

ORIGINAL

20-6682

No: _____

Supreme Court, U.S.

FILED

OCT 22 2020

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

Ann Boris and Vamsidhar Vurimindi

Petition of Vamsidhar Vurimindi

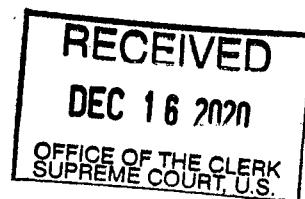
v.

Wells Fargo Bank, NA, Respondent

On Petition For Writ of Certiorari
To The Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Vamsidhar Vurimindi, A#096-689-764,
Petitioner, Pro Se
Montgomery Processing Center,
806 Hilbig Road,
Conroe, TX-77301.



QUESTIONS PRESENTED

1. Whether state appellate court violated state constitutional right to appeal, which is protected by Due Process Clause of U.S. Constitution Fifth Amendment by dismissing homeowner's appeal from trial court order denying to set aside sheriff sale after sheriff delivered deed to the buyer at sheriff sale as moot, stating homeowner no longer owned his home, and lacked standing to appeal in rem judgment in mortgage foreclosure, where homeowner have a concrete interest in his sold home, and the trial court judgment that permitted sheriff sale is void, and sheriff lacked authority to make the sale, and sheriff's deed based on fraud?

LIST OF PARTIES

1. Vamsidhar Vurimindi,
A # 096-689-764, Montgomery Processing Center,
806 Hilbig Road, Conroe, TX-77301.
Petitioner
2. Wells Fargo Bank, NA,
C/o. Steven J. Adam, Esq,
Stevens & Lee, P.C,
111 North Sixth Street, P. O. Box # 679,
Reading, PA 19603.
(Counsel for Wells Fargo Bank, NA).
Respondent

RELATED CASES

1. Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Case No: 1609, October Term 2015, Court of Common Pleas, Philadelphia, Judgment entered on July 29, 2019.
2. Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Appeal of Vamsidhar Vurimindi, No: 2590-EDA-2019, Superior Court of Pennsylvania. Judgment entered February 03, 2020.
3. Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Petition of Vamsidhar Vurimindi, Case No: 101-EAL-2020, Supreme Court of Pennsylvania. Judgment entered August 04, 2020.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
RELATED CASES.....	ii
TABLE OF CONTENTS.....	iii
INDEX TO APPENDICES.....	iv
TABLE OF AUTHORITIES CITED.....	v
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
BACKGROUND.....	4
STATEMENT OF FACTS AND PROCEDURAL HISTORY.....	7
REASONS FOR GRANTING THE PETITION.....	19
Certiorari is Appropriate, because the Pennsylvania Appellate Court's Decision to Dismiss Appeal as Moot, Conflicts With this Court's Precedents in Interpreting the Application of the Due Process Clause in Appeals as of Right under Pennsylvania Constitution and Trial Courts Acted Without Jurisdiction, Presents a Question of Significant National Importance.....	19
Common Pleas Court lacked jurisdiction to Enter Judgment that Permitted Sheriff Sale, and Therefore Appeal from Order Denying to Set Aside Sheriff Sale is Not Moot:.....	19
Wells Fargo Bank Failed to Join Condominium Association, the Senior & Priority Lien-holder against Mortgaged Premises and therefore <i>Common Pleas Court Lacked Jurisdiction to Decide the Matter</i> :.....	20
Wells Fargo Bank's Junior Lien against Mortgaged Premises is Divested at Sheriff Sale on November 11, 2015, when Condominium Association Foreclosed Mortgaged Premises via Judicial Sale to Realize Prior Mortgage, Interest and Costs which have Accrued to Condominium Association, So too Wells Fargo Bank's Right to Execute on Mortgaged Premises:.....	23
Pennsylvania Constitution Guarantee Right to Appeal and Dismissal of Appeal as Moot is Unconstitutional:.....	25
State Appellate Court Misinterpreted Law Regarding Mootness Doctrine, where Petitioner's Appeal is Challenging Common Pleas Court's Jurisdiction to Enter Judgment:.....	26
CONCLUSION.....	30
PROOF OF SERVICE.....	31

INDEX TO APPENDICES

APPENDIX-A

February 03, 2020, Superior Court of Pennsylvania Order dismissing appeal in Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Appeal of Vamsidhar Vurimindi, Appeal No: 2590-EDA-2019, Superior Court of Pennsylvania

APPENDIX-B

October 02, 2019, Court of Common Pleas, Philadelphia Opinion advocating to affirm its July 29, 2019 judgment in denying Motion to Set Aside Sheriff sale in Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Case No: 1609, October Term 2015, Court of Common Pleas, Philadelphia.

APPENDIX-C

August 04, 2020, Supreme Court of Pennsylvania Order denying Petition for Allowance of Appeal in Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Petition of Vamsidhar Vurimindi, No: 101-EAL-2020, Supreme Court of Pennsylvania

TABLE OF AUTHORITIES CITED

UNITED STATES SUPREME COURT CASES

<i>Arizona v. California</i> , 298 U.S. 552 (1936).....	22
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	22
<i>Arbaugh v. Y & H Corp</i> , 546 U.S. 500 (2006).....	22
<i>California v. Southern Pacific Co</i> , 157 U.S. 229 (1894).....	22
<i>Davis v. O'Hara</i> , 266 U.S. 314 (1924).....	22
<i>Dunn v. Blumstein</i> , 405 U.S. 330 (1972).....	19
<i>Ellis v. Railway Clerks</i> , 466 U.S. 435 (1984).....	26
<i>Erwin's Lessee v. Dundas</i> , 45 U.S. 58 (1845).....	28
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956).....	26
<i>Heitmuller v. Stokes</i> , 256 U.S. 359 (1921).....	27
<i>Landes v. Brant</i> , 51 U.S. 348 (1851).....	28
<i>Mansfield Railway Co v. Swan</i> , 111 U.S. 379 (1884).....	22
<i>Mayer v. Chicago</i> , 404 U.S. 189 (1971).....	26
<i>Memphis Light, Gas & Water Div. v. Craft</i> , 436 U.S. 1 (1978).....	27
<i>Metcalf v. Watertown</i> , 128 U.S. 586 (1888).....	22
<i>Mexican Nat'l R. Co v. Davidson</i> , 157 U.S. 201 (1895).....	22
<i>Mills v. Green</i> , 159 U.S. 651 (1895).....	26
<i>Minnesota v. United States</i> , 305 U.S. 382 (1939).....	21
<i>Mission Product Holdings, Inc., v. Tempnology, LLC, _US_, 139 S.Ct. 1652 (2019)</i>	27
<i>Moore v. Ogilvie</i> , 394 U.S. 814 (1969).....	20
<i>Roe v. Wade</i> , 410 U.S. 133, 152-153 (1973).....	19
<i>Rosario v. Rockefeller</i> , 410 U.S. 752 (1973).....	19
<i>Storer v. Brown</i> , 415 U.S. 724 (1974).....	19
<i>Sun Printing & Publishing Ass'n v. Edwards</i> , 194 U.S. 377 (1904).....	22
<i>Super Tire Engineering Company v. McCorkle</i> , 416 U.S. 115 (1974).....	19
<i>United States v. Alabama</i> , 313 U.S. 274 (1941).....	21

<i>United States v. Cotton</i> , 535 U.S. 625 (2002).....	22
<i>United States v W. T. Grant Co.</i> , 345 U.S. 629 (1953).....	26
<i>US Bancorp Mortgage Company v. Bonner Mall Partnership</i> , 513 U.S. 18 (1994).....	27
<i>Walling v. Reuter Co.</i> , 321 U.S. 671 (1944).....	27
<i>Walker v. Powers</i> , 104 U.S. 245 (1881).....	28
<i>Walker v. Turner</i> , 22 U.S. 541 (1824).....	28
<i>Wayne United Gas Company v. Owens-Illinois Glass Company et al</i> , 300 U.S. 131 (1937).....	27

UNITED STATES FEDERAL COURT CASES

<i>Bennerson v. Small</i> , 842 F.2d 710 (3d Cir 1988).....	29
<i>Regency Savings Bank, F.S.B., v. Merritt Park Lands Associates</i> , 139 F. Supp.2d 462 (USDC SDNY 2001).....	21
<i>United States v. Cless</i> , 254 F.2d 590 (3d Cir 1958).....	8

PENNSYLVANIA COURT CASES

<i>Albert J. Grosser v. Rosen</i> , 259 A.2d 679 (Pa. 1969).....	23
<i>Borough of McDonald v. Davidson</i> , 193 A. 472 (Pa Super 1937).....	23
<i>Bradley v. Price</i> , 396 Pa 234, 152 A.2d 908 (Pa 1959).....	10
<i>City of McKeesport v. Delmar Leasing Corporation</i> , 656 A.2d 180 (Pa. Commw. 1995). 8	
<i>Doherty v. Adal Corp.</i> , 261 A.2d 311 (Pa. 1970).....	16, 29
<i>Duetsche Bank Nat'l Co. v. Butler</i> , 868 A.2d 574 (Pa. Super. 2005).....	19
<i>Florida First Bank Capital v. Zoning Hearing Board</i> , 397 A.2d 838 (Pa Commw 1979).....	8
<i>Harris v. Harris</i> , 239 A.2d 783 (Pa. 1968).....	29
<i>Hineline v. Stroudsburg Elec. Supply Co.</i> , 586 A.2d 455 (Pa Super 1991).....	22
<i>Hirsch v. Bunker Hill Mutual Insurance Co.</i> , 8 Pa. D & C 2d 259 (1957).....	23
<i>Insilico Corp v. Rayburn</i> , 543 A.2d 120 (Pa. Super. 1988).....	16
<i>McLanahan v. Goodman</i> , 108 A. 206 (Pa. 1919).....	29
<i>Steckel v. Stickland</i> , 50 Pa. D & C 2d 784 (1971).....	23
<i>Union National Bank v. Delong Furniture Corporation</i> , 26 A.2d 449 (Pa 1942).....	29
<i>Youngman v. Elmira</i> , 65 Pa 278, 287 (Pa 1870).....	10

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court (Superior Court of Pennsylvania) to review the merits appears at **APPENDIX-A** to the petition and is unpublished.

The opinion of the Court of Common Pleas, Philadelphia in Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Case No: 1609, October Term 2015, appears at **APPENDIX-B** to the petition and is unpublished.

JURISDICTION

The date on which the highest court (Supreme Court of Pennsylvania denying Petition for Allowance of Appeal) decided my case was August 04, 2020. A copy of that decision appears at **APPENDIX-C**. The jurisdiction of this Court is invoked under 28 U.S.C.A § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Constitution Fifth Amendment

"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."

STATEMENT OF THE CASE

This case is about a big bank having junior lien against poor immigrant's home, and failed to join senior & priority lien holder in its mortgage foreclosure action, and failed to protect its mortgage interest by bidding on poor immigrant's home at the sheriff's sale to realize the debt, interest and costs which have accrued to the senior & priority lien holder, and trial court permitting big bank to foreclose already foreclosed poor immigrant's home and allowing to execute the sheriff sale after big bank's lien and right to execute has been divested at prior sheriff sale, and denying to set aside sheriff sale, despite trial court judgment that permitted sheriff sale is void, sheriff lacked authority to make the sale, and sheriff's deed is based on fraud, and appellate court dismissing poor immigrant's appeal from trial court order denying to set aside sheriff sale as moot, by stating after sheriff delivered deed of the home to buyer at sheriff sale, appellant no longer owned his home and thereby lacked standing to appeal in rem judgment in mortgage foreclosure.

I. BACKGROUND

In March 2008, Petitioner and his wife purchased a condo located at 309-313 Arch Street, Unit # 607, Philadelphia, PA 19106, ("Mortgaged Premises") as their primary residence. On December 16, 2013, The Condominium Association filed a complaint to foreclose Mortgaged Premises by alleging that Petitioner did not pay Condominium Assessment Fees, ("CAFs") for Years 2012 and 2013, and owed \$7,150 and late fees; and under 68 Pa.C.S.A § 3315(a), it was entitled to initiate a foreclosure action against Mortgaged Premises to collect unpaid CAFs. See Hoopskirt Lofts

Condominium Association v. Vurimindi, No:131201973, Court of Common Pleas, (“Tr.Ct.Dkt.No:131201973”) at 12/16/2013. On March 13, 2015, Common Pleas Court entered a judgment for \$29,506.18 in favor of Condominium Association and permitted to sell Mortgaged Premises. See Tr.Ct.Dkt.No:131201973 at 03/13/2015. At sheriff sale, on November 11, 2015, Condominium Association purchased Mortgaged Premises for \$13,500.00 (thirteen thousand and five hundred dollars), after deducting its judgment amount for \$29,506.18 and outstanding mortgage debt of \$256,000.00 (two hundred and fifty-six thousand dollars) against Mortgaged Premises. See Tr.Ct.Dkt.No:131201973 at 11/11/2015. Nonetheless, Philadelphia Sheriff did not deliver sheriff deed for Mortgage Premises to Condominium Association; and \$13,500.00 (thirteen thousand and five hundred dollars) to Petitioner, because Petitioner timely filed Motion to Strike/Open Default Judgment, Motion to Enter Supersedeas, Motion to Postpone Sheriff Sale, and Motion to Set Aside Sheriff Sale. But, Common Pleas Court denied these motions. See Hoopskirt Lofts Condominium Association v. Vurimindi, 2015 Phila. Ct. Com. Pl. LEXIS 465 (CP, Philadelphia County, 2015); later proceeding at 2016 Phila. Ct. Com. Pl. LEXIS 64 (CP, Philadelphia County, 2016) later proceeding at 2016 Phila. Ct. Com. Pl. LEXIS 69 (CP, Philadelphia County, 2016), Affirmed by Hoopskirt Lofts Condominium Association v. Vurimindi, 178 A.3d 966 (Pa Commw 2017), Allocatur denied, 188 A.3d 1113 (Pa. 2018).

In Motion to Strike/Open Default Judgment, Petitioner asserted that Condominium Association service of foreclosure complaint upon prison officials did not signify service of complaint upon Petitioner, and Petitioner did not received

Condominium Association's foreclosure complaint, and therefore Common Pleas Court lacked personal jurisdiction, because Petitioner was deprived of his U.S. Const. Fifth Amendment's Due Process Notice. Nonetheless, Common Pleas Court, without hearing overruled Petitioner's objections stating at the time of service, Petitioner was incarcerated at the Philadelphia Detention Center, and thus, from a common sense standpoint, Condominium Association was unable to have the Complaint handed to him directly by the process server. Rather, service had to go through an intermediary, presumably a prison employee. Condominium Association's Affidavit of Service states that service was made at 8201 State Road, Philadelphia, PA, the Philadelphia Detention Center's address, upon an individual named Lieutenant J. Smith, who Common Pleas Court assumed to be a correctional officer; and therefore, Court could not look beyond those facts reflected on the record and, as such, determined that Condominium Association's service of its Complaint was not facially invalid.

Thereafter, Petitioner sued Philadelphia Detention Center and obtained copies of prison's standard operating procedures for mail delivery; and found that correctional officer/prison guard is not authorized to accept complaint; and all legal mail must be received by mail-room staff, and enter into the mail-log and then hand-over to housing unit prison guard after obtaining prison guard signature; and then housing unit prison guard deliver the legal mail to prisoner after obtaining prisoner signature in mail-log; and Petitioner never received copy of foreclosure complaint from Lieutenant J. Smith or any other prison official; and Philadelphia Prison System did not maintained mail-log system as stated in its standard operating procedure. Immediately, Petitioner filed Second

Motion to Strike Default Judgment, because Condominium Association handing complaint to prison guard who is not authorized to accept service of complaint is not reasonably calculated to provide notice of pending foreclosure action; and therefore Common Pleas Court lacked jurisdiction to enter default judgment. But Common Pleas Court denied to strike default judgment. See Tr.Ct.Dkt.No:131201973. Immediately, Petitioner filed Notice of Appeal, and this appeal is pending at Hoopskirt Lofts Condominium Association v. Vurimindi, No: 753-CD-2018, Commonwealth Court of Pennsylvania.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

In April 2015, Condominium Association served Pa.R.C.P.3129 Notice of Sheriff Sale of Mortgaged Premises upon Wells Fargo Bank NA, ("Respondent") in Tr.Ct.Dkt.No:131201973. Thereafter, on October 15, 2015, Respondent filed mortgage foreclosure complaint against Petitioner and his wife to foreclose Mortgaged Premises, See Wells Fargo Bank, NA, v. Ann Boris and Vamsidhar Vurimindi, Case No: 1609, October Term 2015, Court of Common Pleas, Philadelphia, ("Tr.Ct.Dkt.No:151001609") at 10/15/2015, without first serving mandatory Act 91 Pre-Suit Notice of Intent to Foreclose or joining the indispensable party, the Condominium Association, despite Respondent's mortgage lien is junior to Condominium Association's mortgage lien.¹

1 Respondent's December 26, 2012 mortgage lien against Mortgaged Premises is eleven (11) months junior to the Condominium Association's statutory lien against Mortgaged Premises, in an amount equal to Year 2012 CAFs against Mortgaged Premises. See 68 Pa.C.S.A § 3315(a). Moreover, Condominium Association perfected its super-priority statutory lien in an amount equal to six (6) months of

On November 11, 2015, in Tr.Ct.Dkt.No:131201973, at sheriff sale, Condominium Association purchased Mortgaged Premises, See Tr.Ct.Dkt.No:131201973 at 11/11/2015; and this sheriff sale divested Respondent's junior mortgage lien,² because Respondent did not participate at Sheriff Sale to protect its junior lien.³ Thereafter, on July 18, 2016, Prothonotary of Common Pleas Court entered default judgment against Petitioner. Immediately, Petitioner filed Motion to Strike/Open Default Judgment. (See Tr.Ct.Dkt.No:151001609 at 08/01/2016). In Motion to Strike/Open Default Judgment

CAFs against Mortgaged Premises. See 68 Pa.C.S.A § 3315(b)(2).

- 2 See 42 Pa.C.S.A § 8152(c) (Sale on prior lien - A judicial or other sale of real estate in proceedings under a prior judgment or a prior ground rent, or in foreclosure of a prior mortgage, shall discharge a mortgage later in lien).
- 3 See City of McKeesport v. Delmar Leasing Corporation, 656 A.2d 180 (Pa. Commw. 1995)(Where a junior lien-holder has notice of a Sheriff's Sale, he may attempt to protect his mortgage interest by bidding on the property at the Sheriff's Sale and/or presenting legal or equitable arguments at a hearing as to why the mortgage should not be divested). See Florida First Bank Capital v. Zoning Hearing Board, 397 A.2d 838 (Pa Commw 1979)(The effect of a mortgage foreclosure and sale is to extinguish the mortgagor's interest in the property and to transfer the estate to the purchaser as fully as it existed in the mortgagor at the date of the mortgage. All intervening estates and interests acquired subsequent to the mortgage are also defeated). See also United States v. Cless, 254 F.2d 590 (3d Cir 1958)(We are of the opinion that the district court properly entered judgment for the defendants by concluding that the subordinate mortgage lien of the United States was divested by foreclosure of the prior mortgage in accordance with Pennsylvania law).

Petitioner asserted several grounds to strike default judgment – (1) Respondent failure to serve Act 91 Pre-Suit Notice of Intention to Foreclose upon Petitioner; (2) Prothonotary violated Pa.R.C.P.236, by failing to serve Common Pleas Court orders upon Petitioner at SCI-Pine Grove; (3) Respondent violated Pa.R.C.P.208.2 & Pa.R.C.P.440(a)(2) (i), by failing to serve its pleadings (other than complaint) upon Petitioner at SCI-Pine Grove; (4) Respondent's served Pa.R.C.P.237.1 Notice of Default, prior to actual default; (5) Prothonotary lacked power to enter default judgment on July 18, 2016, because Petitioner filed responsive pleading on July 14, 2018; (6) Respondent failed to join Condominium Association, an indispensable party; (7) Promissory Note attached to foreclosure complaint is void ab initio; and (8) Respondent's mortgage lien is divested; Condominium Association assumed outstanding debt against Mortgaged Premises; and Petitioner do not owe any money to Respondent. Additionally, Petitioner requested the Court to open default judgment, because:(1) his motion to open default judgment is prompt; (2) the delay in filing motion is due to Prothonotary and Respondent deprivation of his due process notice under Pa.R.C.P.236, 208.2 & 440(a)(2)(i); (3) Respondent's claims are barred by:(a) Promissory note is void; (b) Doctrine of frustration of purpose, anticipatory breach, illegality, waiver, estoppel, duress and laches; (c) Defense of payment, accord and satisfaction, unconscionability, impossibility of performance, statute of frauds and void against public policy; (d) Respondent failure to mitigate damages.

Respondent argued that Condominium Association has notice of its foreclosure action, before Condominium Association purchased Mortgaged Premises at sheriff sale

in Tr.Ct.Dkt.No:131201973, therefore need not join Condominium Association by citing Bradley v. Price, 396 Pa 234, 152 A.2d 908 (Pa 1959)(quoting, Youngman v. Elmira, 65 Pa 278, 287 (Pa 1870)), which held that encumbrances who became *pendente lite* are not necessary parties to a bill of foreclosure, and there would be no end to such suits, if mortgator might by new encumbrances, created *pendente lite*, requires all such encumbrances to be made parties. On April 26, 2017, Common Pleas Court denied Petitioner's Motion to Strike/Open Default Judgment. (See Tr.Ct.Dkt.No:151001609. at 04/26/2017).

Petitioner timely appealed from the order denying Motion to Strike/Open Default Judgment, which was docketed and pending at Wells Fargo Bank, NA, vs. Ann Boris and Vamsidhar Vurimindi, Appeal of Vamsidhar Vurimindi, No: 3905-EDA-2017, Superior Court of Pennsylvania, ("Sup.Ct.Dkt.No:3905-EDA-2017"). While this appeal is pending, Respondent twice organized sheriff sale on February 07, 2017 and August 01, 2017, and Philadelphia Sheriff sold Mortgaged Premises to Land Exercise LLC for \$240,000.00, (*Id.* at 02/08/2017), and thereafter to Respondent for \$190,000.00 (*Id.* at 08/01/2017), respectively. Contemporaneously, twice on April 07, 2017 and January 11, 2018 Common Pleas Court set aside February 07 and August 01, 2017 Sheriff Sales of Mortgaged Premises respectively. (*Id.* at 04/10/2017 and 1/11/2018). Additionally, on January 11, 2018, Common Pleas Court stayed any further sales of Mortgaged Premises, pending determination of Petitioner's appeal at Sup.Ct.Dkt.No:3905-EDA-2017. (*Id.* at 01/11/2018).⁴

4 After Common Pleas Court issued stay against Sheriff Sale of Mortgaged Premises pending appeal in Sup.Ct.Dkt.No:3905-EDA-2017, Petitioner did not

While appeal at Sup.Ct.Dkt.No:3905-EDA-2017 is pending, on November 01, 2018, Respondent filed a Motion to Lift Stay against further sales of Mortgaged Premises in Common Pleas Court, (*Id.* at 11/01/2018), and did not serve this motion upon Petitioner. On November 29, 2018, Common Pleas Court issued an order scheduling hearing on January 09, 2019. (*Id.* at 11/29/2018). On January 07, 2019, Respondent filed an affidavit of service of scheduling order upon Petitioner stating that, "ATTEMPTED SERVICE – NOT FOUND". (*Id.* at 01/07/2019). On January 09, 2019, Common Pleas Court lifted January 11, 2018 stay against sheriff sale of Mortgaged Premises, (*Id.* at 01/09/2019), and Petitioner did not receive order lifting stay against sheriff sale of Mortgaged Premises.⁵

anticipated any activity in Common Pleas Court. Therefore, immediately after upon his release from prolonged incarceration (on August 30, 2018), Petitioner diligently updated his mailing address in Sup.Ct.Dkt.No:3905-EDA-2017 docket as follows:

1. On September 05, 2018 to: 149 West Walnut Lane, Philadelphia PA 19144.
2. On October 02, 2018 to: 1151 North 3rd Street, Apt #202, Philadelphia, PA 19123.
3. On December 21, 2018 to: Vamsidhar Vurimindi, OCA #18-12057, Pike County Correctional Facility, 175 Pike County Boulevard, Lords Valley, PA 18428.

5 Respondent deprived Petitioner's due process notice of Motion to Lift Stay, due process notice of hearing on January 09, 2019, right to argue against lifting stay against Sheriff Sale of Mortgaged Premises, and due process notice of January 09, 2019 order lifting stay against Sheriff Sale of Mortgaged Premises, despite, after his release from prolonged incarceration, Petitioner personally visited

On February 27, 2019, Respondent served Pa.R.C.P.3129 Notice of Sheriff Sale of Mortgaged Premises; and on April 02, 2019, Mikhail Paskar purchased Mortgaged Premises for \$234,000.00 at sheriff sale. (See Tr.Ct.Dkt.No:151001609 at 04/03/2019).⁶ On June 01, 2019, Petitioner found that Philadelphia Sheriff sold Mortgaged Premises and conveyed deed to Mikhail Paskar; (and Philadelphia Sheriff did not responded to

Respondent Counsel on September 10, 2018, at Phelan Hallinan Diamond & Jones, LLP, 1617 JFK Boulevard, Suite # 1400, Philadelphia, PA 19103, and provided his e-mail address and mobile telephone number to Respondent's Counsel; and few days later write a follow-up e-mail to Respondent's Counsel. Additionally, Respondent's Counsels Christina M.Zern, Esq and Steven J.Adams, Esq are counsels of the record in Sup.Ct.Dkt.No:3905-EDA-2017 knew Petitioner's mailing addresses, when Respondent filed a Motion to Lift Stay on November 01, 2018; and when Common Pleas Court conducted hearing on January 09, 2019; and when Common Pleas Court lifted stay against Sheriff Sale of Mortgaged Premises on January 09, 2019. (See Sup.Ct.Dkt.No:3905-EDA-2017).

- 6 Petitioner continue to believe that, January 11, 2018 Stay against further sheriff sale of Mortgaged Premises was in force, because Petitioner, did not have notice of January 09, 2019 order lifting stay against sheriff sale of Mortgaged Premises; and believed that Respondent's Notice of Sheriff Sale is merely a "cry of wolf", similar to prior two premature sheriff sales, that were set aside by Common Pleas Court; and did not respond to Pa.R.C.P.3129 Notice of Sheriff Sale. In addition, Petitioner relapsed into debilitating depression, because USICE untimely taken him into custody for deportation, and did not receive adequate medical care in USICE detention. Consequently, Petitioner was unable to detect that, on January 09, 2019 Common Pleas Court lifted January 11, 2018 Stay against sheriff sale of Mortgaged Premises; and Respondent's Notice of Sheriff Sale not a "cry of

Petitioner's various inquiries for \$13,500.00 (thirteen thousand and five hundred dollars) cash paid in Tr.Ct.Dkt.No:131201973 by Condominium Association at sheriff sale on November 11, 2015); and immediately filed Motion to Set Aside Sheriff Sale, by asserting that Philadelphia Sheriff lacked authority to make the sale because – (1) Respondent failed to serve 35 Pa.C.S.A § 1680.403 (Act 91) Notice of Intent to Foreclose upon Petitioner; (2) Prothonotary deprived Petitioner's Due Process Notice of Orders under Pa.R.C.P.236, by failing to serve Common Pleas Court orders upon Petitioner; (3) Respondent deprived Petitioner's Due Process Notice of its pleadings under Pa.R.C.P.208.2 and Pa.R.C.P.440(a)(2)(i), by failing to serve its pleadings and responsive pleadings upon Petitioner; (4) Respondent's Pa.R.C.P.237.1 Notice of Default is prior to Petitioner's default; (5) Prothonotary lacked power to reject a responsive pleading filed before entering default judgment on July 18, 2016; (6) Respondent failed to join Condominium Association, the indispensable party to foreclosure complaint and suppressed the fact that its mortgage lien against Mortgaged Premises is junior to Condominium Association's lien against Mortgaged Premises; (7) Respondent's mortgage lien is divested at Sheriff Sale on November 11, 2015 in Tr.Ct.Dkt.No:131201973 at 11/11/2015; (8) Promissory Note attached to foreclosure complaint is Void Ab Initio; and Respondent cannot maintain lien against Mortgaged Premises; (9) Respondent deprived Petitioner's due process notice of Motion to Lift Stay, and hearing; and due process right to argue against lifting stay against sale of Mortgaged Premises pending appeal at Sup.Ct.Dkt.No:3905-EDA-2017; and (10) Sheriff Sale lacked competitive bidding, and \$234,000.00 Sheriff Sale price for wolf'.

Mortgaged Premises is grossly inadequate, because its market value is over \$400,000. (See Motion to Set Aside Sheriff Sale, pp 01-60 in Tr.Ct.Dkt.No:151001609 at 06/17/2019).

Respondent filed response by asserting that res judicata and collateral estoppel preclude Petitioner from re-litigating issues decided in Motion to Strike/Open Default Judgment; and Petitioner didn't establish sheriff's deed is based on fraud or Philadelphia Sheriff lacked authority to make the sale. (Id. at 07/08/2019). Petitioner replied that res judicata and collateral estoppel do not apply in the same proceeding to correct or modify its judgment; sheriff's deed is tainted with fraud and sheriff lacked authority to make the sale, because Respondent failed to join the indispensable party (Condominium Association) to foreclosure complaint and suppressed the fact that its mortgage lien is eleven (11) months junior to Condominium Association's lien against Mortgaged Premises; and Respondent's eleven (11) months junior lien is divested at sheriff sale on November 11, 2015 in Tr.Ct.Dkt.No:131201973 at 11/11/2015; and equity demand to set aside sheriff sale.

On July 27, 2019, Common Pleas Court denied Motion to Set Aside Sheriff Sale; and immediately, Petitioner appealed, which was docketed and pending at Wells Fargo Bank, NA, vs. Ann Boris and Vamsidhar Vurimindi, Appeal of Vamsidhar Vurimindi, No: 2590-EDA-2019, Superior Court of Pennsylvania, ("Sup.Ct.Dkt.No:2590-EDA-2019"). On October 02, 2019, Judge Fletman filed Pa.R.A.P.1925(a) Opinion, ("Opinion"), (Tr.Ct.Dkt.No:151001609 at 10/02/2019), and advocated to affirm denying to set aside sheriff sale, because procedural errors prior to sheriff sale do not warrant to set aside

sheriff sale, after sheriff transfer deed to Mikhail Paskar. (See Opinion, attached as **Appendix-B**).

Thereafter, Petitioner filed his opening brief in Sup.Ct.Dkt.No:2590-EDA-2019 and argued that Common Pleas Court made an error by refusing to strike default judgment, because Common Pleas Court lacked jurisdiction over Mortgaged Premises, because Respondent's mortgage lien against Mortgaged Premises is divested at November 11, 2015 sheriff sale of Mortgaged Premises in Tr.Ct.Dkt.No:131201973; and Respondent's failed to join Condominium Association, the senior & priority lien holder against Mortgaged Premises; and Petitioner is deprived of his due process notice of Respondent's Answer to PO's; and notice of April 25, 2016 order overruling his PO's under Pa.R.C.P.236; and as a result, twenty days' time-to-file answer from April 25, 2016, did not begin to run; and Respondent's Pa.R.C.P.237.1 Notice of Default is prior to Petitioner's actual default, and therefore, Prothonotary lacked power to enter default judgment and reject Petitioner's new PO's filed before entering default judgment. Furthermore, Common Pleas Court made an error in overruling PO's, because Respondent failed to serve Act 91, pre-suit Notice upon Appellant. Therefore, the Common Pleas Court judgment that permitted sheriff sale is void; consequently, sheriff lacked authority to make the sale. Additionally, Petitioner argued that, Sheriff's Deed to Mikhail Paskar is tainted with fraud, because Respondent deprived Petitioner's due process notice of Motion to Lift Stay, hearing upon Motion to Lift Stay; and suppressed the fact that its mortgage lien against Mortgaged Premises is divested at November 11, 2015 sheriff sale of Mortgaged Premises in Tr.Ct.Dkt.No:131201973; and April 02, 2019

sheriff sale lacked competitive bidding and \$234,000.00 sale price is grossly inadequate for Mortgaged Premises. (See Sup.Ct.Dkt.No:2590-EDA-2019 at 12/23/2019 at pp.01-84).

On January 16, 2020, Respondent filed Motion to Dismiss Appeal for mootness under Pa.R.A.P.1972(a)(4), claiming Petitioner no longer has any interest in Mortgaged Premises, because on April 02, 2019 Philadelphia Sheriff sold and delivered deed for Mortgaged Premises to Mikhail Paskar, and Court cannot enter any order in this case that has any legal force or effect, because any such order will not restore Petitioner's interest in the Mortgaged Premises. (See Sup.Ct.Dkt.No:2590-EDA-2019 at 01/16/2020). On January 22, 2020, Petitioner filed his response and asserted that circumstances rendering this appeal moot do not exist, because in Hoopskirt Lofts Condominium Association v. Vurimindi (first mortgage foreclosure action), Philadelphia Sheriff did not deliver deed for Mortgaged Premises to Condominium Association, and in Wells Fargo Bank NA v. Vurimindi (second mortgage foreclosure action), sheriff's deed to Mikhail Paskar is untenable because Mikhail Paskar purchased Mortgaged Premises at sheriff sale, under and by virtue of a void judgment, is without title. (See Sup.Ct.Dkt.No:2590-EDA-2019 at 01/22/2020). Nonetheless, Superior Court dismissed Petitioner's appeal as moot by citing Duetsche Bank Nat'l Co. v. Butler, 868 A.2d 574 (Pa. Super. 2005)(dismissing as moot appeal in mortgage foreclosure case where appellant failed to obtain supersedeas, property was sold at sheriff's sale, and deed was delivered to buyer) and Insilico Corp v. Rayburn, 543 A.2d 120 (Pa. Super. 1988)(parties who no longer owned real property lacked standing to appeal in rem judgment in

mortgage foreclosure). (See Sup.Ct.Dkt.No:2590-EDA-2019 at 02/03/2020)

Immediately Petitioner filed Petition for Allowance of Appeal in Supreme Court of Pennsylvania and asserted that *Deutsche Bank*⁷ and *Insilico Corp*⁸ cases do not control instant case, because this appeal is from Common Pleas Court denying to set aside sheriff sale that was predicated upon void judgment, because Respondent's junior mortgage lien is divested at November 11, 2015 Sheriff Sale, and Respondent did not participate at Sheriff Sale to protect its junior lien, See Tr.Ct.Dkt.No:131201973 at 11/11/2015, and Respondent failed to join Condominium Association, the senior & priority lien holder against Mortgaged Premises. Additionally asserted that the buyer Mikhail Paskar, purchased Mortgaged Premises at sheriff sale, under and by virtue of a void judgment, is without title and Petitioner have a concrete interest in Mortgaged Premises, because he had the possession and title for Mortgaged Premises until Philadelphia Sheriff deliver title deed for Mortgaged Premises to Mikhail Paskar; and

- 7 In *Deutsche Bank*, the appeal is from trial court setting aside first sheriff sale of real property, which was dismissed under *Pa.R.A.P.1972(4)* as moot, because the property had already been sold at second sheriffs sale; and Superior Court reasoned that an order declaring first sheriff sale is valid would have no effect; and appellant did not exhaust his remedies in preventing the issue from becoming moot because he never filed a motion objecting to the amount of the security set by the trial court but simply chose not to file the supersedeas bond or a motion under *Pa.R.A.P.1737*. *Id.*
- 8 In *Insilico Corp*, Rayburns have given to Whipney a quitclaim deed conveying any interest they may have had in the real estate. As a result, they no longer have any immediate, direct, pecuniary or substantial interest in the real estate or the in rem foreclosure action. *Insilico Corp*, Supra at 371-74.

both Condominium Association and Respondent executed upon void judgments, because Common Pleas Court lacked jurisdiction over Petitioner (in first mortgage foreclosure action) and over Mortgaged Premises (in second mortgage foreclosure action). Therefore, the possibility of Court granting effective relief by striking deed to Mikhail Paskar is alive. Nonetheless, Supreme Court of Pennsylvania denied Petition for Allowance of Appeal and permitted injury to Petitioner's state constitutional right to appellate review go uncorrected.⁹

9 Similarly, in Sup.Ct.Dkt.No:3905-EDA-2017, Petitioner filed Application to Issue Anew Briefing Schedule, (See Sup.Ct.Dkt.No:3905-EDA-2017 at 06/22/2019), and attached his purported opening brief arguing that Common Pleas Court made an error by refusing to strike or open default judgment, (Id. at pp.01-59), because on March 19, 2019, Superior Court vacated existing briefing schedule, and remanded the certified record to Common Pleas Court for sixty (60) days; and USICE scheduled Petitioner to remove from United States. Immediately, Respondent filed Motion to Dismiss Appeal for mootness under Pa.R.A.P.1972(a)(4), claiming Petitioner no longer has any interest Mortgaged Premises, because on April 02, 2019 Philadelphia Sheriff sold and delivered deed for Mortgaged Premises to Mikhail Paskar, and Court cannot enter any order in this case that has any legal force or effect, because any such order will not restore Petitioner's interest in the Mortgaged Premises.(Id. at 06/27/2020). Immediately, Petitioner replied by asserting that circumstances rendering this appeal moot do not exist, because in *Hoopskirt Lofts Condominium Association v. Vurimindi* (first mortgage foreclosure action), Philadelphia Sheriff did not deliver deed for Mortgaged Premises to Condominium Association, and in *Wells Fargo Bank NA v. Vurimindi* (second mortgage foreclosure action), Sheriff's deed to Mikhail Paskar is untenable because Mikhail Paskar purchased Mortgaged Premises at sheriff sale, under and by virtue of a void judgment, is without title. (Id. at 07/03/2019). Nonetheless, on July 12, 2019, Superior Court dismissed Petitioner's appeal as

REASONS FOR GRANTING THE PETITION

I. Certiorari is Appropriate, because the Pennsylvania Appellate Court's Decision to Dismiss Appeal as Moot, Conflicts With this Court's Precedents in Interpreting the Application of the Due Process Clause in Appeals as of Right under Pennsylvania Constitution and Trial Courts Acted Without Jurisdiction, Presents a Question of Significant National Importance:

A) Common Pleas Court lacked jurisdiction to Enter Judgment that Permitted Sheriff Sale, and Therefore Appeal from Order Denying to Set Aside Sheriff Sale is Not Moot:

The often litigated issue in this case is of significant national concern, particularly at a time when the mortgage banks quickly obtain judgments and sell properties before the case reaches appellate court and homeowners lack necessary financial resources to obtain supersedeas stay of execution and sheriff sale pending appeal. In Super Tire Engineering Company v. McCorkle, 416 U.S. 115 (1974), this Court stated: Certainly the pregnant appellants in Roe v. Wade, 410 U.S. 133, 152-153 (1973), had long since outlasted their pregnancies by the time their cases reached this court. Yet we had no difficulty in rejecting of mootness. Similar and consistent results were reached in Storer v. Brown, 415 U.S. 724 (1974); Rosario v. Rockefeller, 410 U.S. 752 (1973); Dunn v. moot by citing Duetsche Bank Nat'l Co. v. Butler, 868 A.2d 574 (Pa. Super. 2005) (dismissing as moot appeal in mortgage foreclosure case where appellant failed to obtain supersedeas, property was sold at sheriff's sale, and deed was delivered to buyer). Immediately Petitioner filed Petition for Allowance of Appeal in Supreme Court of Pennsylvania. Nonetheless, Supreme Court of Pennsylvania denied Petition for Allowance of Appeal and permitted injury to Petitioner's state constitutional right to appellate review go uncorrected.

Blumstein, 405 U.S. 330 (1972) and Moore v. Ogilvie, 394 U.S. 814 (1969), cases concerning various challenges to state election laws. The important ingredient in these cases was governmental action directly affecting, and continuing to affect, the behavior of citizens in our society. Like pregnancy at nine months and election spaced at yearlong or biennial intervals, we should not preclude challenge to state polices that have had their impact and that continue in force, unabated and unreviewed. The judiciary must not close the door to the resolution of the important questions these concrete disputes present. Super Tire Engineering Company v. McCorkle, Supra (emphasis added, internal citations omitted). The issues raised in the appeal were of significant importance, impacts many citizens of every state and is ripe for review by this Court.

(a) Wells Fargo Bank Failed to Join Condominium Association, the Senior & Priority Lien-holder against Mortgaged Premises and therefore Common Pleas Court Lacked Jurisdiction to Decide the Matter:

In his motion to set aside sheriff sale, Petitioner alleged upon adequate proofs that, Respondent's December 26, 2012 mortgage lien against Mortgaged Premises is eleven (11) months junior to the Condominium Association's statutory lien against Mortgaged Premises, in an amount equal to Year 2012 CAFs against Mortgaged Premises. This Court consistently held that, where the holder of a recorded junior interest to a mortgage seeks to foreclose, it must join the holder of the senior participating interest as an indispensable party, because after the senior lien provided by the statute attaches, the property has two owners, the mortgagor and, to the extent

of the lien, the senior lien holder.¹⁰ But, Respondent failed to join Condominium Association, which is a senior and priority lien holder against Mortgaged Premises and co-owner to the extent of lien. In Pennsylvania, if an indispensable party is not joined, the court is without jurisdiction to decide the matter and any order or decree of the court null and void.¹¹ Because, Respondent's failed to join Condominium Association, any

¹⁰ See *Terrell v. Allison*, 88 U.S. 289 (1875)(The holder of the equity of redemption was, therefore, an indispensable party to a valid foreclosure. *Id.* 88 US at 293); *Minnesota v. United States*, 305 U.S. 382 (1939)(Where the United States held the fee in trust for the Chippewa Indians, United States is indispensable party to any proceeding against the land); *United States v. Alabama*, 313 U.S. 274 (1941) (Where the United States owned the fee, United States is indispensable party to any proceeding against the land); *United States v. Brosnan*, 363 U.S. 237 (1960) (Where the United States is the holder of a senior lien, the *Internal Revenue Code § 6323* require that the United States be an indispensable party to all litigation affecting its interest in the property). *United States v. City of Greenville*, 118 F.2d 963, 965 (4th Cir. 1941)(After the lien provided by the statute attaches, the property has in a sense two owners, the taxpayer and, to the extent of the lien, the United States). It is not necessary to join the subordinate lien-holders in the foreclosure action nor give them actual notice. *United States v. Cless*, 254 F.2d 590 (1958). *Regency Savings Bank, F.S.B., v. Merritt Park Lands Associates*, 139 F. Supp.2d 462 (USDC SDNY 2001)(Where the holder of a recorded junior interest to a mortgage seeks to foreclose, it must join the holder of the senior participating interest as an indispensable party).

¹¹ If an indispensable party is not joined, court lacks jurisdiction to decide the matter. *Pocono Pines Corporation v. Pennsylvania Game Commission*, 345 A.2d 709 (Pa. 1975)(The court held that the validity of the condemnation proceeding of the United States over the land was a central issue and any decision directly

order or decree of the Court affecting Mortgaged Premises is null and void for lack of jurisdiction to decide the matter. The issue of "the failure to join an indispensable party" cannot be waived, and can be raised at anytime.¹² Moreover, all questions concerning the rights of the parties related to Mortgaged Premises shall be decided in this one proceeding because any other finding would negate and be in complete contradiction to equity's rule of avoiding a multiplicity of suits.¹³

affected the rights of the United States and made the United States an indispensable party). This Court also dismissed cases for want of an indispensable party. See Arizona v. California, 298 U.S. 552 (1936); California v. Southern Pacific Co, 157 U.S. 229 (1894).

12 The question is question of jurisdiction as such cannot be waived. Mansfield Railway Co v. Swan, 111 U.S. 379 (1884); Metcalf v. Watertown, 128 U.S. 586 (1888); Mexican Nat'l R. Co v. Davidson, 157 U.S. 201 (1895); Sun Printing & Publishing Ass'n v. Edwards, 194 U.S. 377 (1904); Davis v. O'Hara, 266 U.S. 314 (1924). Subject matter jurisdiction cannot be forfeited or waived and should be considered when fairly in doubt. Ashcroft v. Iqbal, 556 U.S. 662 (2009)(citing Arbaugh v. Y & H Corp, 546 U.S. 500 (2006); United States v. Cotton, 535 U.S. 625 (2002)).

13 The purpose of Pa.R.C.P.1020(d) is to avoid multiplicity of suits, thereby ensuring the prompt disposition of all rights and liabilities of the parties in a single suit. Hineline v. Stroudsburg Elec. Supply Co., 586 A.2d 455 (Pa Super 1991).

(b) Wells Fargo Bank's Junior Lien against Mortgaged Premises is Divested at Sheriff Sale on November 11, 2015, when Condominium Association Foreclosed Mortgaged Premises via Judicial Sale to Realize Prior Mortgage, Interest and Costs which have Accrued to Condominium Association, So too Wells Fargo Bank's Right to Execute on Mortgaged Premises:

In his motion to set aside sheriff sale, Petitioner alleged upon adequate proofs that under 42 Pa.C.S.A § 8152(c), Respondent's eleven (11) months junior lien was divested on November 11, 2015, when Condominium Association foreclosed Mortgaged Premises via judicial sale to realize prior mortgage, interest and costs which have accrued to Condominium Association. Once Respondent's lien on Mortgaged Premises is divested, so too is Respondent's right to execute on Mortgaged Premises.¹⁴ Additionally, in his motion to set aside sheriff sale, Petitioner alleged upon adequate proofs that, Respondent obtained judgment by suppression of truth that its lien against Mortgaged Premises is eleven (11) months junior to the Condominium Association's statutory lien against Mortgaged Premises; and this junior lien was discharged on

14 In Pennsylvania, it is well established that a Sheriff's Sale of real property divests all junior liens on that property. Unity Savings Association v. American Urban Sciences Foundation, Inc., 487 A.2d 356 (Pa Super 1984)(citing, Albert J. Grosser v. Rosen, 259 A.2d 679 (Pa.1969); Borough of McDonald v. Davidson, 193 A. 472 (Pa Super 1937); Sum.Pa.Jur. Mortgages, § 256); See also 42 Pa.C.S.A § 8152 (Judicial sale as affecting lien of mortgage). Once a creditor's lien on property is divested, so too is his right to execute on that property. Unity Savings Association, 487 A.2d at 358 (citing, Steckel v. Stickland, 50 Pa. D & C 2d 784 (1971); Hirsch v. Bunker Hill Mutual Insurance Co., 8 Pa. D & C 2d 259 (1957)(discharged judgment will not support writ of execution and such writ should be stayed)).

November 11, 2015, when Condominium Association foreclosed Mortgaged Premises. In United States, no court will allow itself, its records, and the process of law to be used as instruments of fraud; and courts possess inherent power to control, amend, open and vacate their decisions according to circumstance, and especially where vitiated by fraud.¹⁵ But, Common Pleas Court railroaded Petitioner's allegations supported by adequate proofs, and denied to set aside April 02, 2019 sheriff sale.

(c) **Petitioner has Standing to Appeal from Order Denying to Set Aside Sheriff Sale:**

The doctrine of standing is an essential and unchanging part of the case or controversy requirement. *Lujan v. Defenders of Wildlife*, 505 U.S. 555 (1992), it has been established by long line of cases that the party seeking to invoke a courts jurisdiction must demonstrate three things: (1) Injury in fact by which we mean an invasion of legally protected in that is: (a) concrete and particularized injury must affect the plaintiff in personal and individual way; and (b) actual or imminent not conjectural or hypothetical; (2) There must be causal connection between the injury and the conduct complained of the injury has to be fairly traceable to the challenged action of the defendant and not the result of the independent action of some third not before the court; and (3) It must be likely as opposed to merely speculative that injury will be redressed by favorable decision. *Id.* An actual controversy must be extant at all stages

15 See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)(Supreme Court held that a federal court could grant relief from the court's own prior final judgment under certain rare circumstances, including when there is "after-discovered fraud".)

of review, not merely at the time of complaint is filed. *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997).

Petitioner's appeal is from Common Pleas Court order denying to set aside sheriff sale that is predicated upon a judgment that is void, and the buyer Mikhail Paskar, purchased Mortgaged Premises at sheriff sale, under and by virtue of a void judgment, is without title and Petitioner have a concrete interest in Mortgaged Premises, by being deed holder of Mortgaged Premises until Philadelphia Sheriff deliver deed for Mortgaged Premises to Mikhail Paskar. Therefore, the possibility of Court granting effective relief by striking deed for Mortgaged Premises to Mikhail Paskar is alive, because Petitioner challenged Common Pleas Court's jurisdiction over a judgment used to foreclose Mortgaged Premises.

B) Pennsylvania Constitution Guarantee Right to Appeal and Dismissal of Appeal as Moot is Unconstitutional:

Pennsylvania State Constitution, *Pa. Constitution Article V § 9* guarantee a right to appeal, and Due Process Clause protects the right to direct appeal when that right is guaranteed by the state. See *Evitts v. Lucey*, 469 U.S. 387 (1985). Due process further protects not only the right "to obtain a favorable decision," but also the right "to obtain a decision at all on the merits of the case." *Evitts*, 469 U.S. at 395 n.6 (emphasis in original). Furthermore, this Court has been clear in its reasons for extending the meaningful procedural protections of due process to appeals as of right. By deciding that an appeal is so important that it must be available as a matter of right, a state has "made the appeal the final step in the adjudication of guilt or innocence of the

individual.” *Id.* at 404 (citing *Griffin v. Illinois*, 351 U.S. 12 (1956)). The state itself recognizes that an appeal as of right plays such a crucial role that “the State could not decide the appeal arbitrarily” or otherwise deny an appellant “fair procedure,” *Evitts*, 469 U.S. at 404. Therefore, certiorari is appropriate in this case because Superior Court misinterpreted the law in such as that undercuts the primary purpose of appeal as of right: to determine whether or not the trial-court applied the proper law to the facts and to relieve defendant of harmful erroneous trial-court orders; and to give a recourse to another judicial authority in the event of bias by the trial judge. Therefore, arbitrary denial of appellate review may generate frustration and hostility toward courts among the most numerous consumers of justice. *Mayer v. Chicago*, 404 U.S. 189 (1971).

C) **State Appellate Court Misinterpreted Law Regarding Mootness Doctrine, where Petitioner's Appeal is Challenging Common Pleas Court's Jurisdiction to Enter Judgment:**

A case is not moot, when a “partial remedy” is available, see *Church of Scientology of Cal. V. United States*, 506 U.S. 9 (1992)(The available remedy, however, does not need to be “fully satisfactory” to avoid mootness) or when the parties have a concrete interest, however small, in the outcome of the litigation. *Ellis v. Railway Clerks*, 466 U.S. 435 (1984). Moreover, this Court will not find a case is moot, when litigants attempt to manipulate Court's jurisdiction to insulate a favorable decision, See *Mills v. Green*, 159 U.S. 651 (1895); *United States v W. T. Grant Co.*, 345 U.S. 629 (1953); and this Court will vacate lower court judgment when a party who seeking review of the merits of an adverse ruling, is frustrated by the unilateral action of the party who

prevailed below. *US Bancorp Mortgage Company v. Bonner Mall Partnership*, 513 U.S. 18 (1994)(citing *Walling v. Reuter Co*, 321 U.S. 671 (1944) and *Heitmuller v. Stokes*, 256 U.S. 359 (1921)(the Court held that the case was moot because having sold and conveyed the property, a judgment in plaintiff's favor will not give him possession of the premises). See also *Wayne United Gas Company v. Owens-Illinois Glass Company et al*, 300 U.S. 131 (1937)(A writ of certiorari will not be dismissed under doctrine of mootness, where the parties proceeded in the state court with confirmation of the sale, payment of the purchase price, and delivery of a deed, after the dismissal of the petition for reorganization, with full knowledge that a rehearing in the reorganization proceeding might be granted and that the order entered thereon might be appealed); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978)(damages claim saves case from mootness); *Mission Product Holdings, Inc., v. Tempnology, LLC*, US, 139 S.Ct. 1652 (2019)(a plausible claim for money damages is sufficient to preserve a live controversy).

In Pennsylvania, it is well established that if an indispensable party is not joined, a court is without jurisdiction to decide the matter. It is also well established in Pennsylvania that a sheriff's sale of real property divests all junior liens on that property; and once a creditor's lien on property is divested, so too is creditor's right to execute on that property. Therefore, Common Pleas Court had no jurisdiction to decide the matter or enter judgment and order writ of execution for judicial sale of Mortgaged Premises. Accordingly, sheriff's deed to Mikhail Paskar is untenable because he purchased Mortgaged Premises at sheriff sale, under and by virtue of a void judgment, is without title, and thus deed is void. Wherefore, Petitioner could seek to undo the harm that he

suffered from unjust April 02, 2019 sheriff sale of Mortgaged Premises, because Petitioner's position to that of an appellant who has not obtained a stay of execution on the underlying judgment pending appeal when the appellee executes on its judgment while the appeal is pending. The execution does not render the appeal moot since a reversal would allow the appellant to seek either a money judgment or return of the funds or property seized in the execution. See Walker v. Turner, 22 U.S. 541 (1824)((the justice who ordered writ of execution had no jurisdiction over the subject matter and thus deed is void); Erwin's Lessee v. Dundas, 45 U.S. 58 (1845)(the sheriff sale was irregular and void because the execution on the judgment issued and bore teste after the death of mortgagor); Landes v. Brant, 51 U.S. 348 (1851)(a sheriff deed which is void for want of jurisdiction in the Court under whose judgment the sale took place, is not such a conveyance as that a possession under it will be protected by statute of limitations); Walker v. Powers, 104 U.S. 245 (1881)(principal complainant lacked standing, where there was a misjoinder of parties of actions).

A basic principle that when the question is question of jurisdiction of trial court to enter judgment and order to execute on that judgment as such cannot be waived or defeated by the sheriff sale based upon judgment that is void. Superior Court erred in holding that, Mortgaged Premises was sold at sheriff's sale, and deed was delivered to buyer, Petitioner no longer owned Mortgaged Premises, lacked standing to appeal in rem judgment in mortgage foreclosure. In so holding, Superior Court reaches a result that is not only inconsistent with interpretations of the law rendered by this Court, 42 Pa.C.S.A § 8152 and several other courts, but also antithetical to prevent in rem

judgment bin mortgage foreclosure action based upon diverted liens and sheriff sales based upon divested liens. The question before this Court is question of Common Pleas Court jurisdiction as such cannot be waived, and should be considered by this Court when Common Pleas Court jurisdiction is fairly in doubt.¹⁶

- 16 In Pennsylvania, a motion to set aside a sheriff sale is an equitable proceeding, governed by equitable principles and Pennsylvania Rules of Civil Procedure which provide that, "upon petition of any party in interest before delivery of the sheriff's deed to real property, the court, may upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances". *Pa.R.C.P.3132. Marra v. Stocker*, 615 A.2d 326 (Pa. 1992) (citing, *Doherty v. Adal Corp.*, 261 A.2d 311 (Pa. 1970)). Generally, a motion to set aside a sheriff sale may only be granted when the petition is filed before the sheriff's delivery of the deed. However, there is an exception to this time bar. A sheriff's sale may be set aside after delivery of the sheriff's deed if the judgment entered is void, the sheriff sale will also be declared void, See *Harris v. Harris*, 239 A.2d 783 (Pa. 1968); See also *Bennerson v. Small*, 842 F.2d 710 (3d Cir 1988)(same); or if sheriff's deed is based on fraud or lack of authority to make the sale. See *McLanahan v. Goodman*, 108 A. 206 (Pa. 1919)(sheriff sale without authority, can be set aside even after recordation of the deed); *Union National Bank v. Delong Furniture Corporation*, 26 A.2d 449 (Pa 1942)(The sheriff sale in mortgage foreclosure action may under certain circumstances, be vacated at the instance of third parties, strangers to the writ, it is a minimum requirement, in all such cases, that the petitioner be a party of interest either in property sold or the proceeds thereof); See also *Graffman v. Burgess*, 117 U.S. 180 (1886)(where a mason with small judgment against a property owner purchased the property at a sheriff sale for a grossly inadequate price and took undue advantage of owner's ignorance of the sale, the owner was entitled to redeem the property).

CONCLUSION

Wherefore *Pro Se* Petitioner Vamsidhar Vurimindi respectfully request this Honorable Court to grant this Petition for a Writ of Certiorari.

Date: October 19, 2020

Respectfully Submitted,

Vamsidhar Vurimindi
Vamsidhar Vurimindi, A#096-689-764,
Petitioner, *Pro Se*
Montgomery Processing Center,
806 Hilbig Road,
Conroe, TX-77301.