No. 21-5987

IN THE
SUPREME COURT OF THE UNITED STATES

KATHLEEN C. HAMPTON,
Petitioner,

v.

PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE
Respondent.

On Petition for Writ of Certiorari to the
The Supreme Court of Virginia
Record No. 201105

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Supreme Court of Virginia's *Opinion* that "there is no reversible error in the judgment complained of" in the Loudoun County Circuit Court's *Order* sustaining *Demurrer* with prejudice to Hampton's *Counterclaims & Sanctions*, in an unlawful detainer action, properly addressed, in their *de novo* review, the constitutionality of the law, either under Virginia's Constitution or the Constitution of the United States, involving the life and liberty of Petitioner, pertaining to the application of *Res Judicata* or sustaining demurrers to non-judicial foreclosures; or whether demurrers violate citizens' Constitutional Rights to due process, and, further, the constitutionality of non-judicial foreclosures.

PARTIES TO THE PROCEEDING

PETITIONER, KATHLEEN C. HAMPTON, an individual natural person, citizen of the United States and the Commonwealth of Virginia, is acting pro se, is not an attorney and has had very minimal contact with the legal system prior to this action. Ms. Hampton was plaintiff in the Loudoun County Circuit Court and the General District Court and Appellant in the Supreme Court of Virginia.

RESPONDENT, PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE, was defendant in the Loudoun County Circuit Court and General District Court and Appellee in the Supreme Court of Virginia; and was represented by FAY SERVICING, LLC, AS SERVICING AGENT AND ATTORNEY-IN-FACT FOR PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE; and SAMUEL I. WHITE, P.C., AS ORIGINAL AND SUBSTITUTE TRUSTEE, and *COUNSEL* for PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE throughout the proceedings below in the Loudoun County Circuit Court and General District Court and as *COUNSEL* for Appellee in the Supreme Court of Virginia.

CORPORATE DISCLOSURE STATEMENT

Pursuant to U.S. Supreme Court Rule 29.6, Petitioner Kathleen C. Hampton is an individual with no corporate affiliation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Kathleen C. Hampton, *pro se*, respectfully petitions for a Writ of Certiorari to review the *Opinion* of the Supreme Court of Virginia that "there is no reversible error in the judgment complained of," on the Loudoun County Circuit Court's *Order* granting *Demurrer* and dismissing with prejudice Hampton's *Counterclaims & Sanctions* in an unlawful detainer action, thereby denying Petitioner's Constitutional Rights to Trial by Jury and her Constitutional Rights to Due Process and the Protections of the Law.

OPINIONS BELOW

Circuit Court of Loudoun County *Final Order* granting *Demurrer* to PROF-2013-S3 Legal Title Trust, by US Bank National Association, as Legal Title Trustee, and dismissed with prejudice to Hampton's *Counterclaims and Sanctions*, Civil No. 118605-00, dated February 7, 2020. [unpublished] (App. A)

Supreme Court of Virginia *Opinion* "there is no reversible error in the judgment complained of" and *Refused* the *Petition for Appeal*, Record No. 201105, dated March 23, 2021. [unpublished] (App. B)

Supreme Court of Virginia *Denial* of the *Petition for Rehearing*, Record No. 201105, dated May 14, 2021. [unpublished] (App. C)

Supreme Court of Virginia *Denial* of Appellee's *Motion to Dismiss*, Record No. 201105, dated December 11, 2020. [unpublished] (App. D)

In Primary Unlawful Detainer Case:

Circuit Court of Loudoun County *Final Order* granting *Summary Judgment* and possession to the Property to PROF-2013-S3 Legal Title Trust, by US Bank National Association, as Legal Title Trustee, in the unlawful detainer action, Civil No. 118604-00, dated February 7, 2020. [unpublished] (App. E)

Supreme Court of Virginia *Opinion* "there is no reversible error in the judgment complained of" and *Refused* the *Petition for Appeal*, Record No. 201103, dated March 23, 2021. [unpublished] (App. F)

Supreme Court of Virginia *Denial* of the *Petition for Rehearing*, Record No. 201103, dated May 14, 2021. [unpublished] (App. G)

Supreme Court of Virginia *Denial* of Appellee's *Motion to Dismiss*, Record No. 201103, dated December 11, 2020. [unpublished] (App. H)

Further in the Circuit Court:

Circuit Court of Loudoun County *Order* dated February 7, 2020, denying Hampton's *Motion for Rehearing or in the Alternative Motion for a Mistrial Supporting Memorandum of Law*, filed December 20, 2019. [unpublished] (App. I)

Circuit Court of Loudoun County *Order* dated December 19, 2019, denying Hampton's *Motion for Rehearing or in the Alternative Motion for a Mistrial*, filed November 18, 2019. [unpublished] (App. J)

Circuit Court of Loudoun County *Order* dated November 11, 2019, denying Hampton's *Motion for Reconsideration and Supporting Memorandum of Law*, filed October 25, 2019, and Hampton's *Motion for Reconsideration of Further Support to Memorandum of Law*, filed November 1, 2019. [unpublished] (App. K)

Circuit Court of Loudoun County *Order* dated October 4, 2019, denying Hampton's *Motion to Dismiss*, filed September 18, 2019. [unpublished] (App. L)

Also as Noted and Referenced herein in Hampton's Prior Case before SCOTUS, which this Court can take Judicial Notice of:

Supreme Court of the United States, *Kathleen C. Hampton, Petitioner v. PROF-2013-S3 Legal Title Trust, By U.S. Bank National Association, as Legal Title Trustee, et al.*, on Petition for Writ of Certiorari, denied October 7, 2019, Record No. 18-9127. [published 140 S.Ct. 68 (2019)]

(Reply Brief to SCOTUS 9-25-19 [No. 18-9127] has been included in Appendix W App. 264-270, as it was submitted to the circuit court as an exhibit to Hampton's *Motion to Dismiss*.)

On review of:

Supreme Court of Virginia (Record No. 180842) Denial of the *Petition for Rehearing* dated February 1, 2019 [unpublished]

Supreme Court of Virginia (Record No. 180842) Opinion there is no reversible error in the judgment complained of and Refused the *Petition for Appeal* dated November 9, 2018 [unpublished]

On review of:

Circuit Court of Loudoun County *Amended Final Order* dated March 30, 2018, adding PROF-2013-S3 Legal Title Trust, by US Bank National Association, as Legal Title Trustee as a separate party defendant to the relief awarded in the Court's previously-entered January 3, 2017, *Order* [unpublished]

Still further from the Supreme Court of Virginia's decision of:

Supreme Court of Virginia (Record No. 170427) Denial of the *Petition for Rehearing* dated November 21, 2017 [unpublished]

Supreme Court of Virginia (Record No. 170427) Dismissal without Prejudice, finding that the order appealed from is not a final, appealable order as it is not final with regard to all the parties in the case, namely PROF-2013-S3 Legal Title Trust, by US Bank National Association dated August 14, 2017 [unpublished]

On review of:

Circuit Court of Loudoun County *Final Orders* dated January 3, 2017, sustaining with prejudice the *Demurrers* and *Plea in Bar* to Plaintiff's *Second Amended Complaint* [unpublished] (hearing transcript is part of Appendix V herein)

Circuit Court of Loudoun County *Order* dated January 11, 2017, denying Plaintiff's *Motion for Reconsideration* [unpublished] (*Motions for Reconsideration* are part of Appendix V herein, App. 224-243)

Circuit Court of Loudoun County *Order* dated August 3, 2016, sustaining the *Demurrers* as to all counts and permitting Plaintiff to file *Second Amended Complaint* to combine her case with that of the US District Court case [unpublished]

Circuit Court of Loudoun County *Order* dated July 1, 2016, denying Plaintiff's *Application for Entry of Default and Default Judgment* against the main defendant PROF-2013-S3 Legal Title Trust [unpublished]

US District Court for the Eastern District of Virginia (No. 1:15-cv-1624-LMB-MSN) *Order* dated May 18, 2016, Dismissing without Prejudice pursuant to FRCP 41(a)(1) [unpublished]

STATEMENT OF JURISDICTION

The judgment of The Supreme Court of Virginia on a *Petition for Rehearing* was entered on May 14, 2021. (App. C)

The judgment of The Supreme Court of Virginia on the *Petition for Appeal* was entered on March 23, 2021. (App. B)

This Court's jurisdiction is invoked under 28 U.S.C. §1257(a) and, under §2101(c), this petition was timely filed within one hundred fifty (150) days after the judgment on the *Petition for Rehearing*, dated May 14, 2021, pursuant to Supreme Court Rules 13.1 and 30.1.

Pursuant to U.S. Supreme Court Rules 14.1(e)(v) and 29.4(c), this petition draws into question the constitutionality of the process not the constitutionality of a state statute unless the statutes define the process. Rule 29.4(c) does not appear to apply. However, as 28 U.S.C. §2403(b) may apply, a copy of the petition has been served on the State Attorney General.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are set forth in the Appendix to this petition (App. M).

QUESTIONS PRESENTED

Whether the Supreme Court of Virginia's *Opinion* that "there is no reversible error in the judgment complained of" in the Loudoun County Circuit Court's *Order* sustaining *Demurrer* with prejudice to Hampton's *Counterclaims & Sanctions*, in an unlawful detainer action, properly addressed, in their *de novo* review, the constitutionality of the law, either under Virginia's Constitution or the Constitution of the United States, involving the life and liberty of Petitioner, pertaining to the application of *Res Judicata* or sustaining demurrers to non-judicial foreclosures; or

whether demurrers violate citizens' Constitutional Rights to due process, and, further, the constitutionality of non-judicial foreclosures.

STATEMENT OF THE CASE

This case is companion to my case on Summary Judgment, where facts, statements and arguments are applicable to both, but Petitioner repeats parts as follows.

As my "Opening Statement," I should like to advise that I was raised to never lie and, thus, I never do! You can always trust that what I have to say is the truth as I have seen it. Petitioner also wishes to apologize for not knowing the law to a point that I can argue cases or otherwise, but I was raised and taught right from wrong, as no doubt you were as well. Your path has led you here to the biggest stage of "Equal Justice Under Law," and as the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.

My path has led me here before you. I only hope that you can see the truth and, therefore, the wrongs that have been harshly placed upon me by the failure of the lower courts to recognize the wrongdoing of the banks and such, who have abused the law. For if this case is once again refused, or passed over, that could not possibly be considered "equal justice under the law." That would equate to "no justice" and laws that are not protective and, thus, UNconstitutional!

Further, I am a *pro se* litigant, who could not possibly afford an attorney, on my limited income, but I should not be punished for not knowing the law, as you or attorneys, or your clerks, do. I don't make excuses for not knowing ... I just don't

feel someone like myself, or even someone this court may consider in a different position, is expected to know the law; but equal justice clearly means I am entitled to equal protection and unless the facts are judged instead of the pleadings, there is "no justice." It seems all prior courts have only judged me on pleadings, which no doubt I lack some ability to do right, but the truths to the allegations or facts are what this case should be based on. Again, I do not lie!

And yes, I do feel discriminated against, not so much as a woman or an elder, but as a *pro se* litigant, who has no clerks or ability to access the law, where the law has even played its part in "unlawfully taking" my home and leaving me "homeless." I understand that the court can only select a certain number of significant cases, but "We the People" (and I do stand for all the People, especially in like situations, either past, present or future) need this case "heard" on its truths/merits.

My biggest fear **now** is that, with the ongoing problems of the Covid-induced foreclosure eviction crisis looming, our country and its judicial system will fail to protect its citizens and will, once again, allow the banks, trusts or trustees to profit from the oncoming massive foreclosures that are predicted. There is considerable reason to believe another housing crisis is coming given the huge loss of jobs during the Covid-19 Pandemic. The earlier foreclosure crisis was devastating and I am obviously proof, still, as a remnant of the predatory lending that caused that Great Recession.

Here, and more importantly than ever before, this case should be addressed quickly so that citizens might be protected before they lose their homes as I have.

With the above questions presented, Petitioner feels that the Supreme Court of Virginia has left the question for this superior court to decide as between Virginia's Constitution and the Constitution of the United States that involve the life and liberty of Petitioner, particularly as she has been deprived of her home and property and, as such, has become "homeless," an unconscionable position for her – an elder – to be put in during a pandemic, where the courts have denied her due process – via scheduled/cancelled jury trial – and denied her in presenting her preponderance of the evidence, where a jury would serve "justice" by ruling on it.

As quoted from Petitioner's *Petition for Appeal* (Appendix P, page 6 therein):

"STATEMENT OF THE FACTS

> This is an Unlawful Detainer suit resulting from a "wrongful" non-judicial foreclosure, that no court has recognized or set aside, which was prematurely filed and charged against Hampton, and was also prematurely decided by the GDC prior to final decisions in higher courts on Hampton's appeals of her case. Hampton was lead to believe that by appealing the GDC decisions, she would have a **Trial by Jury, in a court of equity, as a Constitutional right**; and, thus, her costly Appeal.
>
> Hampton notes here that the twenty minute allotted time to argue at hearing on PROF's *Motions for Summary Judgment* and *Demurrer*, was insufficient to present all the evidence that would have been provided in her three-day Trial by Jury. It would appear the court did not consider all the evidence, for there was "sufficient" evidence presented by Hampton in "submitted" *Discovery Admissions,* from both sides, and her Exhibits A – T thereto, to show the Assignment of the Deed of Trust ("DOT") and the Deed of Foreclosure ("DOF") were **materially defective and in dispute** and PROF was not entitled to *Summary Judgment* or possession. Those motions were "fatally" decided, and prevented Hampton's "Constitutional Rights" to a Trial by Jury."

How could Virginia's Supreme Court conclude "there is no reversible error in the judgment complained of" where the evidence clearly demonstrates that in a *de novo* review:

1. The Deed of Trust (DOT) should have been found as *void ab initio*

Appendix W's attachment presented at the hearing on Hampton's *Motion to Dismiss* as a copy of her Reply Brief to SCOTUS 9-25-19 [No. 18-9127] from pages 1-2:

"As to Countrywide ("CW") and the origination of Hampton's loans:

> Under Code of Virginia Section 6.2-1629. Prohibited practices; authority of the Attorney General: A. ... **no person** that is engaged in the business of originating residential mortgage loans in the Commonwealth **shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction**. (emphasis added)

Hampton was deceived, fraud is evident in the transaction staged with HSBC, and she was sold a re-finance loan they clearly knew was subprime and/or unaffordable.

CW's wrongdoing, once again, is further evidenced in the Deed of Trust, where:

> "Under Code of Virginia Section 6.2-1614. Prohibitions applicable to mortgage lenders and mortgage brokers. No mortgage lender ... shall 1. **Obtain any agreement or instrument in which blanks are left to be filled in after execution**; ... 5. ... submitting false information in connection with an application for the mortgage loan, **breaching any representation or covenant made in the agreement or instrument**, or failing to perform any other obligations undertaken in the agreement or instrument; ... 7. Knowingly or **intentionally engage in the act or practice of refinancing a mortgage loan within 12 months following the date the refinanced mortgage loan was originated, unless the refinancing is in the borrower's best interest** ..." (emphasis added)

Clearly, the blanks in the DOT at time of signing the same were a violation of the above. The blanks referred to page nos. of the re-financed [subprime] loans, and were never filled in thereafter and, in fact, they were **struck through** as if it were not a re-finance, concealing the fact that CW was not entitled to a prepayment penalty for an in-house refinance, in addition to the fraud and deceit in recorded documentation with the Clerk's Office, in support of Hampton's claim to a *void ab initio* DOT. Notable also is this refinance was done within 11 months and was not in Hampton's best interest, since it was set to fail, as clearly it was "unaffordable.";

2. The Note had separated from the mortgage through assignment of the mortgage only and, thus, the mortgage loan was a nullity and no one had a right to foreclose per:

> "*Carpenter v. Longan 16 Wall. 271, 83 U.S. 271, 274, 21 L.Ed. 313 (1872), the U.S. Supreme Court stated 'The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while assignment of the latter alone is a nullity.'*";

Thus, the Assignment of the DOT from MERS to BANA failed to assign the same to Fannie Mae – the holder of the Note – creating a separation of the two, making the assignment a nullity. This assignment came six years after the DOT and three years after BANA took over. BANA clearly misrepresented itself as owner of the Note and Mortgage for purposes of foreclosure, which they attempted to do four times in a six month period following execution of that assignment.

3. That PROF, through its purported attorney in fact, Fay Servicing, LLC, and its assigned Substitute Trustee, Samuel I. White, P.C., proceeded with a Substitution of Trustee and foreclosure, where they had no rights to do so, were not secured by the DOT, nor was an assignment of the DOT filed in the courts prior to foreclosure to show they were secured thereby, and thus the foreclosure was invalid as was the Unlawful Detainer cases and in violation of **Code of Virginia §55-59(9):**

> "***The party secured by the deed of trust, or the holders*** of greater than fifty percent of the monetary obligations ***secured thereby***, shall have the right and power to appoint a substitute trustee or trustees ... *The instrument of* ***appointment shall be recorded*** in the office of the clerk wherein the original deed of trust is recorded ***prior to or at the time of recordation of any instrument in which a power, right, authority or duty conferred by the original deed of trust is exercised.***" (emphasis added);

4. Where, further, the Trustee clearly violated his Oath to the Deed of Trust, acting as a biased fiduciary, and failed to comply with all conditions precedent to foreclosure, such as notice requirements, HUD regulations and IFR Remediation Guidelines through Consent Orders with the OCC/US Treasury; (See *Petition for Appeal,* Appendix P, para. 31, bridging pages 15 – 18, re violations, etc.) and still further

5. Trustee ignored the fact that there was a "cloud on title" on the property that needed to be removed via "Corrective Affidavit," prior to sale of the property, as well as a dispute between the parties regarding any default under the security instrument, and further where a judicial proceeding had been filed to challenge any rights to foreclose prior to the foreclosure.

All of the above, and much more, being evident from Petitioner's *Petition for Appeal* to the Supreme Court of Virginia, herein Appendix P, pages 6 through 22, which provided a preponderance of the evidence or could have at the Trial by Jury which Petitioner was "denied." Also, all the evidence has been preserved in the record, which exceeds 2,000 pages.

Still further to para. 32, pages 18-19 of Appendix P, Petitioner quotes:

> "32. Hampton's Civil Cover Sheet and US District Court, Eastern District of VA, December 4, 2015, No. 1:15CV1624, filed to stop the foreclosure December 7, 2015, was presented at the Trustee Sale, but White ignored. (H.E.25) **(H.A.H)**
>
> As laid out in Hampton's *Request for Admissions*, noted in #21, based on the foregoing **Exhs. A – H,** PROF through White proceeded with foreclosure, knowing all of the above, yet their responses deny any "wrongdoing."
>
> It should be obvious to this court, as Hampton believes it would have been to her jurists, White on behalf of Fay/PROF did not fulfill all

requirements precedent to foreclosure per the DOT, nor did they have a right to proceed with the same."

Still further to the above, on page 22 of Appendix P, Petitioner quotes.

> "As laid out in Hampton's *Request for Admissions*, noted in #22, based on the foregoing **Exhs. I – T**, PROF through White proceeded with post-foreclosure filings, knowing all of the above, yet their responses deny any "wrongdoing."
>
> As can be seen from the List of Exhibits (through 48), there was much more testimony and exhibits to be presented to the jury in support of the effects of the "wrongdoings," and to the costly, even duplicate, expense to Hampton and to her welfare, her reputation and her physical, mental and financial well being."

Petitioner had been trying diligently to stay the Circuit Court's judgment, as well as find a new home, both to no avail. Specifically, Petitioner had not been able to secure affordable housing (in the richest county in the U.S.), and has become "homeless" during this ongoing Pandemic. Petitioner is also burdened with "two" petitions herein, as well as accompanying large appendices (270 pages herein and 201 pages in the primary unlawful detainer case), and am a *pro se* litigant, who receives no help from outside sources, burdened with heavy expenses, while living solely on social security, and proceeding *in forma pauperis*, which is a direct result of respondent's negligence and wrongdoing and that of all prior parties who have purported to be a party to her home and property – her "life and liberty."

Being in suit in the courts for over five years, the same has involved a great deal of time and stress, being *pro se*, and a great deal of expenses, while still maintaining a decaying 42-year-old trailer-built dwelling and the property, which Petitioner has been fighting for, on social security benefits only, which is why she is *pro se*. Also, being an indigent should not deprive her of her Constitutional rights

and she would more than likely not be an indigent if she had not had the expenses of representing herself before the courts and if Countrywide Home Loans, Inc. (CW), Bank of America, N.A. (BANA) or Respondent PROF-2013-S3 Legal Title Trust (PROF) had offered the HAMP modification mandated under the OCC FRB Financial Remediation Framework – IFR by Consent Orders with the OCC/U.S. Treasury and dating back to July 29, 2009; nor would there have been a suit before this honorable court, or any other.

In summation, the respondent has "unlawfully taken" Petitioner's home, and the courts have allowed them to do so, in violation of my Constitutional Rights to due process and the protections of the law, as well as to her rights to defend the property from such "unlawful takings," whereby she has also been deprived of her Trial by Jury, where jurist "would have come to but one conclusion" contrary to that of the courts, given the preponderance of the evidence.

PROF, their agents, trustees, and such, have all knowingly proceeded with this "unlawful taking." And, it is still a further crime that a stay was not granted and thus the "unlawful taking" took place before this Supreme Court examines the merits and makes its decision to allow "justice" to prevail. Petitioner knows that based on the merits of her case, justice must prevail to uphold citizens' Constitutional rights. Petitioner only prays that the Court grants her Petitions for Writs of Certiorari and justice does prevail on those merits, to not only her benefit, but to all U.S. citizens who are entitled to due process and protections of the law, as laid out in our Constitution.

Since Petitioner's *Petition for Appeal* before the Supreme Court of Virginia and its record are so voluminous (far exceeding 2,000 pages), Petitioner is providing in her *Appendix*, not only the *Orders* in the record, but also her filings at the Supreme Court level, as well as those referenced in the lower case proceedings, which were used to simplify a review of the *Petition for Appeal* (Appendix P). Also provided in the Appendix are Petitioner's further filings in the Supreme Court of Virginia, on raising Constitutional Rights, including:

Appendix N: *Petition for Rehearing*;

> Quoting from page 4, "Hampton requested herein ... to find (in this court's 'de novo' review of the truths and merits) **that Appellant was deprived of her Constitutional Rights to a 'fair' trial by jury, where again 'reasonable minds would have come to but one conclusion when viewing the evidence,'** ... And still further **to address the Constitutionality of granting Demurrers to non-judicial foreclosures and ... unlawful detainer statutes and**, more particularly, a citizen's **Constitutional rights to defend one's property from 'unlawful takings' without due process."**
>
> Quoting also from pages 5-6, "By the same evidence, demurrer should not have been sustained. It would also seem that dismissing on demurrer, without considering all that evidence, and that which would have been offered at trial, could be considered an abuse of discretion. **The relevant factors that should have been given significant weight, i.e., breach and violations to the DOT, were not considered and an improper factor, i.e., a "defective" DOF, was considered.** This abuse of discretion is also evident in Hampton's prior suit via failure of the court to consider the Judicial Notices, praeciped for the same day as that prior "fatal" Demurrer hearing.
>
> These are the reasons why Hampton has always felt that non-judicial foreclosures and demurrers thereto are unconstitutional. And in the case of a UD, it would appear the statutes to them are as well, if all the court can consider is the DOF and its filing in the court as being "prima facie" evidence."

Appendix O: *Notes from Oral Argument*; and
Quoting from pages 4-6, "'This Court should find, given Hampton's evidence herein that **the earlier case was dismissed on administrative convenience and was not properly reviewed**.'

... So it is **not clear** how **res judicata** should apply here! ...

This Court in a de novo review is hoped will **decide 'without deference' to a previous court's decision** and, in doing so, consider the truths to the allegations ... in the facts and arguments herein, and not on those prior demurrers.

This is not an injury case, as in man vs. man, and after a careful review of the facts, it should not take much to determine that those prior suits, although perhaps not pled well, contained sufficient evidence therein, to find a cause of action and further set aside the foreclosure action itself.

This being a UD case, it appears to me that the **statutes ... offer no protections of the law and violate citizens' Constitutional rights to due process in defending one's property from unlawful takings.**"

Appendix Q: Appellant's *Response to Motion to Dismiss Petition for Appeal.*

Quoting from page 5, "Hampton was deprived of her Constitutional Rights to a "fair" Trial by Jury and from the ruling below, **it also appears that Demurrers to non-judicial foreclosures offer no protections of the law and violate citizens' Constitutional Rights to due process in defending their Property from 'unlawful takings.'"**

And, as detailed on page 3 of the Appendix' Contents, Petitioner's filings in the Circuit Court, as particularly referenced in the *Petition for Appeal*, are included as:

Appendix R: *Objections to the Final Order*;

Quite nearly everything in the arguments to the *Petition for Appeal* (Appendix P herein) was quoted from the *Objections* and therein cite where each element was brought to attention in its quoted material from the following Motions:

Appendix S: *Motion for Rehearing or in the Alternative Motion for a Mistrial Supporting Memorandum of Law*;

Appendix T: *Motion for Rehearing or in the Alternative Motion for a Mistrial*;

Appendix U: *Motion for Reconsideration of Further Support to Memorandum of Law*;

Appendix V: *Motion for Reconsideration and Supporting Memorandum of Law* (with attachments from related Civil Case No. 98163-00); and

Appendix W: Hampton's *Motion to Dismiss* (with attachment from related SCOTUS No. 18-9127 Reply Brief):

> "As was raised in the General District Court, in *Parrish v. Federal National Mortgage Association* (292 Va. 44, 787 S.E.2d 116 (2016), the Supreme Court of Virginia held that "where a borrower raises a bona fide question as to the validity of title in a case originally filed in the General District Court (or subsequently appealed to the Circuit Court from the General District Court), **the case must be dismissed without prejudice because the General District Court lacks original subject matter jurisdiction to adjudicate the validity of title.**"

All of these circuit court filings have been referenced in quotes in the *Petition for Appeal*, particularly to show where in the record they have been preserved.

CONSTITUTIONAL AND STATUTORY PROVISIONS DETAILED

The reasons for granting the Petition fall on the federal constitutional provisions that are involved in this petition and are found in the **United States Constitution (Petitioner's bold emphasis added):**

Amendment V:

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

The U.S. National Archives, **The Bill of Rights – Fifth Amendment – Rights of Persons:**

From page 1341:

> "... the Court has been clear that it **may and will independently review the facts when the factfinding has such a substantial effect on constitutional rights.** [Fn. 360] 'In cases in which there is a claim of denial of rights under the Federal Constitution **this Court is not bound by the conclusions of lower courts, but will re-examine the evidentiary basis on which those conclusions are founded.**' Niemotko v. Maryland, 340 U.S. 268, 271 (1951); Time, Inc. v. Pape, 402 U.S. 279, 284 (1971), and cases cited therein."

Hampton believes that had she not been denied her three-day trial by jury, she would have prevailed on the merits, with a preponderance of evidence.

From page 1346:

> "It may prevent confusion, and relieve from repetition, if we point out that some of our cases arose under the provisions of the Fifth and others under those of the Fourteenth Amendment to the Constitution of the United States. ... it may be that questions may arise in which different constructions and applications of their provisions may be proper. ... The most obvious difference between the two due process clauses is that the Fifth Amendment clause as it binds the Federal Government coexists with a number of other express provisions in the Bill of Rights guaranteeing **fair procedure and non-arbitrary action, such as jury trials**, grand jury indictments, and nonexcessive bail and fines, **as well as just compensation**, whereas the Fourteenth Amendment clause as it binds the States has been held to contain implicitly not only the **standards of fairness and justness** found within the Fifth Amendment's clause but also to contain many guarantees that are expressly set out in the Bill of Rights. In that sense, the two clauses are not the same thing, but insofar as **they do impose such implicit requirements of fair trials, fair hearings**, and the like, which exist separately from, though they are informed with, **express constitutional guarantees**, the interpretation of the two clauses is substantially if not wholly the same. ... Finally, it should be noted that some Fourteenth Amendment interpretations have been carried back to broaden interpretations of the Fifth Amendment's due process clause, such as, e.g., **the development of equal protection standards as an aspect of Fifth Amendment due process.**"

From page 1348:

> "... in observing the **due process guarantee, it was concluded the Court must look 'not [to] particular forms of procedures, but [to] the very substance of individual rights to life, liberty, and property.'** ... The phrase 'due process of law' does not necessarily imply a proceeding in a court or a plenary suit and trial by jury in every case where personal or property rights are involved. ... **What is unfair in one situation may be fair in another. ... The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished – these are some of the considerations that must enter into the judicial judgment.**"

Looking to the very substance of Hampton's rights to life, liberty, and property, as evidenced in the facts, it should be obvious that unfair judgments have

so adversely affected her life by the loss of her home and property, thus rendering her "homeless" and by those with "dirty hands" for failure of all parties to abide by the precedents conditioned in the DOT, and in further failing to offer up the mandated HAMP modification, she was approved for in July, 2009, where BANA required her to go bankrupt to qualify for the HAMP, which in turn destroyed her excellent credit. Hampton, just as in *Wigod* [*Wigod v. Wells Fargo Bank*, 673 F.3d 54 (7th Cir. 2012)], has been waiting over ten years for her HAMP modification, retro to July 29, 2009, as mandated by the Independent Foreclosure Review Remediation Framework and 'Consent Orders' with both US Bank on behalf of its Trusts, as well as BANA, and instead of complying with those mandated remedies, PROF, and its agents or assigns, proceeded with foreclosure in violation of the precedents to the governing DOT and where foreclosure was not permitted by PROF, an unsecured purported note holder, who exercised the right to foreclose, but had no power to do so.

This court should find that PROF and all its associated agents, attorneys and trustees, as well as prior holders and/or assigns, and, accordingly, prior courts have violated the US Constitution by taking this citizen's property in a "non-judicial foreclosure" without due process and "fairness" in any proceedings. In over five years of litigation, Petitioner has never been extended "due process" in violation of the Fifth and Eleventh Amendments, as due process is defined by this court.

From page 1356:

"Substantive Due Process

> Justice Harlan, dissenting in *Poe v. Ullman*, [Fn. 65: 367 U.S. 497, 540, 541 (1961). The internal quotation is from Hurtado v. California, 110 U.S. 516, 532 (1884). Development of substantive due process is noted, supra, pp. 1343-47 and is treated infra, under the Fourteenth Amendment.] observed that one view of due process, 'ably and insistently argued ..., sought to limit the provision to a guarantee of procedural fairness.' But, he continued, due process 'in the consistent view of this Court has ever been a broader concept .... **Were due process merely a procedural safeguard it would fail to reach those situations where the deprivation of life, liberty or property was accomplished by legislation** which by operating in the future could, given **even the fairest possible procedure in application to individuals, nevertheless destroy the enjoyment of all three.** ... Thus the guaranties of due process, though having their roots in Magna Carta's '*per legem terrae*' and considered as procedural safeguards 'against executive usurpation and tyranny,' have in this country 'become bulwarks also against arbitrary legislation.'"

The courts have contributed to Hampton's deprivation of life, liberty or property and any state laws allowing this deprivation must be examined under the Constitution of the United States.

From page 1357-1359:

> "The Fifth Amendment, which is applicable in the District of Columbia, does not contain an equal protection clause as does the Fourteenth Amendment which applies only to the states. **But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive.** The **'equal protection of the laws' is a more explicit safeguard of prohibited unfairness than 'due process of law,'** and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process."

Although Hampton has not made a case for discrimination, there have been several occasions in the courts when she has felt discriminated against due to being a *pro se* litigant, where the truths or evidence have been ignored.

> "... Although the Court has not assumed to define 'liberty' with any great precision, that **term is not confined to mere freedom from bodily restraint.** Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental

> objective. Segregation in public education is not reasonably related to any proper governmental objective and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary **deprivation of their liberty in violation of the Due Process Clause.**
> ...
> 'Equal protection analysis in the Fifth Amendment area,' the Court has said, 'is the same as that under the Fourteenth Amendment.' ... **However, almost all legislation involves some degree of classification among particular categories of persons, things, or events**, and, just as the equal protection clause itself does not outlaw 'reasonable' classifications, neither is the due process clause any more intolerant of the great variety of social and economic legislation typically containing what must be arbitrary line-drawing. ... for example, the Court has sustained a law imposing greater punishment for an offense involving rights of property of the United States than for a like offense involving the rights of property of a private person. ...
> ...
> The federal sovereign, like the States, must govern impartially. ... [B]ut ... there may be overriding **national interests which justify selective federal legislation** ...."

It is with this section that Hampton believes that there is "national interests" that the doctrine of non-judicial foreclosures should be uniform and nationwide, or banned as unconstitutional. Why not require one to prove that one has a right to foreclose before exercising the right of it. This is what Hampton has experienced in her case, whereby she has lost her very home and property of 25 years to the dirty hands of those who had no right to foreclose. This is also why Hampton feels that non-judicial foreclosures should be barred as unconstitutional!

Amendment VII:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Still further to Jury Trials, Petitioner's Appendix N, *Petition for Rehearing* in the Virginia Supreme Court, stated as follows:

"Hampton is hopeful with 'new eyes' that one will recognize the problems with this Court's initial Decision, and understand how she was both 'shocked and dismayed' by that Decision. For to render such, in her opinion, particularly in a de novo review, is to deny her due process and protections under the law as laid out in the Virginia and U.S. Constitution and Virginia's Bill of Rights."

Again, under the Bill of Rights:

"That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken ... That **in controversies respecting property**, and in suits between man and man, **trial by jury is preferable to any other, and ought to be held sacred.**"

This Court [SCOTUS] has determined that the loss of an individual's home constitutes a final, lasting deprivation of property entitling him/her to the protection of the due process clause. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538-541 (1985) ("The point is straightforward: the Due Process Clause provides that certain substantive rights – life, liberty, and property – cannot be deprived except pursuant to constitutionally adequate procedures").

Factors roughly in order of priority that have been considered to be elements of a fair hearing: (1) an unbiased tribunal; (2) notice of the proposed action and the grounds asserted for it; (3) an opportunity to present reasons why the proposed action should not have been taken; (4), (5) and (6) the right to call witnesses, to know the evidence against one **and to have decision based only on the evidence presented**; (7) counsel; (8) and (9) the making of a record and a statement of reasons; (10) public attendance; and (11) judicial review. Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267, 1279-95 (1975). **[Petitioner's Emphasis Added]**

Petitioner, with this wrongful foreclosure and eviction, has been permanently deprived of her ownership, possession, and use of the property, which she used as her primary residence for over 25 years; this clouds the title to the property even further than it already was with the need for a "Corrective Affidavit"; further impairs her ability to sell, rent, or otherwise alienate the property; taints her credit rating; reduces the chance of her obtaining a future loan or mortgage; has subjected her to eviction and homelessness; and jeopardizes her security in a dwelling place. And where with compliance of the mandated remedies to the IFR Remediation Framework, Hampton could have profited years ago and has received no compensation where she has spent hundreds of thousands of dollars invested in the property, which she has been deprived of those who have no right to do so.

In addition to the loss of property, adverse judgments as well as bankruptcies are lasting marks on one's integrity, honor and character. For where a person's good name, reputation, honor or integrity is at stake, due to the taking of the property, should surely be held as unconstitutional and should have been found void as well as to the foreclosure itself, and particularly with the evidence that supports the facts that all Deeds and Assignments on the property should be held void, including the DOT as *void ab initio*.

Still further, in addressing the question of Petitioner's right to a jury trial and due process, the court scheduled the Trial by Jury, which Petitioner was entitled to, and had the trial NOT been cancelled by the bench's *Orders* on *Summary Judgment* and *Demurrer*, due process and justice would have prevailed

where jurist would have found the foreclosure, as well as all recorded Deeds on file, to be void as a matter of law.

As stated in Petitioner's primary case herein, Petitioner tried to obtain a further Stay in the Circuit Court, as well as two attempts here in this Court (in addition to a request for a further extension of time), given Hampton's "homeless" situation and her need to prepare two Petitions together with "**two**" large Appendices. The courts denied those petitions to stay ... [and] the eviction took place ... on July 14, 2021, rendering Petitioner as "homeless." Accordingly, even the procedural process for obtaining the same seems "unconstitutional" where the courts have permitted this "unlawful taking," prior to judgment on the merits.

Amendment XIV, 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 the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**"

It is a fundamental principle that one has the right to protect his or her property from its "unlawful taking" by another. Consistent with the United States Constitution, the **Virginia Constitution, Article I, §1 states**:

> "[A]ll men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

And Article I, §11 further states:

> "... no person shall be deprived of his life, liberty, or property without due process of law. ... That in controversies respecting property, and in suits between man and man, **trial by jury is preferable** to any other, and **ought to be held sacred.**"

Failure of due process began with the non-judicial foreclosure and despite all **facial and material defects** to the Deed of Assignment (from BANA to PROF), filed post foreclosure, and the Deed of Foreclosure itself, the court has permitted these violations to occur by its clearly erroneous finding and/or abuse of discretion for failing to weigh the evidence from both sides. The relevant factors that should have been given significant weight, i.e., breach and violations to the DOT, were not considered and an improper factor, i.e., a "defective" DOF, was considered. This can be clearly seen in the evidence provided in this case, where the courts have either ignored, overlooked or misinterpreted the same. This abuse of discretion is also evident in Hampton's prior suit via failure of the court to consider the Judicial Notices, praeciped for the same day as that prior "fatal" *Demurrer* hearing.

Still further on Due Process (**Petitioner's bold emphasis added**):

"As taken from William & Mary Bill of Rights Journal [Val. 22:1221 2014] pp. 1245-1246, Julie A. Cook, J.D. Candidate, 2014, William & Mary School of Law; B.H., 2011 *magna cum laude*, Clemson University. "Consider the following:

> In light of the recent decision announced by the Supreme Court of the United States in *Ashcroft v. Iqbal*, the pleading standard established under Federal Rule of Civil Procedure 8(a)(2) requires that, in order to survive a motion to dismiss, a complaint must contain sufficient factual matter to 'state a claim to relief that is plausible on its face.' With respect to *pro se* plaintiffs, Federal Rule of Civil Procedure 8(a)(2) **is unconstitutional because it violates an individual's procedural due process rights** by requiring a pleading standard that a layperson finds difficult to satisfy. ...
>
> ...
>
> The argument presented in this Note is analogous to the deprivation of *pro se* litigants' right to due process. Just as *pro se* litigants lack the

> information and expertise necessary to pass muster under the standard of Rule 8, resulting in the premature dismissal of their claims, plaintiffs asserting negligent misrepresentation claims may not have the tools necessary to satisfy heightened pleading. The lack of uniformity in courts in applying a pleading standard, as demonstrated by the current federal circuit court split, prevents plaintiffs from receiving adequate notice of what is sufficient to avoid dismissal. Courts conflation of the elements of negligent misrepresentation with fraud also contributes to the dismissal of claims that might otherwise have merit. Finally, the inconspicuous elements of negligent misrepresentation, when paired with the requirements of heightened pleading, present an undue burden on plaintiffs who, at the outset of a claim, are unable to utilize the tools of discovery. ... **a material injury constituting a deprivation of plaintiff's rights to procedural due process.**"
>
> ...
>
> "The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint," not to "resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243-44 (4th Cir. 1999). ... A claim is plausible if the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," and if there is "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The Court restated the substance and application of the *Bell v. Twombly* test for the sufficiency of pleadings: "Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, **be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.**"
>
> ...
>
> The refusal of the Trial Examiner to receive and **consider competent and material evidence which could have been offered after a reasonable opportunity to meet the charges amounts to denial of due process**, and the fact that the Board had reached, or might have reached, no different conclusion had the rejected evidence been received is entirely beside the point. *N.L.R.B. v. Burns*, 8 Cir., 1953, 207 F.2d 434.

Clearly, Petitioner herein has been denied due process by not only the Circuit Court, but also by the Supreme Court of Virginia, whose *Opinion* stated "there is no reversible error in the judgment complained of."

From *The Making of Modern Law: U.S. Supreme Court Records and Briefs, 1832-1978*, containing the world's most comprehensive collection of records and

briefs brought before the nation's highest court by leading legal practitioners – many who later became judges and associates of the court, Hampton wishes to draw particular attention to portions of the following Jurisdictional Statement.

In the matter of *Flora Daun Fowler, Appellant v. Maryland State Board of Law Examiners*, No. 77-801, 434 U.S. 1043, 98 S.Ct. 844, 54 L.Ed2d 793 (1977), quoting from her Jurisdictional Statement:

> "The federal constitutional provisions involved in this appeal are found in the United States Constitution, Amendment XIV, 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 the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'
>
> ...
>
> Where federal action is concerned: 'The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes with the "liberty" and "property" concepts of the provisions of the Fifth Amendment to the Federal Constitution that no person shall be denied liberty or property within due process of law. *Green v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400'
>
> The Fourteenth Amendment protects liberty or property from state action lacking due process provisions.
>
> ...
>
> The nature of notice and hearing was elaborated upon in the case of *Hornsby v. Allen*, 326 F.2d 605.
>
> > 'Due process in administrative proceedings of a judicial nature generally requires conformance to fair practices of Anglo-Saxon jurisprudence, and this is equally equated with adequate notice and fair hearing – requirements that parties be allowed opportunity to know opposing parties' claims, to present evidence to support their contentions, and to cross-examine opposing parties' witnesses, but strict adherence to common law rules of evidence at hearing is not required.'

> ...
> The Fourteenth Amendment demands that a state treat all citizens alike, unless there is a sufficient reason to treat them differently. The concept of equal protection has been traditionally viewed as requiring uniform treatment of persons standing in the same relation to the action of government. The Equal Protection Clause requires that state laws be applied uniformly to situations which cannot be reasonably distinguished.
> ...
> For the reasons set forth in this Jurisdictional Statement, the questions presented herein being substantial and of public importance, should be heard and decided on this appeal."

The integrity of the rule of law is at stake, as the most basic of our due process rights are involved.

It is a fundamental principle that one has the right to protect his or her property from its unlawful taking by another. Consistent with the United States Constitution, the Virginia Constitution states:

> [A]ll men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Va. Const., Article I, §1. It further states that "no person shall be deprived of his life, liberty, or property without due process of law." Va. Const., Article I, §11.

The federal government, the states, and the courts of all levels, are tasked with the daunting task of protecting the property rights of citizens from theft, conversion, fraud, and otherwise "unlawful takings." One's property rights can be protected through criminal proceedings, through civil proceedings, and sometimes both. This is a civil action appeal filed to defend and protect Hampton's property rights *from the unlawful taking of those rights* by PROF.

AUTHORITIES AND ARGUMENTS

Restating from Hampton's *Petition for Appeal* (Appendix P, beginning pages 26-27) statements originally made in her *Objections to the Final Order on Demurrer to Counterclaims & Sanction Action* (Appendix R), in part:

> "So here Judge Sincavage is stating that this was not a review of the General District Court's rulings or proper findings, but, in fact, **a trial de novo, without deference to a previous court's decision**. But yet, on demurrer, **the court dismisses the trial de novo, based on the prior case, where neither the Unlawful Detainer count was addressed or ruled on, nor the 'wrongful foreclosure' count**. ...
>
> For the courts to allow these demurrers, what speaks to Hampton here is that the courts find no 'wrongful behavior.' This should not be the case, where a dismissal on demurrer is designed to weed out cases for the courts, not to throw them out because it is too much to read and/or comprehend as in Hampton's case and her complained of 'volumes of pages of a Complaint and its exhibits,' where its size was necessary considering it spanned a 15-year period of abuse, neglect and wrongful behavior. Here, again, **a trial by jury is a Constitutional Right** and Hampton's rights have been continuously denied by these demurrers.
>
> Absent a full review of what has gone before in that prior case, this court on Unlawful Detainer should not have accepted as true that *res judicata* applied here, as it was argued by those who do not wish for the 'truth of the allegations' to be heard and/or decided on its merits."

Since Petitioner's Counterclaims were sustained on demurrer, based on Hampton's prior suit, also dismissed on demurrer – though the facts are clear that it should not have been based on the evidence – the issue here relies on the doctrine of **Res Judicata**. Petitioner wishes to add here that at no time has PROF or counsel for PROF admitted to "the truth of the facts alleged in the pleading to which it is addressed, as well as any facts that may be reasonably and fairly implied and inferred from those facts." And to the contrary, they have denied any wrongdoing,

as can be seen in the *Admissions* that Hampton provided to the Circuit Court in response to PROF's *Motions on Summary Judgment* and *Demurrer.*

AUTHORITIES AND ARGUMENTS

Hampton's *Petition for Appeal* (Appendix P) page 24, quotes as follows:

Res Judicata

"Res judicata involves both issue and claim preclusion." *Funny Guy, LLC v. Lecego, LLC*, 293 Va. 135, 142 (2017). While claim preclusion bars relitigation of a cause of action, issue preclusion bars relitigation of a factual issue. *D'Ambrosio v. Wolf*, 295 Va. 48, 56 (2018). Whether a claim or issue is precluded by a prior judgment is a question of law this Court reviews de novo. *Caperton v. A.T. Massey Coal Co.*, 285 Va. 537, 548 (2013).

> [t]he doctrine of res adjudicata is a rule founded on the soundest consideration of public policy. The doctrine is founded upon two maxims of law, one of which is that "**a man** should not be twice vexed for the same cause;" the other is that "it is for the public good that there be an end of litigation." **(bold emphasis added)**

Patterson v. Saunders, 194 Va. 607, 612 (1953) (alteration and citation omitted)

Here PROF is neither a **man,** nor does it have Constitutional rights as Hampton does, nor is it being twice tried and Hampton is not coming through the back door to relitigate or retry the earlier suit. Hampton is trying to have the issues tried for the first time and defending herself from "unlawful takings" and has a Constitutional right to do so.

> "The courts' disposition of legal disputes too often turned not on the substance, truth, or legal sufficiency of the claims litigants asserted, but on obligatory adherence to rigid canons of pleading that, to state a recognized cause of action, procedural law directed parties to observe minutely. Such excessive formalism frequently curtailed the parties' ability to obtain information vital to a full adjudication of the questions at issue, and **thus obstructed achieving the civil legal**

system's most essential goals: securing access to justice, determining the truth behind factual disputes, and deterring wrongful conduct.

Mission to Dismiss: A Dismissal of Rule 12(b)(6) and the Retirement of Twombly/Iqbal, Cardozo Law Review, Volume 40, Issue 1 (2018). **(bold emphasis added)**

"There needs to be a distinction between pleading and proof or evidence, and further "Without courtesy, fairness, candor, and order in the pretrial process ... reason cannot prevail and constitutional rights to justice, liberty, freedom and equality under law will be jeopardized." *Code of Pretrial and Trial Conduct*, p. 2.

One only needs to review the facts to find clear and genuine facts in dispute and as "submitted" in Hampton's *Admissions* (from both sides) with her Exhibits. Hampton also filed *Reconsideration* motions, and then *Motions for Rehearing or in the Alternative Motions for a Mistrial* and *Supporting Memorandum of Law,* to "complete and preserve" the record, before *Final Orders* issued, and to give the court the opportunity to make an informed ruling on the issues to prevent needless appeals and in hopes of "justice" resulting in a **trial by jury, not by the bench.**"

At the hearing granting *Summary Judgment* and sustaining *Demurrer*, Hampton was only permitted 20 minutes to sum up what she would have in her three-day trial by jury, and had presented evidence via Response and "submitted" ***Admissions*** from both parties, and her exhibits thereto, which could prove PROF had no right to summary judgment. The court seemingly ignored those exhibits and based its decision solely on the DOF as being "prima facie" evidence simply by the filing of it by Trustee, which should have been found as an abuse of discretion.

Petitioner's *Petition for Rehearing* stated at page 5:

"By the same evidence, demurrer should not have been sustained. It would also seem that dismissing on demurrer, without considering all that evidence, and that which would have been offered at trial, should be considered an abuse of discretion. The relevant factors that should have been given significant weight, i.e., breach and violations to the DOT, were not considered and an improper factor, i.e., a "defective" DOF, was considered.

> This abuse of discretion is also evident in Hampton's prior suit via failure of the court to consider the Judicial Notices, praeciped for the same day as that prior "fatal" Demurrer hearing."

If the court had examined all the evidence, it should have found that DOF as both "facially" and "materially" defective and found it void or voidable, as well as the foreclosure itself. And, if PROF had not been granted *Summary Judgment*, Hampton's trial by jury should have moved forward and with her evidence before the court, it would have caused a different outcome, no doubt.

Because of this wrongful finding of *Summary Judgment* and *Demurrer*, based on a prior case not truly "litigated," Hampton was deprived of her Constitutional rights to her granted three-day trial by jury. This would seem a contradiction of the law, where a criminal has more rights than a non-criminal.

Hampton still further motioned for a *Rehearing* as a 20-minute hearing was insufficient time to present evidence that would have been presented at the three-day trial by jury, which the court deemed a further *Motion for Reconsideration.* Hampton filed both motions and, more particularly, in the *Motion for Rehearing ... Supporting Memorandum of Law*, she spelled out the evidence and noted violations, and as quoted in her Petition therein:

> ... to "complete and preserve" the record, before *Final Orders* issued, and to give the court the opportunity to make an informed ruling on the issues to prevent needless appeals and in hopes of "justice" resulting in a **trial by jury, not by the bench**.

That motion was denied right before the *Final Orders* were rendered.

Still further argued at *Petition for Appeal*, page 26:

"... This court should review those Petitions as clearly the Circuit Court in that earlier case failed their duties and "did not seek or determine the truth of the allegations," for if it had, it would not have permitted the *Demurrers* and *Pleas in Bar.* All the defendants in Hampton's case were guilty of the alleged wrongdoing and deceived the courts with their responses. They knew full well what they had done wrong, but admitted to nothing.

... Absent a full review of what has gone before in that prior case, this court on Unlawful Detainer should not have accepted as true that *res judicata* applied here, as it was argued by those who do not wish for the "truth of the allegations" to be heard and/or decided on its merits."

From *Petition for Rehearing* quoting from page 8:

"Continuing from Hampton's *Objections to the Final Order on Demurrer to Counterclaims & Sanction Action*:

"... As can be seen in Judge Sincavage's *Final Order*, what Judge Sincavage stated therein as to the issue of demurrer follows.

... "The demonstration of the deed of foreclosure **which has not been found to be invalid**, for the reasons that have been stated previously such an attack isn't cognizable in this litigation"... "and as well because there's been an attempt to attack in a previous case the validity of the foreclosure. That case was dismissed at demurrer, and **that is under the law a decision on the merits.**" ... where Judge Sincavage further found: "It was the same transaction and occurrence and **all the issues relating to the foreclosure sale either were or should have been litigated in that case**, so on the ground I find that the demurrer to the counterclaim should be – to the document called counterclaim and sanctions should be sustained in all respects."

How could this be true, where clearly the merits and most of the evidence were already in that earlier case and, again, how is a pro se litigant expected to know the law to avoid a demurrer, especially where there was convincing evidence to the wrongful behavior, which should prove the court's abuse of discretion. Petitioner adds here that "the idea of presumption of knowledge of law" for a pro se litigant seems unconstitutional as well.

Continuing from *Petition for Rehearing*:

"And restating from Hampton's first *Motion for Reconsideration*:

"... **what does it take to survive a *Demurrer* where clearly the evidence shows that before a trial by jury, Hampton would have prevailed with a preponderance of the evidence. There is no justice in dismissing on *Demurrer*, where the evidence can prove otherwise.** It is PROF who fears this outcome, because surely they would not survive a trial by jury. ... **And this court has failed Hampton on her rights to defend her property from the "unlawful taking" of the same against her Constitutional Rights to Due Process, and this court has failed in protecting Hampton from the same.**

...

Still further to res judicata and due process in Hampton's case:

"Due process in an administrative hearing includes a fair trial, conducted in accordance with the fundamental principles of fair play and applicable procedural standards established by law. Administrative convenience or necessity cannot override this requirement." *Swift and Co. v. United States*, 7 Cir., 1962, 308 F.2d 849; *Hornsby v. Allen*, 5 Cir., 1964, 326 F.2d 605.

The lower court in that prior suit should have found predatory lending, a *void ab initio* DOT and the "Cloud on Title" evident requiring a "Corrective Affidavit," and clearly with the violation of the Consent Orders, and breach to and violations to the governing DOT, a "wrongful foreclosure" had occurred and should have been set aside and Hampton had exercised her rights to file suit before foreclosure and challenged then Defendants' on their conduct and right to Title.

This Court should find, **given Hampton's evidence herein** (all related to the sale of the Property), that the earlier suit was never tried, there were no admissions to the facts, there was no discovery, where clearly the court failed to address all the evidence and abused their discretion on the judicial notices pled, was not properly reviewed, and was dismissed on administrative convenience, thus not truly tried and res judicata cannot apply.

Here PROF is neither a **man**, nor is it being twice tried and Hampton is not trying to come through the back door to relitigate or retry the earlier suit. Hampton is trying to have the issues tried for the first time and defending herself from unlawful takings by thieves and she has a Constitutional right to do so.

Still further from the *Motion for Reconsideration*:

"Hampton had requested and the court permitted a trial by jury, but has been deprived of proving to the court that their bench trials have been improper, unfair, and unconstitutional given the facts and evidence herein. Clearly, these rulings are unconstitutional! And it would appear to Hampton that a criminal, which she is not, has every right to a trial by jury, but Hampton's [case] has been dismissed and not permitted to be tried by jury, but instead by a single judge. ... Hampton believes that Demurrers to non-judicial foreclosures should be banned as unconstitutional."

Continuing from Hampton's *Petition for Appeal*, page 32:

Further to Hampton's Petition to SCOTUS, quoting *Hornsby v. Allen*, 326 F.2d 605:

> "The role of the courts is to ascertain the manner in which this determination **was** or **is made** accords with constitutional standards of due process and equal protection." And "It follows that the trial court must entertain the suit and *determine the truth* of the allegations."

This Court should find, **given Hampton's evidence herein** (the majority of which was in that prior case), that earlier case was dismissed on administrative convenience and was not properly reviewed. Further to Rule 12(b)(6):

> "The plaintiff must allege facts in the amended complaint that 'state a claim to relief that is plausible on its face' and that 'nudges [her] claims across the line from conceivable to plausible.' *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007. A claim is plausible if the complaint contains 'factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,' and if there is 'more than a sheer possibility that a defendant has acted unlawfully.' *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The Court restated the substance and application of the *Bell v. Twombly* test for the sufficiency of pleadings: **'Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'**" (bold emphasis added)

That prior court decision also charged Hampton with not pleading well, but as found in *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938):

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment."

Still further from the *Motion for Reconsideration*:

"Hampton had requested and the court permitted a trial by jury, but has been deprived of proving to the court that their bench trials have been improper, unfair, and unconstitutional given the facts and evidence herein. Clearly, these rulings are unconstitutional! And it would appear to Hampton that a criminal, which she is not, has every right to a trial by jury, but Hampton's [case] has been dismissed and not permitted to be tried by jury, but instead by a single judge.

Hampton has not committed a crime, but this court is doing so by allowing these criminals (SIW, Fay, PROF, and whoever else identified or not) to unlawfully take my home against my Constitutional rights to defend the same and my entitlement to procedural due process and the protections of the law. Hampton believes that Demurrers to non-judicial foreclosures should be banned as Unconstitutional!"

The Fourteenth Amendment to the U.S. Constitution provides:

"*No State shall ... deprive any person of life, liberty, or property, without due process of law ...*"

Granting demurrers to non-judicial foreclosures appears to offer no protections of the law and violates citizens' Constitutional Rights to due process in defending their Property from "unlawful takings."

REASONS FOR GRANTING THE PETITION

Hampton has been fighting for justice not only for herself, but for all the citizens of the U.S., as she has felt this "her path" for over a decade. And despite all the disappointments, of denial to be heard and tried by a jury and afforded due process, as Constitutional rights, she continues, but worries for the future.

Hampton had requested that the lower court's judgment be determined as erred in **sustaining demurrer** and that res judicata was inappropriate to apply, and to find (in that court's "de novo" review of the truths and merits) that Appellant was deprived of her Constitutional Rights to a "fair" trial by jury, where "reasonable minds would have come to but one conclusion when viewing the evidence," ... **And still further to address the Constitutionality of demurrers to non-judicial foreclosures that violate citizen's Constitutional rights to defend one's property from "unlawful takings" and without due process.**

Because the Supreme Court of Virginia has failed to find error in the Circuit Court's rulings, it appears that the unlawful detainer (UD) statutes violate citizens Constitutional rights and particularly in a non-judicial foreclosure setting.

As in Hampton's prior Petition to SCOTUS, and numerous times before all courts, and again herein, quoting *Hornsby v. Allen*, 326 F.2d 605 (5th Cir. 1964):

> "The role of the courts is to ascertain the manner in which this determination **was** or **is made** accords with constitutional standards of due process and equal protection." And "It follows that the trial court must entertain the suit and *determine the truth* of the allegations."

PROF has never produced any evidence that they had a right to possession, and never presented the Note, believed to be forged, and was not entitled to summary judgment, where both the Assignment of the DOT to PROF (post foreclosure) and the Deed of Foreclosure (DOF) had facial and material defects. And, as a matter of law, PROF was not entitled to the remedy of foreclosure, where its purported Note was not secured by the DOT, and the governing DOT should

have been found as *void ab initio*, and where under *Carpenter v. Longan*, the assignment of the DOT was a nullity and, therefore, *void ab initio.*

PROF's Trustee **knew they breached the DOT and noted violations** (as evident in Hampton's Petition spanning six quoted pages), which alone should be found as a reversible error, and knew they had violated their oaths as fiduciary to the DOT, acting only as a biased fiduciary, and further, had to have known that the foreclosure should be set aside. And where Hampton argued:

> "... *When a trustee buys at his own sale, a constructive fraud exists; the transaction is voidable; and when attacked, the sale must be set aside.*" ... *Whitlow v. Mountain Trust Bank*, 215 Va. 149, 152, 207 S.E.2d 837, 840 (1974) ... "As *Whitlow* requires that the foreclosure sale be set aside, the trial court had no legal basis for granting the summary judgment."

From the shear volume of this unlawful detainer, it should appear very complex as it is riddled with a multitude of torts. But despite its scary volume (over 2,000 pages per record), Hampton summed it up in her Petition and the merits should have been examined, as it was believed to be of great interest in setting significant legal precedence and ultimately protecting citizens' Constitutional rights.

It was for the foregoing reasons that Hampton has always felt that non-judicial foreclosures and demurrers thereto are unconstitutional. And in the case of a UD in a post-foreclosure case, it would appear the statutes are as well, if all the court can consider is the DOF and its filing in the court by a trustee as being "prima facie" evidence, despite its inaccuracy or invalidity.

The courts should have examined all the evidence supporting the facts, where there was clear evidence in the Exhibits that PROF was guilty of deceiving the courts and knew they had acted in a manner not consistent with the law or the provisions to the DOT. And that evidence should have changed the lower courts' decisions. By granting *Summary Judgment* and sustaining the *Demurrer*, the court failed its duties regarding procedural due process and abused its discretion.

In summation, the respondent has "unlawfully taken" my home, and the lower courts have allowed them to do so, in violation of my Constitutional Rights to due process and the protections of the law, as well as my right to defend my.property from such "unlawful takings." It would be a further crime for this Supreme Court not to grant this Petition and make its decision on the merits and, thus, allow "justice" to prevail. Petitioner knows that based on the merits of her case, justice must prevail to uphold citizens' Constitutional rights.

Petitioner believes that this Court should review the merits of this case, and should conclude that the decision below was erroneous and/or an abuse of discretion; that irreparable harm has resulted from the decisions below; that PROF has unlawfully taken my home and property, placing me, an elderly woman, into homelessness, during a Pandemic, while still attempting to seek "justice" through this country's superior court; and that this is of incredible interests to the public at large, especially to those citizens facing foreclosures and unlawful detainer suits, and particularly to those in non-judicial foreclosure states. This certainly is my hope

and prayer where our Constitutional rights to defend our property from "unlawful takings" will prevail.

Hampton believes that had she not been denied her three-day trial by jury, she would have prevailed on the merits, with the preponderance of evidence.

Clearly from the facts and merits laid out previously to the courts, there was wrongdoing every step of the way beginning with the sale of the property, which she had lived in for ten years prior to purchase, and as evident by the greed of the TBTF banks (including Countrywide), who had caused a "bubble" to exist, by overpricing or overestimating the values of property.

Now we are at a juncture where the TBTF banks are anxious to profit once again from the oncoming flood of foreclosures, especially with the moratorium on foreclosures, unlawful detainers or evictions lifted, at the expense of innocent citizens.

This court's decision herein should be based on what this court deems to be in the best "interest of justice" and of the citizens of these United States, and their Constitutional rights to defend their property from unlawful takings and without due process is a violation of those rights.

Hampton is also certain that given a **trial by jury**, which "she was deprived of," would have proven that PROF was not entitled to *Summary Judgment*, nor to possession, and further the foreclosure should have been set aside, as the court's jurisprudence calls for. And the court should have found, where the circuit court previously failed to address, that all the deeds on record should be held "void" or

"voidable" and the Deed of Trust (DOT) as "*void ab initio*;" and, as such, no one had a right to possession or to the remedy to substitute a Trustee and foreclose; and particularly where the Assignment of the DOT was a nullity, as has been found in this court in *Carpenter v. Longan.*

Again, upon a review of the merits and a review of the primary case on summary judgment before this Court, which should be obvious from my *Petitions for Appeal* and the "facts/merits" thereto, the judgments of the lower courts in this unlawful detainer action were erroneous and/or an abuse of discretion, and a jury "would have come to but one conclusion when viewing the evidence" contrary to the court's decision. Without considering all the evidence submitted and what would have come before the jury, this should be considered a clear abuse of discretion and a clear violation of Petitioner's Constitutional rights. Still further, if the statutes bar any further consideration of the facts, truths, and merits, then clearly that would be an obstruction of "justice," and those statutes should be rewritten and made constitutional.

Nowhere in my search have I found a case as full of torts involving Predatory Lending, fraud in assignments, material alteration of the DOT making it *void ab initio*, improper assignments and notices of the DOT, wrongful foreclosure, wrong party foreclosing, violations of HUD requirements, violations of federal HAMP programs, violations of Fannie Mae Guidelines, violations of Consent Orders with the OCC/Treasury, and failure to solicit borrowers who qualify for the NMS.