner up to June 25, 2020 DWOP for 19-30610 believed there was one appeal number 19-30836 that first appeared on the Docket October 22, 2019.

23. According to FRAP 45 (c). CLERK'S DUTIES The 5th Circuit had a duty to send a 15-day notice that the case 19-30610 would be DWOP in accordance with Rule 5TH CIR. R. 42.3.1.2. If the Berrys would have been given notice, it would have alerted Petitioners of the second appeal number.

24. The 5th Circuit had a duty to give written notice for case number 19-30610 an Extension of time was granted due to COVID-19. No notice was

provided. Again, if they would have been given notice it would have alerted Petitioners of the second appeal number.

25. August 7, 2020, Petitioners emailed 1) Motion to Reinstate, 2) Appellants' Brief and 3) Record of Excerpts. The Court issued a ruling on August 20, 2020 stating the deficiencies were not cured the record of Excerpts was missing. The email chain shows it was clearly included.

Question 2 – Whether the federal court should have remanded under the Rooker-Feldman Doctrine, because taking foreclosure issues from state to federal court deprives the State of the opportunity to apply and further refine their common law in these areas of quintessential state interest.

A wrongful foreclosure lawsuit filed in the state court, and removed to federal court should not be exempt from the Rooker-Feldman doctrine when **reversal of the state-regulated foreclosure would be a necessary part of the relief requested.**

> **The Rooker-Feldman doctrine has strictly limited federal district courts' authority to review state court judgments and related claims.** See generally Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005); Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fid. Trust co., 263 U.S. 413 (1923). **Because the doctrine involves subject matter jurisdiction, it predominates over other issues because, where it applies, the court cannot consider the merits of the case.** See Powell v. Powell, 80 F.3d 464, 466-67 (11th Cir. 1996); Garry v. ceils, 82 F.3d 1362, 1365 (7th Cir. 1996). The Rooker-Feldman Doctrine generally recognizes that federal district courts do not have jurisdiction to act as appellate courts and precludes them from reviewing state court decisions. Ware v. Polk Cnty. Bd. of Cnty. Comm'rs, 2010 WL 3329959, at *1 (11th Cir. Aug. 25, 2010) (citation omitted). "The doctrine applies to both federal claims raised in the state court and to those 'inextricably intertwined' with the state court's judgment." Casale v. Tillman, 558 F.3d 1258, 1260 (11th Cir. 2009).

The Eleventh Circuit has held that the Rooker-Feldman doctrine bars federal court review of state-court orders authorizing a writ of execution.

> See also: **Cavero v. One West Bank FSB, 14-14369, 2015 WL 3540388 (11th Cir. 2015)** (Because the claims in the Petitioners complaint attacked the validity of the debt and propriety of foreclosure, the Eleventh Circuit found that such claims were "inextricably intertwined" with the foreclosure judgment. Accordingly, the claims could not be heard by a federal district court under the Rooker-Feldman Doctrine.)

Likewise, in this case The Berrys are contesting the validity of the debt and propriety of the foreclosure.

Petitioners state they are the ***SOLE OWNERS*** of the property and not debtors, therefore, any and all legal actions against them and their property are null and void (absolute nullity). Additionally, mixed standards regarding the Rooker-Feldman and Younger doctrines seems to be applied when removal to federal court from a state-court wrongful foreclosure and fraud cases is initiated by the bank; but when the same standard is applied by the party alleging the wrongful foreclosure and fraud, the standard is not applied. This demonstrates the inconsistency within the Middle District, as well as inconsistency with the standards applied by other circuits in which this Court should provide clarity and direction to make the standard apply equally for all parties.

Question 3 – Whether Middle District Court violated 28 U.S. Code §636 and Rule 73 by issuing an order/assigning this case to a USMJ.

> Magistrate Judges Under Federal Rules of Civil Procedure 72-76 and 28 U.S.C. §§ 631-639,324 district courts may refer matters to magistrate judges with authority ranging from acting on **non-dispositive**, pre-trial matters, to conducting full trials. The standard of review applied to matters decided by magistrate judges hinges both on

the **basis for the referral** and **whether the parties have consented to that referral.**

The Berrys were never informed they had a right to consent to the referral to the use of a USMJ. The Docket does not indicate the Consent Request Form was sent by the Clerk. When one reads the Order written by Judge deGravelles declaratory language was used and no reference was made indicating Petitioners had a choice to consent[2]. The Berrys being Pro Se Litigants were unaware that the Middle District Clerk should have sent a form to Plaintiffs to designate if they agree or disagree according to *28 U.S. Code § 636 (c)(1)* and the results of which would be held in confidence by the Clerk and not reported to the Court.

Additionally, according to *28 U.S. Code § 636 (b)(1)(a) and FRCP 73*[3] Judge deGravelles was barred from issuing an Order that **All dispositive motions** in this matter are referred to the United States Magistrate Judge pursuant to *28 U.S.C. § 636 (b)(1)(A) and (B)* on July 3, 2019. The rule states clearly **1) that consent has to be given in the use of USMJ** and 2) **USMJ cannot rule on cases requesting injunctive relief or motions to dismiss for failing to state a claim which are both in**

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[2] FRCP Rule 73(b) **Consent Procedure.** (1) *In General.* When a magistrate judge has been designated to conduct civil actions or proceedings, **the clerk must give the parties written notice of their opportunity to consent under 28 U.S.C. §636(c). To signify their consent, the parties must jointly or separately file a statement consenting to the referral.** ...
(2) *Reminding the Parties About Consenting.* A district judge, magistrate judge, or other court official may remind the parties of the magistrate judge's availability, but must also advise them that they are free to withhold consent without adverse substantive consequences.
(c) **Appealing a Judgment.** In accordance with 28 U.S.C. §636(c)(3), an appeal from a judgment entered at a magistrate judge's direction may be taken to the court of appeals as would any other appeal from a district-court judgment.

[3] ...A judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, ***except*** a motion **for injunctive relief**, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, **to dismiss for failure to state a claim upon which relief can be granted**, and to involuntarily dismiss an action.

this case. It is important to note, Judge deGravelles on the same day July 3, 2019, issued an Order to Dismiss with Prejudice Plaintiffs case for Failure to State a Claim against Wells Fargo. USMJ Bourgeois *Report and Recommendations* made August 30, 2019, is basically the exact same document Judge deGravelles wrote on July 3, 2019. Which begs the question why appoint a USMJ? The only difference between the documents produced by USMJ Bourgeois, and Judge deGravelles seem to have been the numerical ordering of the items the words are the same. So basically, Judge deGravelles approved his own report when he approved the USMJ's report. July 3, 2019, September 17, 2019, November 6, 2019, and November 7, 2019. All findings and reports were the same but for different parties, which means they all could have been combined under one Appellant case number. We request this Honorable Court to *reverse the Dismissal for Want of Prosecution and or Vacate all Judgments, Rulings, and Orders related to the USMJ Bourgeois, Judge deGravelles and the 5th Circuit Clerk.*

Question 4 - Whether the Order to Dismiss with Prejudice the Petitioners' case is an Absolute Nullity according to LA CC Art 2033, and 2030.

The original note and mortgage from Equifirst were cancelled. How can Respondents claim LoanCity ***Refinanced*** a note that was lost and cancelled not transferred, sold or assigned and was deemed Paid in Full? Does this document make null and void Respondents claim to property due to rules of Absolute Nullity LA CC Art 2030, and 2033? This Affidavit was submitted to the Middle District January 18, 2019, over five months before the ruling was made to Dismiss with

Prejudice the Berrys' Case on July 3, 2019 and September 17, 2019. Respondents, deceptively presented to the Berrys and the Court that LoanCity was the original lender. There was a break in the Chain of Title, creating a forever cloud on the instruments[4]. Equifirst's Note and Mortgage were cancelled in January 2006, **not transferred, not sold, not assigned but cancelled showing paid in full.** If LoanCity truly refinanced the "original note and mortgage" the affidavit would have read it was "Sold" or "transferred", but the conveyance and refinance is clearly not in this document which is part of the official records in East Baton Rouge Parish Courthouse. Every action since then and inclusive of the non-rescission of the 2005 note and mortgage by Respondents, represents fraud and absolute nullity. Presenting those documents as the original note and mortgage created a façade and are considered unfair and deceptive practices in violation of Louisiana's Unfair Trade Practices and Consumer Protection Law Section 51:1401 et seq, provided under Title 51, Chapter 13 of Louisiana Revised Statutes and the Dodd Frank Act.[5] This is an unfair and deceptive practice something the Respondents were sued for and chose to settle with the US Department of Justice and all 50 states. The Berrys are in continuous peril as long as these documents are treated as truth especially since they are based on fraud.

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[4] *Securitization without proper assignment into Trust.* The Petitioners were in reality making a *voluntary* stock contributions. The Respondents failed to actually *transfer* the Original Promissory Note into the Trust which **violates provisions for the proper assignment according to New York Trust Law.**

[5] Sec. 1031 of the Dodd-Frank Act. The principles of "unfair" and "deceptive" practices in the Act are similar to those under Sec. 5 of the Federal Trade Commission Act (FTC Act). The Federal Trade Commission (FTC) and federal banking regulators have applied these standards through case law, official policy statements, guidance, examination procedures, and enforcement actions.

As a matter of ethics, and good business practice all activity against the Berrys should have ceased in 2006 which is an *Absolute Nullity*. The Respondents are all in violation of 18 U.S.C. § 1001 which requires that the false statement, concealment or cover up be "knowingly and willfully" done, which means that "The statement must have been made with an intent to deceive, a design to induce belief in the falsity or to mislead, but § 1001 does not require an intent to defraud -- that is, the intent to deprive someone of something by means of deceit." *United States v. Lichenstein*, 610 F.2d 1272, 1276-77 (5th Cir.), *cert. denied*, 447 U.S. 907 (1980). **All activities of reviving a dead company, LoanCity in 2012 to assign an unenforceable note is blatant fraudulent activity** and Respondents Wells Fargo and MERS should be admonished for their behavior.

MERS and Wells Fargo are coconspirators in this illegal enterprise to make money off of the Berrys' home without having a legal right to do so this also violates Rule 7.1; 8.4(c) and (e).

Question 5: Whether the Court made an error in its ruling to Dismiss with Prejudice Appellants claims in light of Fraud Rule 60 b3.

LoanCity, and Freddie Mac, et al illegally securitized the Berrys' Note through the Freddie Mac Multiclass Series 3113. They claimed that LoanCity's Note was the Original Note and provided the instruments used in Foreclosure Proceedings. By doing so the Court and the Berrys were misled to believe LoanCity was the original lender. This caused the Court to base their ruling on fraud. Wells Fargo, MERS, Freddie Mac, the Freddie Mac Multiclass Series 3113 violated Rule

60 b3, FRCP 7.1, 8.4(c) and (e). Therefore, all of Respondents' motions should be dismissed with prejudice. **The Berrys will prevail in light of Rule 60 b3 which states anything done by fraud is void and null.**

The Berrys put the Middle District on notice that Exhibits A (Mortgage) and B (Note) from Freddie Mac were fraudulent multiple times and documented the fraud yet the Middle District failed to consider the evidence in its multiple rulings. In the Petioners' case LoanCity purportedly **refinanced** a note that was cancelled and deemed paid in full. In doing so they sold fictitious paperwork to the pool of The Trust bonds[6]. Freddie Mac illegally securitized Petitioners' note. This was done in order for them to receive an exorbitant amount of money because the Federal Reserve Board paid them ten-times the amount of the Original Note through *Bonds* once the note was allegedly securitized. The Berrys were employed in order to *monetize* or create the *Derivatives* for trading in the Securities Market. This provides the money for the Bank to issue more Loans for people like the Berrys to purchase a home. If it were not for the process the Berrys would not have been able to purchase their home. Therefore, all of the Respondents have to follow the law to assure the right people are paid and no one can lay a false claim to homeowner/ the Berrys' property[7].

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[6] ***Illegal Securitization of Promissory Note Breaks "Chain of Title" because*** Respondents' illegal securitization of the Petitioners' Original Promissory Note was not put in a ***Trust.*** This made a break in the "Chain of Title." The collection on the Berrys' loan under this circumstance was "Double-Dipping" or Securities Fraud in violation of RICO Act (18 U.S.C. § 1962) under the provision of ***collection of unlawful debt (via stock or charge off.*** The Court erred because the Respondents' collection was ***illegal*** when not properly ***assigned*** and based on a ***Nullity.***

[7] The Court erred since the ***securitization process*** requires the Appellees to ***purchase*** THE Original Note; and Deed was proven to be a ***Nullity*** by ***DOJ v. BOA Settlement.*** **Similar to this footnote the**

Claims cannot be barred where fraud was involved; and new evidence should be allowed in the advancement of truth. Brown v. Felsen, 442 U.S. 127, 132 (1979).

> **The Supreme Court has also held that if a party has used fraud to obtain a judgement, the party should be deprived of the benefit of the judgment.** See Marshall v. Holmes, 141 U.S. 589 at 599 (1891), quoting Johnson v. Waters, 111 U.S. 640, 667, 28 L. Ed. 547, 4 S. Ct. 619 (1884). See also Chambers v. NASCO, Inc., 501 U.S. 32, 44.

Louisiana defines Mortgage Fraud as when a person "[k]nowingly makes a deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that [the false information] be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process [including negotiation and servicing].

Further, a violation of the statute occurs when a person uses or facilitates the use of such false information with the intent that the false information be used by anyone during the mortgage lending process.

Violation of the statute occurs when any written instrument that contains a deliberate misstatement, misrepresentation, or omission is recorded in the real estate records of any Louisiana Parish. **Attorneys and others who take part in the mortgage lending process are subject to separate prosecution for conspiracy, should the party conspire with others to violate the statute.**

Fraud upon the Court as set forth with specificity in the Amended Complaint is not subject to a statute of limitation. FRCP 60 b3.

Respondents never purchased the Original Note from Equifirst the original lender, this is fraud and made the note and mortgage an Absolute Nullity.

Question 6: Whether the Berrys' Constitutional rights were violated. Wrongful seizure, under Louisiana law, conversion, and due process violations under federal law 42 U.S.C. 1983.

It is clear that the use of executory process requires authentic and legally viable evidence which was not present here. The Respondents through their attorneys initiated wrongful foreclosure proceedings and vigorously pursued taking Petitioners' home. Petitioners attempted to clarify issues of a Broken Chain of Title prior to the legal requests for Temporary Restraining Orders and Preliminary Injunctive relief. In *Mellon, 71 So.3d at 1043,* explained:

> ...*§ 1983* and that it violated plaintiffs' due process rights, intentionally or otherwise. While there is no evidence of intentionally tortious conduct on the part of Dean Morris, there is evidence that Dean Morris intentionally took measures which resulted in an invasion of the plaintiffs' property interests. **Under Louisiana and Federal law this is enough to create a genuine issue of material fact nullifying the failure to state a claim.**

The Berrys through their brief in 19-30610 and 19-30836 requested the 5th Circuit to reverse the Middle Districts Dismissal of their case with Prejudice and the Court's mandate to only address claims associated with Wells Fargo and not include claims against Freddie Mac, the Trust and MERS. This request was made because all Respondents were actors of this scheme to defraud the Berrys of their constitutional rights and rights to property. In an exception of no cause of action, the court is required to take all factual allegations pled by Petitioner as true. We respectfully make the same request to this Court.

If the Middle District considered impermissible factors or failed to consider factors that it should have evaluated, this Court may reverse. In this category are

cases seeking a **preliminary injunction**, a declaratory judgment, or an exercise of supplemental jurisdiction.

> Whether a preliminary injunction should issue turns on four factors: (1) the movant's reasonable likelihood of success on the merits; (2) the irreparable harm the movant will suffer if preliminary relief is not granted; (3) the balance of hardships tipping in its favor; and (4) the adverse impact on public interest.[8]

The Court may not ignore any of the factors en route to its determination; otherwise, it may have failed its obligation to consider the requisite factors and risks reversal.[9] Petitioners met the burden of proof and documented perpetual fraudulent behavior by Respondents. It is documented that 1) the Original Note and Mortgage were cancelled, not sold, transferred, or assigned but deemed Paid in Full; 2) that irreparable harm to Petitioners was looming; 3) there IS an active Writ of Seizure against the Berrys' home; 4) Petitioners were forced to file bankruptcy to stop the sale of the home; because, the EMERGENCY request for Temporary Restraining Order and Preliminary Injunction was never heard or responded to before the sale of the home by the Middle District. Seven months later Middle District denied the Preliminary Injunction based on the misleading status report of Wells Fargo who committed fraud in dictum and fraud in factum.

> According to LA Code Civ Pro 2752 (2018). The petition for injunction shall be filed in the court where the executory proceeding is pending, either in the executory proceeding or in a separate suit. The injunction proceeding to arrest a seizure and sale shall be governed by the

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[8] Thus, the Federal Circuit applies the four-factor test, that is applied in most jurisdictions, to determine whether a preliminary injunction should issue. See, e.g., Smith Int'l, Inc. v. Hughes Tool Co., 718 F.2d 1573, 1578- 79, 219 U.S.P.Q. 686, 690-91 (Fed. Cir. 1983); Payless Shoesource, Inc. v. Reebok Int'l Ltd., 998 F.2d 985, 991, 27 U.S.P.Q.2d 1516, 1521 (Fed. Cir. 1993).

[9] See, e.g., Chrysler Motors Corp. v. Auto Body Panels of Ohio, Inc., 908 F.2d 951, 954, 15 U.S.P.Q.2d 1469,1472 (Fed. Cir. 1990); Illinois Tool Works, Inc. v. Grip-Pak, Inc., 725 F. Supp. 951, 952, 13 U.S.P.Q.2d 1463, 1464 (N.D. 111. 1989).

provisions of Articles 3601 through 3609 and 3612, except as provided in Article 2753. However, a temporary restraining order shall not issue to arrest the seizure and sale of immovable property, but the defendant may apply for a preliminary injunction in accordance with Article 3602. *In the event the defendant does apply for a preliminary injunction the hearing for such shall be held before the sale of the property.*

Respondents removed the case to Middle District between October 5, 2018 and October 12, 2018. The Berrys then requested on October 25, 2018, to have a hearing for Emergency Temporary Restraining Order/ Preliminary Injunction with the Middle District Court, because their home was up for foreclosure sale on October 31, 2018. No Hearing has ever been held in the Middle District. Therefore, according to Rule 2752 because a hearing was not held before the sale date of the home a procedural error occurred.[10]

Because of this law suit the Berrys have proven the Original Mortgage and note were deemed paid in full; therefore, none of the Respondents have a colorable claim to the property. A genuine issue of material fact is that the Court should determine and order quite title, and all remedies afforded to the Berrys by law. To Dismiss with Prejudice for failure to state a claim does not apply and we respectfully, request the Judgement be Vacated because of due process violations

[10] Louisiana Code of Civil Procedure Article 2631 provides that Executory Proceedings "are those which are used to effect the seizure and sale of property, without previous citation and judgment, to enforce a mortgage or privilege thereon evidenced by an authentic act importing a confession of judgment, . As we noted in Mellon, 71 So.3d at 1042:
Louisiana's executory process itself was held to be constitutional in Buckner v. Carmack, 272 So.2d 326 (La. 1973). However, even where the Louisiana procedure for issuing and executing a seizure is constitutional as written, misapplication of the due process protections provided in the statute can give rise to a section 1983 claim. A private party who sets an attachment scheme in motion is considered a state actor if the plaintiff challenges the constitutionality of the procedure. See Id.

and rulings based on fraud. Respondents should be deprived of benefiting from their actions of deception.

Question 7: Whether the purported refinance note/ Mortgage is non-negotiable under UCC 9 Article 203b and also doctrine of ultra vires

According to UCC 9 203 b and Doctrine of Ultra Vires you must show value. **There is no reference to value in any document provided nor can there be because Wells Fargo never purchased the mortgage and note from LoanCity**. Because Wells Fargo used fraudulent documents supplied by Freddie Mac to initiate foreclosure proceedings, they continuously made false claims to the Court. They have caused the Berrys harm by forcing them to file a lawsuit two years ago to stop a wrongful foreclosure, and initially caused the Berrys' case to be Dismissed with Prejudice multiple times which is another violation of Rule 7.1; 8.4(c) and (e). The Berrys live under constant threat of loss of home causing great anxiety, and emotional distress which should result in punitive damages awarded to them.

Question 8: Whether any Respondent have a legitimate interest in the note and mortgage. Whether the Promissory Note from Freddie Mac 3113 was properly securitized and assigned into the Trust or MERS?

Because of this law suit The Berrys have proven the Original Mortgage and note were deemed paid in full. According the UCC 9 203b and Doctrine of Ultra Vires states that you must show value in obtaining a note and mortgage. Defendants have not complied with this guidance.

> In *The Bank of New York Mellon, Et Al vs Whitney Blaine Smith, Et Ux the State of Louisiana Court of Appeal, Third Circuit Appeal case 14-924* the Court determined that even though the home was not actually taken, does not eliminate Smith's claim for damages.

Likewise, Petioners' claims against Respondents should not be dismissed because they did not actually take the home. They initiated action to take the property in 2017 and 2018, and have set the conditions for any successor to take the home using fraudulent documents. If this issue is not cleared and title quieted the fraudulent LoanCity documents the Berrys would be in perpetual peril.

The collection on the Berrys' loan under this circumstance was Double-Dipping or Securities Fraud[11] because Freddie Mac through The Trust Securitized a note based on fraud. This violates the PSA; the Respondents must legally follow.

Wells Fargo and MERS[12] created a document stating they assigned the note from a company that no longer existed "LoanCity" in 2012. A securitized loan cannot be just assigned there is a process to legally pull the note out of the bond series according to the PSA the process was not followed. An even if the Trust could allow the Trustee, Master Servicer or Depositor to sell the note from the bond to Wells Fargo they could not because they administered a Private Label Trust which means **they did not Register the Certificates with the State or Federal Government.**

There is no evidence of a negotiated transfer from the original lender Equifirst to any Respondent. Because LoanCity has no connection to Equifirst,

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[11] Illegal Securitization of Promissory Note Breaks the Chain of Title. Now that it violated 18 USC 1962 under the provision of collection of unlawful debt, stock or charge off. The Court Erred because the Defendants collection was illegal when not properly assigned from Equifirst to LoanCity, LoanCity to the Trust and then the Trust to Wells Fargo and therefore are based on a Nullity. There are no members of the Trust, towards the bottom states ***Because of appliable securities law exemptions, we have not registered the Certificates with any federal or state securities commission. NO securities commission has reviewed this Supplement.*** This documents the Respondents who are a party to the Trust are in violation of the PSA and therefore have forever broken the Chain of Title therefore they have no rights to foreclose on property.

[12] A Consent Order was issued in reference to the matter of the United States Of America Department Of The Treasury Comptroller Of The Currency Washington, D.C. et all vs MERSCORP, Inc.,) Mortgage Electronic Registration Systems, Inc. (MERS).

Respondents have forever severed the "Chain of Title". The evidence shows clearly that the Berrys' are the sole owners of their home as the chart below shows.

Proper Chain of Title Needed to Foreclose	The Evidence Also Shows	Wells Fargo shows this Chain of Title
Equifirst to ↓ LoanCity to ↓ The Trust (Trustee, Depositor) to ↓ Wells Fargo	Equifirst Never Assigned To LOANCITY **Chain is Broken** LoanCity (refinanced mortgage/note in 2005 w/o purchasing original note) ↓ Equifirst States Note Paid 2006 ↓ **Chain is Broken Again**	Equifirst Never Assigned To LOANCITY **Chain is Broken** LoanCity (refinanced mortgage/note in 2005 w/o purchasing original note) ↓ Equifirst Note Deemed Paid NOT Transferred, Sold or Assigned 2006 **Chain is Broken Again**
This did not happen		
True Chain of Title supported by evidence Equifirst to ↓ The Berrys 2006	The Trust in 2006 (received & securitized bogus note from LoanCity and violates PSA by: 1) accepting the unenforceable note 2) failing to file Certificates with SEC or the State and Federal Government and 3) creating a private label trust which violates New York Law for REMICs The Trust does not assign any rights to Wells Fargo **Chain is Broken Again**	LoanCity dissolves 2008 ↓ MERS transfers LoanCity note to Wells Fargo without permission from LoanCity 2012 **Chain is Broken Again** MERS/Wells Fargo did not pull note from the Freddie Mac Trust **Chain is Broken Again** Wells Fargo to ↓ SLS although Wells Fargo has no rights to transfer the note **Chain is Broken Again**

Question 9: Whether the Court ruled in err based on subject matter jurisdiction, in light of 28 USC §1447 and 1441, Doctrine of Abstention.

> Improper Removal 28 USC §1447 and 1441 if the District Court determines that it lacks subject matter jurisdiction at any time before entry of final judgement, the District Court must remand the action to the State Court. A judgement from a court that did not have subject matter jurisdiction is forever nullity. Rhode Island vs Massachusetts 37 U.S. 657 (1838), Joyce v. United States, 474F.2d215 (3d Cir. 1973)

A hearing was held in State Court on September 6, 2018 for Temporary Restraining Order/ Preliminary Injunction. The Respondents did not show. Instead of the Court ordering a Default Judgment in favor of the Berrys it set a new date for October 24, 2018. This harmed the us because it delayed our due process.

Petitioners have shown Respondents' request to remove case to Federal Court from State Court presented a procedural error related to Subject Matter Jurisdiction under *28 USC §1447, 1441.* The Middle District finally acknowledged that Wells Fargo did misrepresent the truth in their status report since they **DID** file for and obtain a Writ of Seizure to file foreclosure on the Berrys although in their Status Report they stated the opposite. This action triggers Fraud on the Court and should alone be the grounds for default judgement; or at minimum the reversal of all orders and rulings and should remand the case back to State Court because of subject matter jurisdiction.

> Likewise, **Doctrine of Abstention** Younger v Harris 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed.2d669 (1971). When the property at issue is the subject of ongoing foreclosure, proceedings, in state court. 644 – Cunningham v .J.P. Morgan Chase Bank, 537 Fed. Appx 44, 45 (3d Cir. 2013); Like other Circuits, the Fourth Circuit has stated that the Younger abstention doctrine requires a federal court to abstain from

interfering in state proceedings, even if jurisdiction exist, if there is (1) an ongoing state judicial proceeding instituted prior to any substantial progress in the federal proceeding (2) implicates important, substantial or vital state interest (3) provides an adequate opportunity for the plaintiff to raise the federal constitutional claim advanced in federal lawsuit.

Question 10 – The federal court lacks jurisdiction under Article III of the Constitution over the present state-filed, wrongful foreclosure lawsuit.

Article III of the United States Constitution limits the jurisdiction of all federal courts to "cases and controversies". A person with no ownership interest has no constitutional standing because a non-owner cannot establish "injury in fact" traceable to the acts of the opposing party. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). When standing is absent, a district court lacks subject-matter jurisdiction. See D'Lil v. Best Western Encina Lodge & Suites, 538 F.3d 1031, 1036 (9th Cir. 2008) (a party invoking federal jurisdiction has the burden of establishing that it has satisfied the 'case-or controversy' requirement of Article III of the Constitution; standing is a 'core component' of that requirement.") (internal citations omitted); Medina v. Clinton, 86 F.3d 155, 157 (9th Cir. 1996) (linking Article III standing with subject-matter jurisdiction of federal courts). And a federal court cannot hypothesize subject- matter jurisdiction for the purpose of deciding the merits. Ruhrgas A. G. v. Marathon Oil, 526 U.S. 574 (1999).

The constitutional limitations on federal jurisdiction make federal courts "courts of limited jurisdiction," Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 374 (1978) (jurisdiction lacking), as opposed to state courts, which are generally presumed to have subject matter jurisdiction over a case. **This Court has made it clear that judgments must be vacated for lack of jurisdiction.** See e.g., Caterpillar, Inc. v. Lewis, 519 U.S. 61, 76-77 (1996) if, at the end of the day and case, a jurisdictional defect remains uncured, the judgment must be vacated."); See also Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701-03, 102 S. Ct. 2099, 2103-05, 72 L. Ed. 2d 492 (1982).

The Middle District Court erred in taking jurisdiction over the present case **because this case is of important state interest, and under the Younger Doctrine, the federal Court must abstain from interference with state judicial proceedings.**

The District Court denied the Berrys' motion to reconsider pleading to remand the case back to state court. They assumed jurisdiction, and dismissed the complaint multiple times; thereby interfering with the important state issue presented which needs to be resolved by the state court:

> **In You v. JP Morgan Chase Bank, N.A., 293 Ga. 67, 74 (2013) the Court held that the holder of a deed to secure debt is authorized to exercise the power of sale. However, the Assignment of the deed to secure debt must be a facially valid one.** The assignment facially invalid, it is void ab initio for fraud and void ab initio for violation of the Trust's PSA as set forth in the complaint[13] and in Berrys' Brief:

REASONS FOR GRANTING THE PETITION

Petitioners are fully aware that this is a difficult case, and applying to the Supreme Court is not taken lightly. At the same time Petitioners are grateful an appeal to the Highest Court in the Land is possible to assure the laws of the land are not only followed but applied equally. The concerns in this case are not just about one home. The impact is far and wide. A more profound question is does the Judicial Process preserve the rights of the few financial institutions that repeatedly CHOOSE to break, bend, ignore and circumvent the law; OR do we preserved the rights of the 126,000,000 present homeowners and the ones to come.

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[13] "If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void." N.Y. Est. Powers & Trusts Law {7-2.4. ...Wells Fargo Bank, N.A. v. Erobobo, et al., 2013 WL 1831799 (N.Y. sup. Ct. April 29, 2013). ...Erobobo court held that under {7-2.4, any conveyance in contravention of the PSA is void.-

the Federal Deposit Insurance Corporation, among other things to protect the wealth and property of citizens of the United States. Those protections were stripped away and as a result the mortgage meltdown of 2007 occurred teaching us the same lesson. Millions were left homeless, trillions of tax payer dollars, and retirement savings were transferred from Americans to Financial Institutions and their investors. What is there to prevent the same from happening again? We believe that answer lies in the power, function and purpose of Congress with the Judiciary being the last line of defense again unjust enrichment due to fraud.

It is within the purview of the Court grant the Writ of Certiorari based upon 1) numerous and significant procedural errors by the Middle District and 5th Circuit; 2) Younger Doctrine of Abstention; 3) applicability of the Rooker-Feldman Doctrine; 3) Respondents deploying fraudulent documents, statements and actions to deprive the Berrys of Property; and 4) improper securitization and all other actions as set forth above.

CONCLUSION

WHEREFORE, this Court should grant the writ and consider the issue on the merits. Respectfully submitted September 22, 2020.

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