

No. _____

In the
Supreme Court of the United States

PAMELA M. TIMBES,

Petitioner,

VS.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
As Indenture Trustee,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Georgia

APPLICATION FOR STAY PENDING CERTIORARI

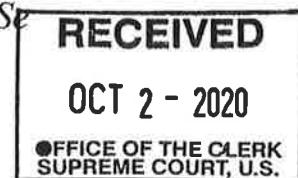
TO THE HONORABLE CLARENCE THOMAS
CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT

PAMELA M. TIMBES

304 Carnoustie
St. Simons Island, GA 31522
(912) 222-6773
ptimbres@gmail.com

Petitioner Pro Se

September 29, 2020



APPLICATION FOR STAY PENDING CERTIORARI

TO THE HONORABLE CLARENCE THOMAS, AS CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT:

Petitioner, Pamela M. Timbes, "Timbes", pursuant to Supreme Court Rule 23 and 28 U.S.C. §2101(f), respectfully requests this Court to stay the Writ of Possession granted in Order Granting Motion on Summary Judgment, **Appendix E**, pending her filing of a Petition for Writ of Certiorari in this Court. The Supreme Court of Georgia denied certiorari, **Appendix A**, to the Court of Appeals Judgment, **Appendix D**, which denied without opinion and without reason Timbes' application to appeal the Superior Court Order Granting Summary Judgment, **Appendix E**. Motion for Reconsideration of the denial of certiorari was denied by the Supreme Court of Georgia on September 28, 2020, **Appendix B**. Motion to Stay Writ of Possession was denied by the Supreme Court of Georgia on September 28, 2020, **Appendix C**.

To allow Deutsche Bank to take Timbes' home and evict her in the middle of a pandemic without having to prove ownership is an unthinkable injustice; there having been no trial to establish proof of ownership of the subject property, standing of Appellee or a landlord-tenant relationship; and Timbes' having been denied her Constitutional right to a jury trial. Timbes has shown error by the Court of Appeals who has denied appeal without opinion or reason, has established

reversible error in the trial court and/or that the establishment of precedent would be desirable, and has established violation of her constitutional rights.

Nonetheless, the Supreme Court of Georgia has denied certiorari. Consequently, if the discretionary appeal process precludes appeal under the present circumstances, thereby denying Timbes' due process rights, the discretionary appeal process, itself, is a violation of the Fourteenth Amendment to the U.S. Constitution, in addition to violation of the Georgia Constitution.

The judgments below appear to be in conflict with the Constitution of the United States and with U.S. Supreme Court precedent, as well as in conflict with the Constitution of the State of Georgia and controlling precedent.

I. QUESTION PRESENTED

The question to be presented to the this Honorable Court on Petition for Writ of Certiorari is whether or not the State of Georgia has abridged Timbes' privileges or immunities by making and enforcing the Discretionary Appeal Process under O.C.G.A. § 5-6-35, which has allowed arbitrary denial of appeal without reason; Timbes' having been deprived of her property without due process of law and having been denied equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution, Section 1?

Amendment XIV to the U.S Constitution provides:

Section 1.

All persons born or naturalized in the United States, and subject to the

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

Although an Application for Discretionary Appeal under O.C.G.A. § 5-6-35 is by definition discretionary, the Court of Appeals of Georgia abused its discretion by arbitrarily denying Pamela Timbes' Application without giving a reason for the denial. There is no way to determine whether the "decision was reached for an impermissible reason or for no reason at all." *Dunlop*, 421 U.S. at 573, 95 S.Ct. 1851 (1975). The arbitrary denial defeats the intention of the Georgia Code. The Georgia Code has made clear in Title 5, Chapter 6, Sec. 30 (5-6-30):

It is the intention of this article to provide a procedure for taking cases to the Supreme Court and the Court of Appeals, as authorized in Article VI, Sections V and VI of the Constitution of this state; to that end, this article shall be liberally construed so as to bring about a decision on the merits of every case appealed and to avoid dismissal of any case or refusal to consider any points raised therein, except as may be specifically referred to in this article.[Emphasis Added.].

None of the issues presented in Timbes' Application was addressed. Reversible error appears to exist and/or the establishment of precedent would be desirable; therefore, pursuant to Rule 31(b)(1) and/or Rule 31(b)(2), the Court of Appeals should have granted Timbes' Application for Discretionary Appeal. And the Supreme Court of Georgia should have granted certiorari. Consequently,

Timbes' Constitutional rights under Article VI, Sections V and VI of the Constitution of this state and her Constitutional rights to due process under the U.S. Constitution have been violated. But it is not just Timbes' Constitutional rights which are at stake here. Because discretionary appeals are routinely, arbitrarily denied without reason, the discretionary appeal process, itself, must be evaluated for its constitutionality under the Fourteenth Amendment to the U.S. Constitution.

As early as Magna Carta, procedural norms were regarded as a valuable means of protecting the rights of litigants. In America, with the object of preventing an arbitrary government, procedural safeguards were guaranteed to all persons by the inclusion of "due process" clauses in the various federal and state constitutions. Few principles of law, applicable as well to the administrative process, are as fundamental or well established as "a party is not to suffer...without an opportunity of being heard." *Painter v. Liverpool Oil Gas Light Co.*, 11 Eng. Rep. 478,484, 3 Sfm. & Rvvl. 433, 448-49 (k.B. 1836); *Caritativo v. California*, 357 U.S. 549, 558 (1958).

Timbes has been denied her due process rights under the Fourteenth Amendment to the U.S. Constitution, as set forth below. It is Timbes' due process right to demand equality of application of the law. Our whole system of law is

predicated on that fundamental principle. *Truax v. Corrigan*, 257 U.S. 312, 331 (1921):

Due process tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the congress or the legislature may not withhold. Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. (pp.312, 331).

II. STATEMENT OF THE CASE

On January 29, 2018 Deutsche Bank National Trust Company, as Indenture Trustee filed a dispossessory action in Magistrate Court Case No. 1800416 with regard to 304 Carnoustie, St. Simons Island, Ga. 31522.

On February 5, 2018 Timbes filed her Answer and Motion to Dismiss Dispossessory Action for Lack of Standing. Also included were Counterclaims against Plaintiff.

On February 15, 2018 Timbes filed Motion to Remove to Superior Court where the jury trial demanded could be had.

On May 10, 2019 a Notice of Dispossessory Hearing was mailed to Timbes advising of the Hearing scheduled for May 28, 2018.

On May 20, 2019 Timbes filed her Motion to Stay Proceedings pending a decision, and any appeals thereof, of Timbes' February 15, 2018 Motion to Remove to Superior Court where a jury trial could be had and pending a decision

on Motion to Dismiss Dispossessory Action for Lack of Standing, filed February 5, 2018 along with Timbes' Answer.

On May 22, 2019 the Magistrate Court denied the pending motions, including the Motion to remove the dispossessory action to Superior Court where a jury trial could be had.

On May 28, 2019 at 8:34 A.M., prior to the Dispossessory Hearing on May 28, 2019, Timbes filed Notice of Appeal from the May 22, 2019 denial of her Motion to Remove to Superior Court, **Appendix F**.

At the May 28, 2019 Hearing, Timbes gave to the Judge the file-stamped copy of the Notice of Appeal from the May 22, 2019 Order and told Judge Harrell that she had offered a settlement higher than the previously auctioned bid of \$385,000, despite the fact that there is no proof of ownership by Deutsche Bank National Trust Company. The Judge encouraged the Bank to consider Timbes' \$400,000 offer to avoid going through the appeal process.

Without Notice to Timbes, on June 3, 2018 a Writ of Possession was granted to Deutsche Bank National Trust Company, ordering Timbes and all others to vacate the premises by June 13, 2018, **Appendix G**.

On June 7, 2019 Timbes filed Notice of Appeal from the June 3, 2019 Writ of Possession in Magistrate Court Case No. 1800416.

On June 14, 2019 the Appeal from Magistrate Court Case No 1800416 was

docketed in Superior Court of Glynn County. Supplement of Appeal from the Magistrate Court was docketed on June 19, 2019.

On June 25, 2019 Timbes filed her Appellant's Brief in the Superior Court, Case No. CE19-00763, and demanded a jury trial.

A hearing was scheduled by the Superior Court; however, Deutsche Bank National Trust Company, as Indenture Trustee asked for a continuance until there was a ruling on the summary judgment, which was granted.

On September 19, 2019 Deutsche Bank filed its Motion for Summary Judgment and Brief in Support of Motion for Summary Judgment; Theory of Recovery and Statement of Material Facts; Affidavit of Gregory Wallach.

On September 30, 2019 Timbes filed her Response in Opposition to Summary Judgment and Brief in Support of her Response in Opposition; Response in Opposition to Deutsche Bank's Theory of Recovery and Statement of Material Facts.

On October 17, 2019 Timbes filed a Supplement to her Responses in Opposition to Summary Judgment and in Opposition to Deutsche Bank's Theory of Recovery and Statement of Material Facts; and Affidavit of Pamela M. Timbes, **Appendix H.**

On January 14, 2020, without a hearing on the disputed facts, the Honorable Stephen G. Scarlett, Jr. signed the Order Granting Motion for Summary Judgment,

prepared by Christopher J. Reading, attorney for Appellee, which had been sent by letter to Judge Scarlett.

On January 21, 2020 Pamela Timbes timely filed within seven (7) days her Application for Discretionary appeal in the Court of Appeals of Georgia pursuant to OCGA § 5-6-35(a)(1), out of an abundance of caution because the dispossessory case was initiated in the Magistrate Court; despite the fact that there had not been a ruling by two courts due to the void Writ of Possession granted by the Magistrate Court in violation of the supersedeas, as set forth below.

On February 12, 2020 the Court of Appeals of Georgia denied without opinion or reason Timbes' Application A20D0280, **Appendix D.**

On September 8, 2020 the Supreme Court of Georgia denied Timbes' timely filed Petition for Writ of Certiorari, **Appendix A**, Motion for Reconsideration was denied on September 28, 2020 **Appendix B.**

Motion to Stay Writ of Possession pending the filing of a Petition for Certiorari in the U.S. Supreme Court was denied by the Georgia Supreme Court on September 28, 2020, **Appendix C.**

The Court of Appeals of Georgia erred by not granting the Application because a direct appeal was available under OCGA § 5-6-34(a).

As set forth with specificity in Timbes' Petition for Writ of Certiorari, the Court of Appeals of Georgia erred in denying the Application for Discretionary

Appeal from the Superior Court’s Order; said Order having granted summary judgment which is directly appealable under OCGA § 5-6-34(a)(1); there having been material fact in dispute; there having been no trial to establish proof of ownership of the subject property, standing of Appellee or a landlord-tenant relationship; Timbes’ having been denied her Constitutional right to a jury trial; *and the Counterclaim having not been barred by res judicata due to fraud, inter alia.* Furthermore, the Magistrate Court lacked jurisdiction to grant the Writ of Possession due to the supersedeas, as set forth in the Petition. See Appendix F and **Appendix G**. If an appellant files an application for discretionary appeal in a case in which direct appeal is available under OCGA § 5-6-34(a), Section 5-6-35(j) provides that the appeals court “shall grant the application,” and the appeal then proceeds as normal. Consequently, the Court of Appeals erred in not granting the present Application pursuant to OCGA § 5-6-34(a)(1).

Pamela Timbes has been denied her due process right to a trial on the issues. And she has a constitutional right to the jury trial she demanded.

In *Metro Atlanta Task Force for the Homeless, Inc. v. Premium Funding Solutions, LLC*, 321 Ga App 100 (2013) the Court stated:

The exclusive method whereby a landlord may evict a tenant is through a properly instituted dispossessory action filed pursuant to OCGA § 44-7-50 et seq.”¹ The statutory procedures for dispossessing a tenant must be strictly construed and observed.² Our review of the trial court’s ruling on a legal question is “plain legal error.”³

In this case, the court did not adhere to the requirements of the dispossessory statute. For instance, the Task Force was entitled to a trial on the issues, which would include taking the testimony of witnesses orally in open court (unless otherwise provided),⁴ [Emphasis added.]

1 Steed v. Fed. Nat. Mtg. Corp., 301 Ga. App. 801, 805 (1) (a) (689 SE2d 843)(2009) (citation omitted); Roberts v. Roberts, 205 Ga. App. 371, 372 (2) (422 SE2d253) (1992).

2 Skelton v. Hill Aircraft & Leasing Corp., 175 Ga. App. 144, 145 (333 SE2d14) (1985).

3 Suarez v. Halbert, 246 Ga. App. 822, 824 (1) (543 SE2d 733) (2000).

4 OCGA § 9-11-43.

O.C.G.A § 15-10-41 states in subsection (a) that “[t]here shall be no jury trials in the magistrate court”, but goes on to describe the manner for an appeal from a judgment of magistrate court in the subsequent sections, stating at (b)(1) that “appeals may be had from judgments returned in the magistrate court to the state court of the county or to the superior court of the county and the same provisions now provided for by general law for appeals contained in Article 2 of Chapter 3 of Title 5 shall be applicable to appeals from the magistrate court, *the same to be a de novo appeal*. The provisions of said Article 2 of Chapter 3 of Title 5 shall also apply to appeals to state court” [emphasis added].

O.C.G.A. § 5-3-30 provides:

a) Upon the filing of an appeal from magistrate court to superior court or state court, the appeal shall be placed upon the court's next calendar for nonjury trial. Such appeals from the magistrate court to superior court or state court shall be tried by the superior court or state court without a jury unless either party files a demand for a jury trial within 30 days of the filing of the appeal or the court orders a jury trial.

ARTICLE I. SECTION I. PARAGRAPH IX of the Georgia State Constitution provides as follows:

(a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party.

"The Georgia Constitution provides for the right of trial by jury in dispossessory actions." *Hill v. Levenson*, 259 Ga. 395 (1) (383 S.E.2d 110).

Pamela Timbes has been denied her due process right to the jury trial she timely demanded. She initially asked that the case be removed from the Magistrate Court to the Superior Court where a jury trial could be had. The Magistrate Court denied Timbes' motion for removal. Timbes then filed a notice of appeal from that Order; despite which the Magistrate Court issued a Writ of Possession in violation of the supersedeas. See Appendix F and Appendix G. Under OCGA §§ 5-6-45 and 5-6-46 the filing of a notice of appeal in the trial court functions as a supersedeas, thereby suspending the trial court's jurisdiction to act with respect to the decision being appealed. "The supersedeas of a filed application or notice of appeal deprives the trial court of the power to affect the judgment appealed, so that subsequent proceedings purporting to supplement, amend, alter or modify the judgment, whether pursuant to statutory or inherent power, are without effect."

Avren v. Garten, 289 Ga. 186, 190 (710 SE2d 130) (2011). Consequently, the Magistrate Court lacked subject-matter jurisdiction to have issued a Writ of

Possession after the notice of appeal was filed.

The Supreme Court of Georgia has long held that judgments, over which the trial court had no subject-matter jurisdiction, must be reversed; and the U.S. Supreme Court has held that any such judgments should be vacated at the earliest opportunity to do so.

Quoting in *Abushmais et al. v. Erby*, No. S07G0372, October 2007:

.... we point out that this holding is in conflict with long-standing statutory and case law requiring courts to dismiss an action “[w]henever it appears, by suggestion of the parties or otherwise, that the court lacks jurisdiction of the subject matter.” OCGA § 9-11-12(h)(3). “The court’s lack of subject-matter jurisdiction cannot be waived and may be raised at any time either in the trial court, in a collateral attack on a judgment, or in an appeal. [Cit.]” Ruskell, Davis and Shulman’s Ga. Practice and Procedure § 9:3, p. 464 (2007 ed.). See *Jackson v. Gamble*, 232 Ga. 149, 152, 205 S.E.2d 256 (1974) (waiver or consent to jurisdiction cannot confer jurisdiction over the subject matter).

See also *McDaniel v. Selman*, 75 Ga. App. 119 (1947), citing *Kirkman V. Gillespie*, 113 Ga 507 (37 S.E. 714) and *Stamey v. Hill*, 114 Ga 154 (39 S.E. 949)(1901):
“When a trial court, in a case over which it has, as to subject-matter, no jurisdiction, renders therein any judgment, except one of dismissal, this Court will reverse the same...”

The United States Supreme Court has held: *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004). (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the

action.”). And even for the first time before the Supreme Court—a party may attack jurisdiction after the entry of judgment. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006).

The Writ of Possession issued by the Magistrate Court is void *ab initio* for lack of subject-matter jurisdiction; therefore, there had not been a ruling by two courts due to the void Writ of Possession granted by the Magistrate Court in violation of the supersedeas. The only Order by a court with jurisdiction to grant possession to Appellee was that of the Superior Court granting summary judgment, **Appendix E**, without a trial, despite there having been fact in dispute. Consequently, there have not been two lower courts who have reviewed this case and the Application for Discretionary Appeal was unnecessary. Direct appeal from the Order granting summary judgment is available under OCGA § 5-6-34(a)(1). The Court of Appeals should have granted the Application and allowed the direct appeal to proceed as normal, OCGA Section 5-6-35(j).

As set forth above and in the Petition, Timbes has *never* had a hearing on the issues. A hearing was initially scheduled by the Superior Court, but was continued at the request of Deutsche Bank after filing its Motion for Summary Judgment. The trial court judge signed the Order granting summary judgment prepared by Respondent’s attorney, who had sent the Order by letter to Judge Scarlett. Consequently, Timbes not only never received the jury trial to which she is entitled

under the Georgia Constitution, she never even got a hearing where she could call witnesses and present evidence and where Deutsche Bank would have to present evidence of ownership; all of which is in violation of the dispossessory statute. See *Metro Atlanta Task Force for the Homeless, Inc. v. Premium Funding Solutions, LLC*, 321 Ga App 100 (2013), quoted *supra*. As set forth in Timbes' Affidavit, **Appendix H**, Timbes has attempted for years to find out who actually owns her mortgage but Appellee has circumvented the discovery process for obvious reasons.

Material Fact is in Dispute; Therefore, the Trial Court Erred in Granting Summary Judgment.

Summary judgment is proper only if the pleadings and evidence “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” OCGA § 9-11-56 (c). Where the party moving for summary judgment is the plaintiff, he must make a *prima facie* showing that no material issues of fact exist and that he is entitled to judgment as a matter of law before the burden shifts to the defendant to establish a possible defense. See *Sawnee Forest, LLC v. CRE Venture 2011-1, LLC*, 339 Ga. App. 339, 341 (2) (793 SE2d 542) (2016); *Smith v. Gordon*, 266 Ga. App. 814, 814 (1) (598 SE2d 92) (2004).

“A party opposing a summary judgment motion need not respond and may instead rely on the movant's failure to remove any fact questions.” *Sherman v. Thomas-*

Lane American Legion Post 597, 330 Ga. App. 618, 621 (1) (768 SE2d 797)

(2015).

Timbes' Response in Opposition to Summary Judgment, and Response in Opposition to Plaintiff's Theory of Recovery and Statement of Material Facts, gave a concise outline of the genuine issues as to material fact which necessitate a trial, as quoted below:

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS GENUINE ISSUE TO BE TRIED

1. Defendant, Pamela Timbes, contends that she currently owns the Property located in Glynn County, Georgia.
2. The subject Security Deed, Plaintiff's Exhibit A, does not reference Deutsche Bank in any capacity.
3. The Assignment of the Security Deed, Plaintiffs' Exhibit B [Appendix I], to Deutsche Bank, is a false document¹ filed in the Glynn County Records,

1. ¹ The "false document" nature of the Assignment, Exhibit A [Appendix I], includes:

A. Michelle Halyard and Elizabeth Boulton signed as assistant secretary; however, they are not and never were authorized to execute on behalf of MERS. They were robo signers employed by LPS.

B. All MERS Assignments of Security Deeds, meaning those purportedly executed by an officer of MERS have been established as void and invalid:

1) pursuant to established case law;
2) pursuant to the MERS Federal Consent Order Including Cease and Desist Orders¹; and
3) pursuant to MERS Membership Rules that make it clear that MERS Members cannot execute such MERS Assignments and must clean the record of such MERS Assignments previously recorded, which rules were amended to comply with the aforementioned MERS Federal Consent Order Including Cease and Desist Orders.

C. The Assignment of Security Deed was executed years after the closing of the of American Home Mortgage Investment Trust 2005-3 in violation of the Trust's PSA and, therefore, void *ab initio* under N.Y. Law.

Although a borrower generally does not have standing to challenge an Assignment of Deed to Secure Debt, Defendant, Pamela M. Timbes, has standing to challenge the Assignment under Georgia law because the Assignment of Security Deed is void *ab initio*. Furthermore, "Fraud, accompanied by damage to the party defrauded, always gives a right of action to the injured party." O.C.G.A. 51-6-1 (2010).

as set forth in Appellants' Brief, and, therefore, void *ab initio*.

4. The Deed Under Power, Plaintiff's Exhibit C, is a premise document based on the false Assignment, and, therefore, also void *ab initio*.
5. Deutsche Bank has no standing to have demanded possession of the property due to lack of proof of ownership; proof of which is incumbent upon Plaintiff.
6. Deutsche Bank is required under Georgia law to prove ownership in order to obtain a Writ of Possession and has failed to provide any such proof; therefore, Plaintiff is not entitled to a Writ of Possession. There is no landlord-tenant relationship. Timbes is not a tenant at sufferance.

The Trial Court Erred in Not Requiring Proof of the Landlord-Tenant Relationship before Granting a Writ of Possession to Deutsche Bank.

Without proof of ownership Deutsche Bank lacks standing under Georgia law to demand possession of Timbes' home, 304 Carnoustie, St. Simons Island, GA. Pursuant to OCGA § 44-7-50, only the owner or its agent may demand possession of property through a dispossessory action. Georgia Courts have recognized a fundamental lack of landlord-tenant relationship as an appropriate defense against a dispossessory action.² Proof of the lack of landlord-tenant relationship is the presentation of fraudulent deeds or other evidence that the Plaintiff does not actually own the property.³ In the present case, Assignment of

² *Egana v. HSBC Mortg. Corp.*, 669 S.E.2d 159, 161 (Ga. Ct. App. 2008). This case involved an allegedly fraudulent security deed. *Id.* The Georgia Court of Appeals distinguished between defendants challenging plaintiff's ownership of the property—and therefore the landlord-tenant relationship itself—and defendants claiming defects in the landlord's title. *Id.*

This case cited *Thomas v. Wells Fargo Credit Corp.*, 200 Ga.App. 592, 594(3), 409 S.E.2d 71 (1991) which is particularly relevant and quoted below.

³ E.g., *Patrick v. Cobb*, 49 S.E. 806 (Ga. 1905) (plaintiff allegedly did not present sufficient evidence to establish the existence of a tenancy); *Egana*, 669 S.E.2d at 160–61 (allegedly fraudulent

security deed, **Appendix I**, is false and void on its face and the Deed Under Power, **Appendix J**, premised on the validity of the Assignment, is false and void as well; therefore, dispossessory cannot lie. There is absolutely nothing in the record which proves that Pamela Timbes' mortgage was ever in the American Home Mortgage Trust 2005-3 or that Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3 is the owner of the subject property and had standing to dispossess.⁴ *See also* Affidavit of Pamela M. Timbes,

Appendix H.

American Home Mortgage Acceptance, Inc. closed in 2007 and has been defunct since that time. The sole proof on which the bank has relied — a purported assignment from "MERS as nominee for the lender, its successors and assigns" — is void, because the assignor did not exist when the document was signed and was fraudulently signed by robo signers who were never agents of MERS. The Assignment referenced is attached hereto as **Appendix I** and the Deed Under Power, premised upon the purported Assignment, is attached as **Appendix J**. There is absolutely no proof of ownership in the record. *See* Affidavit of Pamela

security deed); *Wilbanks v. Arthur*, 570 S.E.2d 664 (Ga. Ct. App. 2002) (defendant's mother allegedly acquired title from plaintiff through adverse possession, and defendant lived on the property with mother's permission); *Sanders v. Hughes*, 359 S.E.2d 396 (Ga. Ct. App. 1987) (document between the parties was allegedly a sales contract, not a lease)

⁴ Note that the present action was brought by Deutsche Bank National Trust Company as Indenture Trustee, but does not designate trustee for which trust. There is no proof in the record that Pamela Timbes' mortgage was ever in the American Home Mortgage Investment Trust 2005-3.

Timbes, **Appendix H.** Quoting in part from the Affidavit:

8. It is my personal belief, based upon the facts set forth, that I have been unable to secure a loan modification, and now have had my offer of \$400,000 declined, because Deutsche Bank does not have legal authority to enter into a contract regarding the subject property. Persisting with the wrongful foreclosure and wrongful dispossession appears to be the only option for Deutsche Bank who has failed to prove chain of title back to the original lender, American Home Mortgage Acceptance, Inc., now defunct. The sole proof on which the bank has relied — a purported assignment from "MERS as nominee for the lender, its successors and assigns" — is void, because the assignor did not exist when the document was signed and was fraudulently signed by robo signers who were never agents of MERS.

See Memorandum Order *Deutsche Bank Nat'l Trust Co. v. Burke*, 117F. Supp 3d 953 (2015).⁵

Deutsche Bank has failed its *prima facie* showing that no material issues of fact exist. Nonetheless, with no hearing on the disputed fact, the Superior Court granted summary judgment. Furthermore, "The Georgia Constitution provides for the right of trial by jury in dispossessory actions." *Hill v. Levenson*, 259 Ga. 395 (1) (383 S.E.2d 110). Pamela Timbes has answered that she is not a tenant at sufferance and timely demanded a jury trial.

In *Thomas v. Wells Fargo Credit Corp.*, 200 Ga.App. 592, 594(3), 409 S.E.2d 71 (1991) the Court stated:

3. Defendants contend in their third and fourth enumerations that the trial court erred in striking their answer and that plaintiff "failed to prove that [it] had ownership."

⁵ Although this federal case involves property in Texas for which Deutsche Bank failed to provide chain of title back to the original lender, now defunct, the Texas law cited is similar to that of Georgia.

[200 Ga. App. 594]

"The defense of lack of landlord-tenant relationship is a proper defense to a dispossessory action [and] if the defendant so answers, a trial of the issues raised shall be had in a civil court of record. OCGA § 44-7-53; *Lopez v. Dlearo*, 232 Ga. 339 (206 S.E.2d 454); *Lamb v. Sims*, 153 Ga.App. 556 (265 S.E.2d 879); see *Rucker v. Fuller*, 247 Ga. 423 (276 S.E.2d 600)." *Bread of Life Baptist Church v. Price*, 194 Ga.App. 693, 694 (392 S.E.2d 15). In the case sub judice, defendants answered and denied that a landlord-tenant relationship exists between the parties. Further, there is no evidence or admission that plaintiff is the owner of the premises or that defendants are on the premises without the landlord's consent. Consequently, genuine issues of material fact remain as to plaintiff's allegations that it is the owner of the premises and that defendants are tenants at sufferance. The trial court erred in striking defendants' answer, granting a judgment on the pleadings and entering an immediate writ of possession. See OCGA § 9-11-12 (c) and (f). Defendants are entitled to a trial of the issues in accordance with procedure prescribed for civil actions in courts of record. See *Crymes v. Crymes*, 148 Ga.App. 299 (2) (251 S.E.2d 155).[Emphasis added.]

4. In their fifth enumeration, defendants contend they are entitled to a jury trial. We agree. "The Georgia Constitution provides for the right of trial by jury in dispossessory actions." *Hill v. Levenson*, 259 Ga. 395 (1) (383 S.E.2d 110).

Clearly Timbes has been denied her due process rights under the Fourteenth Amendment to the U.S. Constitution. **It is Timbes' due process right to demand equality of application of the law.** Our whole system of law is predicated on that fundamental principle. *Truax v. Corrigan*, 257 U.S. 312, 331 (1921):

Due process tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the congress or the legislature may not withhold. Our whole system of law is

predicated on the general, fundamental principle of equality of application of the law. (pp.312, 331).

ARTICLE I. Section I of the Georgia Constitution provides:

Paragraph I.

Life, liberty, and property. No person shall be deprived of life, liberty, or property except by due process of law.

Paragraph II. Protection to person and property; equal protection. Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.

The Court of Appeals February 12, 2020 Order in Case No. A20D0280 is void because Timbes' was denied her Constitutional right to due process.

While the phrase “void for any other cause” does not appear to be specifically defined under O.C.G.A. § 9-12-16, Georgia courts have recognized that the denial of a due process right may result in a void judgment. See *McBurrough v. Dept. of Human Resources*, 150 Ga. App. 130, 131 (3) (257 SE2d 35) (1979).

Where Due Process is denied, the case is void, *Johnson v. Zerbst*, 304 U.S. 458 S Ct.1019 (1938). See also *Sabariego v Maverick*, 124 US 261, 31 L Ed 430, 8 S Ct 461 (1888).

“Defendants who have been treated with unfairness, bias and the appearance of prejudice by this Court, and the opposing counsel, leaves open the question of

how an uninterested, lay person, would question the partiality and neutrality of this Court. "...our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchinson*, 349 U.S. 133, 136 (1955).

"This court had a duty to ensure fairness. This Court failed, or refused to ensure that fairness." *Marshall v. Jerrico*, 100 S. Ct. 1610, 446 U.S. 238.

The establishment of precedent would be desirable with regard to whether O.C.G.A. § 44-14-162 (b) "could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment."

In *Ames v. JP Morgan Chase Bank, N.A.*, 783 S.E. 2d 614 (Ga. 2016) the Georgia Supreme Court actually left open the distinct possibility of a challenge to a facially invalid Assignment under §44-14-162(b):

[Footnote] 7 The legislature has indicated its desire to ensure that only the record holders of deeds initiate foreclosure proceedings. OCGA § 44-14-162 (b) requires that "[t]he security instrument or assignment thereof vesting the secured creditor with title to the security instrument shall be filed prior to the time of sale in the office of the clerk of the superior court of the county in which the real property is located," and the stated legislative purpose of this provision is to "require a foreclosure to be conducted by the current owner or holder of the mortgage, as reflected by public records," Ga. L. 2008, p. 624, § 1. Because Chase recorded its assignment as required and the Ameses have not brought a distinct challenge under this statute, we need not decide whether § 44-14-162 (b) could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment. [Emphasis added.]

Although affirming the dismissal of the Amended Complaint in District Court, 2:16-cv-00031, the Eleventh Circuit Court on September 6, 2017, in Appeal

No. 17-10556, acknowledged the discrepancy between federal law and Georgia law with regard to the issue raised in the present Counterclaim: Timbes' standing to challenge the Assignment of the security deed, **Appendix I**. Quoting from the Eleventh Circuit September 6, 2017 Order:

Turning to Timbes's challenge to the validity of the assignment, we agree the district court that she lacks standing to contest the assignment. [Order at p. 7].

.....

Timbes points out that Georgia courts have not gone quite so far as *Haynes*. In *Ames*, the Supreme Court of Georgia adopted the general rule that a borrower lacks standing to challenge an assignment of his or her security deed. 783 S.E.2d at 619-20. But the Court left open the possibility that a debtor could have standing to challenge the validity of an assignment indirectly, if the invalid assignment violated a statutory protection and thereby injured the debtor. *Id.* At 621. One question left unresolved by *Ames* is whether O.C.G.A. § 44-14-162 (b) "could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment." *Id.* At 622 n.7. Section§ 44-14-162 (b) "requir[es]foreclosures to be conducted by the current owner of the mortgage, as shown by public records." *Duke Galish LLC v. SouthCrest Bank*, 726 S.E.2d 54,56 (Ga. Ct. App. 2012). Thus, *Ames* left open a possibility—that a debtor could have standing to challenge an unrecorded or facially invalid assignment under § 44-14-162 (b)—that *Haynes* appears to foreclose. Compare *Ames*, 783 S.E.2d at 622 n.7 (noting *Haynes*), with *Haynes*, 793 F.3d at 1252-53. [Order at p. 9].

In fact, it has been consistently held that cases involving property rights, particularly foreclosure actions and related matters are state matters. See Shaffer v. Heitner, 433 U.S. 186, 207-208 (1977)(recognizing a state's "strong interests in assuring the marketability of property within its borders and in providing a

procedure for peaceful resolution of disputes about the possession of that property.”

In the Matter of Manuel, 507 F.2d 990, 992 (5th Circuit, 1975) the Court stated as follows:

There is no dispute here as to jurisdiction or to the application of Georgia law. *Lewis v. Manufacturers National Bank of Detroit*, 364 U.S. 603, 81 S.Ct. 347, 5 L.Ed.2d 323 (1961), settled the question of whether state law applies in bankruptcy court to allocate priorities among creditors. As the Bankruptcy Judge stated:

* * * Generally, a secured creditor is entitled to reclaim from the estate of a Bankrupt, or to foreclose against his security interest in, any property in possession of the Bankrupt or Trustee if the value of the security does not substantially exceed the debt to the particular creditor. To enjoy this right, the secured creditor must have, prior to the filing of the Bankruptcy, perfected his security interest in accordance with the law of the State which is to be applied by the Bankruptcy Court in its consideration of the issues. [Emphasis added.]

Appellee had no such perfected lien pre-petition; nor, to this date, has a valid assignment been filed under OCGA § 44-14-162 (b) in order to proceed to foreclosure. The establishment of precedent would be desirable with regard to whether O.C.G.A. § 44-14-162 (b) “could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment.”

Ames, 783 S.E.2d at 622 n.7. Consequently, the Court of Appeals erred in not granting Timbes’ Application for Discretionary Appeal which would have allowed appeal of the Counterclaim. *Inter alia*, the Counterclaim cannot be barred under

the doctrine of *Res Judicata*, due to the fraud upon the court.

The federal court dismissed the issues and then the Georgia Court of Appeals ignored these and other issues without opinion. The Georgia Supreme Court has denied certiorari. Consequently, the issues in the Counterclaim have also been circumvented and Pamela Timbes' right to due process has been denied.

III. REASONS FOR GRANTING THE STAY

The elements necessary for an injunction exist. See *Winter v. Natural Resources Defense Council, Inc*, 555 U.S. at 20:

1. Likelihood of Success on the Merit

There is a “Reasonable Probability” that the Court will grant Certiorari and a “Fair Prospect” that the Court will reverse the Decision Below because it squarely conflicts with Controlling Precedent.

As established above, Pamela Timbes' due process rights have been denied. There exists clear conflict with the Fourteenth Amendment to the U. S. Constitution and precedents of this Court, as well as the Constitution and precedents of the State of Georgia. Furthermore, this Court has also made it clear that fraud upon the court cannot be condoned. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44. Therefore, there is a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari and a fair prospect that a majority of the Court will vote to reverse the decision below.

2. Irreparable Harm

There is a Likelihood that Petitioner will suffer Irreparable Harm in the Absence of a Stay.

Pamela Timbes, age 62, is the caregiver for her parents, ages 89 and 93. Eviction from her home would clearly cause irreparable harm. To allow Deutsche Bank to take Timbes' home and evict her in the middle of a pandemic without having to prove ownership is an unthinkable injustice; there having been no trial to establish proof of ownership of the subject property, standing of Deutsche Bank or a landlord-tenant relationship; and Timbes' having been denied her Constitutional right to a jury trial.

3. Balance of Equities

There is no harm to Respondent. Respondent has no proven ownership of the subject property, proof which is essential to dispossess under Georgia Law.

Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3, wrongfully foreclosed on the subject property utilizing a fabricated, fraudulent Assignment of Deed by known robo signers, **Appendix I**, "Deutsche Bank National Trust Company as Indenture Trustee", Respondent, brought the present action to evict and was granted a writ of possession with no proof in the record that Pamela Timbes' mortgage is in the American Home Mortgage Investment Trust 2005-3, or any trust (explaining

Respondent's current nomenclature as "Trustee", excluding which trust). There is absolutely no proof of ownership in the record. The sole document on which Respondent relies is a purported assignment from "MERS as nominee for the lender, its successors and assigns", which is void, because the assignor did not exist when the document was signed and was fraudulently signed by robo signers who were never agents of MERS.

Deutsche Bank has no proven equity in the subject property. Timbes does have proven equity. All Timbes has asked is for a trial on the issues and for proof of ownership. However, Respondent has always evaded discovery for the obvious reason that it cannot provide proof of ownership and, therefore, standing to evict Pamela Timbes from her home.

4. Public Interest

It benefits public interest to preserve the intention of the Fourteenth Amendment to the U. S. Constitution.

Because discretionary appeals are routinely, arbitrarily denied without reason, the discretionary appeal process, itself, must be evaluated for its constitutionality under the Fourteenth Amendment to the U.S. Constitution. Few principles of law are as fundamental or well established as "a party is not to suffer...without an opportunity of being heard." *Painter v. Liverpool Oil Gas Light Co.*, 11 Eng. Rep. 478,484, 3 Sfm. & Rvvl. 433, 448-49 (k.B. 1836);

Caritativo v. California, 357 U.S. 549, 558 (1958).

Due process demands equality of application of the law. Our whole system of law is predicated on that fundamental principle. *Truax v. Corrigan*, 257 U.S. 312, 331 (1921).

Furthermore, in light of the abuse of banks which resulted in the foreclosure debacle in past years and with anticipation of an improved economy and real estate market, one can only assume the banks will continue these tactics if the Court allows them to go unchecked. Any other common thieves who had filed false documents in the public record in order to steal property would be held accountable. Why should the banks be held to a different standard?

IV. CONCLUSION

For the reasons set forth above, there is a good chance the Court will grant certiorari. Pamela Timbes' will suffer irreparable harm in the absence of a stay. There presents no harm to Respondent, who has no proven equity. And, it benefits public interest to preserve the intention of the Fourteenth Amendment to the Constitution. Therefore, this Honorable Court should grant a stay of the Writ of Possession, **Appendix E**, pending certiorari.

[Signature page follows.]

Respectfully submitted this 29th day of September, 2020.

Pamela M. Timbes

Pamela M. Timbes
304 Carnoustie
St. Simons Is., GA 31522
912-222-6773
ptimbes@gmail.com

PRO SE PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the following parties with
Application for Stay Pending Certiorari:

Dallas R. Ivey
Christopher Reading
3575 Piedmont Road NE
Fifteen Piedmont Center, Suite 500
Atlanta, Georgia 30305

By UPS for scheduled delivery on the 30th of September, 2020 with sufficient postage affixed thereon to assure delivery.

Respectfully submitted this 29th day of September, 2020.

Pamela M. Timbes
Pamela M. Timbes

304 Carnoustie
St. Simons Is., GA 31522
912-222-6773
ptimbes@gmail.com

PRO SE PETITIONER

APPENDIX

A



SUPREME COURT OF GEORGIA
Case No. S20C0938

September 08, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

PAMELA M. TIMBES v. DEUTSCHE BANK NATIONAL TRUST COMPANY AS INDENTURE TRUSTEE.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A20D0280

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

A handwritten signature in black ink, appearing to read "Thavis N. Banna".
, Clerk

APPENDIX B



SUPREME COURT OF GEORGIA

Case No. S20C0938

September 28, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

PAMELA M. TIMBES v. DEUTSCHE BANK NATIONAL TRUST COMPANY AS INDENTURE TRUSTEE.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

A handwritten signature in black ink, appearing to read "Thavis N. Bannas".

, Clerk

APPENDIX C



SUPREME COURT OF GEORGIA
Case No. S20C0938

September 28, 2020

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

**PAMELA M. TIMBES v. DEUTSCHE BANK NATIONAL TRUST
COMPANY AS INDENTURE TRUSTEE.**

Upon consideration of the Motion to Stay filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

APPENDIX

D

Court of Appeals of the State of Georgia

ATLANTA, February 12, 2020

The Court of Appeals hereby passes the following order

A20D0280. PAMELA M. TIMBES v. DEUTSCHE BANK NATIONAL TRUST COMPANY AS INDENTURE TRUSTEE.

Upon consideration of the Application for Discretionary Appeal, it is ordered that it be hereby DENIED.

LC NUMBERS:

CE1900763



*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, February 12, 2020.*

*I certify that the above is a true extract from the minutes
of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court hereto
affixed the day and year last above written.*

Stephen E. Castor, Clerk.

APPENDIX

E

Markie B. Johnson
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

PAMELA M. TIMBES,)	
)	
APPELLANT,)	
v.)	CASE NO.
)	
DEUTSCHE BANK NATIONAL TRUST)	CE19-00763
COMPANY AS INDENTURE TRUSTEE,)	
)	
APPELLEE)	
)	

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Plaintiff/Appellee Deutsche Bank National Trust Company as Indentured Trustee's ("Deutsche Bank") Motion for Summary Judgment, filed on September 19, 2019, and the Response filed by Defendant/Appellant Pamela Timbes ("Defendant"). This Court having reviewed the Motion for Summary Judgment filed by Deutsche Bank, all related documents filed therewith, all pleading and documents of record in this case, and good cause being shown, this Court finds that Deutsche Bank is entitled to judgment as a matter of law on its Dispossessory Affidavit and Defendant's counterclaim, and further finds as follows:

FINDINGS OF FACT

1. Defendant formerly owned certain real property commonly known as 304 Carnoustie, Saint Simons Island, Georgia 31522 (the "Property").
2. To secure repayment of a mortgage loan dated June 23, 2005, in the amount of \$771,000.00, Defendant executed and delivered that certain Security Deed in favor of Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for American

Home Mortgage Acceptance, Inc., filed and recorded in Deed Book 1706, Page 178, Glynn County, Georgia Records ("Security Deed").

3. The Security Deed was assigned Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3 by that assignment filed and recorded on December 2, 2010, in Deed Book 2801, Page 247, Glynn County, Georgia Records (the "Assignment").
4. On January 5, 2016, a Foreclosure Sale occurred and the Property was sold to Deutsche Bank. On March 24, 2016, a Deed Under Power was recorded in Deed Book 3560, Page 164, Glynn County, Georgia Records (the "Deed Under Power").
5. Deutsche Bank is the record owner of the Property.
6. Prior to commencing this action, Deutsche Bank made demand for possession of the Property.

CONCLUSIONS OF LAW

This Court, having made the foregoing finds of fact, concludes as a matter of law as follows:

7. Defendant, and any other residing on the Property are tenants at sufferance following the Foreclosure Sale.
8. As the record owner of the Property, Deutsche Bank is entitled to evict Defendant, and all other residing on the Property.
9. The Counterclaims asserted by Defendants are barred by the doctrines of res judicata and collateral estoppel, in that they are subject of a previous adjudication on the merits in prior litigation between the parties.

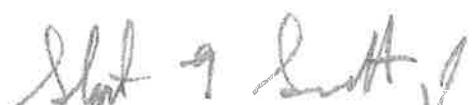
Accordingly, it is,

HEREBY ORDERED AND ADJUDGED that Deutsche Bank National Trust Company as Indentured Trustee shall have a Writ of Possession, and the Sheriff of Glynn County, Georgia or one of his lawful deputies is hereby commanded to remove Defendant Pamela Timbes, and any others residing on the property located at as 304 Carnoustie, Saint Simons Island, Georgia 31522, together with their personal property from the house and premises. It is further,

HEREBY ORDERED AND ADJUDGED that judgment is entered in favor of Deutsche Bank on Defendant's Counterclaim. It is further,

ORDERED AND ADJUDGED that the **CLERK of COURT** shall close this case.

SO ORDERED, this 14th day of July, 2019.


HONORABLE STEPHEN G. SCARLETT, SR.
Judge, Superior Court of Glynn County

Prepared and presented by:

By: /s/ Christopher J. Reading
CHRISTOPHER J. READING
Georgia Bar No. 141761
Counsel for Plaintiff/Appellee

APPENDIX

F

IN THE MAGISTRATE COURT OF GLYNN COUNTY
STATE OF GEORGIA

DEUTSCHE BANK NATIONAL TRUST COMPANY,) CASE NO. 1800416
AS INDENTURE TRUSTEE,) JURY DEMAND
V.)
PLAINTIFF,)
PAMELA M. TIMBES AND ALL OTHERS,)
DEFENDANTS.)

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8
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NOTICE OF APPEAL TO THE SUPERIOR COURT OF GLYNN COUNTY

Pamela M. Timbes, Defendant, pursuant to OCGA 5-3-21, hereby gives notice of appeal to the Superior Court of Glynn County from the Order of Chief Judge, Wallace E. Harrell, Magistrate Court of Glynn County, entered May 22, 2019, denying Defendant's Motion to Remove to Superior Court where a jury trial can be had. The May 22, 2019 Order appealed from is attached hereto.

Designation of Record on Appeal: The entire record in this case.

Respectfully submitted this 28th day of May, 2019.

Pamela M. Timbes
Pamela M. Timbes

304 Carnoustie
St. Simons Island, GA 31522
(912) 222-6773
ptimbess@gmail.com

Original filed in office this
June 10, 2019
Defendant Pro Se
Glynn Magistrate's Office, Glynn County, Georgia

Defendant Pro Se

APPENDIX G

IN THE MAGISTRATE COURT OF GLYNN COUNTY
STATE OF GEORGIA

Original filed in office this

June 3, 2019

John M. Dunn (DJD)
Clerk Magistrate's Court, Glynn County, Georgia

Deutsche Bank National Trust Company,)
Plaintiff,)
v.) Case No. 1800416
Pamela M. Timbes "and All Others,")
Defendant(s).)



WRIT OF POSSESSION

WHEREAS, the above-captioned action having been filed in this Court, and the Defendant(s) and Plaintiff having failed to resolve the issues raised in the action by consent,

NOW THEREFORE, this Court orders that:

Defendant(s) shall vacate the premises located at 304 Carnoustie, St. Simons Island, GA, including all items belonging to the Defendant(s) therein, no later than June 13 2019, and that possession of said premises be vested immediately in the Plaintiff.

Any failure on the part of Plaintiff to exercise any or all of its rights and remedies hereunder shall not constitute waiver of such rights.

SO ORDERED this 28th day of ^{3rd June 2019} May, 2019.

John M. Dunn

Judge, Magistrate Court of Glynn County

APPENDIX

H

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

PAMELA M. TIMBES,)	CASE NO. CE19-00763
APPELLANT/DEFENDANT,)	
VS.)	JURY DEMAND
DEUTSCHE BANK NATIONAL TRUST COMPANY)	ON APPEAL FROM
AS INDENTURE TRUSTEE,)	CASE NO. 1800416
APPELLEE/PLAINTIFF)	
<hr/>		
PAMELA M. TIMBES,)	
VS.)	PLAINTIFF,) COUNTERCLAIM
DEUTSCHE BANK NATIONAL TRUST COMPANY,)	
AS INDENTURE TRUSTEE FOR AMERICAN HOME)	
MORTGAGE INVESTMENT TRUST 2005-3,)	
OCWEN LOAN SERVICING, LLC,)	
AND ITS AGENTS,)	JURY DEMAND
ALDRIDGE PITE, LLP,)	
FKA ALDRIDGE CONNERS,)	
AND ITS AGENTS,)	
DEFENDANTS.)	
<hr/>		

AFFIDAVIT OF PAMELA M. TIMBES

STATE OF GEORGIA

COUNTY OF GLYNN

PERSONALLY APPEARED, before the undersigned Notary Public duly authorized to administer oaths, Pamela M. Timbes, who after having been duly sworn on oath,

FILED
GLYNN CO. CLERK'S OFFICE
2019 OCT 17 P 2:55
Pamela M. Timbes
CLERK SUPERIOR COURT

deposes and states as follows:

1. I, Pamela M. Timbes, am of legal age, am competent to give testimony in the above captioned matter pending in the Superior Court of Glynn County, Civil Action File Number CE19-00763, and make this Affidavit based upon my personal knowledge of the facts and circumstances set forth herein, and authorize its use for any and all purposes allowed under Georgia law.

2. I personally executed the subject Security Deed in 2005 as "Borrower". "Lender" was American Home Mortgage Acceptance, Inc. See Deutsche Bank's Exhibit A at page 2, attached to Deutsche Banks' Motion for Summary Judgment.

3. American Home Mortgage Acceptance, Inc. closed in 2007 and has been defunct since that time. See History, **Exhibit A** attached hereto.

4. In 2011 the subject Assignment was filed in the Glynn County records by Mortgage Electronic Registration Systems, Inc.(MERS) as nominee for American Home Mortgage Acceptance, Inc. its successors and assigns, purportedly assigning the subject security deed to Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3. See Exhibit A attached to Appellant's Brief.

5. On January 9, 2014 Ocwen Loan Servicing, LLC, as Servicer for Deutsche Bank National Trust Company Americas, f/k/a Bankers Trust Company of California, N.A., as Trustee for American Home Mortgage Investment Trust 2005-3, was granted relief from the Bankruptcy Stay. See Order on Motion for Relief from Stay, **Exhibit B**, attached hereto.

6. June 5, 2015 OCWEN Loan serving, LLC, by and through its attorney Aldridge Pite LLP, represented itself to the U.S. Bankruptcy Court as "Secured Creditor". *See* Appellee's Motion for Judgment on the Pleadings, Exhibit D, Timbes' Amended Complaint to which

attached is Exhibit E: "Notice of Appearance and Request for Service of Notice".

7. I have repeatedly brought to the attention of the courts that the Signators on the subject Assignment were not agents of MERS, but were in fact known robo signers, making said Assignment a false document.

8. I have repeatedly attempted loan modification; however, no one ever seemed to know who had the authority to modify the loan.

9. After Deutsche Bank had auctioned the subject property at 304 Carnoustie, St. Simons Island, GA 31522, I submitted to Aldridge Pite an offer of \$400,000, an amount greater than had been offered on the auction site. Despite the fact that there is considerable termite damage to the property, the offer was declined.

8. It is my personal belief, based upon the facts set forth, that I have been unable to secure a loan modification, and now have had my offer of \$400,000 declined, because Deutsche Bank does not have legal authority to enter into a contract regarding the subject property. Persisting with the wrongful foreclosure and wrongful dispossession appears to be the only option for Deutsche Bank who has failed to prove chain of title back to the original lender, American Home Mortgage Acceptance, Inc., now defunct. The sole proof on which the bank has relied — a purported assignment from "MERS as nominee for the lender, its successors and assigns" — is void, because the assignor did not exist when the document was signed and was fraudulently signed by robo signers who were never agents of MERS.

This _____ day of October, 2019.

Pamela M. Timbes
Pamela M. Timbes

Sworn to and subscribed before me
This 17 day of October, 2019.

Notary Public

My Commission expires: 2/1/2020

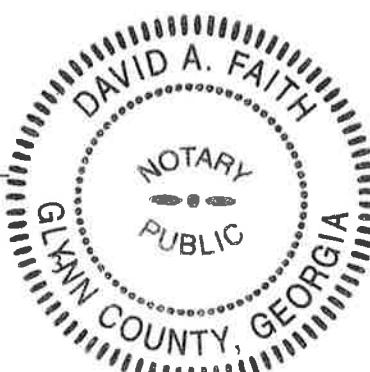


EXHIBIT A

WIKIPEDIA

American Home Mortgage

American Home Mortgage Investment Corporation was the 10th largest retail mortgage lender in the United States and was structured as a real estate investment trust (REIT).

In 2007, it filed for bankruptcy and was liquidated.^{[2][3]} The company was focused on earning net interest income from self-originated loans and mortgage-backed securities, and through its taxable subsidiaries, from originating and servicing mortgage loans for institutional investors.

Mortgages were originated through the company's employees as well as through mortgage brokers and purchased from correspondent lenders and were serviced at the company's servicing center in Irving, Texas.

The company filed for Chapter 11 bankruptcy protection in Wilmington Delaware federal court, on August 6, 2007.^[2] The week before the filing, the company said that many of its lenders had demanded their money back, and that AHM was also unable to deliver on about US\$800 million in commitments for housing loans, and had laid off nearly ninety percent of its 7,000 employees.^[4]

American Home Mortgage

	American Home Mortgage
Industry	Finance
Founded	1987
Defunct	2007
Headquarters	Melville, NY
Key people	Michael Strauss, CEO & President
Products	Financial Services, Investment management
Revenue	▲\$1.026 BillionUSD (2006) ^[1]
Net income	▲\$263.5 Million USD (2006) ^[1]
Number of employees	7,409 (Dec 2006) ^[1]
Website	www.americanhm.com (http://www.americanhm.com)

Contents

- [History](#)
- [Financial difficulties](#)
- [WARN Act Class Action Law Suit](#)
- [External links](#)
- [References](#)

History

Founded in 1987 in New York City, the company became a publicly traded on NASDAQ in September 1999. The company moved its corporate headquarters to Melville, NY in 2000. Since its beginning as American Home Mortgage Holdings, Inc., it was engaged only in the origination and servicing of mortgages. Following its acquisition of Apex Mortgage Capital in December 2003, the Company became a REIT and changed its name to American Home Mortgage Investment Corp., the new parent company of American Home Mortgage and moved from NASDAQ to NYSE.^{[5][6]} The company has made numerous acquisitions since 1999 including Marina Mortgage of Irvine, CA, First Home Mortgage of Mt Prospect, IL, Columbia National of Columbia, MD, and retail

branches from Principal Residential Mortgage, Waterfield Financial, Irwin Mortgage, and 86 Washington Mutual offices.^[1] In December 2003, the company moved its listing from NASDAQ to NYSE, under the new ticker symbol, AHM.^[6]

On July 31, 2007, the company announced that it can no longer fund home loans and may liquidate assets, putting its survival in doubt.^[7] The Melville, New York-based real estate investment trust retained Milestone Advisors and Lazard to help it evaluate options and advise "with respect to the sourcing of additional liquidity including the orderly liquidation of its assets."^[8] American Home's announcement shows how concerns about credit quality and homeowner defaults have spread beyond subprime lenders, which lend to people with weaker credit, to lenders that make higher-quality loans. This announcement caused its stock price to plunge 90% that day to \$1.04 on the NYSE. "The chances are pretty high that the company either goes bankrupt or materially restructures, leaving little value for shareholders," said Bose George, an analyst at Keefe, Bruyette & Woods Inc. in New York. American Home has specialized in prime and near-prime loans. It has, however, made many loans that allow borrowers to produce little documentation of income or assets. It recently commanded about 2.5 percent of the U.S. mortgage market.

Financial difficulties

On August 2, 2007, Michael Strauss sent an email to the entire company announcing company's serious financial difficulties.

It is with great sadness I announce today that American Home Mortgage has been forced to close. Unfortunately, the market conditions in both the secondary mortgage market as well as the national real estate market have deteriorated to the point that our business is no longer viable. What this means for most of our employees is that Friday, August 3, 2007 will be your last day of employment. Detailed information regarding payroll, benefits and other human resource related matter will be available Friday morning for distribution in the office. I would like to personally thank every single individual working for the company for their efforts. It has been my privilege to be associated with such a wonderful team.

Following Strauss's email, at least one employee of AHM has stated that the western division of AHM had been purchased by IndyMac Bank, saving those employees' jobs. In 2008, IndyMac also failed—one of the largest bank failures in American history. On July 11, 2008, IndyMac Bank was placed into conservatorship by the FDIC and on August 6, 2008, the bank filed for Chapter 11 bankruptcy protection. American Home Mortgage Servicing Inc. was sold to Wilbur Ross & Co. LLC, as part of the bankruptcy liquidation, in November 2007.^[9] The entity was formed by affiliates of WL Ross & Co. LLC in November 2007 for the purpose of acquiring the servicing assets of American Home Mortgage Investment Corp., American Home Mortgage Corp. and American Home Mortgage Servicing Inc. in the bankruptcy liquidation. American Home Mortgage Servicing Inc. changed its name to Homeward Residential Holdings, Inc. in February 2012.^[10] In October 2012, Ocwen announced plans to buy Homeward Residential Holdings, Inc. from WL Ross & Co. for \$750 million. The acquisition was finalized on Dec. 27, 2012.^[11]

WARN Act Class Action Law Suit

On August 8, 2007, Outten & Golden LLP filed suit against American Home Mortgage Corp, American Home

Mortgage Acceptance, Inc., American Mortgage Serving Inc., American Home Mortgage Investment Corp., and American Home Mortgage Holding, Inc. seeking to recover 60 days wages and benefits for former employees of American Home Mortgage who they contended were terminated on or about August 3, 2007 in violation of the Worker Adjustment and Retraining Notification Act. (the WARN Act). On December 14, 2009, the court approved a final settlement valued at \$6.5 million for the former employees of American Home Mortgage. As of May 5, 2013, no monies had been distributed as "The Trustee continues to work to resolve claims and pending litigation which will impact the timing of distributions to AHM creditors, including the WARN Class".Source (<http://www.warnlawyers.com/PracticeAreas/American-Home-Mortgage-Settlement.asp>)

The warn act settlement was distributed in 2014.

External links

- American Home Mortgage Historical SEC Filings (<http://www.secdatabase.com/CIK/1256536/Company-Name/AMERICAN-HOME-MORTGAGE-INVESTMENT-CORP>)
- Facing liquidity crunch, American Home Mortgage suspends dividend payment (July 28, 2007) (<http://www.snl.com/InteractiveX/article.aspx?CID=A-6304631-12902&KPLT=2>)
- Outten & Golden LLP American Home Mortgage WARN Suit web page (<http://www.warnlawyers.com/PracticeAreas/American-Home-Mortgage-Settlement.asp>)

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EXHIBIT

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