03/26/21
MD

No. 21-412

In The

SUPREME COURT OF THE UNITED STATES

Samantha Roussell,

Petitioner,

v.

Bank of New York Mellon

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FLORIDA 4TH DISTRICT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Florida Supreme Court and the Fourth District Court of Appeal of Florida ("the Fourth DCA") violated the due process protections of the 5th and 14th Amendments to the U. S. Constitution by allowing the Fourth DCA to block the Florida Supreme Court from reviewing an arbitrary and capricious *per curiam* affirmance ("PCA") of a final judgment of foreclosure procured using false evidence in an unconscionable scheme to defraud the courts, the federal regulators and the U.S. Department of Justice that violated the $25 Billion National Mortgage Settlement by the continued use of fraudulent evidence in foreclosures?

Whether the due process protections enshrined in the 5th and 14th Amendments of the U. S. Constitution prohibit Florida Courts from turning a blind eye to the continued use of fraudulent evidence barred by the $25 Billion National Mortgage Settlement to obtain the equitable relief of foreclosure and from ignoring objective reasons to question the impartiality of those Florida Courts in adjudicating foreclosures requiring disqualification?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner, Samantha V. Roussell, was the defendant in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County and the Appellant in the Fourth District Court of Appeal of Florida. Mrs. Roussell is an individual. Thus, there are no disclosures to be made by him pursuant to Supreme Court Rule 29.6.

The Respondent is Bank of New York Mellon To Petitioner's knowledge, no publicly held corporation owns 10% or more of Bank New York Mellon's stock.

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PETITION FOR WRIT OF CERTIORARI

Samantha Roussell respectfully petitions for a Writof Certiorari to review the judgment of the Fourth DCA after the Florida Supreme Court decline to accept jurisdiction

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INTRODUCTION

In 2008, the United States suffered "the greatest economic meltdown since the Great Depression" and "[a]t the core of this crisis was the mortgage meltdown" caused by the securitization of subprime mortgages.[1] Securitization of mortgages was made possible largely through the expansive use of a private financial industry-created database system, Mortgage Electronic Registration Systems, Inc. ("MERS"), as a replacement for state recording laws. *See generally, In re MERSCORP, Inc.v. Romaine*,8 N.Y.3d 90, 96, 861 N.E.2d 81, 828 N.Y.S.2d266 (2006).

With the collapse of the housing market, the MERS system was exploited by the nation's largemortgage serviceprovidersforadifferentpurpose-themass

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[1] *Nelson, G.S., Confronting the Mortgage Meltdown: A Brief for the Federalization of State Mortgage Foreclosure Law, 37 PEPP.*

L. REV. 583, 583 (2010). *See generally* Lapidus, A.L., What Really Happened: Ibanez and the Case For Using the Actual Transfer of Documents, 41 Stetson L. Rev. 817, 817-18 (Spring 2012)

The production of false and fictitious mortgage assignments were used in foreclosures. This "robo- signing scandal" led to several investigations by federal regulators and the U.S. Department of Justice ("the DOJ") into misconduct by Bank of America, N.A. ("BANA"), JP Morgan Chase ("Chase") and other large financial institutions. These investigations resulted in settlements worth billions of dollars and promises by these financial institutions to stop using false and fictitious evidence in foreclosures. At the time, the Maine Supreme Court stated:

> ... this case is a disturbing example of a reprehensible practice. That such fraudulent evidentiary filings are being submitted to courts is both violate of the rules of court and ethically in defensible.The conduct ... displays a serious and alarming lack of respect of the nation's judiciaries.

Fed. Nat'l Mortg. Ass'n v. Bradbury, 32 A.3d 1014, 1016 (Me. 2011). *See also Kemp v. Countrywide HomeLoans,Inc.*,440B.R.624(Bankr.D.N.J.2010) (refusing to recognize as legitimate Countrywide's attempted transfer of a note and mortgage that had not been properly endorsed);*In re Hill*, 437 Bankr.

W.D. Pa. 2010) (issuing a "public censure" against Countrywide and counsel for

fabricating evidence).

The rampant use of fraudulent documents in mortgage foreclosures was also universally condemned by commentators. See Renuart, E., Property Title Troubles in Nonjudicial Foreclosure States: The Ibanez Time Bomb?, 4 WM. & MARY BUS. L. REV. 111, 119-28 (2013); White, A., Losing the Paper – Mortgage Assignments, Note Transfers and Consumer Protection, 24 Loy. Consumer L. Rev. 468,486-87(2012); Shaun Barnes, Kathleen G. Cully & Steven L. Schwarz, In House Counsel's Role in the Structuring of Mortgage-Backed Securities, 2012 WIS. L. REV. 521, 528(2012).

There is now clear evidence that Chase, BANA, and other large financial institutions defrauded those government regulators and the DOJ, by entering into multi-billion dollar settlements whileintending to continue using false evidence in foreclosures. Chase, BANA and others have continued to bombard state and federal courts with foreclosure actions based on similar fraudulent paperwork. There is a pattern of false mortgage assignments and after-the- fact rubber stamped blank endorsements, backdated by perjury with the knowledge of the Banks' most senior management.

Throughout many appeals, the Fourth DCA has turned a blind eye to this widespread fraudulent conduct by Chase, BANA, and others. There is a clear pattern of bias in the Fourth DCA which the Florida Supreme Court has declined to address, leaving this Court to confront the fraud and bias that violated Mrs. Roussell's due process rights under the 5th and 14th Amendments

to the U.S.

Constitution.

REPORTS OF OPINIONS BELOW

The opinion of the Fourth DCA giving rise to this petition is *Roussell v. Bank of New York Mellon*, (Fla. 4thDCA 2021)

STATEMENT OF BASIS FOR JURISDICTION

The *per curiam* affirmance sought to be reviewed was entered by the Fourth DCA on January 22, 2021.

On February 25th, 2021 The Florida Supreme Court declined to accept jurisdiction; therefore, the Fourth DCA was the last resort from which Petitioner could seek review.

Therefore, The Court's jurisdiction is invoked under 28 U.S.C §1257 (a). *Florida Star v. B.J.F., 530 So.2d 286, 288 n.3 (Fla. 1988).*

CONSTITUTIONAL PROVISIONS

AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be ... deprived of life, liberty or property without due

process of law...."

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No state shall ... deprive any person of . . . property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Florida Statute § 702.01 provides "All mortgages shall be foreclosed in equity..."

Florida Rule of Civil Procedure 1.115(e) provides:

"Verification; When filing an action for foreclosure onamortgageforresidentialrealpropertytheclaim for relief shall be verified by the claimant seekingto foreclose themortgage...."

Florida Rule of Civil Procedure 1.540(b) provides: "(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment...for the following reasons:... (3)

fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;...The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, decree, order, or proceeding was entered ortaken."

STATEMENT OF THE CASE

A. Statement of the Facts

On November 28th, 2017, the trial court below entered the first final judgment of foreclosure in favor of Plaintiff Bank of New York Mellon. R.179-183. On December 26th, 2017, Appellant filed a timelyNotice of Appeal to the Fourth DCA The Fourth DCA Reversed the order of the Circuit Court Judge on February 22nd, 2019 due to inconsistencies in the chain of assignments from which Foreclosure Plaintiff did not have standing to the Circuit Court Foreclosure Case.

Specifically Bank of New York Mellon supposedly got an assignment of the mortgage on July 22nd, 2011 from the original lender America's Wholesale Lender, but on May 21st, 2013 it filed a corrective 'assignment of mortgage ; however, another institution "Nationstar Mortgage LLC" claimed on a corrective assignment of mortgage (Recorded on the Broward County Public Records) that it was the owner of the note and that it was transferring the mortgage to US Bank National Association on December 23rd, 2015. It is all in the public Records.

Mrs. Roussell file a Motion to Dismiss the case on March 17th, 2019 stating that the Fourth DCA in its opinion listed all the errors and mistakes committed by the Foreclosure Plaintiff ; these errors could not be fix because that was going to lead to a fraud and to fabricate documents in order to be able to have standing in the Foreclosure case ; however , the motion was denied by the Circuit Court Judge; moreover , Plaintiff Bank of New York Mellon spent months trying to fabricate evidence that could give it standing in the case.

On January 4th, 2020 a second Final Judgment in favor of Plaintiff was granted

by the Circuit Court Judge; consequently, Mrs. Roussell file a Notice of Appeal on February 19th, 2020 but, The Fourth DCA Per Curiam Affirmed on January 22ND, 2021

How impartial is the 4th DCA?

The front page article reported "*there is no question that the Fourth District is pro-business and couldn't care less about homeowners.*" (emphasis added). It further reported that the Fourth DCA "abuses *per curiam* affirmances, or PCAs, to avoid explaining their rulings on lender standing, ... [and] misuses the tool to strategically sidestep writing opinions that could provide grounds for rehearing. Instead, they say it uses the decisions to wipe out options for further review and avoid conflicts with other district courts." Instead of a reasoned opinion that would create conflict jurisdiction for further review, the Fourth DCA issues a PCA that says: you losebecause we said so and there's nothing you can do aboutit.

Moreover, the front page article laid out statistical, empirical evidence that the Fourth DCA reversed on standing in favor of the banks 87% of the time, while over the same time period, the 1st, 2nd, 4th and 5th DCA's all reversed on standing in favor of the homeowners between 73%-84% of the time. This is not just an anomaly. The front page article attached a press release that setforth:

> ... of its sixteen written opinions addressing standing in recent-era foreclosure cases, the Fourth District has only ruled for a property owner twice. *66 Team, LLC v. JPMorgan Chase Bank Nat. Ass'n*, 187 So. 3d 929 (Fla. 3rd DCA 2016) and *Riocabo v. Fed. Nat'l Mortgage Ass'n*, 230 So. 3d 579 (Fla. 3rdDCA
>
> 2017). (Consider that in 66 Team, the bank did not admit any documents or evidence at trial to prove it s case. And in *Riocabo*, the bank confessed error-admitting that it must lose on appeal.)... The Fourth District has issued 120 written foreclosure opinions on standing, 87 (73%) have been in favor of property owners ... It's also noteworthy that the Third has only issued sixteen written foreclosure opinions on standing – the fewest of any appellate court in thestate.

Most recently, on August 7, 2018, the Florida Supreme Court declined to accept jurisdiction inthe case of *Bank of America v. Jose Rodriguez* in case number SC18-1288. In *Rodriguez*, the Honorable Miami-Dade Circuit Court Judge David Miller entered the two sanctions orders under the inequitable conduct doctrine finding BANA blocked discovery into a similar scheme to use backdated endorsements and false assignments.

BANA appealed Judge Miller and moved to disqualify him. Then BANA's counsel threw a fundraiser for the successor judge who promptly struck both

sanction orders, struck all discovery, struck all pleadings alleging fraud, unclean hands or violations of Florida's RICO statute, and entered a summary final judgment of foreclosure.

On appeal in case number 3D17-272, the Third DCA issued a PCA of the *Rodriguez* summary judgment. By refusing to write an opinion, the Florida Supreme Court could refuse to accept jurisdiction under *R.J. Reynolds Tobacco Co.v. Kenyon*, 882So.2d986(Fla. 2004).

On August 7, 2018, the Florida Supreme Court cited

Reynolds Tobacco Co. and dismissed the Petition for a Writ of Mandamus to compel theThird DCA to issue a written opinion in *Rodriguez.* That appeal will soon be filed with this Court along with other homeowners denied their constitution alrights to due process protected by the 5thand 14th Amendments to the U.S.Constitution.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO PROTECT DUE PROCESS RIGHTS GUARANTEED BY THE 5TH AND 14TH AMENDMENTS TO THE U.S. CONSTITUTION AND TO PREVENT FRAUD ON THE COURT OR BIASED APPELLATE JUDGES FROM GRANTING THE EQUITABLE RELIEF OF FORECLOSURE BY CONDONING THAT FRAUD.

A. The Due Process Test

This Court has established what is essentially a two- Tiered analysis for due process challenges to conduct which, like the one in this case, involves property rather than liberty interests. The first "tier" involves a two-fold inquiry: (1) an examination of whether there has been a significant deprivation or threat of a deprivation of a property right, *see Fuentes v. Shevin*, 407 U.S. 67 (1972), and (2) an examination of whether there is sufficient state involvement of that deprivation to trigger the Due Process Clause, *see Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982). If there is state action and if that action amounts to the deprivation or threat of a privation of a cognizable property interest, the Court proceeds to the second "tier" to then determine what procedural safeguards are required to protect that interest. *Connecticut v. Doehr*, 501 U.S. 1 (1991).

The Court traditionally uses the three-factor test first discussed in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to assess what safeguards are necessary to pass muster under the Due Process Clauses of the Fifth and Fourteenth Amendments. The Mathews analysis weighs (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would

entail." 424 U.S. at 335; *see also Doehr*, 501 U.S. at26-28.

1. The Significance of theDeprivation

There can be no serious question that Petitioner satisfied the first tier requirement. This Court has been a steadfast guardian of due process rights when what is at stake is a person's right "to maintain control over [her] home" because loss of one's home is "a far greater deprivation than the loss of furniture." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53-54 (1993). Courts have held that even "a small bank account" is sufficient to trigger due process protections. *See Nat'l Council of Resistance of Iran v. Dept. of State*, 251 F.3d 192, 202-205 (D.C. Cir. 2001) (*citing Russian Volunteer Fleetv. UnitedStates*,282U.S.481,489-42(1931)).

2. StateAction

Since foreclosures in Florida require judicial supervision from beginning to end, Petitioner also plainly satisfied the second tier. This Court has set out two elements that must be met in order to establish state action under the Fourteenth Amendment: "First, the deprivation must be caused by the exercise of some right or privilege created by the State.... Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor." *Lugar v. Edmondson Oil Company*, 457 U.S. 922, 937(1982).

The first requirement was met in this case by the foreclosure process chosen by the Florida Legislature. Unlike some states which permit non- judicial

foreclosures, Florida has required that mortgage foreclosure actions be supervised by the judiciary for 190 years. *See Daniels v. Henderson*, 5 Fla.452 (1854)(construing Fla. Acts of 1824). Today, foreclosures in Florida are regulated by Fla. R.Civ. P. Rule 1.115(e), which requires verification of foreclosure complaints. See p. supra.

To meet the second requirement, a borrower must show that the "private actor operate[d] as a 'willful participant in joint activity with the State or its agents.'" *Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531U.S.288, 296 (2001) (quoting *Lugar*, 457 U.S. at 941). This means that the private act or must have received the "significant assistance of state officials." Tulsa *Professional Collection Services v. Pope*, 485 U.S. 478, 486(1988).

In judicial-foreclosure states such as Florida ,the use of the state's courts (and the use of all the state officials who work for those courts) to pursue the foreclosure is mandatory; the foreclosing entitydoes not possess the right of self-help. This Court has recognized that prejudgment remedy statutes "are designed to enable one of the parties to 'make use of state procedures with the overt, significant assistance of state officials,' and they undoubtedly involve state action 'substantial enough toimplicate the Due Process Clause.'" *Doehr*, 501 U.S. at11

(*quoting Tulsa Professional Collection Services. Inc. v. Pope*, 485 U.S. 478, 486 (1988). *Seealso*

Brinkerhoff-Faris Trust & Savings Co. v. Hill,281 U.S. 673(1930).

For the same reason, Florida's requirement of strict supervision of Florida's foreclosure proceedings is enough "substantial" involvement to trigger state action. *See Dieffenbach v. Attorney General*, 604 F.2d 187, 194 (2d Cir. 1979) (finding that the use of Vermont's strict foreclosure statute, "directly engage[d] the state's judicial power in effectuating foreclosure," was enough to show that there was state action in the foreclosure process). Se ealso *New Destiny Dev.Corp.v.Piccione*,802F.Supp.692(D. Conn.1992).

3. The Matthews Test

a. The PrivateInterest

The "private interest" prong of the *Matthews* Test weighs heavily in Petitioner's favor. As *Daniel Good* again underscores, Petitioner had an enormous interest in retaining his home.

b. The Risk of ErroneousDeprivation

The risk of an erroneous deprivation when the decision rests on fraudulent evidence manufactured by the opposing party should be self evident. Using false or fraudulent evidence "involve[s] a corruption of the truth-seeking function of the trial process." *United States v. Agurs*,427U.S.97,107(1976).*See also Miller v. Pate*, 386U.S.1(1967)(findingthata deliberate misrepresentation of truth to a jury is a violation of due process); *Caldwell v. Mississippi*, 472 U.S. 320 (1985) (finding that an uncorrected, misleading statement of law to a jury

violated due process); *Darden v. Wainwright*, 477 U.S. 168,181- 82 (1986) (improper argument and manipulation or misstatement of evidence violates Due Process). *Cf. Mesarosh v. United States*, 352 U.S. 1, 14 (1956) (reversing convictions based on Solicitor General's disclosure that an important government witness had committed perjury in other proceedings,stating that the Court had a duty "to see that the waters of justice are notpolluted").

c. The governmentalinterest

While requiring plaintiffs in foreclosure actions to prove standing to sue creates an administrative burden, it is a burden that is basic to all civil litigation. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975) (standing "is [a] threshold question in every federal case, determining the power of the court to entertainthesuit").Thesameprincipleholdstruein federal bankruptcy proceedings involving foreclosure disputes. As one district court bluntly put it: 'This Court possesses the independent obligations to preserve the judicial integrity of the federal court and to jealously guard federal jurisdiction. Neither the fluidity of thesecondary

mortgage market, nor monetary or economic considerations of the parties, nor the convenience of litigants supersede these obligations." *In re Foreclosure Cases I*, Nos. I:07CV2282 et al., 2007 U.S. Dist .LEXIS 84011, at*6, 2007WL3232430, at *2 (N.D. Ohio Oct. 31, 2007). *See generally*

RESTATEMENT (THIRD) OF PROP: MORTGS.§

5.4(c) (1997) ("A mortgage may be enforced only by, or on behalf of, a person who is entitled to enforce the obligation the mortgage secures.").

d. The Need for Supreme Court Intervention

If this Court does not grant *writ* in this case, the corruption of foreclosure proceedings in Florida will effectively be rendered immune from challenge. By refusing to issue an opinion, the Fourth DCA insulated its views from challenge in the Florida Supreme Court,.*See Pino v. Bank of New York Mellon*, 57 So.3d 950 (Fla. 4 DCA 2011), the certified question answered, 121 So.3d 23 (Fla. 2013). Federal court review, in turn, is limited by *Rooker-Feldman* doctrine, which deprives "lower federal courts" of "subject matter jurisdiction" to review state court decisions on foreclosure matters, even as to due process/fraud claims similar to Petitioner's. *See*, e.g., *Warriner v. Fink*, 307 F.2d 933 (5 Cir. 1962); *Moncrief v.Chase Manhattan Mortgage Corp.*,275Fed.Appx.149(3d Cir. 2008); *Pennington v. Equifirst Corp.*, No. 10-1344-RDR,2011U.S.Dist.LEXIS9226(D.Kan.

Jan. 31, 2011). Courts also held that borrowers lack standingtochallengeviolationsofthe2012Consent Judgment. *See Conant v. Wells Fargo Bank, N.A.*, No. 13-572 (CKK), 2014 U.S. Dist. LEXIS 19154,at **37-39 (D. D.C. Feb. 14, 2014)(collectingcases). Thus,review of the Third DCA's conduct an only be accomplished by this Court through a Petition such as this one.

(4) Fraud on the Court Violates Due Process when it Deprives Life, Liberty, or Property

It is axiomatic that "[a] fair trial in a fair tribunal is a basic requirement of due process." *Capertonv. A.T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S. Ct. 2252, 2259, 173 L. Ed. 2d 1208 (2009). Because fraud on the courts pollutes the process society relies on for dispute-resolution, subsequent courts reason that "a decision produced by fraud on the court is not in essence a decision at all, and never becomes final. Judgments ... obtained by fraud or collusion are void, and confer no vested title." *League v. De Young*, 52 U.S. 185, 203, 13 L. Ed. 657 (1850).Due process does not permit fraud on the court to deprive any person of life, liberty or property. A biased court also violates constitutional due process guarantees by tolerating that fraud.

> "As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112,55S.Ct.340,342,79L.Ed.791(1935),this Court made clear that deliberate deception of a court ...by the presentation of known false evidence is

incompatible with 'rudimentary demands ofjustice'... the same result obtains when the State, although not soliciting false evidence, allows it togo uncorrected when it appears.'" *Giglio v. United States*,405U.S.150,153,92S.Ct.763,766,31L. Ed. 2d 104 (1972). In *Mooney*, this Court held due process:

is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state hascontrived...adeliberatedeceptionofcourt and jury by the presentation of testimony known to be perjured. Such a contrivance ...is asinconsistentwiththerudimentarydemands of justice as is the obtaining of a like result by intimidation.Andtheaction...mayconstitute state action within the purview of the Fourteenth Amendment. That amendment governs any action of a state,'whether through its legislature, through its courts, or through its executive or administrative officers...Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution. *Mooney v. Holohan*, 294 U.S. 103.113,55S.Ct.340.342,79L.Ed.791 (1935).

If a state, whether by the active conduct or the connivance of the prosecution, obtains a conviction through the use of perjured testimony, it violates civilized standards for the trial of guilt or innocence

and thereby deprives an accused of liberty without due process of law. *Hysler v. State of Fla.*, 315 U.S. 411, 413, 62 S. Ct. 688, 690, 86 L. Ed. 932 (1942).

Thesameholdstruewhenthedeprivalisofproperty without due process oflaw.

(5) The Growing Chorus of Federal and State Court Judges Calling Out this Fraud in Foreclosures

The Florida Legislature enacted Florida Statute §702.01 which provides, all mortgages shall be foreclosed in equity. Fla. Stat.

Ann. § 702.01 (1987). Almost two centuries ago, this Court pronounced: "equitable powers can *never* be exerted in behalf of one who has acted fraudulently, or who, by deceitor any unfair means, has gained an advantage." *Bein v.Heath*,47U.S.228,6How.228,1848WL6464

(U.S.La.), 12 L.Ed. 416 (1848)(emphasis added).

Recently, the Chief Judge of the Second DCA, in a concurring opinion, noted, "[i]t appears that many foreclosure judgments are entered based on dubious proof by the banks due to an understandable lack of sympathy for defendants who are years behind on payments..." *Shaffer v. Deutsche Bank Nat. Trust.*, 2017 WL 1400592 at *8 (Fla. 2ndDCA) filed April 19, 2017. On June 10, 2017, the Honorable Broward County Circuit Court Judge William W. Haury, Jr. wrote:

This is one of the few instances in the history

of Florida jurisprudence where the Florida Supreme Court has deemed it necessary to subject an entire industry to special rule[Fla.

R. Civ. P. 1.115(e) due to the industry's documented illegal behavior... a direct result of the robo signing scandal...Notwithstanding this, some of our courts appear to be conforming to the business practices of this industry rather than requiring the business practices to conform to the law."W*ells Fargo Bank N.A., as Trustee for the Structured Asset Mortgage Investments II Inc. Bear StearnsMortgageFundingTrust2007-AR1. Mortgage Pass Through Certificates Series 2007-AR1.v.JerryWarren*,BrowardCounty Case No. 13-010112(11), fn.4.

In 2011, the Honorable Judge Gary M. Farmer retired from the Fourth DCA of Florida but wrote a dissent, through the Honorable Judge Mark Polen, following the robo-signing scandal that stated:

Decision-making in our courts depends on genuine, reliable evidence. The system cannot tolerate even an attempted use of fraudulent documents and false evidence in our courts. The judicial branch long ago recognizedits responsibility to deal with, and punish, the attempted use of false and fraudulent evidence. When such an attempt has been colorably raised by a party, courts must be most vigilant to address the issue and pursue

it to a resolution. *Pino v. Bank of New York, Mellon*,57So.3d950,954(Fla.4thDCA2011).

Only the Honorable U.S. District Court Judge Ursula Ungaro has expressly called out BANA for violating the $25 Billion National Mortgage Settlement ("NMS") by using rubberstamped endorsements backdated by perjury by the highest senior BANA executives and false MERS assignments in the false claims act case brought by undersigned counsel discussed *supra.* It is intolerable for any appellate courts to misstate the facts and the law to protect fraudulent foreclosures over the constitutional rights of homeowners.

Wells Fargo essentially admitted to the same misconduct before U.S.

Bankruptcy Court Judge Robert N. Drain of the Southern District of New York. Wells Fargo, another party to the NMS, was also "improving its own position by creating new documents and indorsements from third parties to itself to ensure that it could enforce its claims." *Inre Carssow-Franklin (Wells Fargo Bank, N.A. v. Carssow-Franklin)*, --- F. Supp. 3d ---, --- [2016 WL 5660325, *6-10] (S.D.N.Y.2016).

In *Franklin*, the Honorable U.S. District Court Judge Kenneth M. Karasaffirmed Judge Drain's findings, noting Wells Fargo engaged in a practice of creating"after-the-fact"documentation"on behalf of third parties" by in-house "assignment and indorsementteams"whichWellsFargotriedto

cover-up with an invalid MERS assignment onJune 12, 2012, two months after signing the $25 Billion National Mortgage Settlement. BONYM and BANA did the same thing and engaged in the most egregious misconduct to cover itup.

No party, especially not a party to the $25 Billion NMS, "has a right to trifle with the courts." *Ramey v. Haverty Furniture Companies, Inc.*, 993 So. 2d 1014, 1018 (Fla. 2nd DCA 2008).

Petitioners' homestead is a protected property right which Respondent cannot foreclose on with unclean hands. The U.S. Supreme Court instructs that once it is determined that a protected property interest was taken, the next determination is whether the State's procedures comport with due process. *American Mfrs. Mutual Ins. Co., v. Sullivan*, 526 U.S. 40, 59, 119 S.Ct. 977, 989(1999).

This Court must review these procedural and substantive due process violations of the U.S. Constitution. "It is the purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Board of RegentsofStateCollegesv.Roth*,408U.S.564,577, 92 S.Ct. 2701, 2709(1972).

Once a state has established avenues of appellate review, they must be free of unreasoneddistinctions to impede equal and open access to the courts. *Rinaldi v. Yeager*, 384 U.S. 305, 310, 86 S.Ct.1497, 1500 (1966). By refusing to write an opinion, the Third DCA denied Petitioner equal access to the Florida Supreme Court and due process of law.

In 1980, Article V of the Florida Constitution was amended to divest the Florida Supreme Court of jurisdiction to review a PCA without a written opinion.[3] In 1993, the Honorable Judge Gerald B. Cope, Jr., of the Third District Court of Appeal, published an extensive article analyzing Florida's Appellate Procedure after the 1980 Amendment. Gerald B. Cope Jr., Discretionary Review of the Decisions of Intermediate Appellate Courts:

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3 - Florida Constitutional Amendment Article V 3(b)(3): see generally, Jenkins v. State, 385So.2d1356,1359 (Fla.1980); St. Paul Title Ins.Co. v. Davis, 392So.2d1304,1305 (Fla.1981).

A Comparison of Florida's System with Those of the Other States and the FederalSystem,45Fla.L.Rev. 21 (Jan. 1993). Judge Cope concluded that Florida's written opinion requirement was enacted in a time of crisis and imposed "the most severe limitation on access to the State Supreme Court of any American jurisdiction." Id. At 93.

Two decades after the 1980 amendment, the Florida Supreme Court commissioned a report to study the use of PCA decisions. See, Comm. on Per Curiam Affirmed Dec., Final Report and Recommendations (May 2000). The majority reported that the PCA performs a useful function when used properly. Id. at 29. However, several practitioners cited a widespread PCA problem which appears arbitrary and undermines the quality of appellate justice in Florida. Id. The Florida Supreme Court adopted the PCA Committee's recommendation to amend Rule 9.330 of Florida's Appellate Procedure to allow litigants to request a written opinion from the Court effective January,2003.

Former Florida Supreme Court Justice England also concluded this amendment to Rule 9.330 is conceptually flawed and should be repealed. Arthur J. England, Jr., Asking for Written Opinion from a Court That Has Chosen Not to Write One,78- Mar Fla. B. J. 10, 16 (March, 2004). Justice England saw the procedural infirmity in "asking a District Court to provide an opinion that willexpose their rationale to Supreme Court review puts expressly in the hands of District Court judges the discretion to allow or not allow

review." Id. at15.

It is "fundamental black letter law" that a District Court should write an opinion unless "the points of law raised are so well settled that a further writing would serve no useful purpose." *Elliot v. Elliot*, 648 So. 2d 137, 138 (Fla. 4th DCA 1994). The Third DCA has abused the PCA to deny appeals speaking out about the use of false endorsements and assignments, fraud on the court, perjury, and the destructionofevidenceindefianceofacourtordered subpoena. This breakdown in due process reaches an arbitrary result that conflicts with well-settled lawandpermitspartiestotheNationalMortgage

Settlement to continue to defraud courts with the approval, *sub silencio*, of the Florida Court system.

Due Process protects against the arbitrary deprivation of property and reflects the value our constitutional and political history places on the right to enjoy prosperity. free of governmental interference. *Fuentes v. Shevin*, 407 U.S. 67. 80-1, 92 S.Ct. 1983, 1996 (1972).

Under the Magna Carta, the Due Process Clause limits the powers of all branches of government, including the judiciary. *Truax v. Corrigan*, 257, U.S. 312,333, 42 S.Ct. 124, 129 (1921). Chief Justice

Taft wrote:

Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men," Nomanis above the law, 'are all maxims

showing the spirit in which Legislatures, executives and courts are expected to make, execute and apply laws." *Id.* The guaranty of due process "was aimed at undue favor and individual or class privilege.... *Id.*

This is why "Equal Justice Under Law" is etched in all caps across the front of the U.S. Supreme Court. "The vague contours of the Due Process Clause do not leave judges at large." *Rochin v. People of California*, 342 U.S. 165, 170, 72 S.Ct. 205, 209 (1952). Judges have long been required to give a public reasoned opinion from the bench in support of their judgment. Id. at fn.4.

The reason given to support state action that takes property may not be so inadequate that it may be characterized as arbitrary. *Jeffries v. Turkey Run ConsolidatedSchoolDistrict*,492F.2d1,4(7thCir. 1974). State action is "arbitrary" when it takes without reason or for merely pre textual reasons. *Decarionv.MonroeCounty*,853F.Supp1415,1421

(S.D. Fla. 1994).

The "arbitrary and capricious" standard requires a state to examine the relevant data and to articulate a satisfactory explanation for its action. *Motor VehicleMfrs.Ass'nofU.S.,Inc.v.StateFarm*,463 U.S. 29, 43, 103 S.Ct. 2856, 2867 (1983) *citing Burlington Truck Lines v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 245-246 (1962). Asthe

Florida Supreme Court has held, "one of the best procedural protections against arbitrary exercise of discretionary power lies in the requirement of findings and reasons that appear to reviewing judges to be rational." *Roberson*

v. Florida Parole andProbationCommission,444So.2d917,921(Fla.1983).

(6) The Third DCA's Per Curiam Affirmance is Pretextual, Arbitrary andCapricious

This Court is asked to review the Third DCA's opinion below which is clearly pretextual, arbitrary, and violates Petitioner's due process rights. If the Florida Supreme Court won't speak out to correct this miscarriage of justice, this Honorable Court is all that is left to protect Petitioner's due process rights enshrined in the 5th and 14th amendments to the U.S. Constitution. This Court instructs:

Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunityto protectit."*Brinkerhoff-FarisTrust&Sav.Co. v. Hill*, 281 U.S. 673, 50 S. Ct. 451, 74 L.Ed.

1107 (1930). at 681-682, 50 S. Ct., at454-455.

This Court is called on to act because the Florida Supreme Court has taken no action to prevent the Fourth DCA from improperly ignoring fraudulent conduct in foreclosures.

(7) Due Process Demands the Fourth DCADisqualify Itself from Foreclosures as its Impartiality is Objectively Questioned

Justice England recognized an unconstitutional and inherent flaw in entrusting intermediate appellate court judges with the power to shield an

arbitrary decision from further appellate review merely by refusing to write an opinion. The same infirmity exists in Florida, wherein appellate court judgesare entrusted to decide for themselves whether there is an objective reason to question theirimpartiality.

The Florida Supreme Court instructs that "the disqualification of an appellate judge is a matter which rests largely within the sound discretion of the individual involved." *Giuliano v. Wainwright*, 416 So. 2d 1180, 1181 (1982). "When a litigant seeks to disqualify ... a judge of a district court of appeal, a different, more personal standard applies. The standard enunciated by the Florida Supreme Court is that 'each justice must determine for himself both the legal sufficiency of a request seeking his disqualification and the propriety of with drawing in any particular circumstances.'" *Inre Carlton* 378 So.2d1212,1216 (Fla.1979)(On Request for Disqualification). *Clarendon Nat. Ins. Co. v. Shogreen*, 990 So. 2d 1231,1233 (Fla. 3rd DCA 2008).In *Shogreen*, this Court noted that the Florida Supreme Court "has approved the application ofthe Carlton standard when that court's appellate-level judges were faced with a court-wide motion for disqualification." *Id.citing,5–HCorp.v.Padovano*, 708 So. 2d 244, 245–46(Fla.1997).

This Court instructs "a multimember court must not have its guarantee of neutrality undermined for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1902, 195 L. Ed. 2d 132

(2016). "An unconstitutional failure to recuse constitutes structural error..." *Id.* "The Due Process Clause may sometimes demand recusal even when a judge "'ha[s] no actual bias.'" (citations omitted) Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." *Rippov.Baker*,137 S. Ct. 905, 907, 197 L. Ed. 2d 167 (2017). Asthis

Court has explained:

The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions. As Justice Frankfurter once put it for the Court, "justice must satisfy the appearance of justice." (citations omitted). It follows that public perception of judicial integrity is "a state interest of the highest order." (citations omitted) *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1666, 191 L. Ed. 2d 570(2015).

"ItisaxiomaticthattheDueProcessClauseentitles a person to an impartial and disinterested tribunal in...civil...cases.This requirement of neutrality... preserves both the appearance and reality of fairness,...by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find againsthim.*Marshallv.Jerrico,Inc.*,446U.S.238, 242 (1980). "Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistakendeprivationsofprotectedinterests." *Carey v.Piphus*,425U.S.247,262(1978);*Taylorv.Hayes*, 418 U.S. 488, 501(1974).

The Florida Supreme Court has held, "it is the duty of Courts to scrupulously guard this right and to refrain from attempting to exercise jurisdiction in any matter where his qualification to do so is seriously brought in question. The exercise of any other policy tends to discredit the judiciary and shadow the administration of justice." *Crosby v. State*, 97 So. 2d 181, 184 (Fla. 1957). The Florida Supreme Court recognized that "prejudice of a judge is a delicate question to raise but..., if predicated on grounds with a modicum of reason, the judge against whom raised, should be prompt to recuse himself." *Livingston v. State*, 441 So. 2d 1083, 1086 (Fla. 1983). In *Livingston*, the Florida Supreme Court further instructed:

it is a matter of no concern what judge presides in a particular cause, but it is a matter of grave concern that justice be administered with dispatch, without fear or favor or the suspicion of such attributes. The outstanding big factor in every lawsuit is the truth of the controversy. Judges, counsel,and rules of procedure are secondary factors designed by the law as instrumentalities to work out and arrive at the truth of the controversy... *Id.*

The rules regarding judicial disqualification "were established to ensure public confidence in the integrity of the judicial system...." *Livingston* at 1086.

The Fourth DCA has repeatedly denied Motions to Disqualify that set forth many objective reasons to question the court's impartiality. Most obvious is the front page article of the Daily Business Review that explained in great detail how the Third DCA has ruled for homeowners in only 2 cases on standing since

2010, while the other 4 DCAs have ruled for homeowners in hundreds of cases. These foreclosures are prosecuted using the same forms and evidence throughout Florida. As the Daily Business review correctly reported "There is no question that the Third District is pro-business and couldn't care less about homeowners."

On March 23, 2017, the Honorable U.S. Bankruptcy Judge Christopher M. Klein of the Eastern District of California sanctioned BANA $45 million for foreclosure misconduct involving BOA's Senior Management. *Sundquist v. Bank of America*,--B.R.--, 2017 WL 1102964 *46 (U.S. Bkrptcy, E.D.

Cal. issued March 23, 2017). The opinion "tells a story that smacks of cynical disregard for the law." Id. at *47. The Court noted:

The high degree of reprehensibility, coupled with the significant involvement by the office of the Chief Executive Officer, calls for of an amount sufficient to have a deterrent effect on Bank of America and not be laughed off in the boardroom as petty cash or "chump change.... It happens that Bank of America has a long rap sheet of fines and penalties in cases relating to its mortgage business ... In an environment in which Bank of America has been settling, i.e. terminating exposure to higher sums, for billions and hundreds of millions of dollars... why should Bank of America be permitted to evade the appropriate measure of punitive damages for its conduct? Not being brought to book for bad behavior offensive to societal norms merely incentivizes future bad behavior."*39-40.

Judge Klein noted BANA's "attitude of impunity" citing failed governmental

regulatoryinvestigations "that turned out to be a chimera." Id. at *43. Even investigations by the Consumer Financial Protection Bureau were "thwarted" with a "bald- faced lie" and a refusal to turn overdocuments.

In stark contrast to Florida, the Maine Supreme Court has taken a different approach to misconduct in foreclosures. *Bayview Loan Servicing, LLC v. Bartlett*, 87 A.3d 741, 749 (Maine S. Ct. 2014). In *Bartlett,* the Maine Supreme Court affirmed an involuntary dismissal with prejudice for Bayview's failure to attend a fourth court ordered mediation and awarded the borrower a free home. *Id.* The ultimate sanction was appropriate as Bayview had previously defied court orders that affected the borrower's ability to resolve their foreclosure.

Trial level judges are speaking out against continued misconduct in foreclosures, even if the Fourth DCA and the Florida Supreme Court are not. This Court should join those judges on the right side of history and grant certiorari.

CONCLUSION

The basis for the judicial power, which isreferenced in Article V, Section 1 of the Florida Constitution,is found in Federalist Number 78, written by Alexander Hamilton as Publius. The Federalist Society warns that:

The Constitution's promise of due process of law is, among other things, a promise of impartial adjudication in the courts—a promise that people

challenging assertions of government power will have access to a neutral tribunal that is not only free from actual bias but free even from the appearance of bias. To the extent that private citizens cannot reasonably be confident that they will receive justice through litigation, they will be tempted to seek extra-legal recourse.

This Court must act to save the integrity of the Florida judiciary. It is the best hope to save our country from the perils Alexander Hamiltonwarned of when the people believe they cannot receive fair and impartial justice from this judiciary. Such a concern become more real as political events unfold, undermining the institutions of democracy.

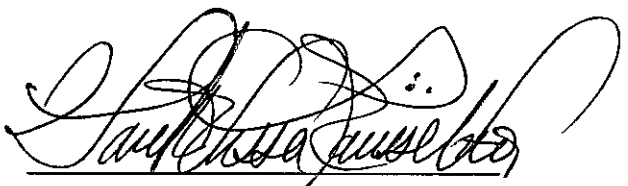
The Fourth DCA violated Petitioner's due process rights and the judicial canons governing impartiality by refusing to write an opinion that justifies the continued use of fraudulent evidence in an equitable action of foreclosure. It is objectively reasonable to fear the Fourth DCA acted to reach a predetermined outcome that favor banks over homeowners - foreclosure. The Florida Supreme Court must act.

As this David v. Goliath battle involves misconduct by the most wealthy and powerful, this petition presents perhaps the most epic constitutional crisis in our lifetime. Democracy will not fall if financial institutions are held to the rule of law. To the contrary, democracy falls if the public is allowed to believe Courts are biased in favor of bad corporate citizens and a fraudulent foreclosure process.

In this Case the evidence of the fraud is the Broward County Public Records.

WHEREFORE, this Court should grant the writ and consider the issue on the merits.

Respectfully submitted,



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