No. _____

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.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI ON APPEAL FROM THE SUPREME COURT OF VIRGINIA DECISION IN RECORD NO. 201105

By: Kathleen C. Hampton, Petitioner pro se
P.O. Box 154
Bluemont, Virginia 20135
Phone: 540-554-2042
khampton47@yahoo.com

APPENDIX

Supreme Court of Virginia Record No. 201105
Loudoun County Circuit Court Civil No. 118605-00
Loudoun County General District Court Case No. GV17013350-00
(Prior Related Case No. GV16004218-00 dismissed 9/26/2016)

App. Page

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHLEEN C. HAMPTON	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 118605-00
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
	)	
Defendant.	)	

FINAL ORDER

On October 18, 2019 this matter came before the Court on the Defendant's Demurrer to the Plaintiff's Counterclaim and Sanctions. Ms. Hampton, the Plaintiff, was present *pro se.* Counsel for the Defendant was present.

For reasons stated of record, as memorialized in the attached Transcript of Hearing Excerpt from October 18, 2019, which is hereby incorporated into this Order, it is hereby

ORDERED that the Demurrer of Defendant PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee is sustained, and that the Plaintiff's Counterclaims and Sanctions is dismissed with prejudice.

This Order was prepared by the Court. Endorsements are dispensed with pursuant to Rule 1:13 and the parties are granted leave to file with the Clerk in writing any exception to the Court's ruling on or before February 21, 2020.

This Order is **final.**

APPENDIX A

Let the Clerk forward a copy hereof without charge to Ms. Hampton and to counsel for the Plaintiff.

ENTERED this 7 day of February, 2020.

Stephen E. Sincavage, Judge

Incorporated into
2/7/20 Final Order
IC 118605
4y

FILED
2020 JAN 10 AM 11:36
CIRCUIT COURT
CLERKS OFFICE
LOUDOUN COUNTY, VA
TESTE: D.C.

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Transcript of Hearing Excerpt

Date: October 18, 2019
Case: Prof-2013-S3 Legal Title Trust -v- Hampton

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www.planetdepos.com

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VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2011-S1 LEGAL TITLE TRUST,
Plaintiff,
vs
KATHLEEN C. HAMPTON,
Defendant.
CASE NO. CL0811B504-00

Recorded Hearing
(Judge's Ruling Only Transcribed)
Friday, October 18, 2019
1:11 p.m.

Job No.: 269223
Pages: 1-21
Transcribed by: Bonnie Panek

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Recorded Hearing held pursuant to agreement, before Donald E. Lane, II, Notary Public of the State of Virginia, at the Circuit Court of Loudoun County, 18 E. Market Street, Leesburg, Virginia, 20176.

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APPEARANCES

ON BEHALF OF PLAINTIFF:
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ON BEHALF OF DEFENDANT:
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CONTENTS

EXHIBITS

(None.)

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PROCEEDINGS

JUDGE SINCAVAGE: All right. Thank you for your patience. There's in this case a lot to think about, a lot to look at. I know these are important matters to both parties and they're important to the court as well, and I want to -- I want to say I do appreciate that clearly each of ya'll have very different positions on this litigation.

And ya'll have been at it for a while as the record shows, and I do appreciate that ya'll have been able to present professional presentations here and you're not -- notwithstanding your differences, and I say this because sometimes it isn't this way where lawyers and litigants are sniping at each other and doing all that, and that didn't happen here and the court does appreciate that.

Now, let me just say to Ms. Hampton that a lot of the arguments that you put forward today and in your papers really sounded and came across like a closing argument in a case where

6

you're challenging the foreclosure and the title, and I understand that because I understand your position as to why it is that you think things should go in a direction in this litigation and why you should be granted certain relief.

And conversely there wasn't really a whole lot of your presentation here today that was really responsive to the issues that were before the court, and that's the motion for summary judgment and the demurrer, and I need to decide the motion for summary judgment and I need to decide the demurrer.

I'm not here today to hear and decide a closing argument in a case that isn't really before the court, so the issue on summary judgment as we have heard said a couple of times here today and have seen the papers, are there any genuine disputes of material facts. And I think an important word there is -- there's a lot of important words there, but one of the most important words for this analysis is material facts.

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And what I mean by that is we need to keep in mind that where we are at in this litigation given previous rulings and given the state of the law is that issues and facts that bear on the validity or invalidity of title aren't material to the inquiry that is being made here today because of the Paris case.

The court's jurisdiction on this -- these matters is derivative of the general court's jurisdiction which per Paris clearly doesn't include the ability, the jurisdiction, the power, the authority to try issues of title.

Now, interestingly at another stage in this case it's been Ms. Hampton, and even today it's been Ms. Hampton who has advocated this position and today even continuing in her quest to have the general district court initially and now this court dismiss Prof's case because of Paris, because it's her position that the case actually shouldn't be here because it involves matters of title.

Now, the court has ruled on that and

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the court did decline to dismiss the claim because the court found for reasons stated at that hearing that Ms. Hampton's claim of -- that title was invalid was not a bona fide claim under the law. Obviously Ms. Hampton disagrees with the court's decision to deny the motion to dismiss.

It doesn't then allow her or any litigant to back up now and ignore Paris, ignore law that you've cited and relied on in the litigation of this case and continue to want to assert, attacks the validity of the title where this case arose in general district court and now is in circuit court after appeal when the law clearly indicates otherwise.

Ms. Hampton can't on the one hand trumpet the law and say you can't have this type of case here where a title is tried, I want it dismissed, and then continue to have title interjected into the issues that she wants tried, so the issue in the plaintiff's claim is an unlawful detainer claim and nothing more.

So the materiality of the dispute must

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be seen in the light of unlawful detainer action and unlawful detainer action only, so start with looking at the summons. There was a summons filed for unlawful detainer in January of 2017 and you look at the code 801126.

Let's see, I always -- D4, if on the day of a foreclosure sale of a single family residential dwelling unit the former owner remains in possession of the dwelling -- said dwelling unit such former owner becomes a tenant at suffering. Such tenancy may be terminated by written termination notice from the successor owner given to such tenant at least three days prior to the effective date of termination.

So when we examine the record properly in this case of matters that can be considered on summary judgment, including admissions, we have listed as Exhibit 1 to the motion for summary judgment the deed of foreclosure which is instrument number 20160513 which was referenced in the request for admissions.

And among the responses to that is Ms.

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Hampton's admission that it's a true copy of what Samuel I. White filed in the county records, said deed of foreclosure to Green T. Prof as filed electronically and recorded on May 13, 2016 nearly 6 months after the trustee of sale -- after trustee's sale of 12-7-15.

As well in the request for admissions there's a reference to notices to vacate, one on June 2, 2016 wherein Ms. Hampton admits that on June 7th, 2016 she received notice to vacate from the Marinosci Law Group. Obviously all these regard the pertinent subject property.

Those matters being admitted in the court's view leave no material issue in genuine dispute because they conclusively demonstrate as a matter of law that Prof is entitled to possession of the subject property under the unlawful detainer statute.

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

11

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.

Now, Ms. Hampton has strenuously and continuously contended that the prior case was not heard on the merits, and I can understand a -- an argument that says that because there wasn't a trial, but you don't have to have a trial to under the law have the decision be a merits decision, and I think part of that -- from hearing the argument part of that position is taken from Ms. Hampton.

And one of the things she said is that -- well, she said multiple times she wasn't afforded due process, but I think part of what Ms. Hampton's contention with this process has been is that as she said today she never got to establish the truth of her allegations, and I understand that in the sense that in that case there was no trial, there was no evidence.

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You said there was no discovery and you never got to call a witness to say hey, what I'm alleging is true. In fact, though, that case which was decided in a demurrer setting, the court assumes that all the facts that you alleged are true, okay, as well as any implied facts and any reasonable inferences.

They're looked at in the light most favorable to the pleader, which in that case was Ms. Hampton, so even though there wasn't a trial the pleader in that case, Ms. Hampton, actually had the benefit of what I'll just call a fast track to the development of your allegations and the facts because at a demurrer standard they're taken as true by the circuit court and then reviewed by an appellate court.

The only exception to that is if there's any contrary demonstration and exhibits that may be attached to a complaint they get deference and there's a fast track because even though in deciding the demurrer where the court says okay, I'm looking at this complaint,

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everything that Ms. Hampton is alleging I'm taking as true, but even so there is not a cognizable claim here under the law of the commonwealth.

And you got to that point where everything is accepted as true without having to put on witnesses or put on evidence or argue the weight and credibility because all those issues were decided in your favor in consideration of the demurrer.

So that's in the court's view a counter to a position that the court didn't consider your allegations after they've been allowed to develop because you're the maker of the allegations and the court said okay, those are true, so I think that's in part why these decisions on demurrers can be seen as decisions on the merits.

So this is all part of saying that the deed of foreclosure and its provisions stands as valid as does the notice to vacate, and as a matter of law I find that plaintiff is entitled to possession, so the court grants the plaintiff's motion for summary judgment and grants possession

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of the subject property to the plaintiff. On the demurrer there were several bases of demurrer that were put forward. The one I'm going to address first is the one of res judicata.

In looking at the document called counterclaim and sanctions, which the court again as I just said a moment ago reviews in the light most favorable to the pleader which in this case is Ms. Hampton, giving all implied facts and inferences seen in the light most favorable which I think was important, especially in this circumstance because the document titled counterclaims and sanctions really reads much like a history of the case and is really in the court's view lacking in clarity in identifying claims which in the court's view I think alone would be a basis to sustain a demurrer because of lack of a cognizable claim.

But that wasn't cited as a ground by the defendant, so the court can't really sustain a demurrer on that ground. The ground of res judicata, though, is one that the court took a

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look at. Under the doctrine of res judicata a party whose claim for relief arising from identified conduct a transaction or an occurrence is decided on the merits by final judgment shall forever be barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action that arises from the same conduct, transaction or occurrence whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit.

So when I look at the claim, the counterclaim and sanctions document in the light most favorable it is a pleading that again seeks to challenge the validity of the foreclosure and the plaintiff's subsequent purchase of the property. Those are the very issues that were subject to the litigation in the circuit court case number 98163.

There's 98 -- yeah, 98163, and that case has been much referenced and written about and talked about. That case was decided. It was

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dismissed, and as I said a moment ago it was a merits decision. 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 that ground I find that the demurrer to the counterclaim should be -- to the document called counterclaim and sanctions should be sustained in all respects.

Any claim for sanctions, it's hard to tell from the paper what was actually intended there because Ms. Hampton's language was such that the law was I sanctioned the plaintiff or so on and so forth, didn't really read as many sanctions claims would, but in any event it didn't state a proper claim for a court to award sanctions so that link of the document counterclaims and sanctions is -- the demurrer is also sustained.

Having sustained the demurrer to that pleading the court does order that the counterclaims and sanctions be dismissed with prejudice. I am not going to take any action. Ms. Kim, you talked about a potential other

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hearing in the future but I think someone's got to file something, something's got to happen before we do that.

I think that's a little premature. I'm going to direct Ms. Kim to draft an order consistent with the court's ruling and submit that.

MS. KIM: Would Your Honor want an order that has findings and conclusions of law or just a summary?

JUDGE SINCAVAGE: Maybe what you ought to do is get a transcript of my ruling and attach that.

MS. KIM: I don't have that. What I have today is just a summary order, so I'd prefer to wait.

JUDGE SINCAVAGE: Okay. All right. Ms. Hampton, certainly your objections to the court's ruling are noted. You've opposed them in writing. You've opposed them in argument here today, and the next step is we're going to get an order circulated. I don't -- do we need to set

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that for entry, Ms. Kim, or do you --

MS. KIM: We -- I don't know how long it will take to order, but we are fine for the next -- the first Friday in November or first Friday in --

JUDGE SINCAVAGE: All right. I'll tell you what. I'll see what ya'll can accomplish without --

MS. KIM: Sure.

JUDGE SINCAVAGE: If you need to put it on the docket you know how to put it on the docket.

MS. KIM: Correct.

JUDGE SINCAVAGE: All right. And Ms. Hampton, just so there's no misunderstandings this is a final order in the matters that are before the court in 981 -- hold on. That's the wrong numbers.

MS. HAMPTON: 98163.

JUDGE SINCAVAGE: That's the old case number.

MS. HAMPTON: Yes.

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JUDGE SINCAVAGE: This is in 118604 and 118605.

MS. HAMPTON: Correct.

JUDGE SINCAVAGE: And based on the court's ruling here today there's nothing to be tried, so there's no trial next week. All right.

MS. HAMPTON: So there's no trial Monday?

JUDGE SINCAVAGE: There's no trial. The next step in this case is to get this order entered that reflects the court's ruling. All right?

MS. KIM: Yes, Your Honor. Thank you.

JUDGE SINCAVAGE: All right. Thank you all.

(The portion of the recorded hearing requested to be transcribed was concluded at 4:20 p.m.)

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CERTIFICATE OF COURT REPORTER

I, Donald E. Lane, II, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings were electronically recorded by me; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Donald E. Lane, II, Court Reporter

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CERTIFICATE OF TRANSCRIBER

I, Bonnie K. Panek, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Bonnie K. Panek

BONNIE K. PANEK
OCTOBER 23, 2019

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 23rd day of March, 2021.

Kathleen C. Hampton, Appellant,

against Record No. 201105
Circuit Court No. 118605-00

PROF-2013-S3 Legal Title Trust,
By U.S. Bank National Association,
as Legal Title Trustee, Appellee.

From the Circuit Court of Loudoun County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Deputy Clerk

APPENDIX B

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 14th day of May, 2021.

Kathleen C. Hampton, Appellant,

against Record No. 201105
Circuit Court No. 118605-00

PROF-2013-S3 Legal Title Trust,
By U.S. Bank National Association,
as Legal Title Trustee, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on March 23, 2021 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Deputy Clerk

APPENDIX C

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 11th day of December, 2020.

Kathleen C. Hampton, Appellant,

against Record No. 201105
Circuit Court No. CL 118605-00

PROF-2013-S3 Legal Title Trust,
by U.S. Bank National Association,
as Legal Title Trustee, Appellee.

From the Circuit Court of Loudoun County

On October 1, 2020 came the appellee, by counsel, and filed a motion to dismiss in this case.

On October 13, 2020 came the appellant, who is self-represented, and filed her opposition thereto.

Upon consideration whereof, the Court denies the motion.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Deputy Clerk

APPENDIX D

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
Plaintiff,	)	
v.	)	Civil No. 118604-00
KATHLEEN C. HAMPTON	)	
Defendant.	)	

FINAL ORDER

On October 18, 2019 this matter came before the Court on the Plaintiff's Motion for Summary Judgment. Counsel for the Plaintiff was present. Ms. Hampton, the Defendant, was present *pro se*.

For reasons stated of record, as memorialized in the attached Transcript of Hearing Excerpt from October 18, 2019, which is hereby incorporated into this Order, it is hereby

ORDERED that the Motion for Summary Judgment of Plaintiff PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee is granted, and that judgment is granted in favor of the Plaintiff in this unlawful detainer action. Accordingly, it is also

ORDERED that the Plaintiff PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee is granted possession of the Property known as and located at 34985 Snickersville Turnpike, in Round Hill, Virginia 20141.

APPENDIX E

This Order was prepared by the Court. Endorsements are dispensed with pursuant to Rule 1:13 and the parties are granted leave to file with the Clerk in writing any exception to the Court's ruling on or before February 21, 2020.

This Order is **final.**

Let the Clerk forward a copy hereof without charge to counsel for the Plaintiff and to Ms. Hampton.

ENTERED this 7 day of February, 2020.

Stephen E. Sincavage, Judge

incorporated into
final Order 2/7/20
CL118604
KS

FILED
2020 JAN 10 AM 11:36
CIRCUIT COURT
CLERKS OFFICE
LOUDOUN COUNTY, VA
TESTE: [illegible] D.C.

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Transcript of Hearing Excerpt

Date: October 18, 2019
Case: Prof-2013-S3 Legal Title Trust -v- Hampton

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VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST,
Plaintiff,
vs
KATHLEEN C. HAMPTON,
Defendant.

CASE NO. CL-2019-0118684-00

Recorded Hearing
(Judge's Ruling Only Transcribed)
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3

APPEARANCES

ON BEHALF OF PLAINTIFF:
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(757) 490-9284

ON BEHALF OF DEFENDANT:
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CONTENTS

EXHIBITS

(None.)

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PROCEEDINGS

JUDGE SINCAVAGE: All right. Thank you for your patience. There's in this case a lot to think about, a lot to look at. I know these are important matters to both parties and they're important to the court as well, and I want to -- I want to say I do appreciate that clearly each of ya'll have very different positions on this litigation.

And ya'll have been at it for a while as the record shows, and I do appreciate that ya'll have been able to present professional presentations here and you're not -- notwithstanding your differences, and I say this because sometimes it isn't this way where lawyers and litigants are sniping at each other and doing all that, and that didn't happen here and the court does appreciate that.

Now, let me just say to Ms. Hampton that a lot of the arguments that you put forward today and in your papers really sounded and came across like a closing argument in a case where

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you're challenging the foreclosure and the title, and I understand that because I understand your position as to why it is that you think things should go in a direction in this litigation and why you should be granted certain relief.

And conversely there wasn't really a whole lot of your presentation here today that was really responsive to the issues that were before the court, and that's the motion for summary judgment and the demurrer, and I need to decide the motion for summary judgment and I need to decide the demurrer.

I'm not here today to hear and decide a closing argument in a case that isn't really before the court, so the issue on summary judgment as we have heard said a couple of times here today and have seen the papers, are there any genuine disputes of material facts. And I think an important word there is -- there's a lot of important words there, but one of the most important words for this analysis is material facts.

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And what I mean by that is we need to keep in mind that where we are at in this litigation given previous rulings and given the state of the law is that issues and facts that bear on the validity or invalidity of title aren't material to the inquiry that is being made here today because of the Paris case.

The court's jurisdiction on this -- these matters is derivative of the general court's jurisdiction which per Paris clearly doesn't include the ability, the jurisdiction, the power, the authority to try issues of title.

Now, interestingly at another stage in this case it's been Ms. Hampton, and even today it's been Ms. Hampton who has advocated this position and today even continuing in her quest to have the general district court initially and now this court dismiss Prof's case because of Paris, because it's her position that the case actually shouldn't be here because it involves matters of title.

Now, the court has ruled on that and

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It doesn't then allow her or any litigant to back up now and ignore Paris, ignore law that you've cited and relied on in the litigation of this case and continue to want to assert, attacks the validity of the title where this case arose in general district court and now is in circuit court after appeal when the law clearly indicates otherwise.

Ms. Hampton can't on the one hand trumpet the law and say you can't have this type of case here where a title is tried, I want it dismissed, and then continue to have title interjected into the issues that she wants tried, so the issue in the plaintiff's claim is an unlawful detainer claim and nothing more.

So the materiality of the dispute must

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be seen in the light of unlawful detainer action and unlawful detainer action only, so start with looking at the summons. There was a summons filed for unlawful detainer in January of 2017 and you look at the code 801126.

Let's see, I always -- D4, if on the day of a foreclosure sale of a single family residential dwelling unit the former owner remains in possession of the dwelling -- said dwelling unit such former owner becomes a tenant at suffering. Such tenancy may be terminated by written termination notice from the successor owner given to such tenant at least three days prior to the effective date of termination.

So when we examine the record properly in this case of matters that can be considered on summary judgment, including admissions, we have listed as Exhibit 1 to the motion for summary judgment the deed of foreclosure which is instrument number 20160513 which was referenced in the request for admissions.

And among the responses to that is Ms.

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Hampton's admission that it's a true copy of what Samuel I. White filed in the county records, said deed of foreclosure to Green T. Prof as filed electronically and recorded on May 13, 2016 nearly 6 months after the trustee of sale -- after trustee's sale of 12-7-15.

As well in the request for admissions there's a reference to notices to vacate, one on June 2, 2016 wherein Ms. Hampton admits that on June 7th, 2016 she received notice to vacate from the Marinosci Law Group. Obviously all these regard the pertinent subject property.

Those matters being admitted in the court's view leave no material issue in genuine dispute because they conclusively demonstrate as a matter of law that Prof is entitled to possession of the subject property under the unlawful detainer statute.

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

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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.

Now, Ms. Hampton has strenuously and continuously contended that the prior case was not heard on the merits, and I can understand a -- an argument that says that because there wasn't a trial, but you don't have to have a trial to under the law have the decision be a merits decision, and I think part of that -- from hearing the argument part of that position is taken from Ms. Hampton.

And one of the things she said is that -- well, she said multiple times she wasn't afforded due process, but I think part of what Ms. Hampton's contention with this process has been is that as she said today she never got to establish the truth of her allegations, and I understand that in the sense that in that case there was no trial, there was no evidence.

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You said there was no discovery and you never got to call a witness to say hey, what I'm alleging is true. In fact, though, that case which was decided in a demurrer setting, the court assumes that all the facts that you alleged are true, okay, as well as any implied facts and any reasonable inferences.

They're looked at in the light most favorable to the pleader, which in that case was Ms. Hampton, so even though there wasn't a trial the pleader in that case, Ms. Hampton, actually had the benefit of what I'll just call a fast track to the development of your allegations and the facts because at a demurrer standard they're taken as true by the circuit court and then reviewed by an appellate court.

The only exception to that is if there's any contrary demonstration and exhibits that may be attached to a complaint they get deference and there's a fast track because even though in deciding the demurrer where the court says okay, I'm looking at this complaint,

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everything that Ms. Hampton is alleging I'm taking as true, but even so there is not a cognizable claim here under the law of the commonwealth.
And you got to that point where everything is accepted as true without having to put on witnesses or put on evidence or argue the weight and credibility because all those issues were decided in your favor in consideration of the demurrer.
So that's in the court's view a counter to a position that the court didn't consider your allegations after they've been allowed to develop because you're the maker of the allegations and the court said okay, those are true, so I think that's in part why these decisions on demurrers can be seen as decisions on the merits.
So this is all part of saying that the deed of foreclosure and its provisions stands as valid as does the notice to vacate, and as a matter of law I find that plaintiff is entitled to possession, so the court grants the plaintiff's motion for summary judgment and grants possession

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of the subject property to the plaintiff. On the demurrer there were several bases of demurrer that were put forward. The one I'm going to address first is the one of res judicata.
In looking at the document called counterclaim and sanctions, which the court again as I just said a moment ago reviews in the light most favorable to the pleader which in this case is Ms. Hampton, giving all implied facts and inferences seen in the light most favorable which I think was important, especially in this circumstance because the document titled counterclaims and sanctions really reads much like a history of the case and is really in the court's view lacking in clarity in identifying claims which in the court's view I think alone would be a basis to sustain a demurrer because of lack of a cognizable claim.
But that wasn't cited as a ground by the defendant, so the court can't really sustain a demurrer on that ground. The ground of res judicata, though, is one that the court took a

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look at. Under the doctrine of res judicata a party whose claim for relief arising from identified conduct a transaction or an occurrence is decided on the merits by final judgment shall forever be barred from prosecuting any second or subsequent civil action against the same opposing party or parties on any claim or cause of action that arises from the same conduct, transaction or occurrence whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit.
So when I look at the claim, the counterclaim and sanctions document in the light most favorable it is a pleading that again seeks to challenge the validity of the foreclosure and the plaintiff's subsequent purchase of the property. Those are the very issues that were subject to the litigation in the circuit court case number 98163.
There's 98 -- yeah, 98163, and that case has been much referenced and written about and talked about. That case was decided. It was

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dismissed, and as I said a moment ago it was a merits decision. 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 that ground I find that the demurrer to the counterclaim should be -- to the document called counterclaim and sanctions should be sustained in all respects.
Any claim for sanctions, it's hard to tell from the paper what was actually intended there because Ms. Hampton's language was such that the law was I sanctioned the plaintiff or so on and so forth, didn't really read as many sanctions claims would, but in any event it didn't state a proper claim for a court to award sanctions so that link of the document counterclaims and sanctions is -- the demurrer is also sustained.
Having sustained the demurrer to that pleading the court does order that the counterclaims and sanctions be dismissed with prejudice. I am not going to take any action. Ms. Kim, you talked about a potential other

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hearing in the future but I think someone's got to file something, something's got to happen before we do that.

I think that's a little premature. I'm going to direct Ms. Kim to draft an order consistent with the court's ruling and submit that.

MS. KIM: Would Your Honor want an order that has findings and conclusions of law or just a summary?

JUDGE SINCAVAGE: Maybe what you ought to do is get a transcript of my ruling and attach that.

MS. KIM: I don't have that. What I have today is just a summary order, so I'd prefer to wait.

JUDGE SINCAVAGE: Okay. All right. Ms. Hampton, certainly your objections to the court's ruling are noted. You've opposed them in writing. You've opposed them in argument here today, and the next step is we're going to get an order circulated. I don't -- do we need to set

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that for entry, Ms. Kim, or do you --

MS. KIM: We -- I don't know how long it will take to order, but we are fine for the next -- the first Friday in November or first Friday in --

JUDGE SINCAVAGE: All right. I'll tell you what. I'll see what ya'll can accomplish without --

MS. KIM: Sure.

JUDGE SINCAVAGE: If you need to put it on the docket you know how to put it on the docket.

MS. KIM: Correct.

JUDGE SINCAVAGE: All right. And Ms. Hampton, just so there's no misunderstandings this is a final order in the matters that are before the court in 981 -- hold on. That's the wrong numbers.

MS. HAMPTON: 98163.

JUDGE SINCAVAGE: That's the old case number.

MS. HAMPTON: Yes.

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JUDGE SINCAVAGE: This is in 118604 and 118605.

MS. HAMPTON: Correct.

JUDGE SINCAVAGE: And based on the court's ruling here today there's nothing to be tried, so there's no trial next week. All right.

MS. HAMPTON: So there's no trial Monday?

JUDGE SINCAVAGE: There's no trial. The next step in this case is to get this order entered that reflects the court's ruling. All right?

MS. KIM: Yes, Your Honor. Thank you.

JUDGE SINCAVAGE: All right. Thank you all.

(The portion of the recorded hearing requested to be transcribed was concluded at 4:20 p.m.)

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CERTIFICATE OF COURT REPORTER

I, Donald E. Lane, II, the officer before whom the foregoing proceedings were taken, do hereby certify that said proceedings were electronically recorded by me; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Donald E. Lane, II, Court Reporter

CERTIFICATE OF TRANSCRIBER

I, Bonnie K. Panek, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Bonnie K. Panek

BONNIE K. PANEK
OCTOBER 23, 2019

A COPY TESTE
Gary M. Clemens, Cle
By
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 23rd day of March, 2021.

Kathleen C. Hampton, Appellant,

against Record No. 201103
Circuit Court No. 118604-00

PROF-2013-S3 Legal Title Trust,
By U.S. Bank National Association,
as Legal Title Trustee, Appellee.

From the Circuit Court of Loudoun County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Deputy Clerk

APPENDIX F

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 14th day of May, 2021.

Kathleen C. Hampton, Appellant,

against Record No. 201103
Circuit Court No. 118604-00

PROF-2013-S3 Legal Title Trust,
By U.S. Bank National Association,
as Legal Title Trustee, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on March 23, 2021 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: _____

Deputy Clerk

APPENDIX G

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 11th day of December, 2020.

Kathleen C. Hampton, Appellant,

against Record No. 201103
Circuit Court No. CL 118604-00

PROF-2013-S3 Legal Title Trust,
by U.S. Bank National Association,
as Legal Title Trustee, Appellee.

From the Circuit Court of Loudoun County

On October 1, 2020 came the appellee, by counsel, and filed a motion to dismiss in this case.

On October 13, 2020 came the appellant, who is self-represented, and filed her opposition thereto.

Upon consideration whereof, the Court denies the motion.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By: Deputy Clerk

APPENDIX H

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHLEEN C. HAMPTON	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 118605-00
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
	)	
Defendant.	)	

ORDER

On December 20, 2019, the Plaintiff, *pro se*, filed a Motion for Rehearing or in the Alternative Motion for a Mistrial Supporting Memorandum of Law in this case and in Civil No. 118604. The Court considers the Motion to be a Motion for Reconsideration of the Court's rulings on October 18, 2019, sustaining the Defendant's demurrer in this matter and granting summary judgment to PROF-2013-S3 Legal Title Trust as the Plaintiff in Civil No. 118604.

In the motion, the Plaintiff requests the Court to grant a rehearing "and/or to serve justice by placing this case back on the docket for a 'fair' trial by jury and on its merits."

Upon consideration of the Motion to Reconsider, the Court finds no basis to modify its ruling.

Accordingly, it is ORDERED that the Plaintiff's Motion to Reconsider is denied without the need for further argument or hearing.

Endorsements are dispensed with under Rule 1:13. This Order was prepared by the Court.

APPENDIX I

Let the Clerk forward a copy hereof without charge to Ms. Hampton and to counsel for the Defendant.

ENTERED this 7 day of February, 2020.

Stephen E. Sincavage, Judge

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHLEEN C. HAMPTON	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 118605-00
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
	)	
Defendant.	)	

ORDER

On November 18, 2019, the Plaintiff, *pro se*, filed a Motion for Rehearing or in the Alternative Motion for a Mistrial in this case and in Civil No. 118604. The Court considers the Motion to be a Motion for Reconsideration of the Court's rulings on October 18, 2019, sustaining the Defendant's demurrer in this matter and granting summary judgment to PROF-2013-S3 Legal Title Trust as the Plaintiff in Civil No. 118604.

In the motion, the Plaintiff requests the Court to grant a rehearing "and/or to serve justice by placing this case back on the docket for a 'fair' trial by jury and on its merits."

Upon consideration of the Motion to Reconsider, the Court finds no basis to modify its ruling.

Accordingly, it is ORDERED that the Plaintiff's Motion to Reconsider is denied without the need for further argument or hearing.

Endorsements are dispensed with under Rule 1:13. This Order was prepared by the Court.

APPENDIX J

Let the Clerk forward a copy hereof without charge to Ms. Hampton and to counsel for the Defendant.

ENTERED this 19 day of December, 2019.

Stephen E. Sincavage, Judge

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHLEEN C. HAMPTON	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil No. 118605-00**
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
	)	
Defendant.	)	

NUNC PRO TUNC ORDER*

On October 25, 2019, the Plaintiff, *pro se*, filed a Motion for Reconsideration and Supporting Memorandum of Law in this matter and in Civil No. 118604. On November 1, 2019, the Plaintiff, *pro se*, filed a Motion for Reconsideration of Further Support to Memorandum of Law in this matter and in Civil No. 118604.

In both pleadings, the Plaintiff requests the Court to reconsider its ruling sustaining the Defendant's Demurrer, and to "either place this case back on the docket for a 'fair' trial by jury and on its merits, or dismiss this case without prejudice."

Upon consideration of the Motion to Reconsider, the Court find no basis to modify its ruling.

Accordingly, it is ORDERED that the Plaintiff's Motion to Reconsider is denied without the need for further argument or hearing.

Endorsements are dispensed with under Rule 1:13. This Order was prepared by the Court.

APPENDIX K

Let the Clerk forward a copy hereof without charge to Ms. Hampton and to counsel for the Defendant.

ENTERED this 19 day of ~~November~~ December, 2019. nunc pro tunc to 11 Nov 2019

Stephen E. Sincavage, Judge

*This nunc pro tunc Order corrects an error in the Order entered on November 11, 2019 in this matter wherein the Order recited in paragraph 2 that the "Defendant requests the Court to reconsider its ruling..." This Order corrects the error to properly identify the Plaintiff as the party requesting the Court to reconsider its ruling.

A COPY-TESTE
Gary M. Clemens, Clerk
By
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

HAND DELIVERED 11-18-19

KATHLEEN C. HAMPTON	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil No. 118605-00**
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
	)	
Defendant.	)	

ORDER

On October 25, 2019, the Plaintiff, *pro se*, filed a Motion for Reconsideration and Supporting Memorandum of Law in this matter and in Civil No. 118604. On November 1, 2019, the Plaintiff, *pro se*, filed a Motion for Reconsideration of Further Support to Memorandum of Law in this matter and in Civil No. 118604.

In both pleadings, the Defendant requests the Court to reconsider its ruling sustaining the Defendant's Demurrer, and to "either place this case back on the docket for a 'fair' trial by jury and on its merits, or dismiss this case without prejudice."

Upon consideration of the Motion to Reconsider, the Court find no basis to modify its ruling.

Accordingly, it is ORDERED that the Plaintiff's Motion to Reconsider is denied without the need for further argument or hearing.

Endorsements are dispensed with under Rule 1:13. This Order was prepared by the Court.

Let the Clerk forward a copy hereof without charge to Ms. Hampton and to counsel for the Defendant.

ENTERED this 11 day of November, 2019.

Stephen E. Sincavage, Judge

A COPY-TESTE
Gary M. Clemens, Clerk
By _____
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK, NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE, *Plaintiff,* v. KATHLEEN C. HAMPTON, *Defendant.*	CASE No: CL118604,05

ORDER ON DEFENDANT'S MOTION TO DISMISS

THIS DAY CAME the Plaintiff, PROF 2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee ("PROF 2013-S3"), by counsel, and the Defendant, Kathleen C. Hampton, ("Hampton"), *pro se,* in this appealed eviction or unlawful detainer proceeding, upon the Defendant's *Motion to Dismiss* and Plaintiff's *Response and Opposition* to same. Upon argument of counsel for Plaintiff, and the Defendant, *pro se,* at hearing, the pleadings, proffers, interests of equity, and for further good cause shown, it is hereby accordingly

ORDERED, ADJUDGED, and **DECREED** that:

1. Defendant's Motion to Dismiss is DENIED;

APPENDIX L

2. The Clerk is requested to send copies of this *Order*, upon entry, to all counsel of record and unrepresented parties; and

3. This matter is hereby **CONTINUED** on the Court's active and open docket.

Loudoun County Circuit Court Judge

ENTERED ON THE DOCKET:
10 / 4 / 2019

WE ASK FOR THIS:

Daniel J. Pesachowitz, Esq. (VSB #74295)
Lisa Hudson Kim, Esq. (VSB# 45484)
SAMUEL I. WHITE, P.C.
5040 Corporate Woods Drive, Suite 120
Virginia Beach, Virginia 23462
(757) 457-4234 (Direct Dial)
(757) 337-2814 (Facsimile)
Email: lkim@siwpc.com; dpesachowitz@siwpc.com
Counsel for Plaintiff, PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee

SEEN AND DISAGREED:

Kathleen C. Hampton
34985 Snickersville Turnpike
Round Hill, Virginia 20141

And

Kathleen C. Hampton
P.O. Box 154
Bluemont, Virginia 20135
Email: khampton47@yahoo.com
Defendant, Pro Se

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The federal constitutional provisions involved in this petition are found in the

United States Constitution:

Amendment V:

> "No person shall ... be subject for the same offence to be twice put in jeopardy of life or limb; ... nor 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."

From Amendment 5 – 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."

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."

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.'"

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."

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."

As to the Doctrine on **Res Judicata** as found in Virginia:

> "Res judicata involves both issue and claim preclusion." **Whether a claim or issue is precluded by a prior judgment is a question of law this Court reviews de novo**. ... [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."

As to Demurrers, **Virginia Code §8.01-273.** Demurrer; form; grounds to be stated; amendment.

A. In any suit in equity or action at law, the contention that a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted may be made by demurrer. All demurrers shall be in writing and shall state specifically the grounds on which the demurrant concludes that the pleading is insufficient at law. No grounds other than those stated specifically in the demurrer shall be considered by the court. A demurrer may be amended as other pleadings are amended.

B. Wherever a demurrer to any pleading has been sustained, and as a result thereof the demurree has amended his pleading, he shall not be deemed to have waived his right to stand upon his pleading before the amendment, provided that (i) the order of the court shows that he objected to the ruling of the court sustaining the demurrer and (ii) the amended pleading incorporates or refers to the earlier pleading. On any appeal of such a case the demurree may insist upon his earlier pleading before the amendment, and if the same be held to be good, he shall not be prejudiced by having made the amendment.

"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.**'" *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)

"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).

"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.

Petitioner's filings to all *Orders*

In the Supreme Court of Virginia

IN THE SUPREME COURT OF VIRGINIA

KATHLEEN C. HAMPTON	)	
	)	
Appellant, *pro se*	)	
	)	
v.	)	**Record No. 201105**
	)	**From the Circuit Court**
	)	**of Loudoun County**
	)	**Case No. CL00118605-00**
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
	)	
Appellee.	)	

PETITION FOR REHEARING
(Pursuant to Rule 5:20)

NOW COMES Appellant/Defendant below, Kathleen C. Hampton (herein-after "Hampton" or "Appellant"), *pro se*, and, pursuant to the Rules of the Supreme Court of Virginia, respectfully submits this Petition for Rehearing from the decision dated March 23, 2021, of this Honorable Supreme Court to refuse the Petition for Appeal finding that their opinion is that there is no reversible error in the judgment complained of.

Appellant herein, as a truthseeker, albeit aging, and in an attempt to be a "vehicle for change," with deep appreciation for the opportunity to address the "full court," respectfully requests and values this court's further consideration.

APPENDIX N

Appellant is hopeful and believes it is important to review Hampton's Petition for Rehearing on the Summary Judgment before this one, as the two are so intertwined and rely on the same set of evidence and merits. Thus, Hampton will not repeat all of her opening statements as to why the case should be heard.

This court should also consider that Hampton, who is only a pro se litigant by her inability to afford counsel as she lives on social security, is burdened with not just one Petition for Rehearing, but two petitions. This is a very extensive case that truly should have been tried and decided years ago, when Hampton filed her first suits, before foreclosure, that were ultimately dismissed on Demurrer, and where the foreclosure should have never taken place and thus never suited.

Again, Appellant believes that acceptance of this petition will avail this superior court with an opportunity to correct what needs to be, since it is believed of precedential value and can significantly impact the development of legal standards. And where important issues regarding case law, particularly on UD statutes, Demurrers and *res judicata*, can be settled or clarified. And, "in the interest of justice," by doing so, will help to protect citizens' rights and afford citizens the protections of the law.

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**."

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.

By this court's initial decision, it denies any wrongdoing and, clearly from the facts and merits, 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.

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 this Commonwealth, and their Constitutional rights, which Hampton has been "defending" for many years.

Again Hampton can't help but feel that the only way she might be noticed would require "media attention," such as Ellen or Oprah, or "front page news." 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 this court's jurisprudence calls for. Given this finding, a Demurrer should be moot as the issues

would be finally "tried and settled" by a trial by jury, where a jury "would have come to but one conclusion when viewing the evidence." Upon de novo review, this should be obvious from Hampton's Petition for Appeal and the "facts" thereto, where the real "proof is in the pudding."

Our state needs to establish protections for its citizens, and can begin with this appeal which could also aid in avoiding another collapse by demonstrating that punishment will result from wrongdoing, thus assuring citizens of their protections of the law. Our Constitutional rights and protections of the law must survive.

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 requested herein that the lower court's judgment be determined as erred in sustaining Demurrer on Counterclaims & Sanctions, and that res judicata was inappropriate to apply, and 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 thus to grant this Appeal. And still further to address the Constitutionality of granting Demurrers to non-judicial foreclosures and addressing unlawful detainer statutes and, more particularly, a

citizen's Constitutional rights to defend one's property from "unlawful takings" without due process.

As quoted in Hampton's Petition to SCOTUS, and again herein, 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."

Hampton further provides herein clarity to the following, which, in her opinion, the court may have overlooked or misapprehended.

At the hearing granting Summary Judgment and sustaining Demurrer, Hampton had presented evidence via Response and "submitted" ***Admissions*** from both sides, with her exhibits/evidence thereto, which could prove PROF had no right to summary judgment, but the court ignored this evidence. 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.

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.

Also prior to those "fatal" findings, Hampton presented the court with an opportunity to first dismiss without prejudice, under *Parrish*, and PROF could refile in the circuit court as a court of equity. But instead her *Motion to Dismiss* was denied, primarily based on her prior case and demurrer instead of merits.

Hampton gave the court an opportunity to *Reconsider* and provided further evidence on how *res judicata* should not apply, providing the evidence in the prior suit, and long prior to the *Final Order*. That motion was denied.

As Hampton has argued in her Petition on **Res Judicata**:

> "Res judicata involves both issue and claim preclusion." **Whether a claim or issue is precluded by a prior judgment is a question of law this Court reviews de novo**. ... [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."

Here PROF is not a **man**, is instead a derivative on Wall Street, and has no Constitutional rights as Hampton does.

Further argued:

> "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**."
>
> ...
>
> "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.

Still further argued:

> "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**. ... 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.
>
> ... 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."

From page 2, *Motion for Rehearing ... Memorandum of Law*:

Further to Hampton's *Grounds of Defense*, it should be noted on page 10 under Conclusion and Prayers for Relief, Hampton "prays that this Court award Hampton by voiding those documents on file in our Court records, including the Assignment of Substitute Trustee, Deed of Assignment, Deed of Foreclosure, and all other documents filed on behalf of PROF, as being invalid. ... or do any further harm to Hampton as against her property, her reputation, and her physical, mental and financial well being."

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

"Further to the Counterclaims & Sanctions initially filed, which Judge Sincavage could not make sense of, clearly because they were moot as based on the superior courts' cases and awaiting decisions, and the real Counterclaims & Sanctions were to be found in the Grounds of Defense, where it was clear what Hampton was seeking – that being invalidation of all documents that PROF had placed on file in this Court's records.

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."

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.**

Restating from Hampton's *Objections to the Final Order on Summary Judgment*:

"Thus, it appears to Hampton that the Circuit Court is stating here that on appeal from the General District Court on an unlawful detainer, this court can only rule on an unlawful detainer based on the unlawful detainer statute, that being the same as in the General District Court. If this is the case, what would be the purpose of an appeal to the Circuit Court, if it was limited to what the General District Court can rule on? And why would a Trial by Jury be granted on a **de novo appeal**, if you cannot consider anything more than the unlawful detainer statute? Hampton was lead to believe that by appealing an Unlawful Detainer suit from a General District Court, which is not a court of record, **she would be entitled to a de novo trial of record, and her Constitutional Right to a Trial by Jury, where the jury would determine the outcome and not the bench.**

Still further to res judicata and due process in Hampton's case (p.35 herein):

"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 governing the 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 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."

IN CONCLUSION: Hampton believes and is confident that, if this court accepts her appeal, a "just" decision will result to her benefit and this state's citizens.

Respectfully submitted,

Kathleen C. Hampton, pro se

Kathleen C. Hampton, *pro se*
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Bluemont, Virginia 20135
540-554-2042
Email: khampton47@yahoo.com (limited access)

CERTIFICATE OF SERVICE
CERTIFICATE OF COMPLIANCE

Pursuant to Rule 5:20, I hereby certify that a true and correct copy of the foregoing Petition for Rehearing was sent by electronic mail to The Supreme Court of Virginia at scvpfr@vacourts.gov and by electronic mail to the following counsel of record on this 6th day of April, 2021. The undersigned Appellant, Kathleen C. Hampton, also hereby certifies that the Petition for Rehearing is in full compliance with Rule 5:20.

E. Edward Farnsworth, Jr., Esq. (VSB No. 44043)
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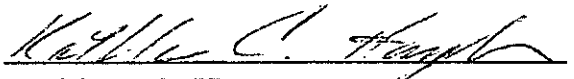
Counsel for Appellee, PROF-2013-S3 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee



Kathleen C. Hampton, *pro se*

MY 2ND ORAL ARGUMENT IS IN RESPONSE TO PROF'S BRIEF IN OPPOSITION TO MY PETITION ON THE DECISION GRANTING DEMURRER, AND IT APPEARS AGAIN THAT THIS COURT REVIEWING DE NOVO IS THE ONLY THING THAT PROF & I AGREE ON!

FROM MY PETITION HEREIN, I BELIEVE I HAVE PROVIDED SUFFICIENT TRUE FACTS & UNDENIABLE EVIDENCE & ARGUMENTS IN DEFENDING MY PROPERTY FROM SUCH UNLAWFUL TAKINGS, UNDER MY CONSTITUTIONAL RIGHTS TO DUE PROCESS!

THESE ARE TRUE FACTS THAT SHOULD SPEAK FOR THEMSELF AND TESTIFY TO WHAT I HAVE HAD TO ENDURE, SINCE PURCHASE OF THE PROPERTY... A VERY LONG TIME AGO! IT IS HOPED THIS COURT WILL CONSIDER WHETHER THOSE PRIOR DEMURRERS SHOULD HAVE BEEN SUSTAINED.

THE ONLY THING NEW TO MY FACTS HEREIN WAS WHAT I HAVE DISCOVERED ON MY OWN, AS A PRO SE LITIGANT, SOME WHICH WAS NOT AVAILABLE UNTIL AFTER THE FILING OF THE 2ND AMENDED COMPLAINT IN THAT PRIOR SUIT, AS CAN BE NOTICED IN MY REQUESTS FOR JUDICIAL NOTICES FROM COURTS AND GOVERNMENT

APPENDIX O

AGENCIES; AND SOME DISCOVERY LEARNED THRU COMPLAINTS WITH OUR ATTORNEY GENERAL'S PREDATORY LENDING UNIT, JUST PRIOR TO SUBMITTING MY SCOTUS REPLY BRIEF ... AND I AM NEITHER AN ATTORNEY, NOR HAVE ACCESS TO THE LAW AS COUNSEL HAS.

I HAVE BEEN DEFENDING MY PROPERTY SINCE 2009 AND IN THE COURTS SINCE 2015, ON WHAT IS HOPED TO BE OBVIOUS HERE WAS A "WRONGFUL" FORECLOSURE – SOMETHING THE CIR CT DID NOT SEEM TO RECOGNIZE, WHERE THESE FACTS WERE BEFORE THEM.

AS TO RES JUDICATA, I STAND ON MY ARGUMENTS AS PLED IN MY PETITION BEGINNING P. 24 AND THEREIN "PARTICULARLY WHETHER A CLAIM OR ISSUE IS PRECLUDED BY A PRIOR JUDGMENT IS A QUESTION OF LAW THIS COURT REVIEWS DE NOVO."

QUOTING AGAIN FROM P. 27: "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." ...

AND AGAIN ON P. 31: "WHERE IT IS CLEAR THAT PROF WAS NOT ENTITLED TO SUMMARY JUDGMENT, NEITHER SHOULD THE FINAL ORDER ON DEMURRER BE PERMITTED TO SURVIVE."

REPEATING FROM P. 32, *HORNSBY V. ALLEN*:

"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."

AS RULED ON IN THE UD, THIS DEMURRER SHOULD HAVE RELATED TO MY "GROUNDS OF DEFENSE" – NOT COUNTERCLAIMS & SANCTIONS, AS INITIALLY FILED, WHERE THE JUDGE COULDN'T MAKE SENSE OF, AND RIGHTFULLY SO, SINCE THEY RELATED TO HALTING EVERYTHING PENDING OUTCOME OF MY PRIOR CASES. – SO ON GROUNDS OF DEFENSE, DON'T I HAVE A RIGHT TO DEFEND MYSELF FROM UNLAWFUL TAKINGS? THE TERM ITSELF WOULD INDICATE SO!

ARGUING RES JUDICATA BASED ON MY CASES VS THEM WOULD SEEM INAPPROPRIATE, SINCE THIS IS A CASE OF **THEM VS ME**, AND ONCE AGAIN, I SHOULD HAVE A RIGHT TO DEFEND MYSELF FROM THOSE UNLAWFUL TAKINGS!

FURTHER QUOTING FROM P. 33: "STILL FURTHER TO RES JUDICATA AND DUE PROCESS IN HAMPTON'S PRIOR CASE:

'DUE PROCESS IN AN ADMINISTRATIVE HEARING INCLUDES A FAIR TRIAL, CONDUCTED IN ACCORDANCE WITH THE FUNDAMENTAL PRINCIPLESS OF FAIR PLAY AND APPLICABLE PROCEDURAL STANDARDS ESTABLISHED BY LAW. ADMINISTRATIVE CONVENIENCE OR NECESSITY CANNOT OVERRIDE THIS REQUIREMENT.' QUOTING FROM *SWIFT AND CO. V. UNITED STATES.*

THIS COURT SHOULD FIND, GIVEN HAMPTON'S EVIDENCE HEREIN THAT THE EARLIER CASE WAS DISMISSED ON ADMINISTRATIVE CONVENIENCE AND WAS NOT PROPERLY REVIEWED."

IN THE EARLIER SUIT, THE MAJORITY OF THE FACTS & EVIDENCE WERE THERE, AND THE COURT DIDN'T RULE ON THE COUNT OF FORECLOSURE, NOR THE UD COUNT OR THE IRS COUNT.

YOUR HONORS, I HOPE IT IS CLEAR THAT MY ARGUMENTS & PRAYERS HEREIN SHOULD BE CONSIDERED IN YOUR DE NOVO REVIEW "WHERE 'REASONABLE' MINDS WOULD HAVE COME TO BUT ONE CONCLUSION WHEN REVIEWING THE EVIDENCE" ... AS THE FACTS DEMONSTRATE THAT PROF WAS NOT ENTITLED TO FORECLOSURE AND THE SAME SHOULD HAVE BEEN SET ASIDE, & IT IS MY HOPE THAT UD STATUTES BE REVIEWED IN LIGHT OF MY PETITION.

PROF'S RESPONSE HEREIN CONTINUES TO DECEIVE THE COURT WHERE THEY STATE THAT I HAVE **NOT** CONTESTED DEFAULT IN PAYMENT, AS ARGUED EARLIER IS INCORRECT, AND MISCONSTRUES ALL THE FACTS, WHERE THEY CLEARLY KNOW OF THEIR WRONGDOINGS AND CONTINUE TO DENY THE SAME! THEIR OPPOSITION IS A REHASHING OF THEIR EARLIER DEMURRERS & DECEITS EXPRESSED THEREIN.

AGAIN, I WAS PLAINTIFF IN MY SUIT, BUT DEFENDANT IN THE UD & SHOULD HAVE A RIGHT TO DEFEND THIS **SUIT VS. ME** ... AND WHERE MY DEFENSE MUST RETURN TO THE SAME FACTS, BECAUSE WITHOUT THE "WRONGFUL" FORECLOSURE, THERE WOULD BE NO UD CASE ... AND W/O A DOT, THERE COULD BE NO FORECLOSURE, THUS THE FACTS RELATE TO THE SAME DOT & ALL THE DEEDS ON FILE. RESULTING FROM THE INITIAL TRANSACTION OR SALE.

SO IT IS **NOT CLEAR** HOW **RES JUDICATA** SHOULD APPLY HERE! IN THIS DE NOVO REVIEW, IT IS HOPED THIS COURT COULD DETERMINE FROM THE EVIDENCE AND ALLEGATIONS, PER PARRISH AGAIN, THAT IN THOSE PRIOR DEMURRERS, WHERE THE COURTS DID NOT PURSUE THE "TRUTHS TO THE ALLEGATIONS," & WHERE FURTHER GDC'S DECISION WAS PREMATURE, I SHOULD NEVER HAD NEEDED TO

APPEAL, SINCE I DID HAVE SUFFICIENT INFORMATION TO SURVIVE A DEMURRER, WHICH WAS NEVER CONSIDERED & RESULTED IN MY FURTHER COSTLY APPEALS.

THIS COURT IN A DE NOVO REVIEW IS HOPED WILL DECIDE "W/O DEFERENCE" TO A PREVIOUS COURT'S DECISION AND, IN DOING SO, CONSIDER THE TRUTHS TO THE ALLEGATIONS AS LAID OUT IN THE FACTS & ARGUMENTS HEREIN, & 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, ALTHO PERHAPS NOT PLED WELL, CONTAINED SUFFICIENT EVIDENCE THEREIN, TO FIND A CAUSE OF ACTION & FURTHER SET ASIDE THE FORECLOSURE ACTION ITSELF.

THIS BEING A UD CASE, IT APPEARS TO ME THAT THE STATUTES AS CURRENTLY WRITTEN OFFER NO PROTECTIONS OF THE LAW AND VIOLATE CITIZENS' CONSTITUTIONAL RIGHTS TO DUE PROCESS IN DEFENDING ONE'S PROPERTY FROM UNLAWFUL TAKINGS.

IT IS ALSO MY BELIEF THAT THE STATUTES TO A NON-JUDICIAL FORECLOSURE ALSO FAIL TO PROTECT HOMEOWNERS & THEIR

CONSTITUTIONAL RIGHTS TO DUE PROCESS, WHICH WAS THE CRUX OF MY SCOTUS PETITION, WHEREIN I QUOTE: "UNIFORM NON-[JUDICIAL] FORECLOSURE RULES SHOULD BE DEVELOPED TO PROTECT CITIZENS NATIONWIDE FROM THE UNLAWFUL TAKING OF THEIR HOMES IN VIOLATION OF THEIR CONSTITUTIONAL RIGHTS AND W/O DUE PROCESS ... THE SOLUTION IS ALWAYS UNIFORMITY AND CLARITY MUST BE ACHIEVED! PERHAPS THE BETTER SOLUTION WOULD BE TO BAR NON-JUDICIAL FORECLOSURES ALTOGETHER UNTIL OUR FAITH IN HOME OWNERSHIP CAN BE RESTORED" ... "& IN ORDER TO RESTORE & PROTECT CITIZENS' CONSTITUTIONAL RIGHTS, AS THEY WERE CREATED TO BE."

YOUR HONORS, I BELIEVE THAT MY PETITION, IF ACCEPTED FOR APPEAL, IS OF PRECEDENTIAL VALUE AND COULD SIGNIFICANTLY IMPACT THE DEVELOPMENT OF LEGAL STANDARDS ON A NUMBER OF TORTS ADDRESSED HEREIN.

I RESPECTFULLY PRAY THIS SUPERIOR COURT GRANT THIS APPEAL, WHERE THIS COURT CAN BEGIN THE PROCESS TO CHANGE WHAT NEEDS TO BE.

IN THE SUPREME COURT OF VIRGINIA

KATHLEEN C. HAMPTON	)	
	)	
Appellant / Plaintiff, *pro se*	)	
	)	
v.	)	**Record No.** 201105
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE,	)	
	)	
Appellee / Defendant.	)	

PETITION FOR APPEAL

KATHLEEN C. HAMPTON

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APPENDIX P

IN THE SUPREME COURT OF VIRGINIA

KATHLEEN C. HAMPTON	)	
	)	
Appellant / Plaintiff, *pro se*	)	
	)	
v.	)	**Record No.** 201105
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE,	)	
	)	
Appellee / Defendant.	)	

PETITION FOR APPEAL

NOW COMES Appellant, Plaintiff below, Kathleen C. Hampton, *pro se* ("Appellant" or "Hampton"), and, pursuant to the Rules of the Supreme Court of Virginia, respectfully submits this Petition for Appeal from the decision of the Circuit Court of Loudoun County, Virginia, entered on February 7, 2020, in CL00118605-00, in favor of Appellee, Defendant below, PROF-2013-S3 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee ("Appellee" or "PROF"). Per the Judicial Emergency Declarations, the tolling period for filing the petition for appeal under Rule 5:17(a)(1) was extended for a period of 52 days after the tolling period ended on July 20, 2020, or for this Petition for Appeal was extended until at least September 8, 2020, and thus timely filed. In support of said Petition for Appeal, Hampton states as follows:

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ASSIGNMENT OF ERROR

Whether the Circuit Court erred in sustaining Demurrer on Counterclaims & Sanctions (*Order* of February 7, 2020, excerpt tr. 10-18-19, p.16, ll. 2-8); whether Res Judicata was appropriate to apply (tr. p.14, l.21 - p.16, l.8); whether Demurrers to non-judicial foreclosures violate Citizens' Constitutional Rights to Due Process.

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ASSIGNMENT OF ERROR

Whether the Circuit Court erred in sustaining Demurrer on Counterclaims & Sanctions (*Order* of February 7, 2020, excerpt tr. 10-18-19, p.16, ll. 2-8); whether Res Judicata was appropriate to apply (tr. p.14, l.21 - p.16, l.8); whether Demurrers to non-judicial foreclosures violate Citizens' Constitutional Rights to Due Process.

STATEMENT OF THE NATURE OF THE CASE AND MATERIAL PROCEEDINGS BELOW

This appeal is from the February 7, 2020, *Final Order* of the Circuit Court of Loudoun County on Kathleen C. Hampton ("Hampton" or "Appellant")'s *Counterclaim & Sanctions (Grounds of Defense)*, filed in General District Court ("GDC") (GV17013350-00, December 21, 2017, and June 1, 2018, respectively) and appealed to the Circuit Court (CL00118605-00), by sustaining PROF-2013-S3 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee ("PROF" or "Appellee")'s *Demurrer*. It also needs to be noticed here that Appellant, by separate *Petition for Appeal*, appeals the February 7, 2020, *Final Order* of the Circuit Court of Loudoun County on Appellee's *Unlawful Detainer* granting *Summary Judgment* (CL00118604-00), filed in the GDC (GV17000311-00, January 12, 2017). Both cases have been heard together in the GDC and Circuit Court, and are requested to continue to be herein.

As the record will reflect, in Hampton's initial *Counterclaims and Sanctions*:

> "NOW COMES Defendant, Kathleen C. Hampton, and in response to this Court's action to set Trial for January 5, 2018, submits her

Counterclaims under Code of Virginia Title 16.1-88.01 and Sanctions which will follow on Motion under Rule 11(b).

First, with regard to this Unlawful Detainer herein, a prior claim for the same in this court was filed June 27, 2016, in Case No. GV16004218-00, and dismissed September 26, 2016 (after three appearances in court), for failure of counsel to show up and was argued on Defendant's claim regarding her case, as Plaintiff, against PROF-2013-S3 Legal Title Trust (and several others) before the Circuit Court of Loudoun County, Case No. CL-98163, which was pending at that time and included her claim to stop the Unlawful Detainer suits as they were "believed that Fay did this intentionally as a serious act of extortion against her property, her reputation and her physical, mental and financial well being." ...

Second, with regard to this Unlawful Detainer herein, this claim was brought on January 12, 2017, and hearings scheduled ... were continued due to Defendant's ... Appeal before the Virginia Supreme Court ... the Supreme Court decision of August 14, 2017, finding that the Final Order ... was "not a final, appealable order as it is not final with regard to ... PROF..." ... thereafter schedule the December 13, 2017, hearing for a "status check." At this last hearing ... Plaintiff herein submitted the Final Order of the Circuit Court dated January 3, 2017 ... A Trial date of January 5, 2018, was set for docket. ...

Following the scheduling of a Trial Date ... Defendant will provide supporting Exhibits ... and petition this court to rule on the Unlawful Detainers and further requests to stop the perpetual auctions on line that are being conducted on a weekly basis on behalf of the Plaintiff, which is believed to be a further intentional, serious act of extortion against Defendant's property, her reputation and her physical, mental and financial well being. This type of behavior should be barred as this case is part of a much larger case that shall return to the highest court in this state on further appeal of an "acceptable, appealable Final Order" of the Circuit Court....

For the foregoing reasons, Defendant sanctions for this Plaintiff and all of its counsels to quit any further actions which should be barred by the above-mentioned suits of Defendant, as it is Defendant's position that these Unlawful Detainer suits and auctions on line of the property herein are being brought "to harass or to cause needless litigation," while Defendant's case continues through the superior courts."

On March 30, 2018, the Circuit Court signed an *Amended Final Order*, adding PROF, on Hampton's motion for an appealable *Final Order*, and Hampton filed

her *Objections*, where clearly she did not agree to PROF having entered into any suit in any court. Thus the second *Petition for Appeal* (Record No. 180842) from the *Amended Final Order* included the *Order* of January 3, 2017, sustaining the *Demurrers* and *Pleas in Bar* and "*now added*" PROF, and the Supreme Court, by *Opinion* dated November 9, 2018, found "there is no reversible error in the judgment complained of" and refused *Petition for Appeal* and, upon *Petition for Rehearing*, denied the same February 1, 2019. The mandates were not returned to the Circuit Court until February 25, 2019.

Petitioner therein did not believe that the Supreme Court had addressed all the errors, particularly those related to Hampton's Constitutional Rights to Due Process and the Protections of the Law, in addition to whether PROF had truly entered into any suit, and accordingly, filed her *Petition for Writ of Certiorari* before SCOTUS May 1, 2019, identified as Record No. 18-9127. SCOTUS subsequently denied Hampton's *Petition* on October 7, 2019, as being part of the 99% which does not get accepted. This was not a confirmation of the State Supreme Court's *Opinion.*

Hampton's initial *Complaint* filed December 4, 2015, in the U.S. District Court (Eastern District of Virginia, Alexandria Div.) Civil Action No.1:15CV 1624 for "Application for TRO and/or Preliminary Injunction, and Declaratory Relief," was filed in a hurried effort to stop two defendants, Fay Servicing LLC ("Fay")

and Samuel I. White, P.C. ("SIW" or "White") on behalf of PROF, from proceeding with a Trustee Sale on December 7, 2015. That U.S. court later granted Hampton's request May 18, 2016, Dismissing without Prejudice pursuant to FRCP 41(a)(1), which Hampton requested in an effort to combine that federal suit with the state court case (filed December 11, 2015, subsequent to foreclosure) in her *Second Amended Complaint*, since opposing counsels had complained of multiple suits, which were only brought on by PROF's failure to cancel the foreclosure proceeding three days after suit filed.

Returning here to the Unlawful Detainer ("UD") case in the GDC, at the trial date of January 5, 2018, the Court accepted Hampton's *Counterclaims*, despite PROF's counsel's arguments and further set a "status check" for April 2, 2018. It was at this "status check" (three days after the March 30, 2018, *Amended Final Order* issued) that the GDC set a trial for August 3, 2018, and directed PROF's counsel to submit a *Bill of Particulars* and for Hampton to submit her *Grounds of Defense*. This was what the trial on August 3, 2018, was to be based upon, not the initial *Counterclaims*, which were dependent upon Hampton's other court filings.

At the August 3, 2018, trial, it was not apparent that the court reviewed the *Bill of Particulars* or the *Grounds of Defense*, although the judge advised Hampton that she could not invalidate any Deeds or foreclosure actions, and that the GDC was not a "court of record." Thereafter, as prompted by PROF's counsel, the court

ruled on a *Motion for Summary Judgment*, dismissed previously as premature, and without considering Hampton's response thereto. The court granted possession to PROF and, without a spoken word, apparently dismissed the *Grounds of Defense*, and imposed an $8,000 bond on Appeal, advising that both the *Unlawful Detainer* and the *Counterclaims* would have to be separately appealed. However, the GDC held out on an *Order* until another "status check" was held on November 14, 2018.

At the "status check" November 14, 2018, Hampton made known that *Parrish* (*Parrish v. Federal National Mortgage Association*, 292 Va. 44, 787 S.E.2d 116 [2016]) should have prevented the GDC from ruling on the UD case and awarding possession. Hampton also advised of her continuing cases before the Supreme Court of Virginia, where the court denied Hampton's *Petition for Appeal* on November 9, 2018, but she had intention to file a *Petition for Rehearing*, which she did file, and it was not until February 1, 2019, that the *Petition* was denied, and the mandates were not returned to the Circuit Court until February 25, 2019.

It appeared to Hampton that the GDC made a premature ruling on a case, where superior court decisions were not mandated to the Circuit Court until three months after GDC's November 14, 2018, *Order*.

Hampton's *Petition for Writ of Certiorari* to SCOTUS was not denied until October 7, 2019, nearly a year after the November 14, 2018, GDC *Order*.

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.

The following facts were identified in Hampton's *Amended List of Exhibits* (herein as H.E.#), filed as evidence to be presented to the court and jury, and identified in Hampton's exhibits to *Discovery Requests for Admissions* (herein as

H.A. A through **T**), as supported in Hampton's *Motion for Rehearing ... Mistrial Supporting Memorandum of Law*, which should be reviewed together herein.

1. On July 28, 2005, America's Wholesale Lender, aka Countrywide Home Loans, Inc. ("CW" or "Countrywide"), sold Hampton two predatory loans (referred to as subprime 2/28 [$300,000] and 2/15 [$75,000]), as evidenced on the original Deed of Sale, and the DOTs, filed in the court as Instrument Nos. 20050729-0083785, 20050729-008386, 20050729-008387, respectively.

2. Hampton, upon receiving, reviewed her Deed of Sale, where the original description of the property was not at settlement, and reported to the Title Company that the description listed an incorrect amount of acreage conveyed. The company obtained a corrected description of the property from the seller, and filed deeds in the court on October 17, 2005, as: Re-recorded Deed of Sale instrument no. 20051017-0116773 (H.E.1); Re-recorded DOT (for $300,000) instrument no. 20051017-0116774 (H.E.2); and Re-recorded DOT (for $75,000) instrument no. 20051017-0116775 (H.E.3).

3. The first DOT and loan had a two percent prepayment penalty, never noted to Hampton (in violation of VA Code §159.1-200 re predatory lending), and in February of 2006, Countrywide induced Hampton into a re-finance of her loans, combining the two, for both a significantly lower payment and slightly lower interest rate, and claiming the property appraised at $581,000.

4. Countrywide staged a sale of the subordinate loan to HSBC, to validate the prepayment penalty they were not entitled to with an "in-house" re-finance, as seen in the "fraudulent" Corporation Assignment of DOT from Countrywide to Household Realty Corp. of VA, filed in the court on May 25, 2006, as instrument no. 20060525-0046084, just prior to the re-finance June 9, 2006. (H.E.4) (Also appended to *Reconsideration Memorandum of Law* from prior case Exhibit 5)

5. Countrywide violated VA Code §6.2-1629 (prohibited practices re deception, fraud, etc. with Consumer Transactions) as well as §6.2-1614 (blanks left to be filled in after execution and submitting false information ... breaching any covenant or instrument ... intentionally engage in the act of refinancing a mortgage loan within 12 months following the date the refinanced mortgage loan was originated, unless in borrower's best interest). Hampton was not only induced but deceived as to the loan product of an interest-only-arm loan for ten years, not discovered until ten years later and her loan increased by $16,800 without cashout. The 2006 Countrywide refinance DOT was filed in the court on June 14, 2006, as instrument no. 20060614-0052490. (H.E.5) (**H.A.A**) (further argued at Hampton's *Motion to Dismiss*, as evidence submitted at hearing with Hampton's *Reply Brief* to SCOTUS, copies of the DOT, both before and after alteration). And since again the property description was not at signing, the description was found altered and incorrect and later determined to require a "Corrective Affidavit." (see para. 20).

6. Evidence of the material alteration is easily seen in the 2006 Countrywide refinance DOT, first page of Hampton's original copy at closing, unaltered, with blank spaces to be filled in. (H.E.6) (**H.A.A**, altered DOT in admissions). The original was to be at Trial, together with other originals, and included at *Summary Judgment* and *Demurrer* hearings, but returned to Hampton for use at trial.

7. Although Bank of America, N.A. ("BANA") admitted to State Attorney General's Predatory Lending Unit in 2019 that Fannie Mae was the "master" investor since 2006, it was not until a Bloomberg Audit on Hampton's account revealed the Note possibly went into the Fannie Mae REMIC-2006-67 GSE.

8. Although Countrywide failed to send or file with the court a Notice of Corporate Assignment (per paragraph 20 of the DOT), Bank of America ("BoA" or "BofA") took over the loan in April 2009. Hampton, having applied and qualified for, was verbally approved by BoA, under the Fannie Mae Guidelines, for the HAMP modification, as evidenced by Hampton's July 27, 2009, submission for HAMP modification (H.E.7), qualifying Hampton for the HAMP modification on July 29, 2009, but was never offered. No further billing statements were received after the July 2009 statement, and Hampton was instructed not to make payment on that prior loan as it was being modified. All loans were to convert to fixed-rates.

9. BoA required Hampton to file bankruptcy in order to qualify for the HAMP modification, which Hampton filed January 12, 2010. And, in a further

effort to receive the modification, Hampton faxed her January 24, 2010, letter to BofA re HAMP modification with attachments 5A-D (hardship/history of loan) and 6A-6B (Fannie Mae Guidelines), after bankruptcy attorney's consent. (H.E.8)

10. Thereafter, BoA failed to reaffirm with a modification, as promised, and the court discharged the debt as could be seen in US Bankruptcy Court Discharge dated April 26, 2010. (H.E.9)

11. Shapiro et al. wrote a December 15, 2010, letter re deed of trust being unavailable and notice re sale of property. (H.E.10) Later, it was this foreclosure notice and BoA's prior approval of the HAMP modification (never offered) that qualified Hampton under the Independent Foreclosure Review.

12. Hampton's further evidence to qualification for the HAMP modification could be seen in her December 21, 2010, e-mail with John Pontino, BoA's Loss Mitigation Specialist, re HAMP application sent to underwriting. (H.E.11) In February 2011, BoA "lied" about the investors rejecting the HAMP modification where Fannie Mae, the investor, did not deny the same. (H.E.8, attached 6A-6B)

13. Notice of Assignment of DOT from MERS to Bank of America, N.A. ("BANA"), successor by merger to BAC Home Loans Servicing, LP fka Country-wide Home Loans Servicing, LP (who never serviced Hampton's loan) filed in the court March 30, 2012 (nearly six years later), instrument no. 20120330-0023523, misrepresenting that they were the "holder and owner" of the Note and beneficiary

of the DOT, when this was not true and was a misrepresentation of material fact, and they did so with the intent to cause Hampton to rely on the misrepresentation regarding the DOT and their attempts to foreclosure on the Property (H.E.12) **(H.A.B)**, argued at *Motion to Dismiss*, with exhibits to Hampton's *Reply Brief* to SCOTUS, and her argument regarding separation of the Note and the DOT, and where **an assignment of the DOT alone is a nullity**.

14. Under the Consent Orders (2011) (H.E.39 US Bank N.A., on behalf of their trusts), US Treasury created the OCC FRB Financial Remediation Framework – Independent Foreclosure Review (2012). (H.E.13) (H.E.40, full Guide) The remedies required to "provide the loan (HAMP) modification for which borrower should have been (was) approved," plus corrections to credit records, and to "suspend" foreclosure or "rescind" if such occurred. (Also *see* US Bank's letters on their role with Trusts, H.E. 40a & 40b) *See also*, 12 U.S.C. §1818(b).

15. Under the Independent Foreclosure Review ("IFR"), the board sent a letter of acknowledgment of Hampton's request January 4, 2013. (H.E.14)

16. Under the IFR, the banks were found accountable "with an enforcement action related to deficient servicing and foreclosure processes," and Hampton was approved for the remedies, and sent a penalty payment on April 19, 2013. (H.E.15)

17. Under the IFR, Hampton was sent Tax Form 1099-Misc for 2013 (for the penalty payment alone) received April 22, 2013. (H.E.16)

18. At no time following Hampton's qualification under the IFR has BANA or Fay (on behalf of US Bank/PROF) offered the mandated remedies, i.e., the HAMP modification retro to July 29, 2009. A modification is like a re-finance without closing costs and the loan starts over again, for another 30-40 years.

19. Hampton filed Complaints with President Obama in April 2014 (redirected to Consumers Financial Protection Bureau [CFPB]) as well as follow-ups with CFPB, OCC/US Treasury, for BANA/Fay to comply with the IFR remedies, to no avail. In response to BANA's attorney (H.E.41) offering nothing resembling the mandates, Hampton had Burch arrange a Bloomberg Audit of her account in January 2015. Hampton's expert witness was to provide testimony and the Audit would have been presented to the jury (H.E.38) (Audit was also submitted in full with *Motion for Rehearing/Mistrial.*)

20. Notices were sent in April 2015 on BANA's attempt to foreclose and Hampton discovered that the "description" in the publication and 2006 DOT were altered from the re-recorded deeds of October 2005. Upon further investigation, she discovered her property's description was inaccurate and she put in claim to Fidelity National Title Insurance Co., who turned it over to Owen & Owens ("O&O") in Virginia for a "Corrective Affidavit." (H.E.43a – 43g) Jeremiah Yourth, Esq. from O&O would have testified to White's knowledge and approval of those required "Affidavits" **prior to foreclosure**. *See also* para. 45 re (**H.A.T**).

21. Further to BANA's attempt to foreclose, Fannie Mae's May 8, 2015, Notice to Occupants was hand delivered to Hampton and she advised that CH13 had been filed and no foreclosure had taken place at the courthouse. (H.E.17)

22. BofA sent on July 14, 2015, Notice of Servicing Transfer to Fay as of August 1, 2015. (H.E.18) There was no transfer of the DOT filed in the court, nor could Fay be considered a "Lender." And Fay appears as a sub-servicer of BANA, since on the MERS site STILL Fannie Mae is investor, and BANA is servicer.

23. Fay sent on July 17, 2015, 404 Notice/Notice of Sale of Ownership of Mortgage Loan to PROF as of June 19, 2015. (H.E.19) (**H.A.C**) Hampton knew this to be a misrepresentation since PROF could only be sold to "within a ninety period of time" back in 2013, under the terms of a Pooling and Servicing Agreement (PSA), which governs such trusts.

24. White sent on August 20, 2015, Notice re Fair Debt Collection Practices Act. (H.E.20) Several communications followed and Hampton responded to all, to both Fay and White, to communicate Notice of Error or Information Request/ Notice of Incorrect Default Amounts, Bankruptcy dismissal, and status of her loan with the IFR remedies (H.E.20d), and as would have been presented in her trial by jury, exhibits identified as H.E.20a to H.E.20f, with 20e being Fay's offer of a Deed in Lieu Incentive, which did not **expire until December 31, 2015**, and where they ignored all proper procedures as set out as violations in paragraph 31 herein.

25. White sent its September 29, 2015, response to Hampton's Notice of Dispute, together with Interest Only Adjustable Rate Note attached. (H.E.21) (**H.A.D**), stating that the note with all endorsements evidenced Noteholder status, but it was "blank" endorsed. There should have been an endorsement to Fannie Mae. A review of the Note and DOT clearly shows no endorsement to Fannie Mae or BANA and, therefore, any appointment of a Substitute of Trustee or Assignment is invalid, as both parties do not have the requisite authority to foreclose, assign a substitute trustee or collect any payments.

26. Substitution of Trustee (SOT) from PROF to White, filed electronically November 10, 2015, is identified as instrument no. 20151110-0074973. (H.E.22) (**H.A.E**) PROF was never secured by the DOT, no Power of Attorney (POA) was noted in the SOT, nor filed in the court records, and there was no Assignment to the DOT filed in the court records, as a prerequisite to foreclose or assign the SOT. Thus, White and Fay acted without the right to do so and knowingly did so.

27. White's November 18, 2015, Notice of Trustee Sale/Substitution of Trustee, was received by Hampton November 23, 2015, for Trustee Sale on December 7, 2015 (H.E.23) (**H.A.F**), where this should be considered as "unfair" notice as further detailed in paragraph 31 herein.

28. Although Hampton advised in August 2015, both Fay and White, of the name of her attorney's office (as required) and, more particularly, Burch's

involvement, and submitted numerous Third Party Authorizations, upon their request, Fay continuously did not accept the same as they should have. Also, Hampton, under the IFR remedies, was to be offered the HAMP modification – not an application to determine eligibility – as she had already been found eligible.

29. Finally on December 1, 2015, Fay accepted Burch's Third Party Authorization, together with a modification application and proposed workout, and contrary to Fay's claim that Hampton failed to workout anything with Fay, it was the reverse as they were to deal with Burch, but failed to do so until this late date.

30. Burch's December 3, 2015, Demand to Cease & Desist Foreclosure Proceedings was sent to White and Fay, together with Third Party Authorization. (H.E.24) (**H.A.G**) Also attached to that letter were the *Loan Securitization Audit Highlights* (H.E.24) to be presented at trial together with the other supporting attachments noted in that Cease & Desist letter. (H.E.24a through H.E.24d)

31. On December 7, 2015, PROF through Fay and trustee White proceeded with a foreclosure they had no right to proceed with and despite warnings per Burch's Cease and Desist, as set forth above, and stated in Hampton's *Motion for Rehearing ... Mistrial Supporting Memorandum of Law*, at pages 6 through 10:

> "At no time has SIW acted as an unbiased fiduciary, and together with Fay, have acted more as debt collectors (and, in fact, all their communications identified them as such) violating the Fair Debt Collections Practices Act (FDCPA) by:
>
> Not following proper notice requirements such as:

1) Unfair Notice of Trustee Sale where such Notice might have been received within two weeks of the foreclosure date, but it was given during the Thanksgiving Holiday and Hampton was only afforded 7 ½ days to do anything about it, during a time period where not only the courts were closed, but attorneys were unavailable as well. Also, Hampton did not receive this Notice until after it was published in the newspaper, which again should not be viewed as fair.

2) Hampton never received a Default Letter or any of the other notices that were to be sent to her, in breach of the DOT, paragraph 22, where Notice must specify:

(a) The Default; (b) the action to cure the default; (c) date not less than thirty days from date of notice; and (d) notice of right to reinstate after acceleration and right to bring court action.

Further to the above, Section 55-59.1.B of the Code of Virginia, requires proper and timely notice, which was not provided to Hampton or other beneficiaries.

3) In further breach of the DOT, paragraph 16, Governing Law; Severability; Rules of Construction, calls for all conditions precedent as required by Federal and/or Virginia Law, including but not limited to:

(a) the Virginia Supreme Court ruling in *Mathews v. PHH. Mortg. Corp.*, 724 S.E.2d 196, 283 Va. 723 (2012) regarding the failure to conduct the HUD face-to-face meeting required by HUD regulations (24 CFR section 203.604);

(b) failing to offer the mandated HAMP modification approved initially July 29, 2009, under Fannie Mae Guidelines, and further approved in early 2013, in the review of the Independent Foreclosure Review and its Remediation Framework, a program which followed US Bank NA's, on behalf of their Trusts, "Consent Orders" with the OCC/US Treasury (as well as to its predecessor BANA), which also did not require a complete modification application, as it had already been approved; **[12 U.S.C. §1818(b) added here]**

(c) failing to address the full and complete modification package which was submitted, with confirmation to Fay Servicing on December 1, 2015, together with the Third Party Authorization, which ... delayed the submission of the same ... And had Fay accepted the Third Party Authorization, when first boarding the loan, Hampton's further modification application could have been submitted 37 days before the foreclosure date making the foreclosure invalid ... under 12 CFR Section 1024.41(g).

(d) failing to let the offer of a Deed in Lieu expire prior to foreclosure, where expiration date was December 31, 2015, and where foreclosure action

took place December 7, 2015, in further violation of 12 CFR section 1024.41 – Loss Mitigation Procedures.

Even more specifically, the FDCPA is a strict liability statute which specifically prohibits "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information regarding a consumer." 15 USC section 1692e(10). The FDCPA was enacted "to eliminate abusive debt collection practices by debt collectors... " *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 591 (6th Cir. 2009) (quoting 15 U.S.C. Section 1692(e)).

... *See Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d 1222 (9th Cir. 1988) ... *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993) ... *Wallace v. Washington Mut. Bank, F.A.*, 683 F.3d 323 (6th Cir. 2012).

Here in this case it is clear that Fay committed numerous violations using false representations and unfair and deceptive practices to collect against Hampton, beginning with their very first 404 Notice of Sale of Ownership of Mortgage Loan (Hampton's Exhibit C to *Discovery Admissions*) informing Hampton that PROF was the New Creditor as sold on 6/19/2015. Since Hampton had already commissioned CFLA to conduct the Bloomberg Audit in January of 2015, and having received and studied the same, Hampton knew that PROF could not be a new creditor since these trusts must have pooled all loans into the trust back in 2013 within 90 days of the pooling and servicing agreement. Also, Fannie Mae was still claiming to be the investor at that time.

Accordingly, Fay misrepresented to Hampton that this entity had a right to foreclose, where clearly they did not, and as further evidenced by the Bloomberg Audit. Here, Fannie Mae, the investor, was clearly the only one who might have been able to foreclose had MERS assigned that first Assignment to them instead of BANA, and thereafter appointed BANA as servicer. Fay also advised Hampton that they would make sure that a modification would be made and they would be Hampton's last customer service manager (since Hampton had more than 25 CSMs with BANA). Further, Fay advised that the HAMP modification was no longer available, which was clearly not true since it did not cease until December 31, 2016. However, before Fay had time to even "board" the loan or followed through with any of the above, they had instructed SIW to proceed with foreclosure in mid-August, 2015.

Further Fay, early on, had advised that if Hampton had legal representation that they would communicate with them, and Hampton advised of the same and Burch, Hampton's Loss Mitigation Specialist, contacted them in mid-August regarding the same. However, it was not until

December 1, 2015, that Fay accepted the "Third Party Authorization" together with the modification application. SIW also did not accept the "Third Party Authorization" together with the December 3, 2015, Cease & Desist Letter until that date. That letter was also copied to Fay, and warned of violations to the DOT, FDCPA, etc., and that Hampton would file suit, which she did, the following day, December 4, 2015, if they failed to call off the Trustee Sale scheduled for December 7, 2015.

So in addition to all the violations listed above and in Burch's Cease & Desist, including the Audit Highlights, the need for the Corrective Affidavit to correct the Property description ("Cloud on Title"), invalid assignments, lack of required notices, and the actual filing of a suit against them in an attempt to stop the same, SIW and Fay proceeded with the "wrongful" Trustee Sale on December 7, 2015. ... Hampton's belief that Fay acted merely as a "foreclosure mill" and misrepresented PROF was the beneficiary of Hampton's loan, where clearly Fannie Mae was the beneficiary, but had never been assigned the DOT as it should have within three months of acquiring the same, it should be found that this constituted a false representation in connection with the collection of a debt and a deceptive practice in the conduct of trade or commerce in violation of 15 U.S.C. Section 1692e. All of this coupled with the fact that the signer of the Assignment from BANA to PROF, shows further confusion as to PRMF's acquisition of the loan as of June 19, 2015, the same date that Fay claimed PROF had acquired the same. Given the wide range of misrepresentations, the "least sophisticated consumer" would clearly have difficulty ascertaining who owns the loan, and who can foreclose or resolve the loan.

Still further, the FDCPA prohibits a debt collector from communicating with a consumer in connection with the collection of any debt "if the debt collector knows the consumer is represented by an attorney ..." 15 U.S.C. Section 1692c(a)(2). Fay, as well as SIW, knew in mid-August that Hampton was represented by counsel and, more specifically, the firm's Loss Mitigation Specialist Jeff Burch, but failed to accept the Third Party Authorization until December 1st and 3rd, 2015, respectively, and right before the Trustee Sale of December 7, 2015."

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.

33. Assignment of DOT from BANA to PROF was executed December 17, 2015, filed electronically twice December 28, 2015, in the court as instrument nos. 20151228-0084712 and 20151228-0084736 (H.E.26) (**H.A.I**), after the December 7, 2015, Trustee Sale, evidencing that PROF was not secured by the DOT prior to filing the SOT and proceeding with foreclosure. This deed was not an original, had an incorrect pin number, had a "bogus" description of the property, was executed by a servicer on a POA not filed in the court and concealed ownership to still another party, not party to the DOT, nor assigned servicing of the DOT; and where the land records do not connect PRMF to the loan or the lender.

34. Auction.com advertisements began with post for January 16-19, 2016, submitted with Exhibit BB to GDC and provided herein. (H.E.27) (**H.A.K**) It should be noted here that neither Probate Court nor Circuit Court posted *Orders* until nearly a year after auctions began, which continued into 2018, and caused Hampton a great deal of stress, which Hampton believed to be Fay's intention.

35. Fay on behalf of PROF, through other counsel, initially filed Unlawful Detainers ("UD") in GDC on June 27, 2016, where Probate Court had yet to rule, and again January 12, 2017, despite ongoing litigation. Hampton believes these actions, as well as the GDC *Order*, were all premature to other court decisions.

36. Fay, as "Lender," submitted to the IRS 2015 Form 1099-A/Acquisition or Abandonment of Secured Property, where they knew Hampton filed bankruptcy and was discharged from the debt in 2010, and were not entitled to file this notice, and believed filed to cause Hampton further harm. (H.E.28) (**H.A.L**)

37. DOF from White to PROF dated May 12, 2016, filed May 13, 2016, as instrument no. 20160513-0028205 (H.E.29) (**H.A.M**), not executed on December 7, 2015, did not state verbatim the property conveyed from the DOT, where White knowingly substituted from a "Corrective Affidavit" (re "Cloud on Title") they approved, and knew the SOT was improperly assigned, and DOF was not an Original, wet-ink copy as required. The property description is still incorrect.

38. Hampton's Letter of Opposition filed with the Circuit Court to Land Records, Real Estate Assessment and Treasurer's Office dated June 20, 2016, was sent to the Commissioner of Accounts and complained on the DOF as to being unacceptable to the courts and was filed to stop further harm. (H.E.30) (**H.A.N**)

39. The Limited POA from US Bank NA to Fay dated August 26, 2014, which was first submitted with Foreclosure Accounting by White to Commissioner

of Accounts on June 7, 2016 (to show right or power to act), failed to list PROF. (H.E.31) **(H.A.O)**

40. The Limited POA from US Bank NA to Fay dated June 4, 2015, was filed and recorded in Mount Holly, NJ, on December 23, 2015, as instrument no. 5188366, and subsequently submitted for Foreclosure Accounting by White to support its powers to foreclose, was not an original POA, not filed in the county court, and appeared tampered with regarding "PROF's" entry – the exhibit attached thereto being a copy and not original, as required. (H.E.32) **(H.A.P)**

41. PROF's Certificate of Partial Release, was prepared by White, and filed with the court on August 16, 2016, as instrument no. 20160816-0052847. (H.E.33) **(H.A.Q)** This deed demonstrates White's confusion regarding the need for the "Corrective Affidavit" on the description of the property, where this deed releases 21.88 acres that never conveyed in the DOT of 2006, and further "Clouds Title."

42. The Limited POA from BANA to Avenue 365 Lender Services, LLC, relates to BANA's sale of Hampton's Mortgage Loan Purchase and Interim Servicing Agreement as sold June 19, 2015, to PRMF Acquisitions LLC, was recorded in the Maricopa County Recorder on August 26, 2015, as instrument no. 20150617207. (H.E.34) **(H.A.J)** This POA conceals further ownership and that the wrong party proceeded with the assignment of the SOT and foreclosure proceedings, and failed to record in court records, to prove any powers.

43. US Securities & Exchange Commission's ("SEC") Attestation dated October 3, 2016, states no filings under US Bank NA as Legal Title Trustee for PROF-2013-S3 Legal Title Trust or under the name of PROF; thus the Note not secured by the DOT. (H.E.35) (**H.A.R**) Where these trusts are governed by their PSAs, Federal law requires that their contracts be certified and filed with the SEC.

44. The *Order* of Probate Court dated December 1, 2016, states it "expresses no opinion as to the correctness and validity … or other language on the account of sale." (H.E.36) (**H.A.S**) And where Hampton had filed "Exceptions" therein, those Exceptions could have been offered at trial (H.E.42) Note: Probate Court, like GDC, is not a court of record, and thus cannot invalidate a DOT or DOF.

45. The Loudoun County website stating how to correct a deed recorded in the land records (by "Corrective Affidavits" only), was submitted first in GDC on August 3, 2018, which procedures White ignored. (H.E.37) (**H.A.T**)

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.

AUTHORITIES AND ARGUMENT

Assignment of Error: Whether the Circuit Court erred in sustaining Demurrer on Counterclaims & Sanctions (*Order* of February 7, 2020, excerpt tr. 10-18-19, p.16, ll. 2-8); whether Res Judicata was appropriate to apply (tr. p.14, l.21 - p.16, l.8); whether Demurrers to non-judicial foreclosures violate Citizens' Constitutional Rights to Due Process.

Standard of Review

The standard of appellate review of a circuit court's grant of a demurrer is well established. "[I]n reviewing the judgment of the circuit court, an appellate court looks solely to the allegations in the pleading to which the demurrer was sustained." *Philip Morris USA, Inc. v. Chesapeake Bay Foundation, Inc.*, 273 Va. 564, 572, 643 S.E.2d 219, 233 (2007) (citations omitted). And a demurrer "admits 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." *Id.* As a "review of a circuit court's decision sustaining a demurrer addresses that same legal question, [this Court] review[s] the circuit court's judgment de novo." *Chesapeake Bay Foundation, Inc. & Citizens of Stumpy Lake v. Commonwealth ex rel. State Water Control Board*, 46 Va. App. 104, 111, 616 S.E. 2d 39, 42 (2005). Further, "[T]he interpretation of a contract presents a question of law subject to de novo review." *PMA Capital Insurance Co. v. US Airways, Inc.*, 271 Va. 352, 357-58, 626 S.E.2d 369, 372 (2006).

As stated in a concurring opinion of former Chief Justice Kinsner, "[i]n ruling on a demurrer, a trial court cannot consider any grounds other than those stated specifically in the demurrer ... nor can this Court on appeal." *Matthews v. PHH Mortgage Corp.*, 724 S.E.2d 196 (Va., 2012); *also see Klein v. National Toddle House Corp.*, 210 Va. 641, 643, 172 S.E.2d 782, 783 (1970), Va. Code §8.01-273(a).

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)

> "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).

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.**

Hampton submitted her *Objections to the Final Order on Demurrer to Counterclaims & Sanction Action*, ruled on February 7, 2020, and as preserved therein, when read together with Hampton's other *Reconsideration/Rehearing/ Mistrial* motions will be easier to follow, thus offers those arguments as stated:

First, Hampton had filed *Motions for Reconsideration* (denied by Judge Sincavage), as well as *Motions for Rehearing or in the Alternative Motions for a Mistrial* and *Supporting Memorandum of Law*, deemed to be further *Motions for Reconsideration*, also denied at the February 7, 2020, hearing on *Final Order*. Those motions and exhibits thereto, now on record, presented evidence as to the wrongdoing that PROF, Fay Servicing and Samuel I. White, P.C. have imposed upon Hampton. The following objections and/or arguments are being preserved herein as they will be presented to the Supreme Court of Virginia on a still further appeal.

Second, Hampton believes that her *Objections to the Final Order on Summary Judgment in the Unlawful Detainer Action* should be read and addressed prior to these objections, as they were first addressed at the hearing therein ruling on both.

Addressing the issue of demurrer to the counterclaims and sanctions, the following is an excerpt from Judge Sincavage's ruling on December 6, 2019, on the *Motion to Release Bond*:

> "Hampton filed *Motion to Reconsider* and I have not reviewed yet. ... First on ruling, I don't believe I affirmed. Affirming has a couple meanings that apply. If someone was to withdraw their appeal, then the General District Court ruling is affirmed. There was no withdrawal in this case. **Nor was this a review of General District Court whether they made proper rulings or proper findings. This was a trial *de novo*.**" [*Hampton notes here: de novo review: when court decides **without deference to a previous court's decision**. Court decides all issues, **as if case being heard for first time**.*] **(bold added for emphasis here)**
>
> "... So the court was starting from the beginning – not looking at what the District Court did and seeing if there was any error. **What the court in fact do was adjudicate these matters *de novo* from the start and the court did so by granting summary judgment on unlawful detainer and dismissing on demurrer the counterclaim.** ... Until I get a final order, the court has not really spoken as to what its adjudication or rulings in this matter." **(bold added for emphasis here)**

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. In addition, the Cease & Desist Letter of December 3, 2015, Exhibit 24 admitted herein, was not part of the evidence submitted; nor were the violations as presented herein; nor could they be since Hampton was not privy to all that information as an attorney might be; nor were her cited cases available to her as a pro se litigant or decided prior to the time of that complaint; and still further, nor were the Judicial Notices with further evidence considered; nor was such available at the time of filing the 2nd Amended Complaint, which combined her Federal case with her State case. And as can be further seen from Hampton's *Petition for Writ of Certiorari* before the Supreme Court of the United States, attached hereto as Exhibit A, together with its Appendix, her petition was based on her Constitutional Rights to Due Process, not afforded by the lower courts. In further support herein, Hampton attaches hereto as Exhibit B, Hampton's *Petition for Rehearing* before the Supreme Court of Virginia. 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.

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."

From page 2, *Motion for Rehearing ... Memorandum of Law*:

"It is Defendant's *Grounds of Defense* which this court should have consulted in this appeal, and, from the District Court's decision, it appears that court also failed to consult the same, particularly given the evidence

already presented to the court and of record herein. And as noted on page 3 thereof, Hampton's *Response* to Plaintiff's *Motion for Summary Judgment* in the General District Court, where she was not required to file a response (as dismissed below), but Hampton "did so in order to set the record straight, since SIW was trying to prevent Hampton from even defending herself, misconstruing nearly all the facts on record and attempting to paint an unfair picture of Hampton. ... **Hampton interprets this to be 'an obstruction of justice' and is, at minimum, 'questionable' or 'unethical' as to counsel.**" (emphasis added)

Further to Hampton's *Grounds of Defense*, it should be noted on page 10 under Conclusion and Prayers for Relief, Hampton "prays that this Court award Hampton by voiding those documents on file in our Court records, including the Assignment of Substitute Trustee, Deed of Assignment, Deed of Foreclosure, and all other documents filed on behalf of PROF, as being invalid. ... or do any further harm to Hampton as against her property, her reputation, and her physical, mental and financial well being."

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

"Further to the Counterclaims & Sanctions initially filed, which Judge Sincavage could not make sense of, clearly because they were moot as based on the superior courts' cases and awaiting decisions, and the real Counterclaims & Sanctions were to be found in the Grounds of Defense, where it was clear what Hampton was seeking – that being invalidation of all documents that PROF had placed on file in this Court's records.

As can be seen in Judge Sincavage's *Final Order*, as memorialized by the Transcript Excerpt of October 18, 2019, what Judge Sincavage stated therein as to the issue of demurrer follows.

Continuing with Judge Sincavage's rulings, where he stated "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" [p.10, l.19 - p.11, l.l] "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." [p.11, ll.1-5] and continuing through transcript pages 11 to 16, 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." [p.16, ll.2-8] **(bold emphasis added)**

Hampton disagrees as stated above and as stated in her *Motions for Reconsideration,* as well as her *Motions for Rehearing ... Mistrial* deemed *Motions for Reconsideration*, and *Supporting Memorandum of Law* thereto, still denied February 7, 2020. And still further, the attached Petitions (Exhibits A & B) clearly demonstrate that Judge Irby did not seek the truths of Hampton's allegations, nor did she recognize any of the claims as can be seen therein.

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

> "Yes, Hampton takes issue with this where clearly she has provided sufficient evidence in her exhibits, as well as in *Admissions* to *Discovery Requests* from both sides, for this court to determine that the documents of *Deed of Foreclosure*, as well as the *Assignment of the Deed of Trust*, which it is based upon, **are materially defective**. It appears from the transcript that the court has based its decision on what was presented at hearing only, and has ignored the evidence in the exhibits and *Admissions*. What does it take to prove that there is a material dispute or a defective Deed, **or 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 according to their *Admissions*, have challenged Hampton on the same. But if you look more clearly, they wish to prevent all evidence, including witnesses, as they have objected to the same. Again, Hampton considers this to be an "obstruction of justice." **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.**
>
> Although Hampton, prior to receiving the e-mail with a copy of the transcript attached, had filed her *Motions for Reconsideration*, based on her recollection at the hearing, Hampton believes those motions and reconsiderations should be considered herein, together with their attachments thereto.

It is clear from the transcript that the court did not review all documentation on file, where particularly in Hampton's *Response to Summary Judgment and Demurrer*, Hampton was specific in her "**submitted**" *Admissions* to PROF's *Discovery Requests* that the documents on file were, in fact, defective and those material facts were in dispute and, thus, PROF was not entitled to judgment as a matter of law. It appears that Hampton's filed *Response* and her "**submitted**" attachments thereto, which also included the *Admissions of PROF* to *Discovery Requests*, which read more on denials, together with Hampton's exhibits, were not considered by the court. Clearly, the *Admissions* and Exhibits demonstrated that there were defects to those documents, as well as to the procedure leading up to and including those documents with regard to possession. And **Hampton knows that she would have prevailed at a trial by jury**." **(bold emphasis added)**

Restating from Hampton's *Objections to the Final Order on Summary Judgment*:

"Thus, it appears to Hampton that the Circuit Court is stating here that on appeal from the General District Court on an unlawful detainer, this court can only rule on an unlawful detainer based on the unlawful detainer statute, that being the same as in the General District Court. If this is the case, what would be the purpose of an appeal to the Circuit Court, if it was limited to what the General District Court can rule on? And why would a Trial by Jury be granted on a **de novo appeal**, if you cannot consider anything more than the unlawful detainer statute? Hampton was lead to believe that by appealing an Unlawful Detainer suit from a General District Court, which is not a court of record, **she would be entitled to a de novo trial of record, and her Constitutional Right to a Trial by Jury, where the jury would determine the outcome and not the bench.** How could this court's decision be considered "fair," particularly, where Hampton was further imposed with not only the $8,000 Bond to appeal, but the cost of filing appeals fees; the costs involved in pleadings; the costs involving expert witnesses, where a trial by jury was not permitted; the time spent in researching and writing; the burden of trying to prove these injustices, where she was not permitted to do so; and leaving Hampton still with the burden of carrying on this appeal?" **(bold emphasis added)**

In light of the above, and as supported by Hampton's *Motions for Reconsideration, Supporting Memorandum of Law* and, still further, *Motions for Rehearing ... Mistrial* and more particularly, as spelled out to the court (as Hampton would have to a jury) in her *Motions for Rehearing ... Mistrial Supporting Memorandum of Law*, all the violations listed therein, and still further to Hampton's arguments and objections to the *Final Order* and/or rulings in this case on *Summary Judgment*, where it is clear that PROF was not entitled to summary judgment, neither should the *Final Order* on Demurrer be permitted to survive.

Hampton sincerely believes that the Supreme Court of Virginia on Appeal could find that *Parrish* does apply to this particular case.

Here in Hampton's *Supporting Memorandum of Law*, she has spelled out what she would have to a panel of jurists, as well as the court, the violations to the DOT incorporated as a condition precedent to foreclosure and the regulations that barred that foreclosure. Further, as found in *Parrish*:

> "We may further infer from their allegations that the foreclosure purchaser, Fannie Mae, was aware of the alleged violation of the deed of trust because it was the lender that allegedly committed the violation. We conclude that these allegations are sufficient that, if proved, they could satisfy a court of equity to set aside the foreclosure.
>
> We therefore hold that the Parrishes raised a bona fide question of title in the unlawful detainer proceeding, thereby divesting the general district court of subject matter jurisdiction. Accordingly, the general district court lacked subject matter jurisdiction to try the unlawful detainer before it. The circuit court likewise lacked subject matter jurisdiction while exercising its de novo appellate jurisdiction, because its subject matter jurisdiction was derived from and limited to the subject matter jurisdiction of the court from which the appeal was taken. **Its authority therefore was limited to dismissing the proceeding without prejudice, thereby enabling the foreclosure purchaser to pursue its choice of available remedies in the circuit court under that court's original jurisdiction." (bold emphasis added)**

Further to Hampton's *Motion to Dismiss*, at oral argument, Hampton stated: "This should be sufficient evidence, all previously submitted and pled, but NEVER previously "actually" tried, but if not I have more that I could present." It was believed, in light of *Parrish*, Hampton had raised a

bona fide dispute of title, including its validity. And, in fact, Hampton's arguments, as previously presented by attorneys, have survived using the same.

The Parrishes alleged that the foreclosure was invalid due to violations of 12 CFR § 1024.41(g) – HAMP modification submittal 37 days before foreclosure – **JUST ONE of the many violations spelled out in Hampton's *Supporting Memorandum of Law*.** But as can be seen in all the pleadings, Hampton sought to invalidate the Trustee's Deed, the Assignment of the DOT to PROF, the Substitution of Trustee from Fay/PROF to SIW, the 1st Assignment of the DOT from MERS to BANA, and the DOT itself … of course, to set aside the wrongful foreclosure and prove to this court that no one had the right to possession or the right to the remedy to foreclose.

Further to Hampton's Petitition 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."

And as further stated in Hampton's *Reply Brief* to SCOTUS:

> "Further, beginning on pages 23-33, of Hampton's Petition, she had pled with "factual" evidence (exhibits) that drew a reasonable inference that the defendants were liable for the misconduct alleged, and **for Hampton's case not to be heard on the merits thereto is a clear violation of her rights to procedural due process.**
>
> Hampton's Constitutional Rights are supported by the Jurisdictional Statement bridging pages 33 through 36. Clearly, this Superior Court has jurisdiction over Hampton's Appeal."

Hampton request that this court review that Jurisdictional Statement from the attached SCOTUS Petition, Exhibit A.

[*Flora Dawn 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)]

And continuing with Hampton's *Reply Brief* to SCOTUS:

> "Petitioner in her "questions presented" and throughout her Petition is seeking "clarity and uniformity" and believes that this case, upon being heard, may aid in establishing the same.

Continuing here from page 40 of Hampton's Petition:

> It would seem that in light of the bad practices of these servicers, including Fay on behalf of PROF/US Bank, uniform non-[judicial] foreclosure rules should be developed to protect citizens nationwide from the unlawful taking of their homes in violation of their Constitutional rights and without due process. ... It is time for the courts to stand up to these TBTF banks and/or their servicers. The solution is always uniformity and clarity must be achieved. Perhaps the better solution would be to bar non-judicial foreclosures altogether until our faith in home ownership can be restored."

As seen in PROF's *Renewed Demurrer* (p.3) and as argued at hearing:

> See VA Code 8.3A-205(b) "... When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed." ... As such, any possessor, **even a thief is entitled to enforce the *Note*.** (bold emphasis added)

It is clear to Hampton this statement goes beyond anything Constitutional! A *Note* can only be enforced **if it is secured by a DOT**, and at no time was PROF secured by the DOT prior to exercising the powers of the DOT to Substitute a Trustee or to foreclose, as is clear from Hampton's evidence.

Still further to res judicata and due process in Hampton's prior 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.

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

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 ...*"

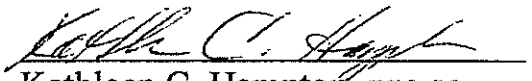
Will this Court allow for a wrongful foreclosure to end in the theft of Hampton's property without due process? I pray not!

Granting Demurrers to non-judicial foreclosures appears to offer no protections of the law and violate citizens' Constitutional Rights to due process in defending their Property from "unlawful takings." This court can begin the process to change what needs to be.

CONCLUSION

Appellant respectfully requests this court find that the Circuit Court erred in sustaining Demurrer on Counterclaims & Sanctions, and that res judicata was inappropriate to apply and that this case is of significant precedential value, and find 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 thus to grant this Appeal. Appellant should not have to continue to defend her property from the "Unlawful Taking" by PROF, in clear violation of her Constitutional Rights.

Respectfully submitted,



Kathleen C. Hampton, *pro se*

CERTIFICATE

The undersigned Appellant, Kathleen C. Hampton, in accordance with VSCR 5:17(i), makes the following certification:

1. Names of parties and full contact information for counsel:

Appellant (Plaintiff below): Pro se	Kathleen C. Hampton Kathleen C. Hampton, *pro se* P.O. Box 154 Bluemont, Virginia 20135 540-554-2042 khampton47@yahoo.com (limited access)
Appellee (Defendant below):	PROF-2013-S3 LEGAL TITLE TRUST, by U.S. BANK NATIONAL ASSOCIATION, as Legal Title Trustee *Counsel for Plaintiff* Ronald J. Guillot, Jr., Esquire (VSB No. 72153) SAMUEL I. WHITE, P.C. 596 Lynnhaven Parkway, Suite 200 Virginia Beach, Virginia 23452 (757) 217-9304 (Telephone) (757) 337-2814 (Facsimile) rguillot@siwpc.com

2. I further certify that a copy of the Petition for Appeal was mailed USPS to the above-named counsel for Appellee, at their office address listed, on this 8th day of September, 2020.

3. I further request the opportunity to state orally, in person, to a panel of the Justices of the Supreme Court, the reasons why this Petition for Appeal should be granted. I understand that should I choose to file a Reply Brief in Opposition that will serve as a waiver of the right to such oral argument.

Kathleen C. Hampton, *pro se*

IN THE SUPREME COURT OF VIRGINIA

KATHLEEN C. HAMPTON	)	
	)	
Appellant / Plaintiff, *pro se*	)	
	)	
v.	)	**Record No. 201105**
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE,	)	
	)	
Appellee / Defendant.	)	

RESPONSE TO MOTION TO DISMISS PETITION FOR APPEAL

COMES NOW Appellant, Kathleen C. Hampton ("Appellant" or "Hampton"), pro se, and responds to the *Motion to Dismiss* filed by PROF-2013-S3 Legal Title Trust, by U.S. Bank, National Association, as Legal Title Trustee ("Appellee" or "PROF"), by counsel, and, as respectfully requested on *Petition for Appeal*, further requests this response be reviewed together with the companion response to *Motion to Dismiss* on Unlawful Detainer (Record No. 201103), heard together below, and again requested to be heard together herein.

Under Rule 5:17(c)(1), Hampton did "list, clearly and concisely and **without extraneous argument**, the specific errors in the rulings below ..." and did so on pages iii, 1 and 23 and under a separate heading entitled "Assignment of Error."

APPENDIX Q

Under Rule 5:1(c)(1)(iii), Hampton did "address the findings, rulings, or failures to rule on issues in the trial court or other tribunal from which an appeal is taken" and Hampton did not "merely state the judgment or award is contrary to law and the evidence," as can be seen beginning pages 23 through 35 of her Authorities and Argument, all of which specifically address the findings, rulings, or failures to rule on issues, and where the lower court ignored the preponderance of evidence as can be seen in the "Statement of the Facts" on pages 6 through 22.

Under Rule 5(c)(1)(iv), Effect of Failure to Use Separate Heading or Include Preservation Reference, "**If there is a deficiency** in the reference to the page(s) of the ... record where the alleged error has been preserved ... *including, with respect to error assigned to failure of such tribunal to rule on an issue ... where the issue was preserved in such tribunal, specifying the opportunity that was provided to the tribunal to rule on the issue(s),* **a rule to show cause will issue pursuant to Rule 5:1A.**" Accordingly, Hampton believes there is no real deficiency as can be determined from the contents of pages 6 through 35 of her *Petition for Appeal*, where Hampton clearly quotes from most of that record, as filed prior to any *Final Orders*, and as preserved therein. It is not believed that this Supreme Court will find a need for rule to show cause required under Rule 5:1A, but if this court so determines, the same will issue and there need not be a dismissal of these cases. Clearly, PROF does not want this case to be heard, thus its *Motion to Dismiss*.

As presented in Hampton's *Petition for Appeal*, the Assignment of Error was presented to this court **without extraneous argument**, but pointing directly to the court's ruling on sustaining Demurrer on Counterclaims & Sanctions, preserved in the transcript, and stated as follows:

ASSIGNMENT OF ERROR

Whether the Circuit Court erred in sustaining Demurrer on Counterclaims & Sanctions (*Order* of February 7, 2020, excerpt tr. 10-18-19, p.16, ll. 2-8); whether Res Judicata was appropriate to apply (tr. p.14, l.21 – p.16, l.8); whether Demurrers to non-judicial foreclosures violate Citizens' Constitutional Rights to Due Process.

Apparently, PROF takes issue with the terminology used, which if this court needs clarification, can be reworded as follows:

ASSIGNMENT OF ERROR

The Circuit Court erred in sustaining Demurrer on Counterclaims & Sanctions (*Order* of February 7, 2020, excerpt tr. 10-18-19, p.16, ll. 2-8) and erred as to Res Judicata being appropriate to apply (tr. p.14, l.21 – p.16, l.8) and, thus, it appears that Demurrers to non-judicial foreclosures violate Citizens' Constitutional Rights to Due Process.

There really should be no issue with the wording as Hampton posed her errors as queries, because she felt the query would avoid her looking as if she was drawing "**a conclusion of law**," which is what the lower court and PROF, by counsel, had accused her of doing before. More importantly, it is up to this Supreme Court to decide or determine whether Hampton's *Petition* is or isn't

sufficient; and given all the torts to this case, it is hoped that some clarification to those torts and the significant precedential value, as well as substantial constitutional questions as to these issues, should be determined as pled for in Hampton's *Petition.* A *Motion to Dismiss* would not obtain that goal, nor would it be in the "interest of justice."

PROF's arguments in their *Motion to Dismiss* are unwarranted, as Hampton has clearly presented the facts and arguments and prayers and one needs only to read the *Petition*, in full, and the record, which they should be very familiar with by now, particularly since arguments in the *Petition* were quoted from the record and preserved therein as noted.

It would appear that counsel has neglected to read the full *Petition* and record, so they could consider and address the alleged errors. However, PROF has filed their *Brief in Opposition*, which continues to deceive the court stating such things as "Hampton **does not contest** her default in payment" and in the case on Summary Judgment "these material **uncontested facts** demonstrate PROF has a superior right to possession against Hampton," where these are the very facts and issues contested as seen in Hampton's Statement of Facts, and preserved in the evidence below, and, thus, further demonstrates that the *Petition* and the record has not been fully read. Further to res judicata, Hampton on page 33, that this court should find, given Hampton's evidence ... that earlier case was dismissed on

administrative convenience and was not properly reviewed; nor did that court rule on the counts on foreclosure or even speak a single word on the UD count.

Further to the Assignment of Errors, 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." Hampton requested the court to address these matters and to change what needs to be.

WHEREFORE, Appellant respectfully requests that this Court dismiss PROF's *Motion to Dismiss*.

Respectfully submitted,

Kathleen C. Hampton, *pro se*
P.O. Box 154
Bluemont, Virginia 20135
540-554-2042
khampton47@yahoo.com (limited access)

CERTIFICATE OF SERVICE

I further certify that a copy of this foregoing *Response to Motion to Dismiss Petition for Appeal* was mailed USPS to counsel for Appellee, at their office address listed below, on this 10th day of October, 2020.

E. Edward Farnsworth, Jr., Esq.
Ronald J. Guillot, Jr., Esq.
SAMUEL I. WHITE, P.C.
596 Lynnhaven Parkway, Suite 200
Virginia Beach, Virginia 23452

Kathleen C. Hampton, *pro se*

Petitioner's filings to all *Orders*

In the Circuit Court of
Loudoun County Virginia

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST,	)	
BY U.S. BANK NATIONAL ASSOCIATION,	)	
AS LEGAL TITLE TRUSTEE	)	
Appellee,	)	
Plaintiff, Unlawful Detainer	)	
Defendant, Counterclaim	)	
	)	
v.	)	**CL00118604-00, Unlawful Detainer**
	)	**CL00118605-00, Counterclaim**
	)	
KATHLEEN C. HAMPTON	)	
Appellant, *pro se*	)	
Defendant, Unlawful Detainer	)	
Plaintiff, Counterclaim	)	

APPELLANT'S OBJECTIONS TO THE FINAL ORDER ON DEMURRER TO COUNTERCLAIMS & SANCTIONS ACTION

COMES NOW, Appellant/Defendant/Counterclaim Plaintiff, Kathleen C. Hampton ("Appellant" or "Hampton"), to submit her *Objections to the Final Order on Demurrer to Counterclaims & Sanctions Action* as ruled on February 7, 2020, and as memorialized in the Transcript of Hearing Excerpt from October 18, 2019, in Judge Sincavage's *Final Order*.

First, Hampton had filed *Motions for Reconsideration* (denied by Judge Sincavage), as well as *Motions for Rehearing or in the Alternative Motions for a Mistrial* and *Supporting Memorandum of Law*, deemed to be further *Motions for Reconsideration*, also denied at the February 7, 2020, hearing on *Final Order*. Those motions and exhibits thereto, now on record, presented evidence as to the wrongdoing that PROF, Fay Servicing and Samuel I. White, P.C. have imposed upon Hampton. The following objections and/or arguments are being preserved herein as they will be presented to the Supreme Court of Virginia on a still further appeal.

APPENDIX R

Second, Hampton believes that her *Objections to the Final Order on Summary Judgment in the Unlawful Detainer Action* should be read and addressed prior to these objections, as they were first addressed at the hearing therein ruling on both.

Addressing the issue of demurrer to the counterclaims and sanctions, the following is an excerpt from Judge Sincavage's ruling on December 6, 2019, on the *Motion to Release Bond*:

> "Hampton filed *Motion to Reconsider* and I have not reviewed yet. … First on ruling, I don't believe I affirmed. Affirming has a couple meanings that apply. If someone was to withdraw their appeal, then the General District Court ruling is affirmed. There was no withdrawal in this case. **Nor was this a review of General District Court whether they made proper rulings or proper findings. This was a trial *de novo*.**" [*Hampton notes here: de novo review: when court decides **without deference to a previous court's decision**. Court decides all issues, **as if case being heard for first time**.*] **(bold added for emphasis here)**
>
> "… So the court was starting from the beginning – not looking at what the District Court did and seeing if there was any error. **What the court in fact do was adjudicate these matters *de novo* from the start and the court did so by granting summary judgment on unlawful detainer and dismissing on demurrer the counterclaim.** So the court doesn't feel that there's an affirmation of the General District Court's ruling in their ruling and the result of both ruling would cause somebody to say that, but I think it has a special significant meaning and I just want to be clear, that is what we are talking about. … Until I get a final order, the court has not really spoken as to what its adjudication or rulings in this matter." **(bold added for emphasis here)**

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**. In addition, the Cease & Desist Letter of December 3, 2015, Exhibit 24 admitted herein, was not part of the evidence submitted; nor were the violations as presented herein; nor could they be since Hampton was not privy to all that information as an attorney might be; nor were her cited cases available to her as a pro se litigant or decided prior to

the time of that complaint; and still further, nor were the Judicial Notices with further evidence considered; nor was such available at the time of filing the 2nd Amended Complaint, which combined her Federal case with her State case. And as can be further seen from Hampton's *Petition for Writ of Certiorari* before the Supreme Court of the United States, attached hereto as Exhibit A, together with its Appendix, her petition was based on her Constitutional Rights to Due Process, not afforded by the lower courts. In further support herein, Hampton attaches hereto as Exhibit B, Hampton's *Petition for Rehearing* before the Supreme Court of Virginia. 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.

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.

Further to the Counterclaims & Sanctions initially filed, which Judge Sincavage could not make sense of, clearly because they were moot as based on the superior courts' cases and awaiting decisions, and the real Counterclaims & Sanctions were to be found in the Grounds of Defense, where it was clear what Hampton was seeking – that being invalidation of all documents that PROF had placed on file in this Court's records.

As can be seen in Judge Sincavage's *Final Order*, as memorialized by the Transcript Excerpt of October 18, 2019, what Judge Sincavage stated therein as to the issue of demurrer follows.

Continuing with Judge Sincavage's rulings, where he stated "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" [p.10, l.19 - p.11, l.l] "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." [p.11, ll.1-5] and continuing through transcript pages 11 to 16, 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." [p.16, ll.2-8] (**bold emphasis added**)

Hampton disagrees as stated above and as stated in her *Motions for Reconsideration,* as well as her *Motions for Rehearing ... Mistrial* deemed *Motions for Reconsideration*, and *Supporting Memorandum of Law* thereto, still denied February 7, 2020. And still further, the attached Petitions (Exhibits A & B) clearly demonstrate that Judge Irby did not seek the truths of Hampton's allegations, nor did she recognize any of the claims as can be seen therein.

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

"Yes, Hampton takes issue with this where clearly she has provided sufficient evidence in her exhibits, as well as in *Admissions* to *Discovery Requests* from both sides, for this court to determine that the documents of *Deed of Foreclosure*, as well as the *Assignment of the Deed of Trust*, which it is based upon, **are materially defective**. It appears from the transcript that the court has based its decision on what was presented at hearing only, and has ignored the evidence in the exhibits and *Admissions*. What does it take to prove that there is a material dispute or a defective Deed, **or 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 according to their *Admissions*, have challenged Hampton on the same. But if you look more clearly, they wish to prevent all evidence, including witnesses, as they have objected to the same. Again, Hampton considers this to be an "obstruction of justice." **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.**

Although Hampton, prior to receiving the e-mail with a copy of the transcript attached, had filed her *Motions for Reconsideration*, based on her recollection at the hearing, Hampton believes those motions and reconsiderations should be considered herein, together with their attachments thereto.

It is clear from the transcript that the court did not review all documentation on file, where particularly in Hampton's *Response to Summary Judgment and Demurrer*, Hampton was specific in her "**submitted**" *Admissions* to PROF's *Discovery Requests* that the documents on file were, in fact, defective and those material facts were in dispute and, thus, PROF was not entitled to judgment as a matter of law. It appears that Hampton's filed *Response* and her "**submitted**" attachments thereto, which also included the *Admissions of PROF* to *Discovery Requests*, which read more on denials, together with Hampton's exhibits, were not considered by the court. Clearly, the *Admissions* and Exhibits demonstrated that there were defects to those documents, as well as to the procedure leading up to and including those documents with regard to possession. And **Hampton knows that she would have prevailed at a trial by jury." (bold emphasis added)**

Restating from Hampton's *Objections to the Final Order on Summary Judgment*:

"Thus, it appears to Hampton that the Circuit Court is stating here that on appeal from the General District Court on an unlawful detainer, this court can only rule on an unlawful detainer based on the unlawful detainer statute, that being the same as in the

> General District Court. If this is the case, what would be the purpose of an appeal to the Circuit Court, if it was limited to what the General District Court can rule on? And why would a Trial by Jury be granted on a **de novo appeal**, if you cannot consider anything more than the unlawful detainer statute? Hampton was lead to believe that by appealing an Unlawful Detainer suit from a General District Court, which is not a court of record, **she would be entitled to a de novo trial of record, and her Constitutional Right to a Trial by Jury, where the jury would determine the outcome and not the bench**. How could this court's decision be considered "fair," particularly, where Hampton was further imposed with not only the $8,000 Bond to appeal, but the cost of filing appeals fees; the costs involved in pleadings; the costs involving expert witnesses, where a trial by jury was not permitted; the time spent in researching and writing; the burden of trying to prove these injustices, where she was not permitted to do so; and leaving Hampton still with the burden of carrying on this appeal?" **(bold emphasis added)**

In light of the above, and as supported by Hampton's *Motions for Reconsideration, Supporting Memorandum of Law* and, still further, *Motions for Rehearing ... Mistrial* and more particularly, as spelled out to the court (as Hampton would have to a jury) in her *Motions for Rehearing ... Mistrial Supporting Memorandum of Law*, all the violations listed therein, and still further to Hampton's arguments and objections to the *Final Order* and/or rulings in this case on *Summary Judgment*, where it is clear that PROF was not entitled to summary judgment, neither should the *Final Order* on Demurrer be permitted to survive.

Hampton sincerely believes that the Supreme Court of Virginia on Appeal could find that *Parrish* does apply to this particular case.

Here in Hampton's *Supporting Memorandum of Law*, she has spelled out what she would have to a panel of jurists, as well as the court, the violations to the DOT incorporated as a condition precedent to foreclosure and the regulations that barred that foreclosure. Further, as found in *Parrish*:

> "We may further infer from their allegations that the foreclosure purchaser, Fannie Mae, was aware of the alleged violation of the deed of trust because it was the lender that allegedly committed the violation. We conclude that these allegations are sufficient that, if proved, they could satisfy a court of equity to set aside the foreclosure.

> We therefore hold that the Parrishes raised a bona fide question of title in the unlawful detainer proceeding, thereby divesting the general district court of subject matter jurisdiction. Accordingly, the general district court lacked subject matter jurisdiction to try the unlawful detainer before it. The circuit court likewise lacked subject matter jurisdiction while exercising its de novo appellate jurisdiction, because its subject matter jurisdiction was derived from and limited to the subject matter jurisdiction of the court from which the appeal was taken. **Its authority therefore was limited to dismissing the proceeding without prejudice, thereby enabling the foreclosure purchaser to pursue its choice of available remedies in the circuit court under that court's original jurisdiction.**" **(bold emphasis added)**

Further to Hampton's *Motion to Dismiss*, at oral argument, Hampton stated: "This should be sufficient evidence, all previously submitted and pled, but NEVER previously "actually" tried, but if not I have more that I could present." It was believed, in light of *Parrish*, Hampton had raised a bona fide dispute of title, including its validity. And, in fact, Hampton's arguments, as previously presented by attorneys, have survived using the same.

The Parrishes alleged that the foreclosure was invalid due to violations of 12 CFR Sec. 1024.41(g) – HAMP modification submittal 37 days before foreclosure – **JUST ONE of the many violations spelled out in Hampton's *Supporting Memorandum of Law*.** But as can be seen in all the pleadings, Hampton sought to invalidate the Trustee's Deed, the Assignment of the DOT to PROF, the Substitution of Trustee from Fay/PROF to SIW, the 1st Assignment of the DOT from MERS to BANA, and the DOT itself … and, of course, to set aside the wrongful foreclosure and prove to this court that no one had the right to possession or the right to the remedy to foreclose.

Further to Hampton's Petitition 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."

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

And as further stated in Hampton's *Reply Brief* to SCOTUS:

> "Further, beginning on pages 23-33, of Hampton's Petition, she had pled with "factual" evidence (exhibits) that drew a reasonable inference that the defendants were liable for the misconduct alleged, and **for Hampton's case not to be heard on the merits thereto is a clear violation of her rights to procedural due process.**
>
> Hampton's Constitutional Rights are supported by the Jurisdictional Statement bridging pages 33 through 36. Clearly, this Superior Court has jurisdiction over Hampton's Appeal."

Hampton request that this court review that Jurisdictional Statement from the attached SCOTUS Petition, Exhibit A.

And continuing with Hampton's *Reply Brief* to SCOTUS:

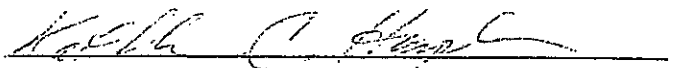
> "Petitioner in her "questions presented" and throughout her Petition is seeking "clarity and uniformity" and believes that this case, upon being heard, may aid in establishing the same.
>
> Continuing here from page 40 of Hampton's Petition:
>
> > It would seem that in light of the bad practices of these servicers, including Fay on behalf of PROF/US Bank, uniform non-foreclosure rules should be developed to protect citizens nationwide from the unlawful taking of their homes in violation of their Constitutional rights and without due process. ... It is time for the courts to stand up to these TBTF banks and/or their servicers. The solution is always uniformity and clarity must be achieved. Perhaps the better solution would be to bar non-judicial foreclosures altogether until our faith in home ownership can be restored."

Again, Hampton believes that Demurrers to non-judicial foreclosures should be barred as Unconstitutional!

It is Hampton's prayer and belief that, with these supporting arguments and objections to the rulings and subsequent *Final Order*, and further, upon a de novo review by the Supreme Court of Virginia on Appeal, an outcome will result in "justice being served," where a **"fair"**

trial by jury, on its **merits**, with **witnesses** and **evidence** supporting all her claims, might be held, and it is hoped that the same may set some legal precedence to protect the citizens of this country from the abuses by the TBTF banks. Hampton should not have to continue to defend her property from the "Unlawful Taking" by PROF or otherwise, in violation of her Constitutional Rights; but she will continue to do so, even before SCOTUS, once again, if necessary.

Respectfully submitted,

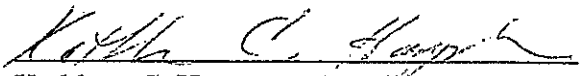


Kathleen C. Hampton, Appellant *pro se*
Defendant/Counterclaim Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, a true copy of the foregoing *Appellant's Objections to the Final Order on Demurrer to Counterclaims & Sanctions* is being sent via first class US Mail, postage prepaid to:

Appellee
Plaintiff/Counterclaim Defendant
Ronald J. Guillot, Jr., Esq.
SAMUEL I. WHITE, P.C.
596 Lynnhaven Parkway, Suite 200
Virginia Beach, Virginia 23452
Counsel for PROF-2013-S3 Legal Title Trust,
by US Bank National Association, as Legal Title Trustee



Kathleen C. Hampton, Appellant *pro se*
P.O. Box 154
Bluemont, Virginia 20135
540-554-2042

STATE OF VIRGINIA
COUNTY OF LOUDOUN

CERTIFICATION

I, Kathleen C. Hampton, hereby certify that I am the Appellant in this action. I have read the foregoing *Appellant's Objections to the Final Order on Demurrer to Counterclaims & Sanctions* and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

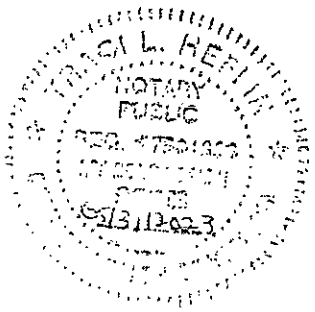
Date of execution: February 21, 2020

Kathleen C. Hampton, Appellant *pro se*

SWORN to and subscribed before me, this 21st day of February, 2020.

NOTARY
Reg # 7501336

My Commission Expires: May 31, 2023



IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST,	)	
BY U.S. BANK NATIONAL ASSOCIATION,	)	
AS LEGAL TITLE TRUSTEE	)	
Appellee,	)	
Plaintiff, Unlawful Detainer	)	
Defendant, Counterclaim	)	
	)	
v.	)	**CL00118604-00, Unlawful Detainer**
	)	**CL00118605-00, Counterclaim**
KATHLEEN C. HAMPTON	)	
Appellant, *pro se*	)	
Defendant, Unlawful Detainer	)	
Plaintiff, Counterclaim	)	

DEFENDANT'S MOTION FOR REHEARING OR IN THE ALTERNATIVE MOTION FOR A MISTRIAL SUPPORTING MEMORANDUM OF LAW

COMES NOW, Appellant/Defendant/Counterclaim Plaintiff, Kathleen C. Hampton ("Defendant" or "Hampton"), to submit further, as reserved, *Defendant's Motion for Rehearing or in the Alternative Motion for a Mistrial Supporting Memorandum of Law* on *Summary Judgment* and *Demurrer* judgments at the hearing of October 18, 2019, and states as follows:

Hampton wishes to advise that to date Plaintiff has not "circulated" the transcript nor the proposed "Final Order," and, accordingly, this *Supporting Memorandum* is filed in further support of Hampton's *Motion for Rehearing ... or Mistrial* (deemed by the Honorable Judge Sincavage to be a still further *Motion for Reconsideration*, where Hampton's first *Motion for Reconsideration* had been previously denied) and, as previously stated therein,

> "... as that transcript clearly demonstrates that the court did not consider the entire record on appeal, and especially the *Bill of Particulars* filed by Plaintiff, and Defendant's *Grounds of Defense*, and instead relied on Defendant's initial *Counterclaims and Sanctions* as filed two years ago, while her case was still active in the courts and still

APPENDIX S

developing in the General District Court. It should be noted here too that the prior state case was only recently denied by the U.S. Supreme Court on October 7, 2019, but did not affirm the lower courts decisions. Thus, it would seem to Hampton that the General District Court's decision to award possession on November 14, 2018, was also premature and again should have been dismissed without prejudice re *Parrish.*

It is Defendant's *Grounds of Defense* which this court should have consulted in this appeal, and, from the District Court's decision, it appears that court also failed to consult the same, particularly given the evidence already presented to the court and of record herein. And as noted on page 3 thereof, Hampton's *Response* to Plaintiff's *Motion for Summary Judgment* in the General District Court, where she was not required to file a response (as dismissed below), but Hampton "did so in order to set the record straight, since SIW was trying to prevent Hampton from even defending herself, misconstruing nearly all the facts on record and attempting to paint an unfair picture of Hampton. ... **Hampton interprets this to be 'an obstruction of justice' and is, at minimum, 'questionable' or 'unethical' as to counsel.**" (emphasis added)

Further to Hampton's *Grounds of Defense*, it should be noted on page 10 under Conclusion and Prayers for Relief, Hampton "prays that this Court award Hampton by voiding those documents on file in our Court records, including the Assignment of Substitute Trustee, Deed of Assignment, Deed of Foreclosure, and all other documents filed on behalf of PROF, as being invalid. ... or do any further harm to Hampton as against her property, her reputation, and her physical, mental and financial well being."

It appears from the transcript that the court has based their judgment on what transpired at the hearing itself, where the court stated "I'm not here today to hear and decide a closing argument in a case ... so the issue on summary judgment ... are there any genuine disputes of material facts. ... the most important words for this analysis is material facts. (page 5, lines 13-22) Continuing on page 8, line 15 (at the top) "So when we examine the record properly in this case of matters that can be considered on summary judgment, including admissions, we have listed as Exhibit 1 to the motion for summary judgment the deed of foreclosure which was referenced in the request for admissions ... And among the responses to that is Ms. Hampton's admission that it's a true copy of what Samuel I White filed in the county records ... Those matters being admitted in the court's view **leave no material issue in genuine dispute** because they conclusively demonstrate as a matter of law that Prof is entitled to possession of the subject property under the unlawful detainer statute." (emphasis added)

Yes, Hampton takes issue with this where clearly she has provided sufficient evidence in her exhibits, as well as in *Admissions* to *Discovery Requests* from both sides, for this court to determine that the documents of *Deed of Foreclosure*, as well as the *Assignment of the Deed of Trust*, which it is based upon, **are materially defective**. It appears from the transcript that the court has based its decision on what was presented at hearing only, and has ignored the evidence in the exhibits and *Admissions.* What does it

take to prove that there is a material dispute or a defective Deed, or 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 according to their *Admissions*, have challenged Hampton on the same. But if you look more clearly, they wish to prevent all evidence, including witnesses, as they have objected to the same. Again, Hampton considers this to be an "obstruction of justice." 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.

Although Hampton, prior to receiving the e-mail with a copy of the transcript attached, had filed her *Motions for Reconsideration*, based on her recollection at the hearing, Hampton believes those motions and reconsiderations should be considered herein, together with their attachments thereto.

It is clear from the transcript that the court did not review all documentation on file, where particularly in Hampton's *Response to Summary Judgment and Demurrer*, Hampton was specific in her "**submitted**" *Admissions* to PROF's *Discovery Requests* that the documents on file were, in fact, defective and those material facts were in dispute and, thus, PROF was not entitled to judgment as a matter of law. It appears that Hampton's filed *Response* and her "**submitted**" attachments thereto, which also included the *Admissions of PROF* to *Discovery Requests*, which read more on denials, together with Hampton's exhibits, were not considered by the court. Clearly, the *Admissions* and Exhibits demonstrated that there were defects to those documents, as well as to the procedure leading up to and including those documents with regard to possession. And Hampton knows that she would have prevailed at a trial by jury.

Further, as to the *Demurrer* in the lower court there was none and no *Demurrer* filed herein admits to any truths or allegations as can be seen from again the *Admissions*.

Hampton did not file an Appeal and post an "unaffordable Bond of $8,000"** (for which she has two additional years to pay on and comprises 1/6th of her social security income), **in addition to the "unrefundable" retainer fee of $1,500 for an expert witness, where the trial was dismissed based on these wrongful *Summary Judgment* and *Demurrer* filings, and where Plaintiff seeks to impose a further bond on Appeal from this court on Property which they have no right to and have never had a right to possession, **to be DENIED her "Trial by Jury."** According to Code of Virginia 8.01-129, "Trial by jury shall be had upon application of any party." Hampton appealed the lower court decision, knowing she would prevail before a jury trial, but has been denied her most basic rights of what the judicial system is designed to do … and that is, let justice prevail. And this denial has come at a very costly expense to her and her welfare, not to mention her reputation and her physical, mental and financial well being.

This trial court, while still awaiting the proposed Final Order and the transcript of the judgment from the hearing of October 18, 2019, should consider this motion on the grounds that the fairness of the trial was infected by improper evidence as Plaintiff argued that the *Admissions* of Hampton were clear admissions of fact, and where from those *Admissions*, it can be seen that Hampton denied as "true" Plaintiff's Exhibits since they are **defective** and **inaccurate**, and only admitted to their "wrongful" filing of the same in the court system.

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!"

Since this court has made a decision from the bench, without considering the evidence that would have been presented in the trial by jury, and although it is difficult to offer up all evidence as would have been presented in that three day trial, Hampton attempts herein to supply key factors/evidence that would have been presented. This evidence is in addition to what this court has already received in the record, and particularly in addition to those exhibits identified in the *Discovery Requests* and *Responses* or *Answers* thereto, which already demonstrate the defective nature of the Assignments and Deeds placed on file in our own Circuit Court.

First, as identified in Hampton's initial and *Amended List of Exhibits and Witnesses*, as Exhibit 38 Certified Forensic Loan Auditors, LLC *Property Securitization Analysis Report*, prepared initially January 26, 2015, and updated September 27, 2019, by expert witness Andrew P. Lehman, J.D., provided herein, would have been offered up to the jury, together with a shorter version referenced as "Highlights from the Bloomberg Audit." The expert witness would have demonstrated and educated the court and the jury on who/what PROF is (**still a trust of Fannie**

Mae and Fannie Mae is still the investor on the site of MERS, as well as BANA is still listed as servicer) and how all the Assignments should be held as invalid. A portion of this report was submitted to SCOTUS in Hampton's Reply Brief and again to this court with regard to the hearing on Hampton's *Motion to Dismiss*. This report demonstrated that the Note and the loan secured by the *Deed of Trust* (DOT) had separated giving no one the right to the remedy of foreclosure, and the Assignments of the DOT were invalid, identified on pages 66-67 (Exhibit 1 attached to the Audit). Auditor recommended reading pages 10 – 37 particularly in support of his standing on this audit.

Further Hampton draws attention to the highlighted portions on page 27 regarding conducting foreclosure proceedings when Fannie Mae is the mortgagee and the Auditor's note following on page 28; and further report summary on page 30, where clearly MERS should have assigned the DOT to Fannie Mae and Fannie Mae could have assigned BANA as servicer. Again on page 34, Fannie Mae did not assign this latest Assignment and thus, it fails as being valid. Page 37 explains this even further in terms that a jury could understand. The Auditor goes on to explain what a trust such as PROF is and how it operates on pages 61-62. It was believed that to demonstrate the contents of this report to a jury, Hampton's retained expert witness would need a four-hour period to do so.

As to Hampton's second witness Jeffrey T. Burch (of Virginia Law PLC and Hampton's Loss Mitigation Specialist since 2011), his testimony would have been supported further by all exhibits following his involvement, but particularly with regard to PROF/Fay/SIW in Exhibit 24 from Hampton's *Amended List of Exhibits*, provided herein, Burch's Demand to Cease & Desist Foreclosure Proceedings dated December 3, 2015, sent to both Samuel I. White PC (SIW), as Trustee, and Fay Servicing, on behalf of PROF. This Court should carefully review this

communication, together with the attachments of the Audit Highlights and further documents listed as (a) through (f). Further Hampton spells out to this court the violations to the DOT and/or federal and/or state regulations applicable as follows:

At no time has SIW acted as an unbiased fiduciary, and together with Fay, have acted more as debt collectors (and, in fact, all their communications identified them as such) violating the Fair Debt Collections Practices Act (FDCPA) by:

Not following proper notice requirements such as:

1) Unfair Notice of Trustee Sale where such Notice might have been received within two weeks of the foreclosure date, but it was given during the Thanksgiving Holiday and Hampton was only afforded 7 ½ days to do anything about it, during a time period where not only the courts were closed, but attorneys were unavailable as well. Also, Hampton did not receive this Notice until after it was published in the newspaper, which again should not be viewed as fair.

2) Hampton never received a Default Letter or any of the other notices that were to be sent to her, in breach of the DOT, paragraph 22, where Notice must specify:

(a) The Default; (b) the action to cure the default; (c) date not less than thirty days from date of notice; and (d) notice of right to reinstate after acceleration and right to bring court action.

Further to the above, Section 55-59.1.B of the Code of Virginia, requires proper and timely notice, which was not provided to Hampton or other beneficiaries.

3) In further breach of the DOT, paragraph 16, Governing Law; Severability; Rules of Construction, calls for all conditions precedent as required by Federal and/or Virginia Law, including but not limited to:

(a) the Virginia Supreme Court ruling in *Mathews v. PHH. Mortg. Corp.*, 724 S.E.2d 196, 283 Va. 723 (2012) regarding the failure to conduct the HUD face-to-face meeting required by HUD regulations (24 CFR section 203.604);

(b) failing to offer the mandated HAMP modification approved initially July 29, 2009, under Fannie Mae Guidelines, and further approved in early 2013, in the review of the Independent Foreclosure Review and its Remediation Framework, a program which followed US Bank NA's, on behalf of their Trusts, "Consent Orders" with the OCC/US Treasury (as well as to its predecessor BANA), which also did not require a complete modification application, as it had already been approved;

(c) failing to address the full and complete modification package which was submitted, with confirmation to Fay Servicing on December 1, 2015, together with the Third Party Authorization, which had not been previously accepted prior to that date and prior to foreclosure notices, which also in turn delayed the submission of the same by Hampton's Loss Mitigation Specialist. And had Fay accepted the Third Party Authorization, when first boarding the loan, Hampton's further modification application could have been submitted 37 days before the foreclosure date making the foreclosure invalid per prohibition under 12 CFR Section 1024.41(g).

(d) failing to let the offer of a Deed in Lieu expire prior to foreclosure, where expiration date was December 31, 2015, and where foreclosure action took place December 7, 2015, in further violation of 12 CFR section 1024.41 – Loss Mitigation Procedures.

Even more specifically, the FDCPA is a strict liability statute which specifically prohibits "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information regarding a consumer." 15 USC section 1692e(10). The FDCPA was

enacted "to eliminate abusive debt collection practices by debt collectors, to ensure that those debts collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 591 (6th Cir. 2009) (quoting 15 U.S.C. Section 1692(e)).

To assess whether particular conduct violates the FDCPA, courts use the "least sophisticated debtor" standard. *See Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d 1222, 1227 (9th Cir. 1988). This objective standard "ensure[s] that the FDCPA protects all consumers, the gullible as well as the shrewd." *Clomon v. Jackson*, 988 F.2d 1314, 1318-19 (2nd Cir. 1993).

When applying the "least sophisticated consumer" standard, the misleading statement must also be materially false or misleading to violate FDCPA 15 U.S.C. Section 1692e. *Miller* at 596-97. "The materiality standard simply means that in addition to being technically false, a statement would tend to mislead or confuse the reasonable unsophisticated consumer." *Wallace v. Washington Mut. Bank, F.A.*, 683 F.3d 323, 326-27 (6th Cir. 2012).

Here in this case it is clear that Fay committed numerous violations using false representations and unfair and deceptive practices to collect against Hampton, beginning with their very first 404 Notice of Sale of Ownership of Mortgage Loan (Hampton's Exhibit C to *Discovery Admissions*) informing Hampton that PROF was the New Creditor as sold on 6/19/2015. Since Hampton had already commissioned CFLA to conduct the Bloomberg Audit in January of 2015, and having received and studied the same, Hampton knew that PROF could not be a new creditor since these trusts must have pooled all loans into the trust back in 2013 within

90 days of the pooling and servicing agreement. Also, Fannie Mae was still claiming to be the investor at that time.

Accordingly, Fay misrepresented to Hampton that this entity had a right to foreclose, where clearly they did not, and as further evidenced by the Bloomberg Audit. Here, Fannie Mae, the investor, was clearly the only one who might have been able to foreclose had MERS assigned that first Assignment to them instead of BANA, and thereafter appointed BANA as servicer. Fay also advised Hampton that they would make sure that a modification would be made and they would be Hampton's last customer service manager (since Hampton had more than 25 CSMs with BANA). Further, Fay advised that the HAMP modification was no longer available, which was clearly not true since it did not cease until December 31, 2016. However, before Fay had time to even "board" the loan or followed through with any of the above, they had instructed SIW to proceed with foreclosure in mid-August, 2015.

Further Fay, early on, had advised that if Hampton had legal representation that they would communicate with them, and Hampton advised of the same and Burch, Hampton's Loss Mitigation Specialist, contacted them in mid-August regarding the same. However, it was not until December 1, 2015, that Fay accepted the "Third Party Authorization" together with the modification application. SIW also did not accept the "Third Party Authorization" together with the December 3, 2015, Cease & Desist Letter until that date. That letter was also copied to Fay, and warned of violations to the DOT, FDCPA, etc., and that Hampton would file suit, which she did, the following day, December 4, 2015, if they failed to call off the Trustee Sale scheduled for December 7, 2015.

So in addition to all the violations listed above and in Burch's Cease & Desist, including the Audit Highlights, the need for the Corrective Affidavit to correct the Property description

("Cloud on Title"), invalid assignments, lack of required notices, and the actual filing of a suit against them in an attempt to stop the same, SIW and Fay proceeded with the "wrongful" Trustee Sale on December 7, 2015. Hampton's belief that Fay acted merely as a "foreclosure mill" and misrepresented PROF was the beneficiary of Hampton's loan, where clearly Fannie Mae was the beneficiary, but had never been assigned the DOT as it should have within three months of acquiring the same, it should be found that this constituted a false representation in connection with the collection of a debt and a deceptive practice in the conduct of trade or commerce in violation of 15 U.S.C. Section 1692e. All of this coupled with the fact that the signer of the Assignment from BANA to PROF, shows further confusion as to PRMF's acquisition of the loan as of June 19, 2015, the same date that Fay claimed PROF had acquired the same. Given the wide range of misrepresentations, the "least sophisticated consumer" would clearly have difficulty ascertaining who owns the loan, and who can foreclose or resolve the loan.

Still further, the FDCPA prohibits a debt collector from communicating with a consumer in connection with the collection of any debt "if the debt collector knows the consumer is represented by an attorney ..." 15 U.S.C. Section 1692c(a)(2). Fay, as well as SIW, knew in mid-August that Hampton was represented by counsel and, more specifically, the firm's Loss Mitigation Specialist Jeff Burch, but failed to accept the Third Party Authorization until December 1st and 3rd, 2015, respectively, and right before the Trustee Sale of December 7, 2015.

4) Further to the above, Hampton had claimed that by the violations previously stated to SCOTUS, as well as in this court as presented at hearing on *Motion to Dismiss*:

(a) the DOT should be determined *void ab initio*;

(b) the Assignment of the DOT from MERS to BANA should be held invalid, as it should have been assigned to Fannie Mae and then Fannie Mae could have assigned to BANA;

(c) the Substitution of Trustee (SOT) from PROF to SIW should be held invalid as PROF was never the Noteholder (Fannie Mae was), nor was the note secured by the DOT, nor was PROF the beneficiary of the same and had no authority to assign, nor to exercise the remedy of foreclosure; and further no Power of Attorney (POA) was given to Fay as is evident therein and, in the first POA submitted to the Commissioner of Accounts, it failed to list PROF in US Bank NA's POA to Fay; and where clearly, the wrong party made assignment; and further that no assignment to the security instrument from BANA to PROF was filed before or concurrently with the SOT giving PROF such authority to assign or foreclose;

(d) the subsequent Assignment of the DOT should be held invalid as it relied on the first Assignment of the DOT and PROF, as a Trust, could not bid on any new loan and was never the Lender who could have, and Countrywide, the Lender, had ceased to exist. As to facial defects, this Assignment bears a "bogus" description of the property, an incorrect pin number, which is critical to its identification, and is executed by a further party Avenue 365 as attorney-in-fact for BANA, concealing true ownership of the loan to PRMF Acquisitions as of June 19, 2015, where Fay claimed the same was sold to PROF on that date;

(e) the Deed of Foreclosure (DOF) should be found invalid, as it relied on the Assignment of the DOT and the Trustee Sale, all of which should be held invalid and set aside by a court in equity. As to facial defects, first the sidebar on page 1 should read "Lot No. 3, Parkview Estates II," per its proper recorded identification yet to be submitted via "Corrective Affidavit;" at the top right of the page, "Title Insurance underwriter unknown to the preparer," where it is believed that the Trustee is suppose to be in receipt of the same in order to proceed with foreclosures; in the third paragraph, "WHEREAS, by instrument recorded in the Clerk's Office, Samuel I. White, PC was appointed Substitute Trustee under the DOT," this SOT is

invalid as Fay on behalf of PROF was not the proper party to assign; in the fourth paragraph, the Trustee failed to comply with the requirements of the DOT prior to exercising foreclosure; in the last paragraph on page 1, PROF, as a trust, could not bid nor take in any loan as the closing date for doing so was back in 2013, and is not the Lender, who could do bidding. On page 2 of the DOF, as to the first paragraph, at no time did the Trustee inquire, but should have; as to the legal description, SIW copied the description received by Owens & Owen regarding the "Corrective Affidavit," which they approved with one correction, but remained to be approved by Hampton and filed in the court herein, which to date has not occurred due to late receipt, **after the Trustee Sale**, as well as the description is still not accurate to what is recorded with the Register of Deeds (see Exhibit T to Admissions as to procedures to follow on "Corrective Affidavits"), and herein there are further errors as to incorrect page nos. cited, and, more importantly, the description is to **state verbatim as to the DOT it relies on and does not**.

5) The Note itself might be held defective as well by the Commissioner of Accounts' stamp listing the foreclosure date as of November 7, 2015, whereas it should be December 7, 2015. And as further alleged by Hampton, the signature on this Note is believed to be forged.

6) Still further, PROF's claim to the Probate Court Order affirming as "true" or "accurate" as to the Accounting submitted by SIW, deceives this court as the Probate Court Order specifically states that it does not approve on the "accuracy" of anything therein.

There is much more supporting evidence as can be seen in Hampton's *Amended List of Exhibits & Witnesses*, but this court should once again carefully review both Hampton's *Admissions to PROF's Discovery Requests* and, even more particularly, *PROF's Admissions to Hampton's Discovery Requests* and Exhibits A through T provided therein, where Hampton lays

out her case to be presented to her "jury trial," where PROF denies most and challenges Hampton to show proof, which she was prepared to do at the trial by jury.

Hampton's allegations should be sufficient to state a bona fide claim that the foreclosure sale and Trustee's Deed could be set aside in equity, as well as all the Deeds on file. Hampton has herein, as she would have before a jury, identified the requirements in the DOT that constitute conditions precedent to foreclosure; has alleged facts that indicate the Trustee failed to comply with those requirements and that no power to foreclose had accrued before or at the time of foreclosure; and still further, not only was the foreclosure purchaser the wrong party to bid or foreclose, but Fannie Mae – the true owner of the trust PROF – knew or should have known of these defects.

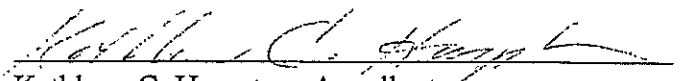
Still further, should this Court deem all of the above to be "conclusions of law," it is Hampton's belief that her jury would conclude, that by law, all of the above would be found as true and all Deeds found void or invalid, and the foreclosure "wrongful."

Hampton also refers your Honor to her "12-6-19 Notes for hearing on Bond Release," together with her submissions therein and herein request for a full and complete review in hopes that you will draw the conclusion that PROF (a Trust of Fannie Mae's) has deceived this court, as it has deceived Hampton, and is not entitled to *Summary Judgment*, nor *Demurrer*, where Hampton can show a preponderance of evidence to survive the same, and further the General District Court's decision was premature and Hampton should have never needed to appeal or post an $8,000 Bond.

WHEREFORE, for all of the reasons previously submitted and further stated above, and as supported in the exhibits attached hereto and those previously submitted, Hampton respectfully requests this Court grant this *Rehearing ... Mistrial*, and/or to serve justice by

placing this case back on the docket for a "fair" trial by jury and on its merits. Hampton should not have to continue to defend her property from the "Unlawful Taking" by PROF, in violation of her Constitutional Rights.

Respectfully submitted,

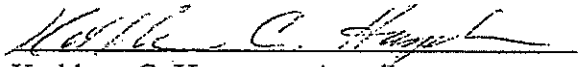


Kathleen C. Hampton, Appellant *pro se*
Defendant/Counterclaim Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2019, a true copy of the foregoing *Defendant's Motion for Rehearing or in the Alternative Motion for a Mistrial Supporting Memorandum of Law* is being sent via first class US Mail, postage prepaid to:

Appellee
Plaintiff/Counterclaim Defendant
Lisa Hudson Kim, Esq.
SAMUEL I. WHITE, P.C.
596 Lynnhaven Parkway, Suite 200
Virginia Beach, Virginia 23452
Counsel for PROF-2013-S3 Legal Title Trust,
by US Bank National Association, as Legal Title Trustee



Kathleen C. Hampton, Appellant *pro se*
P.O. Box 154
Bluemont, Virginia 20135
540-554-2042

STATE OF VIRGINIA
COUNTY OF LOUDOUN

CERTIFICATION

I, Kathleen C. Hampton, hereby certify that I am the Appellant in this action. I have read the foregoing *Defendant's Motion for Rehearing or in the Alternative Motion for a Mistrial Supporting Memorandum of Law* and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

Date of execution: December 20, 2019

Kathleen C. Hampton, Appellant *pro se*

SWORN to and subscribed before me, this 20th day of December, 2019.

NOTARY

My Commission Expires: JAN. 31. 2020

Mary E. McCauley
Commonwealth of Virginia
Notary Public
Commission No. 116683
My Commission Expires 1/31/2020

KCH.

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE	)	
Appellee,	)	
Plaintiff, Unlawful Detainer	)	
Defendant, Counterclaim	)	
	)	
v.	)	**CL00118604-00, Unlawful Detainer**
	)	**CL00118605-00, Counterclaim**
KATHLEEN C. HAMPTON	)	
Appellant, *pro se*	)	
Defendant, Unlawful Detainer	)	
Plaintiff, Counterclaim	)	

DEFENDANT'S MOTION FOR REHEARING OR IN THE ALTERNATIVE MOTION FOR A MISTRIAL

COMES NOW, Appellant/Defendant/Counterclaim Plaintiff, Kathleen C. Hampton ("Defendant" or "Hampton"), to submit *Defendant's Motion for Rehearing or in the Alternative Motion for a Mistrial* on *Summary Judgment* and *Demurrer* judgments at the hearing of October 18, 2019, and further reserves the right to file a subsequent *Supporting Memorandum of Law*, and states as follows:

First, Hampton wishes to advise that opposing counsel has via e-mail only on November 8, 2019, supplied her with a copy of the transcript of the Summary Judgment hearing (attached hereto), and to date Plaintiff has not "circulated" this transcript nor the proposed "Final Order," and accordingly, this motion is filed as that transcript clearly demonstrates that the court did not consider the entire record on appeal, and especially the *Bill of Particulars* filed by Plaintiff, and Defendant's *Grounds of Defense*, and instead relied on Defendant's initial *Counterclaims and Sanctions* as filed two years ago, while her case was still active in the courts and still developing

APPENDIX T

in the General District Court. It should be noted here too that the prior state case was only recently denied by the U.S. Supreme Court on October 7, 2019, but did not affirm the lower courts decisions. Thus, it would seem to Hampton that the General District Court's decision to award possession on November 14, 2018, was also premature and again should have been dismissed without prejudice re *Parrish*.

It is Defendant's *Grounds of Defense* which this court should have consulted in this appeal, and, from the District Court's decision, it appears that court also failed to consult the same, particularly given the evidence already presented to the court and of record herein. And as noted on page 3 thereof, Hampton's *Response* to Plaintiff's *Motion for Summary Judgment* in the General District Court, where she was not required to file a response (as dismissed below), but Hampton "did so in order to set the record straight, since SIW was trying to prevent Hampton from even defending herself, misconstruing nearly all the facts on record and attempting to paint an unfair picture of Hampton. ... **Hampton interprets this to be 'an obstruction of justice' and is, at minimum, 'questionable' or 'unethical' as to counsel.**" (emphasis added)

Further to Hampton's *Grounds of Defense*, it should be noted on page 10 under Conclusion and Prayers for Relief, Hampton "prays that this Court award Hampton by voiding those documents on file in our Court records, including the Assignment of Substitute Trustee, Deed of Assignment, Deed of Foreclosure, and all other documents filed on behalf of PROF, as being invalid. ... or do any further harm to Hampton as against her property, her reputation, and her physical, mental and financial well being."

It appears from the transcript that the court has based their judgment on what transpired at the hearing itself, where the court stated "I'm not here today to hear and decide a closing argument in a case ... so the issue on summary judgment ... are there any genuine disputes of

material facts. ... the most important words for this analysis is material facts. (page 5, lines 13-22) Continuing on page 8, line 15 (at the top) "So when we examine the record properly in this case of matters that can be considered on summary judgment, including admissions, we have listed as Exhibit 1 to the motion for summary judgment the deed of foreclosure which was referenced in the request for admissions ... And among the responses to that is Ms. Hampton's admission that it's a true copy of what Samuel I White filed in the county records ... Those matters being admitted in the court's view **leave no material issue in genuine dispute** because they conclusively demonstrate as a matter of law that Prof is entitled to possession of the subject property under the unlawful detainer statute." (emphasis added)

Yes, Hampton takes issue with this where clearly she has provided sufficient evidence in her exhibits, as well as in *Admissions* to *Discovery Requests* from both sides, for this court to determine that the documents of *Deed of Foreclosure*, as well as the *Assignment of the Deed of Trust*, which it is based upon, **are materially defective**. It appears from the transcript that the court has based its decision on what was presented at hearing only, and has ignored the evidence in the exhibits and *Admissions*. What does it take to prove that there is a material dispute or a defective Deed, or 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 according to their *Admissions*, have challenged Hampton on the same. But if you look more clearly, they wish to prevent all evidence, including witnesses, as they have objected to the same. Again, Hampton considers this to be an "obstruction of justice." 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.

Although Hampton, prior to receiving the e-mail with a copy of the transcript attached, had filed her *Motions for Reconsideration*, based on her recollection at the hearing, Hampton believes those motions and reconsiderations should be considered herein, together with their attachments thereto.

It is clear from the transcript that the court did not review all documentation on file, where particularly in Hampton's *Response to Summary Judgment and Demurrer*, Hampton was specific in her "**submitted**" *Admissions* to PROF's *Discovery Requests* that the documents on file were, in fact, defective and those material facts were in dispute and, thus, PROF was not entitled to judgment as a matter of law. It appears that Hampton's filed *Response* and her "**submitted**" attachments thereto, which also included the *Admissions of PROF* to *Discovery Requests*, which read more on denials, together with Hampton's exhibits, were not considered by the court. Clearly, the *Admissions* and Exhibits demonstrated that there were defects to those documents, as well as to the procedure leading up to and including those documents with regard to possession. And Hampton knows that she would have prevailed at a trial by jury.

Further, as to the *Demurrer* in the lower court there was none and no *Demurrer* filed herein admits to any truths or allegations as can be seen from again the *Admissions*.

Hampton did not file an Appeal and post an "unaffordable Bond of $8,000" (for which she has two additional years to pay on and comprises $1/6^{th}$ of her social security income), **in addition to the "unrefundable" retainer fee of $1,500 for an expert witness**, where the trial was dismissed based on these wrongful *Summary Judgment* and *Demurrer* filings, and where Plaintiff seeks to impose a further bond on Appeal from this court on Property which they

have no right to and have never had a right to possession, **to be DENIED her "Trial by Jury."** According to Code of Virginia 8.01-129, "Trial by jury shall be had upon application of any party." Hampton appealed the lower court decision, knowing she would prevail before a jury trial, but has been denied her most basic rights of what the judicial system is designed to do ... and that is, let justice prevail. And this denial has come at a very costly expense to her and her welfare, not to mention her reputation and her physical, mental and financial well being.

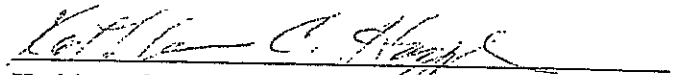
This trial court, while still awaiting the proposed Final Order and the transcript of the judgment from the hearing of October 18, 2019, should consider this motion on the grounds that the fairness of the trial was infected by improper evidence as Plaintiff argued that the *Admissions* of Hampton were clear admissions of fact, and where from those *Admissions*, it can be seen that Hampton denied as "true" Plaintiff's Exhibits since they are **defective** and **inaccurate**, and only admitted to their "wrongful" filing of the same in the court system.

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 has cesc 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!

WHEREFORE, for all of the reasons stated above, and as supported in the copy of the transcript attached hereto, and Hampton's further *Supporting Memorandum of Law*, to come, Hampton respectfully requests this Court grant this *Rehearing*, and/or to serve justice by placing this case back on the docket for a "fair" trial by jury and on its merits. Hampton should not have to continue to defend her property from the "Unlawful Taking" by PROF, in violation of her Constitutional Rights.

Respectfully submitted,

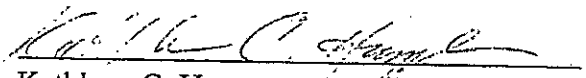


Kathleen C. Hampton, Appellant *pro se*
Defendant/Counterclaim Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2019, a true copy of the foregoing *Defendant's Motion for Rehearing or in the Alternative Motion for a Mistrial* is being sent via first class US Mail, postage prepaid to:

Appellee
Plaintiff/Counterclaim Defendant
Lisa Hudson Kim, Esq.
SAMUEL I. WHITE, P.C.
5040 Corporate Woods Drive, Suite 120
Virginia Beach, Virginia 23462
Counsel for PROF-2013-S3 Legal Title Trust,
by US Bank National Association, as Legal Title Trustee



Kathleen C. Hampton, Appellant *pro se*
P.O. Box 154
Bluemont, Virginia 20135
540-554-2042

STATE OF VIRGINIA
COUNTY OF LOUDOUN

CERTIFICATION

I, Kathleen C. Hampton, hereby certify that I am the Appellant in this action. I have read the foregoing *Defendant's Motion for Rehearing or in the Alternative Motion for a Mistrial* and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

Date of execution: November 18, 2019

Kathleen C. Hampton, Appellant *pro se*

SWORN to and subscribed before me, this 18th day of November, 2019.

Sandra Amundson
~~NOTARY~~ Deputy Clerk

My Commission Expires: _____

MY CC

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST,	)	
BY U.S. BANK NATIONAL ASSOCIATION,	)	
AS LEGAL TITLE TRUSTEE	)	
Appellee,	)	
Plaintiff, Unlawful Detainer	)	
Defendant, Counterclaim	)	
	)	
v.	)	**CL00118604-00, Unlawful Detainer**
	)	**CL00118605-00, Counterclaim**
KATHLEEN C. HAMPTON	)	
Appellant, *pro se*	)	
Defendant, Unlawful Detainer	)	
Plaintiff, Counterclaim	)	

MOTION FOR RECONSIDERATION
OF FURTHER SUPPORT TO MEMORANDUM OF LAW
TO THE HONORABLE STEPHEN E. SINCAVAGE

COMES NOW, Appellant/Defendant/Counterclaim Plaintiff, Kathleen C. Hampton ("Defendant" or "Hampton"), to submit her *Motion for Reconsideration of Further Support to Memorandum of Law*, as follows:

As previously stated in *Motion for Reconsideration* filed October 25, 2019:

> "Hampton's case is a clear case under *Parrish*, wherein the Trustee's Sale was not valid, since neither PROF nor Fay had power to assign or conduct the same, but did so; title was challenged judicially prior to foreclosure; facially the Deeds are defective; and yes, a court of equity should set aside the same; and further *res judicata* does not apply where the prior suit never ruled on the "merits," and further never ruled on the Foreclosure or the Unlawful Detainer Counts and never addressed the same therein. These are not "naked allegations" and this court should recognize the same and follow through with adjudicating title, because the title is not valid at law and should be set aside by a court in equity.
>
> Wherein this Court should have either conducted a de novo trial by jury, including the new issues raised supporting further the *void ab initio* DOT, adjudicated the deeds on

APPENDIX U

file, and set aside the "wrongful" foreclosure, or, if not allowing the de novo trial to proceed, should have dismissed without prejudice and PROF should have to file their claim in the Circuit Court, as the Unlawful Detainer is only "lawful" if PROF had a right to foreclose, which they did not; and as is evident from that which Hampton has already submitted herein, particularly in Hampton's *Discovery Requests,* with evidence/exhibits, and PROF's responses thereto.

There is no justice on dismissing on *Demurrer*, where clearly with the evidence raised and the dismissal based on the *Demurrer* in a prior case, which were wrong since Judge Irby did not "seek the truth of the allegations," was completely confused as to *void ab initio* DOT, and Property Description requiring a "Corrective Affidavit," and did not rule on Count VIII Wrongful Foreclosure or on Count XII the Unlawful Detainer, and dismissed on *Demurrer* as to all counts, as a housekeeping matter.

PROF has been so eager to provide the entire Second Amended Complaint with their *Opposition to Hampton's Motion to Dismiss without Prejudice*, together with most prior court *Orders* and PROF's prior *Demurrer* thereto, which once again claim they could not find anything to defend, and where they never addressed the wrongful foreclosure, nor the unlawful detainer, in their *Demurrer*.

Clearly, this Court failed to review the Counts to Hampton's Second Amended Complaint, together with the transcript of Judge Irby's ruling, which Hampton includes herein, and at the very base of Hampton's claim re *void ab initio* DOT, Hampton points to the transcript page 38, beginning at line 20, where Judge Irby rules: "I find that the claim allegations with respect to the DOT was altered is without merit. Plaintiff's own exhibits reveal that the DOT was re-recorded in October of 2005 to correct the legal description. Plaintiff did not specifically state how the DOT was allegedly altered, who, when it was altered, or who altered it. ... There's no cognizable cause of action for an alteration for a DOT and Property Description." Clearly, Judge Irby failed to read all allegations and exhibits since the evidence/exhibits were clearly explained. ...

This Court on Appeal, should have consulted with the transcript as well as Hampton's *Motion for Reconsideration* and *Memorandum in Support of Motion for Reconsideration*, also provided herein, that states in detail why Judge Irby's rulings "failed to consider or misinterpreted as to some of the evidence submitted supporting Plaintiff's allegations."

This Court should have never considered *Demurrers* herein, where the prior *Demurrers* never addressed all applicable issues, nor did the court rule on those issues or claims, and further misinterpreted most of the evidence thereto, and no *res judicata* or other doctrine should apply, as never ruled on specifically to this Unlawful Detainer, nor the underlying Wrongful Foreclosure therein.

How can this court turn a blind eye to the wrongful foreclosure and the Deeds which should be voided regarding the same, particularly with the evidence which proves the same?"

In further support of Hampton's *Reconsideration*, Hampton is providing the 209 pages of evidence/exhibits that were part of the *Second Amended Complaint* by permitted reference from the *First Amended Complaint*, which is the bulk of the real proof or evidence of the wrongdoing as laid out in that prior case (*Hampton v PROF-2013 Legal Title Trust* **et al.** CA 98163). This Court can take judicial notice of the *First Amended Complaint* **Exhibits** (before it was combined in the *Second Amended Complaint*, with that of the U.S. Federal District Court case, filed before foreclosure), pursuant to *Virginia Code 8.01-389* (1950, as amended) and *Rule 2-201* of *The Rules of the Supreme Court of Virginia*. Since PROF has already supplied the *Second Amended Complaint* as previously mentioned, it was felt that Your Honor should have the full package and evidence/exhibits referenced in that prior complaint.

WHEREFORE, for all of the reasons stated above, and supported in this further attachment hereto, Hampton respectfully requests this Court's further *Reconsideration*, and to serve justice by either placing this case back on the docket for a "fair" trial by jury and on its merits, or dismiss this case without prejudice, which should have been done in the General District Court. PROF may file their claim in Circuit Court or perhaps they will come to the settlement table as they should have done ten (10) years ago. Hampton should not have to continue to defend her property from the "Unlawful Taking" by PROF, in violation of her Constitutional Rights.

Respectfully submitted,

Kathleen C. Hampton, Appellant *pro se*
Defendant/Counterclaim Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, a true copy of the foregoing *Motion for Reconsideration of Further Support to Memorandum of Law to the Honorable Stephen E. Sincavage*, with attachments, is being sent via first class US Mail, postage prepaid to:

Appellee
Plaintiff/Counterclaim Defendant
Lisa Hudson Kim, Esq.
SAMUEL I. WHITE, P.C.
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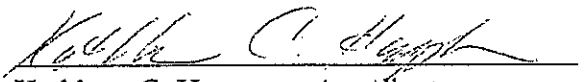

Kathleen C. Hampton, Appellant *pro se*
P.O. Box 154
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540-554-2042

STATE OF VIRGINIA
COUNTY OF LOUDOUN

CERTIFICATION

I, Kathleen C. Hampton, hereby certify that I am the Appellant in this action. I have read the foregoing *Motion for Reconsideration of Further Support to Memorandum of Law to the Honorable Stephen E. Sincavage* and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

Date of execution: November 1, 2019

Kathleen C. Hampton, Appellant *pro se*

SWORN to and subscribed before me, this 1st day of November, 2019.

NOTARY

My Commission Expires: 7/31/21

#7741444

State of Virginia
County of Loudoun

DANA LYNN MURPHY
NOTARY PUBLIC
REG. #7741444
MY COMMISSION EXPIRES
7/31/2021
COMMONWEALTH OF VIRGINIA

MY CC

VIRGINIA

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST,	)	
BY U.S. BANK NATIONAL ASSOCIATION,	)	
AS LEGAL TITLE TRUSTEE	)	
Appellee,	)	
Plaintiff, Unlawful Detainer	)	
Defendant, Counterclaim	)	
	)	
v.	)	**CL00118604-00, Unlawful Detainer**
	)	**CL00118605-00, Counterclaim**
KATHLEEN C. HAMPTON	)	
Appellant, *pro se*	)	
Defendant, Unlawful Detainer	)	
Plaintiff, Counterclaim	)	

MOTION FOR RECONSIDERATION
AND SUPPORTING MEMORANDUM OF LAW
TO THE HONORABLE STEPHEN E. SINCAVAGE

COMES NOW, Appellant/Defendant/Counterclaim Plaintiff, Kathleen C. Hampton ("Defendant" or "Hampton"), to submit her *Motion for Reconsideration and Supporting Memorandum of Law*, as follows:

First, the General District Court erred in not dismissing this case without prejudice and causing Hampton to further appeal to this court, with the burden of imposing an $8,000 bond on Hampton, wherein this court cannot under *Parrish* rule on the same. The General District Court should have dismissed the same and PROF would have had to bring a suit against Hampton in the Circuit Court, wherein Hampton, as a defendant, would still have been entitled to a trial by jury and been permitted to bring in all of her evidence and witnesses, and further where there would be no *Demurrer* or *res judicata* or other doctrine barring the same.

APPENDIX V

As argued on November 14, 2018, in General District Court:

"Your honor, I would like to address the court, this is the 12th time that I have appeared in this court over what I consider to be a "Wrongful" Unlawful Detainer, where I have called into question not only the validity of the foreclosure, but the validity of the Deed of Foreclosure and all Assignments leading up to it, including the Deed of Trust, and PROF's claim to my property by Wrongful Foreclosure conducted Dec. 7, 2015, where I had already challenged that foreclosure via filing suit Dec. 4, 2015, prior to that foreclosure, where Samuel I. White on behalf of PROF should have been barred from proceeding.

As pled before the Supreme Court 10-16-18, the Circuit Court should have found predatory lending, a *void ab initio* Deed of Trust and the "Cloud on Title" evident requiring a "Corrective Affidavit" and clearly with the violation of the Consent Orders with the OCC/US Treasury, a "wrongful foreclosure" had occurred and, more particularly, I had exercised my rights to file suit before the same challenging the foreclosure, which SIW on behalf of Fay/PROF ignored. …

… I shall continue to fight for my due process rights to defend my property from its unlawful taking by PROF.

Meanwhile, it is my request herein that this court refuse to entertain this unlawful detainer case any further and dismiss this case based on that fact that I have raised bona fide dispute of title from the foreclosure sale. And, specifically, in *Parrish v. Federal National Mortgage Association*, 292 Va. 44, 787 S.E.2d 116 (2016), the Supreme Court of Va. 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. This Court had admitted on 8-3-18 that it could not invalidate the Deed of Foreclosure or any other deeds on record and further there was no recordation of trial. **In these circumstances, I have alleged facts sufficient to place the validity of the trustee's deed in doubt. In such cases, the General District Court's lack of subject matter jurisdiction to try title supersedes its subject matter jurisdiction to try unlawful detainer and the court must dismiss the case without prejudice.** (Hampton's emphasis added)

Additionally, in two cases, *Ramos v. Wells Fargo Bank*, 770 S.E.2d 491 (2015) and *Mathews v. PHH Mortgage Corp.*, 283 a. 723, 724 S.E.2d 196 (2012), the Supreme Court of Virginia confirmed that any challenge to a foreclosure based on the pre-foreclosure conduct of the lender must be filed before the foreclosure sale has taken place, if the borrower wants to avoid a foreclosure sale. Clearly, I had filed my first suit Dec. 4, 2015,

prior to the foreclosure of Dec. 7, 2015, which foreclosure should be found "wrongful" and/or "void" by the fact that I have filed before the foreclosure action took place."

Clearly, the General District Court erred in awarding possession and imposing a bond of $8,000 on Hampton should she appeal the same, where again **the General District Court's lack of subject matter jurisdiction to try title "supersedes" its subject matter jurisdiction to try unlawful detainer and the court must dismiss the case without prejudice.**

Here, again, where Hampton filed her *Motion to Dismiss* in this Circuit Court on Appeal, realizing that she may not be afforded a fair trial based on the merits of her case, the undeniable evidence and the testimony to support the same, she was denied the same primarily on the basis of not surviving a *Demurrer* in her prior suit, which was against far more than just PROF, and on far more issues than just the Unlawful Detainer. Why was Hampton lead to believe she could have a fair trial (one of record) in this Court and reviewed de novo, where in fact she was imposed with an $8,000 bond to appeal, and where this Court will not entertain that fair trial by jury? Obviously, this court should have again dismissed this case without prejudice and PROF should have filed their suit against Hampton in a separate action before a court of equity and of record.

Hampton's case is a clear case under *Parrish*, wherein the Trustee's Sale was not valid, since neither PROF nor Fay had power to assign or conduct the same, but did so; title was challenged judicially prior to foreclosure; facially the Deeds are defective; and yes, a court of equity should set aside the same; and further *res judicata* does not apply where the prior suit never ruled on the "merits," and further never ruled on the Foreclosure or the Unlawful Detainer Counts and never addressed the same therein. These are not "naked allegations" and this court should recognize the same and follow through with adjudicating title, because the title is not valid at law and should be set aside by a court in equity.

Wherein this Court should have either conducted a de novo trial by jury, including the new issues raised supporting further the *void ab initio* DOT, adjudicated the deeds on file, and set aside the "wrongful" foreclosure, or, if not allowing the de novo trial to proceed, should have dismissed without prejudice and PROF should have to file their claim in the Circuit Court, as the Unlawful Detainer is only "lawful" if PROF had a right to foreclose, which they did not; and as is evident from that which Hampton has already submitted herein, particularly in Hampton's *Discovery Requests,* with evidence/exhibits, and PROF's responses thereto.

There is no justice on dismissing on *Demurrer*, where clearly with the evidence raised and the dismissal based on the *Demurrer* in a prior case, which were wrong since Judge Irby did not "seek the truth of the allegations," was completely confused as to *void ab initio* DOT, and Property Description requiring a "Corrective Affidavit," and did not rule on Count VIII Wrongful Foreclosure or on Count XII the Unlawful Detainer, and dismissed on *Demurrer* as to all counts, as a housekeeping matter.

PROF has been so eager to provide the entire Second Amended Complaint with their *Opposition to Hampton's Motion to Dismiss without Prejudice*, together with most prior court *Orders* and PROF's prior *Demurrer* thereto, which once again claim they could not find anything to defend, and where they never addressed the wrongful foreclosure, nor the unlawful detainer, in their *Demurrer*.

Clearly, this Court failed to review the Counts to Hampton's Second Amended Complaint, together with the transcript of Judge Irby's ruling, which Hampton includes herein, and at the very base of Hampton's claim re *void ab initio* DOT, Hampton points to the transcript page 38, beginning at line 20, where Judge Irby rules: "I find that the claim allegations with respect to the DOT was altered is without merit. Plaintiff's own exhibits reveal that the DOT was

re-recorded in October of 2005 to correct the legal description. Plaintiff did not specifically state how the DOT was allegedly altered, who, when it was altered, or who altered it. … There's no cognizable cause of action for an alteration for a DOT and Property Description." Clearly, Judge Irby failed to read all allegations and exhibits since the evidence/exhibits were clearly explained.

Further, it is this very alteration of the DOT, as Hampton has raised in this Appeal, and as submitted to the Supreme Court of the US that makes the DOT *void ab initio*:

> "Petitioner believes this Superior Court should request a response of Bank of America, N.A., Fannie Mae, and Countrywide Home Loans, Inc. ("CW") ("Bank Defendants"), particularly since the loan origination began with predatory loans dating back to 2005, and resulting in the subject predatory re-finance loan of 2006, and the Deed of Trust, which accompanied it, which should be found *void ab initio*.
>
> Further, in investigations pending in the Virginia Office of Attorney General, Predatory Lending Unit, Hampton has learned more violations to the Deed of Trust:
>
> 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; also under [B] Code 59.1-9.10 from 2000 with slight rewording)
>
> 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.""

In addition, Hampton's loan increased by nearly $17,000 for a re-finance, recorded NOT as a re-finance and without cash out.

As to the re-recorded DOT in October of 2005, that re-recorded DOT only corrected the acreage listed from 27 plus acres described to the 5.24 acres conveyed. Along with the refinance of 2006, CW further altered that corrected property description, which obviously Judge Irby had consulted with the wrong exhibits, and further to all those recorded DOTs, they still had the wrong "metes and bounds" description of the property requiring still further the "Corrective Affidavits," which were required as to all the deeds on record. And which Samuel I. White in the *Deed of Foreclosure* altered the property description to what he had approved in the "Corrective Affidavit," which required his approval since he was the original Trustee, and obviously the new (still wrong) description does not convey that of the DOT, which is required to state verbatim that which is being conveyed. Further still all Deeds require the "Corrective Affidavits." Judge Irby had not consulted with all the exhibits, which clearly could show the need for the same, and it was clear she was confused as to the same being already corrected in 2005.

As to Judge Irby's ruling on page 42, beginning line 15, "Count VIII, Lack of Standing to Foreclose, Wrongful Foreclosure as to BofA, PROF, Fay and White. The Plaintiff argues that Countrywide and its successors lacks the power of exercise on behalf of the PSA. The Plaintiff

furthermore disputes the validity of the assignment of the DOT. The Plaintiff admits in her pleadings that she does not allege specifically to each defendant as to their actions are accountable." **Judge Irby does not rule hereon and moves on to the next count.**

On page 44, line 21 through page 45, line 1, Judge Irby leaves off with sustaining the *Demurrer* to Count X with prejudice and without leave to amend. Judge Irby never made a ruling on the Wrongful Foreclosure, only citing what the claim was, and never ruled on the Count XI – Fraud with the IRS and Count XII – Unlawful Detainer.

It does appear from the Judge's rulings that she followed along with whatever PROF's counsel had said, both at hearing and in their *Demurrer*, and the judge failed to address the "allegations as truth," finding no cause of action, no cognizable claim, no fraud pled with specificity, and barred by the statute of limitations. Still further she never addressed the Pleas for Judicial Notice, which clearly showed that: the wrong party foreclosed; both banks had violated their Consent Orders with the OCC/US Treasury to follow the remedies of the IFR Remedial Framework they were mandated to follow, including rescission of the foreclosure and offering the HAMP modification, based on approval back in July 29, 2009; SEC Attestation that showed no registration by PROF, thus not secured by the DOT; and further, documentation showing when Statute of Limitations began.

So in that prior case, where perhaps no such claim might have been heard in this state before, the Judge failed to "seek the truth of the allegations" and violated Hampton's due process rights, by prematurely sustaining the *Demurrers* and not allowing Discovery with her Pleas for Judicial Notices. This was a clear case, which should have set legal precedence, since there has never been a case with as many torts, and violations of Codes and violations of all precedents to

the DOT being fulfilled prior to exercising the power of foreclosure, as well as wrong party proceeding.

Further, as pled before this court and the Supreme Court of the US:

> "Pertinent constitutional and statutory provisions were set forth in the Appendix to Hampton's Petition (App. N), which Hampton draws this Court's attention to the last paragraph on the last page thereof:
>
> > "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)

Here, PROF appointed a substitute trustee, while they did not own the loan nor were they secured by the DOT, as it had been **sold** to PRMF Acquisitions on June 19, 2015 (and not PROF as indicated in Fay's 404 Notice), and exercised a "power, right, authority or duty conferred by the original deed of trust" without being assigned the same or recording the same "in the office of the clerk wherein the original deed of trust was recorded." This is but one merit to Hampton's case that was pled and Judicially Noticed. Thus, wrong party appointed a substitute trustee and could not make claim to being secured by the Deed of Trust, nor had an Assignment of the Deed of Trust been made to them prior to exercising foreclosure and still further, PROF could only bring in loans 90 days within their closing date sometime back in 2013.

Where further shown in the Bloomberg Audit Reports Highlights taken from pages 24-31 of the Second Amended Complaint:

> "**<u>Bloomberg Loan Securitization Audit Report HIGHLIGHTS</u>**
>
> 1. There is no evidence on Record to indicate that the Mortgage was ever transferred concurrently with the purported legal transfer of the Note, such that the Mortgage

and Note has been irrevocably separated, thus making a nullity out of the purported security in a property, as claimed." ...

- Although MERS records an assignment in the real property records, the promissory note which creates the legal obligation to repay the debt has not been transferred nor negotiated by MERS." ...

- MERS is not a party to the alleged mortgage indebtedness underlying the security instrument for which it serves as "nominee". ...

The loan was originally made to Countrywide Home Loans, Inc. and may have been sold and transferred to Fannie Mae Remic Trust 2006-67. There is no record of Assignments to either the Sponsor or Depositor as required by the Pooling and Servicing Agreement.

In 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."

An obligation can exist with or without security. With no security, the obligation is unsecured but still valid. A security interest, however, cannot exist without an underlying existing obligation. It is impossible to define security apart from its relationship to the promise or obligation it secures. The obligation and the security are commonly drafted as separate documents – typically a promissory note and a Mortgage. If the creditor transfers the note but not the Mortgage, the transferee receives a secured note; the security follows the note, legally if not physically. If the transferee is given the Mortgage without the note accompanying it, the transferee has no meaningful rights except the possibility of legal action to compel the transferor to transfer the note as well, if such was the agreement. (Kelley v. Upshaw 91952) 39 C.2d 179, 246 P.2d 23; Polhemus v. Trainer (1866) 30C 685).

"Where the mortgagee has "transferred" only the mortgage, the transaction is a nullity and his "assignee" having received no interest in the underlying debt or obligation, has a worthless piece of paper (4 Richard R. Powell), Powell on Real Property, § 37.27 [2] (2000).

By statute, assignment of the mortgage carries with it the assignment of the debt. .. Indeed, in the event that a mortgage loan somehow separates interests of the note and the Mortgage, with the Mortgage lying with some independent entity, the mortgage

> may become unenforceable. The practical effect of splitting the Mortgage from the promissory note is to make it impossible for the holder of the note to foreclose, unless the holder of the Mortgage is the agent of the holder of the note. Without the agency relationship, the person holding only the trust will never experience default because only the holder of the note is entitled to payment of the underlying obligation. The mortgage loan becomes ineffectual when the note holder did not also hold the Mortgage."

Thus, Hampton's claim to no one having a right to foreclose, where MERS assigned the DOT to BANA when it should have assigned to Fannie Mae and then Fannie Mae could have assigned servicing to BANA. Here there has been a patently clear separation of the Note and the Mortgage, making a nullity out of the latter. And further, the Note has lost its security of the DOT, and thus, no Noteholder has a right to foreclose.

This Court on Appeal, should have consulted with the transcript as well as Hampton's *Motion for Reconsideration* and *Memorandum in Support of Motion for Reconsideration*, also provided herein, that states in detail why Judge Irby's rulings "failed to consider or misinterpreted as to some of the evidence submitted supporting Plaintiff's allegations."

This Court should have never considered *Demurrers* herein, where the prior *Demurrers* never addressed all applicable issues, nor did the court rule on those issues or claims, and further misinterpreted most of the evidence thereto, and no *res judicata* or other doctrine should apply, as never ruled on specifically to this Unlawful Detainer, nor the underlying Wrongful Foreclosure therein.

How can this court turn a blind eye to the wrongful foreclosure and the Deeds which should be voided regarding the same, particularly with the evidence which proves the same?

Again, this court has denied Hampton her due process rights to her 3-day trial by Jury this week, where it is believed by the end of the same, Hampton would have proven by a preponderance of evidence that PROF has never been entitled to the remedy of foreclosure, since

at no point in time were they secured by the DOT, and as no right to Assign a Substitute Trustee and proceed with a foreclosure action had accrued, and thus was a "wrongful" foreclosure, particularly since Hampton had filed suit prior to the same to stop the same, and further not all conditions precedent to the DOT were fulfilled prior to proceeding.

This Appeal scheduled for a three (3)-day Trial by Jury for October 21-23, 2019, which was ordered on February 4, 2019, over eight months ago. Also ordered at that time was the Uniform Pretrial Scheduling Order setting Pretrial Conference for September 20, 2019, and the following orders applied:

> "V. Dispositive Motions: All dispositive motions shall be presented to the court for hearing as far in advance of the trial date as practical. All counsel of record are encouraged to bring on for hearing **all demurrers, special pleas, motions for summary judgment or other dispositive motions 60 days after being filed.**"

PROF had more than ample time to bring on any dispositive motions "as far in advance of the trial date as practical," since February 4, 2019, wherein the Uniform Pretrial Scheduling Order was set, and should have further done so prior to and concluded by the Pretrial Conference date of September 20, 2019.

> "VII. Pretrial Conferences: Pursuant to Rule 4:13 of the Rules of the Supreme Court of Virginia, when requested by any party or upon its own motion, **the court may order a pretrial conference wherein motions *in limine*, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.**"

Again PROF's motions should have been brought on earlier and disposed of or concluded by Pretrial Conference.

> "VIII. Motions In Limine: Absent leave of court, any motion *in limine* which requires argument exceeding five minutes shall be duly noticed and heard before the day of trial."

Again, see VII above "**wherein motions *in limine*, settlement discussions or other pretrial motions which may aid in the disposition of this action can be heard.**"

Hampton had hoped that as a dispositive matter, her *Motion to Dismiss* might be considered at the Pretrial Conference. However, at that Pretrial Conference, the Honorable Judge Sincavage advised that would be unfair notice to PROF and, after consulting with counsel on time needed to respond, set September 27, 2019, as a response date for PROF's reply thereto, one week before the hearing on the same October 4, 2019. Judge Sincavage also advised both Hampton and counsel that two motions could not be heard on the same day, and since Hampton's *Motion to Dismiss* took priority, she left it on the motions hearing date of October 4, 2019. Further to this, Hampton's *Motion to Compel Discovery* had to be dismissed for motions day of October 4, 2019, and re-praeciped for scheduling date of September 30, 2019, which motion was particularly in response to PROF's answers to *Discovery Requests*, and **which Hampton needed in order to aid her in preparation for trial.**

On September 30, 2019, the hearing for the *Motion to Compel Discovery* was set for Tuesday, October 15, 2019, less than a week before trial. Had both motions been heard on October 4, 2019, Hampton might have been afforded those *Discovery Requests* to aid her in preparation for trial and where the court found Hampton could have subpoenaed witnesses and documents, but October 15, 2019, was not within the required ten day time limit to issue subpoenas, thus not ample time for trial.

The first dispositive motions, *Motion for Summary Judgment* and *Renewed Demurrer to Hampton's Counterclaim*, were both filed on September 20, 2019, on the day of Pretrial Conference (held one month before trial), and both of which were praeciped for scheduling on September 30, 2019. At the scheduling hearing, Judge Irby, after setting Hampton's *Motion to Compel Discovery* for October 15, 2019, indicated that there was no space on the docket to hear PROF's motions before trial. Hampton also brought up the fact that Judge Sincavage had

informed both Hampton and counsel that two motions could not be heard on one day, but Judge Irby said otherwise and, after questioning counsel on the *Renewed Demurrer* (which did not exist as renewed in this case) and realizing it was a *Demurrer* to the former case heard and ruled on by Judge Irby and dismissed on *Demurrer*, Judge Irby found a 45-minute slot on October 18, 2019, to hear both the *Motion for Summary Judgment* and the *Renewed Demurrer*, and giving Hampton until October 11, 2019, for her replies to both. On this same scheduling date, September 30, 2019, PROF filed their *Motion in Limine* with their *Praecipe* for scheduling docket for October 7, 2019 (one week later), and at that scheduling docket, Judge Irby scheduled the *Motion in Limine* to be heard on October 15, 2019, on the same hearing date of Hampton's *Motion to Compel Discovery*.

So here Judge Irby had scheduled two motions together, twice, and all four motions to be heard within four days of each other, and regardless of their late filings, and right before a Trial by Jury, where time should be spent on preparation for the Trial. And if Hampton wanted to respond to this late *Motion in Limine*, she was not afforded any "fair" time to do so. The Clerk's office informed Hampton that in order for her response to be considered at that hearing date on October 15, 2019, Hampton would have to file the same within four (4) days or by October 11, 2019, together with her other two responses that were due by that date. It is not believed that this is "fair process" and Judge Irby, who has been disqualified under Rule 2:11 as to any hearings, acted with prejudice therein.

All three of PROF's motions were not only "not timely filed," but could have and should have been filed months ago, as claimed "dispositive," possibly even eliminating the time needed for Pretrial Conference, *Discovery Requests*, etc., should they succeed; and it is believed that the same was only brought on because of Hampton's *Discovery Requests*, and the *Motion in Limine*

brought on further by Hampton's *Responses to PROF's Discovery Requests*. It is quite obvious that counsel sought to make this case solely upon the Unlawful Detainer and their limited proof as to having a right to possession and wished to dismiss all of Hampton's evidence and witnesses, **which can prove otherwise**. Hampton should have been entitled to a fair trial and the right to present her evidence and witnesses to the jury, and none of those motions should have survived Hampton's Constitutional Rights to Due Process.

Further, just because Hampton's Petition before the United States Supreme Court, was denied, as being part of the 99% which does not get accepted, this was not an affirmation of the lower court's decision, as counsel would have you believe. Hampton's Petition before this highest court was based on her Constitutional Rights to defend her property from the "unlawful taking" of the same without Due Process. **And to date, no court has afforded her the same, since her earlier *Complaints* were *Dismissed on Demurrers* and *Pleas in Bar* as to "finding no cause of action, insufficiently pled as to fraud, and finding no cognizable claim, and barred by the Statute of Limitations." That judgment never addressed the merits of the case, nor the evidence that supported them.** And, in fact, there was no Trial, no Discovery, no witnesses examined and/or cross-examined, just a hearing where the Honorable Judge Jeanette A. Irby found in favor of PROF and the other Defendants (predecessors to PROF), and where Hampton's objection to that ruling in the *Order*, stated clearly **"... the dismissal of the claim is a material injury constituting a deprivation of Plaintiff's right to procedural due process."**

Addressing this court's decision to grant summary judgment on PROF's *Motion for Summary Judgment* and *Renewed Demurrer to Counterclaim*, Hampton repeats that PROF is not entitled to judgment where "summary judgment shall not be entered if any **material fact** is genuinely in dispute." (Rule 3:20) Clearly, there is a "preponderance of evidence" that material

facts were genuinely in dispute as to the Assignment of the DOT and the Deed of Foreclosure, and as can be seen from Hampton's *Responses to Requests for Admissions*, where clearly she has disputed and **has not admitted to any material facts that would permit summary judgment to PROF**.

It should be noted here from page 4 of Hampton's Admissions that **she denies any allegations as to the "accuracy"** of Exhibit A, **the *Deed of Foreclosure*** ... "Hampton will admit that SIW has altered the property description in the *Deed of Foreclosure* from that of the *Deed of Trust*, which is to be stated verbatim." **This should be considered as a facially-invalid title** and certainly Hampton challenged it on the same.

In further support as to PROF not being entitled to summary judgment, Hampton submitted PROF's *Responses to Hampton's Requests for Admissions*, together with the Exhibits referenced therein, and wherein it should have been clear to this court that they denied all allegations as stated and demanded strict proof thereof, which Hampton was prepared to do at the trial by jury.

Although, Hampton believed all PROF's responses to admission should be read, she directed attention to admission 13, on page 10, **Exhibit M**, again as to their *Deed of Foreclosure* to PROF ... "that SIW has altered the property description from that of the DOT, which is to be stated verbatim, and has done so with the knowledge and its own approval to a "Corrective Affidavit" which "was" to be filed/recorded ... to correct the property description creating a "Cloud on Title," ... further needed Defendant's approval." Where PROF's response is **"Plaintiff lacks present sufficient knowledge, information, and belief to respond as to allegations regarding same, and as such, denied the same and demands strict proof thereof. ... denies any title defects and/or clouds on title and the germaneness of same to this**

possession suit in the eviction appeal and demands strict proof thereof." Hampton again was prepared to prove the same at trial, and these combined suits were not limited to possession, nor had anything on the merits of Hampton's allegations ever been **"actually" litigated** or **ruled on the "merits"** in any prior case.

Turning to admission 9, on page 7, **Exhibit I**, again as to SIW's *Assignment of Deed of Trust* dated December 17, 2015, filed electronically and recorded in the public land records of Loudoun County Circuit Court on December 28, 2015, ... whereby Bank of America, N.A. grants, conveys, assigns to PROF all beneficial interest under that certain DOT executed by Defendant ... **with an invalid description of the property**, ... TOGETHER with the note or notes therein described and secured thereby. Said Assignment of DOT was prepared by PROF, but returned to Avenue 365. To which PROF responds "**... legal instruments speak for themselves ... all contrary allegations are denied thereto and strict proof is demanded thereof. ... the Substitution of Trustee instrument and Limited Power of Attorney are legal instruments that speak for themselves.**" Hampton again was prepared to prove the same at trial, and even further to this Assignment of DOT, the **document contained an incorrect pin no. in addition to the "bogus" description, which by virtue of those facts alone should be considered as a facially-invalid title,** and Hampton challenged it on the same, as well as challenging this Assignment which was filed 21 days after foreclosure, **evidencing that PROF had not been previously secured by the DOT and had no power to Substitute a Trustee (Exhibit E), nor were they permitted to exercise the remedy of foreclosure, when they did so.**

Further, to Hampton's claim was **Exhibit J**, the Limited Power of Attorney from BANA to Avenue 365 under the terms of sale of Hampton's loan to PRMF Acquisition LLC resulting

from an auction on June 19, 2019, **thus concealing true ownership of said loan and evidence that the wrong party proceeded with the SOT and foreclosure proceeding/Trustee Sale.** Here is where true evidence of collusion appears, **where the loan was sold, but yet Fay on behalf of PROF and SIW file a SOT without any power to do so, and where that power had been sold to PRMF**, and where neither BANA nor the "concealed" PRMF assign that power to PROF, until after the foreclosure (filed 21 days later).

Accordingly, what Hampton has raised herein is that PROF was not entitled to possession, as they were never secured by the DOT, were not permitted to Assign a Trustee and exercise the power of foreclosure and, at the time they did so, were no longer the owner of the *Note* and further the subsequent *Assignment of the DOT* to PROF from BANA and the *Deed of Foreclosure* are facially invalid, as well.

Repeating here from Hampton's Response as to *res judicata*, etc.:

> "Further, to correct counsel on its position as this matter having been litigated fully and exhaustively through companion or corollary affirmative litigation, even to the Highest Court of the Land, counsel deceives this court with their claims under *res judicata*, issue preclusion, collateral estoppels, and judicial economy, where at no time was Hampton's prior case **heard on the merits, nor "actually" litigated and "tried" on the merits**, as apparently **none of the defendants could find a cause of action to defend, could find no fraud pled with specificity, could not find a cognizable claim, and nearly all counts were barred by the statute of limitations, and Judge Irby ruled the same.**
>
> Here, on PROF's motion for summary judgment, page 10, states that Judge Irby's *Final Order* after the exhaustive four (4)-hour *Demurrer* hearing conclusively and readily demonstrates that Hampton's title-attacking claims failed to meet the *Parrish* threshold and survive a demurrer by the Defendants, to which **Hampton says is totally bogus as the hearing was forty-eight (48) minutes long and never addressed *Parrish* therein, and again was dismissed as to not finding a cause of action, nor a cognizable claim, nor fraud pled with specificity, and further Count XII on the Unlawful Detainer was never addressed by defendants, particularly PROF as it only applied to them, nor ruled on by Judge Irby, but all counts were dismissed with prejudice as prompted by counsel as "a final housekeeping note."**

Obviously, in the courts final ruling, "the complaint failed to meet the pleadings standard; was unable to find a cause of action; being exhaustively litigated for a number of years (***13 months and 3 months of filing the COMBINED 2nd amended complaint***); where foreclosure [***wrongful***] had concluded; and was an inappropriate use of court's and parties' resources." How could this court conclude such as a fair trial? … "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." (quoting *Hornsby v. Allen*, 326 F.2d 605)

The circuit court should have found predatory lending, a *void ab initio* Deed of Trust and the "Cloud on Title" evident requiring a "Corrective Affidavit," and clearly with the violation of the Consent Orders, HUD requirements, and breaches of the DOT, a "wrongful foreclosure" had occurred and, more particularly, Hampton had exercised her rights to file suit before the same challenging the foreclosure, which Plaintiff and SIW ignored.

As stated on p25 of Hampton's Petition before the Supreme Court of Virginia and further to *Hornsby v. Allen*:

> "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."

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 US Constitution, the Virginia Constitution states that "no person shall be deprived of his life, liberty, or property without due process of law." **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."** That earlier case was a civil action to protect Hampton's property rights *from the unlawful taking of those rights* by either Bank Defendants or Trust Defendants, but Hampton never experienced any protections of the law, since her Complaint was dismissed on Demurrer without determining the truths of the allegations and nothing was ruled on any merits. (emphasis added)

Hampton has challenged all Assignments on record and particularly the *Deed of Trust* as being *void ab initio*, and challenged the foreclosure first warning of the same via her Loss Mitigation Specialist, Jeffrey Burch's December 3, 2015, "Cease & Desist"

letter (Exhibit G attached) to both SIW and Fay Servicing, and when it became obvious that they would not Cease & Desist the foreclosure, Hampton filed suit in US District Court to stop the same on December 4, 2015. SIW ignored this case filing and foreclosed, in violation of and breach of the DOT as to not fulfilling all conditions precedent as required, and as found in Virginia Supreme Court ruling in *Mathews v. PHH Mortgage Corp.*, 724 S.E.2d 196 (Va., 2012).

Further repeating: Hampton has raised the fact that SIW has abused their fiduciary duties, where Hampton filed suit against PROF and others December 4, 2015, prior to foreclosure on December 7, 2015, challenging foreclosure, which SIW ignored; in addition to improper notices to foreclosures; invalid 404 notice; failure to send Default Letter; breaches to the DOT as not all conditions precedent met, including HUD violations, and violations of "Consent Order" with OCC/US Treasury; improper or voidable Assignments; **wrong party proceeding with foreclosure**; despite a known "Cloud on Title" requiring a "Corrective Affidavit;" and despite a Cease & Desist Letter from Hampton's Loss Mitigation Specialist, including Highlights from a Bloomberg Audit, demonstrating why the initial assignment of the DOT to BANA failed as a valid instrument.

That based on the violation of not conducting the HUD face-to-face meeting alone, Hampton should have survived earlier and should have survived herein any *Demurrer.* And further to the National Mortgage Settlement (NMS), "**The banks have agreed to major reforms ... borrowers will have the right to see all of their loan documents to make sure any potential foreclosure is legal**" (taken from page 9 of the NMS). Clearly, PROF (nor BANA) have ever complied with this major reform, but should have done so.

Addressing further those dispositive motions, under the doctrine of *res judicata*, "[a] party whose claim for relief arising from identified conduct, a transaction, or an occurrence, **is decided on the merits by a final judgment**, shall be forever barred from prosecuting any

second or subsequent civil action against the same opposing party or parties **(this is reference to individual persons not entities)** on any claim or cause of action that arises from that same conduct, transaction or occurrence, whether or not the legal theory or rights asserted in the second or subsequent action were raised in the prior lawsuit ..." This argument cannot apply to a case dismissed on *Demurrer* that could find "no cause of action, no cognizable claim, not pled fraud with specificity, or barred by the statute of limitations," which **was never decided on the merits by a final judgment**, and further those issues were never **"actually" litigated**, since they were dismissed on *Demurrer* before any actual discovery was permitted.

Since Judge Welsh in the General District Court ruled in favor of PROF, moving on their earlier dismissed Summary Judgment, and without considering Hampton's response thereto, it became necessary for Hampton to file an appeal to protect her rights from the "Unlawful Taking" by PROF, in violation of her Constitutional Rights, and she was informed by Judge Welsh, that both the Unlawful Detainer and the Counterclaim had to be appealed together.

As previously argued, Hampton considered any imposed bond unfair, since she too has her own damages, where she has not been afforded the benefits of loan payments against her taxes for ten years; has been forced into bankruptcy several times (once on Bank of America's requirement for the HAMP modification/twice on stopping foreclosures); has had to pay higher prices on all lines of credit and insurance; has been deprived of her right to quiet title, which the Deed of Trust is purported to give; where she has been damaged further by the unlawful detainer suits; where these losses have spanned a period of ten years, not to mention the Predatory loans and the cost of the same.

Still further Hampton has had to go to the expense of these continued litigations, and prior cost of attorneys, loss mitigation specialists, bankruptcy attorneys, auditors, courts, printing

and, in general, deprived of seeking employment or furthering her desire to start a healing practice; open her doors to veterans; and lacks time to further volunteering with Wounded Warriors and Sanctuary on the Trail, in Bluemont, which is how Hampton would like to retire. This state of never knowing what is next, and continually having to fight for her rights, take a real toll on Hampton's quality of life.

Plaintiff (and all predecessors) could have and should have offered the HAMP modification, for had they done so according to the Independent Foreclosure Review Remedies, there would never have been a need for litigation. Where it was the banks, including PROF/US Bank's, obligation to fulfill the remedies of the IFR Remediation Framework and offer the HAMP, as it should have been offered ten (10) years ago – that is, a new loan that starts all over again, and based on the terms when they should have offered it. The banks/PROF at any time could have had a working loan, but choose instead to "unlawfully take" Hampton's property.

Hampton believed in the success of her case herein and, particularly since she would finally have a court of record trial by jury, with the court's and jurists' findings of justice on the "**merits**" of her case; and further believed that by October 23, 2019, this case would finally be put to rest in Hampton's favor.

PROF has deceived this court at every level of these procedures, because they knew with the "truth of the allegations" and the supporting evidence, they could not possibly win at trial by jury – thus the last minute dispositive motions, which were clearly in response to Hampton's *Discovery Requests*, of record herein, which also should have been fully read.

This court has found that Hampton, once again, did not survive either a *Demurrer* or *res judicata* and it is hoped that, Your Honor, will read the attached transcript (at least to its rulings) and accompanying *Motion for Reconsideration* and *Memorandum in Support of*, in that prior

case, and further determine that PROF has clearly misled this court as to those *Demurrers* and *res judicata*.

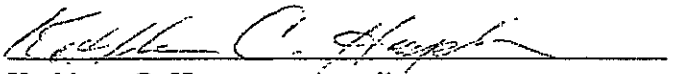
Hampton has unfairly been denied her rights to present her evidence to a "fair" trial, as her "fair" trial by jury was cancelled as to those dispositive motions. Please tell me where is there **justice** in this. This is clearly a violation of my Constitutional Rights to due process, since no court has afforded the same.

Hampton has already been burdened with a bond, which will take her two more years to pay off, and which should never have been imposed on her, and now this court is allowing thieves to take her home of nearly twenty-five (25) years, and again, without due process.

Hampton should not have to Appeal again, but will and hopefully, with her pleadings and evidence provided herein, the Supreme Court will remand the same, where she will be heard on the "merits" with all of her evidence and witnesses permitted again before a trial by jury.

WHEREFORE, for all of the reasons stated above, and supported in the attachments hereto, Hampton respectfully requests this Court's *Reconsideration*, and to serve justice by either placing this case back on the docket for a "fair" trial by jury and on its merits, or dismiss this case without prejudice, which should have been done in the General District Court. PROF may file their claim in Circuit Court or perhaps they will come to the settlement table as they should have done ten (10) years ago. Hampton should not have to continue to defend her property from the "Unlawful Taking" by PROF, in violation of her Constitutional Rights.

Respectfully submitted,

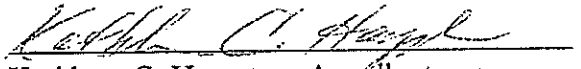


Kathleen C. Hampton, Appellant *pro se*
Defendant/Counterclaim Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2019, a true copy of the foregoing *Motion for Reconsideration and Supporting Memorandum of Law to the Honorable Stephen E. Sincavage,* with attachments, is being sent via first class US Mail, postage prepaid to:

Appellee
Plaintiff/Counterclaim Defendant
Lisa Hudson Kim, Esq.
SAMUEL I. WHITE, P.C.
5040 Corporate Woods Drive, Suite 120
Virginia Beach, Virginia 23462
Counsel for PROF-2013-S3 Legal Title Trust,
by US Bank National Association, as Legal Title Trustee



Kathleen C. Hampton, Appellant *pro se*
P.O. Box 154
Bluemont, Virginia 20135
540-554-2042

STATE OF VIRGINIA
COUNTY OF LOUDOUN

CERTIFICATION

I, Kathleen C. Hampton, hereby certify that I am the Appellant in this action. I have read the foregoing *Motion for Reconsideration and Supporting Memorandum of Law to the Honorable Stephen E. Sincavage* and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

Date of execution: October 25, 2019

Kathleen C. Hampton, Appellant *pro se*

SWORN to and subscribed before me, this 25th day of October, 2019.

NOTARY

My Commission Expires: JAN. 31 2020

Mary E. McCauley
Commonwealth of Virginia
Notary Public
Commission No. 116683
My Commission Expires 1/31/2020

NOTED ON P. 4 re MOTION FOR RECONSIDERATION

VIRGINIA:

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHLEEN C. HAMPTON,

Plaintiff

v. CASE NO.:

PROF-2013-S3 LEGAL, TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE et al., CL00098163-00

Defendants

_____x

Tuesday, January 3, 2017

Leesburg, Virginia

Hearing before The Honorable Jeanette A. Irby, at the Loudoun County Circuit Court, 118 East Market Street, Leesburg, Virginia 20176 and all parties were present.

P R O C E E D I N G S

COURT CLERK: Kathleen C. Hampton versus Professional Legal Title, 98163.

THE COURT: Morning.

MS. KIM: Good morning, Your Honor.

THE COURT: Okay. Parties can have a seat.

I've read the file. I believe this is the Defendants' demurrer, correct?

MR. LEE: That's correct, Your Honor.

THE COURT: All right. Are you prepared to go forward?

MS. KIM: Yes --

THE COURT: Okay.

MS. KIM: -- we are, Your Honor.

THE COURT: Okay. Go ahead.

You can go ahead and have a seat.

MS. KIM: May it please the Court, Your Honor, Lisa Kim and Amy Czekala here from Samuel I. White, P.C. We're here defending three

Defendants and moving for demurrer to the Second Amended Complaint.

For the sake of the record, our clients are Fay Servicing as Servicing Agent and Attorney in Fact for PROF-2013-S3 Legal Title Trust by U.S. Bank N.A. as Legal Title Trustee, MERS, Mortgage Electrical Systems, and, lastly, Samuel I. White, P.C. as Substitute Trustee.

And the Court is probably aware we've been here before, this is the third complaint in this suit. The second suit of two suits that Ms. Hampton has filed to forestall foreclosure and/or eviction proceedings on a home on Snickersville Turnpike in Round Hill, Virginia.

That first suit was filed in this Eastern District of Virginia pre-foreclosure in December 2015 and was voluntarily dismissed on the eve of a motion to dismiss hearing. And a Judge Brinkema entered that dismissal order; and then this suit was filed four days after the foreclosure, somehow seeking to enjoin it post-sale. And we've gone

through two considerations of amendments and we're now here on the second amended complaint.

Largely, this 150-page document, Your Honor, seems to be plucked from the Internet. A lot of California Law and "Show Me The Note" or what we call "Show Me The Noteholder" authority claims, saying things along the lines of "this Trust wasn't properly securitized, guidelines under HAMP or the Office of Comptroller or Treasury weren't properly adhered to, HAMP and loan modification provisioning were not granted to her, and the substitution of Trustee instrument fails, there's no authority to foreclose, things along these lines. Also, short-circuited and called "illegal foreclosure".

Your Honor, in a judicial foreclosure jurisdiction like Virginia, all of these claims ring hollow. They are summarily dismissed. The body of jurisprudence is sacrosanct that they fall on deaf ears in the Court and otherwise.

Had Ms. Hampton filed anything citing a

single violation from the Deed of Trust, which is the operative mortgage loan document here or her Promissory Note, both signed in 2006 -- I have that original note, "Wet Ink Note" here today bearing her signature that matches the signature on the pleadings. It is a blank endorsement, Your Honor, so it's bearer paper, and Countrywide signed that original endorsement that is in blank. So anybody processing this note is entitled to and enforced it.

I also have the Substitution of Trustee instruments that are recorded in the public land records of this Court, but, Your Honor, there is nothing within the four corners of the Complaint that cites to a Deed of Trust violation or a note violation or any of the operative code sections in Virginia, found in Section 55-59.1 et seq, to allege any kind of malfeasance with this sale along the lines of notices were inadequate or bids were improperly calculated, collusion, fraud, anything like that.

Instead the fraud is all the allegations of it which do not rise to the level of specificity and particularity required in Virginia, but it's along the lines of the way the note was secur -- the loan was securitized and pooled. Nothing for which she has standing and nothing that is recognized in this jurisprudence of Show Me the Note or Show Me The Noteholder authority that is disallowed in this jurisdiction.

And Ms. Hampton recognizes that, because her own latest pleading, her opposition that was filed I believe on the 27th of December to our demurrer briefs, says she has no standing and no authority to make those allegations, yet she does.

So claims like "illegal foreclosure", "violation of HAMP guidelines", "no authority to foreclose", "IIED", Intentional Infliction of Emotional Distress, they're not pled with anything more than the recitation of the elements, there are no supporting facts, and case law says that simply the stress of foreclosure is not sufficient

for an IIED claim, something more must be pled and certainly supporting factual allegations, yet those are not found within the Second Amended Complaint. And this is now the third bite at the apple, fourth bite overall, that she's had to perfect these claims. And I might note also, this defaults stems from a Notice of Intention to Accelerate, which is found within the facts of her Memorandum 2008.

So we're talking about a person residing in a property who hasn't made payments for eight to nine years, and a foreclosure that occurred, was put to record and the Deed of Foreclosure was filed and recorded over a year ago in December 2015.

We would submit, Fay Servicing, U.S. Bank, the Trust, who holds the Deed of Trust or held the Deed of Trust and note prior to the foreclosure. They need to be able to move on and evict and sell this bank-owned property, enough is enough. There have been no good faith bases to

repay this loan; there's no monthly bond in place, the prejudice continues; and these serial litigation claims and suits that Ms. Hampton filed, notably the Federal suit and the State suit, concurrent in December of 2015 until that dismissal of the Federal suit in May of 2016 are at severe prejudice in terms of fees and costs and time delay to these Defendants.

May I also add, Your Honor, that the claim for Slander of Title that Ms. Hampton makes fails because the elements required for the prima facie case of uttering and publication of slanderous words, falsity of those words, malice, and special damages are not adequately pled. There's no malice and reckless disregard in foreclosing on a conceded default on a failed mortgage loan.

And then, finally, Your Honor, in terms of the remedy that Ms. Hampton seeks in her Second Amended Complaint, she's pleading legal damages, compensatory and punitive, but also seeking

judicial rescission to unwind that sale as an extraordinary equitable remedy after the fact. And when they're adequate legal damages that are there and are available and are, indeed, are pled, jurisprudence says, in case law of this jurisdiction, that the equitable remedy of rescission is not appropriate. She has the very availability of the legal damages that she has pled. The Virginia Supreme Court has held that only the post-sale, such as this, after December 2015 when this sale was concluded, only adequate remedy of law exists when a borrower seeks money damages in a complaint filed post-sale. In the particular case cited in our brief, a prerequisite to sale, and the Matthews case was cited, here it's more along the lines of arguments about the possession of the note and the authority to enforce the note. But here, notably, she has that adequate legal remedy, she has indeed pled it and so it is inappropriate to rescind a sale over a year later, eight to nine years post-default.

She should have filed this suit before the sale when seeking to enjoin it or to seek an equitable remedy like rescission.

And one might ask, well, are there exceptions to that and there are, along the lines of collusion, pricing building, rigging, conflicts of interest, self-dealing of the Trustee, but here the only thing she alleges is fraud and it's fraud in the loan origination process along the lines of securitization of the Trust, nobody's told me who sold my note to whomever. It's not Samuel I. White and Bank of America colluded or conspired in the sale, or the publication in the newspaper was not in a proper newspaper of general circulation or anything along those lines.

And, finally, Your Honor, there's nothing to state that the -- the Bank, the Trust, short-circuited as U.S. Bank, that's bought this property as the high bidder at sale is not a bona fide purchaser. They paid the high bid, they recorded the Deed of Foreclosure, as you're --

this court is aware, most recently in the last one to two weeks there were exceptions filed by Ms. Hampton to that sale with the Commissioner of Accounts and the Court has entered an order that has overruled those exceptions. So the sale had been found appropriate to the Commissioner of Accounts, the reviewing body found in the court, and in this jurisprudence; and then this Court has then overruled the exceptions that she's filed which are reiterated or re-pasted into these pleadings.

And for those reasons, Your Honor, we seek to have her -- the demurrers to her Second Amended Complaint of these three Defendants sustained this time, Your Honor, with prejudice -- last time they were sustained without prejudice -- and for her to be given no further lead to amend as it would be futile. There's no way to salvage or resurrect or these claims that are largely Internet California seq pleadings that do not resonate in Virginia jurisprudence and are akin to

prohibited Show Me the Note or Show Me the Noteholder authority claims not recognized in this jurisdiction.

THE COURT: Thank you.

Did you have an opportunity to review Ms. Hampton's pleadings that she filed this morning at 8:07?

MS. KIM: I did not, Your Honor, I was travelling from Virginia Beach.

MS. HAMPTON: Did you, Your Honor?

THE COURT: I have it. Why don't you show it to opposing Counsel.

MS. HAMPTON: I brought another copy for you, and a copy for both of the Defendants.

THE COURT: How about if I give you a couple of minutes to look that over in case there's anything that you feel you need to respond to. Because I think there's some paperwork that I can take care of very --

MS. KIM: Okay.

THE COURT: -- quickly. Okay.

MS. KIM: (Counsel reviewing documents.)

(Court docket resolutions.)

THE COURT: And, Ms. Hampton, do you want to go ahead and respond to their demurrer?

And I'll give you a chance in your response to address any issues that you may have with respect to the judicial notice issue.

Okay. Go ahead, Ms. Hampton.

MS. HAMPTON: Well, in addition to the request of judicial notices which I feel are very primary to this case in support of the evidence needed.

First, Plaintiff does not believe that she has failed to state any factual or legal basis for any of her counts and, in fact, has introduced clear evidence of the 59 exhibits identified in the initial Amended Complaint, permitted to be referenced in the Second Amended Complaint and in addition to an added 19 exhibits, all of which have been identified in a list of exhibits on page 151 thereto -- thereof, that supports her facts

and allegations to the wrongdoings of both Defendants and Trust Defendant -- Bank Defendants and Trust Defendants have caused Plaintiff to bring this action.

As previously stated, if Bank Defendants had not violated the HAMP Guidelines, as set out by the investor Fannie Mae and as mandated by Fannie Mae, by approval of the HAMP modifications as of July 29, 2009, this cause of action would not be before this Court and Plaintiff would be enjoying peaceful quiet title to her home and would not have suffered the financial, physical, and mental damages that she had incurred by Bank Defendants' actions.

In Plaintiff's opinion, Bank Defendants' failures are the primary basis to which they could have and should have corrected under their Consent Order with the OCC, which they violated by their failure to suspend foreclosure and extend that same modification, approved on July 29th, 2009, under the Independent Foreclosure Guidelines as

mandated therein and further failed to extend that modification prior to changing hands.

As to Trust Defendants, they did not fulfill their obligations as a new server, failed to "board" the loan prior to initiating foreclosure proceedings, further were under a Consent Order with the OCC Treasury, mandated to suspend foreclosure and extend that modification as approved on July 29th, 2009 and proceeded to foreclose without proper notice and in clear violation of Nonjudicial Foreclosure Laws. It is not believed that Trustee White had the proper documentation to carry this foreclosure out as mandated under the Nonjudicial Foreclosure Laws, nor was it conducted under the terms of the Deed of Trust.

It is with these actions that Trust Defendants caused Plaintiff to file her first suit prior to the scheduled Trustee sale in the U.S. District Court for the Eastern District of Virginia, Alexandria Division on December 4th,

which Trustee White did not honor as called for in the Deed of Trust and thus proceeded with the proceed -- with the foreclosure, December 7th, and by doing so caused this Plaintiff to file her suit here in the Circuit Court, December 11th.

In Plaintiff's opinion, Trust Defendants' failures are the primary basis for the filing of these cases.

Plaintiff has also pled for request for Judicial Notices is herein and request this Court to make determinations on all documents filed in this Court particularly with regard to Probate Case Number 061608, which resulted from the above Foreclosure Trustee Sale and Plaintiff's petitions exceptions to the report to the Commissioner of Accounts.

Although Plaintiff is aware that the Honorable Judge Douglas L. Fleming, Jr. Had been assigned both this case as well as the Probate case and has reviewed those exceptions, Plaintiff believes that the Deed of Trust and subsequent

assignments should be ruled as to validity prior to ruling on the Defendants' demurrers. Should the Court find that the loan was one of predatory lending and its alteration of the Deed of Trust void ab initio, all subsequent assignments become invalid as well.

Pursuant to Virginia Codes 801-386 and 801-389 and further Virginia Rules of Evidence, Rule 2:104(b), relevancy conditioned on proof of connecting facts: Whenever the relevancy of the evidence depends upon proof of the connecting facts, the Court may admit the evidence upon or in the Court's discretion subject to the introduction of proof sufficient to support a finding of the connecting facts. All of Plaintiff's request of Judicial Notices are relevant, and with the evidence on notice, this Court will have more complete evidence to rule upon the issues, which are not avail -- which were not available earlier at filing of the Second Amended Complaint. And Plaintiff's request for admission fulfilled under

Rule 4:1.

With regard to both Bank Defendants and more particularly Trust Defendants' demurrer stating the Second Amended Complaint is largely nonsensical, ambiguous, vague and, frankly, hard to decipher and comprehend, let alone defend efficiently and effectively, and further fails to state any plausible valid recognized Virginia claim upon which relief can be granted. Should this Court agree, under Rule 3:7, a bill of particulars may be ordered to amplify any pleading that does not provide notice of the claim or defense adequate to permit to adversary a fair opportunity to respond or prepare the case.

However, Plaintiff believes that she has not failed to state any factual or legal basis for any of her counts, and by Plaintiff's further pleas or request for Judicial Notice, she has called in further evidence to connecting the facts in this case.

Still, should the Court agree with the

Defendants, this Court may order a bill of particulars under Rule 3:7, and Plaintiff will comply.

With regard to Counts I through IV, Count I, Predatory Lending and Fraud in the Inducement as to Countrywide 05; Count II, Fraud in the Inducement, Fraud in the Concealment, Alteration of the Deed of Trust and Property Descriptions and Violations of the TILA/RESPA and Rescission, Countrywide 06; Count III, Fraud in the Concealment as to Countrywide and BANA regarding the securitization, Country --; Count IV, Fraud in the Inducement, secured trust having the power of sale contained in the DOT/mortgage, Countrywide and BANA, mainly through the Bloomberg audit.

Is court cases, the Court will look at each of the factors making up the loan and decide whether the factors, taken as a whole, constitute predatory lending. If a court determines that a loan was predatory, it can order the lender to modify the terms of the loan or cancel the debt or

take any other equitable action.

In 2003, the OCC ordered banks to establish appropriate due diligence and monitoring procedures to ensure that they avoid becoming involved in predatory lending, as such, predatory lending can be raised as a defense to foreclosure by borrowers. Plaintiff has raised this issue in the introduction of facts, allegations, and these counts, and this Court should make a determination on predatory lending as well as the validity of the DOT in connection with these loan transactions, and further support in the evidence requested for Judicial Notice.

As to Count V, Breach of Contract as to Countrywide, Plaintiff has requested Judicial Notice as it may pertain to this Count and is not barred by the statute of limitations as previously pled.

As to Count IV (sic), Violations of HAMP, IFR Guidelines and the Consent Order with OCC/Treasury -- that's to Countrywide, BANA, Fay,

PROF/U.S. Bank), clearly neither Bank Defendants nor Trust Defendants admit to their failures under this Count, nor do they address it appropriately with the OCC or consumers and thus the request for Judicial Notice from both.

Bank Defendants further misinterpret Plaintiff's allegations and claim Plaintiff asserts that BANA violated the Home Affordable Modification Program, when, in fact, what Plaintiff alleges is BANA violated the Fannie Mae Guidelines mandated to solicit and offer the HAMP to all eligible homeowners. Additionally, BANA denoted as arising under a Consent Order by which Plaintiff presumably means the National Mortgage Settlement reached with the U.S. Department of Justice and State Attorneys General, although Plaintiff makes no attempt to allege any facts pertaining to these subjects.

Bank and Trust Defendants should both know that the National Mortgage Settlement with the U.S. Department of Justice in 49 states,

including ours, is a separate settlement from that of the OCC based on the Independent Foreclosure Review; and, additionally, BANA should have solicited Plaintiff or the National Mortgage Settlement per predatory loan practices and wrongful foreclosure, but did not.

That "wrongful foreclosures", Your Honor, is also for -- for -- included wrongful attempts at foreclosures and -- and not properly servicing.

The language of the Consent Judgment indicates -- this is a quote -- "The language of the Consent Judgment indicates that the parties to the agreement did not intend the individual borrowers to be able to sue to protect the benefits the Consent Judge confers". This Consent Judgment does not apply to the OCC Consent Order and the IFR guidelines, and under that review borrowers were -- are able to sue to protect their benefits for noncompliance with those guidelines. Plaintiff does not state -- Plaintiff does not state a cause of action under HAMP alone, but does

not state -- this is a quote again, I think -- Plaintiff does not state a cause of action under HAMP alone -- no, that's fine -- but does state a cause of action under Fannie Mae's Guidelines that mandated the solicitation and offering of the HAMP.

And BANA's noncompliance with both that as well as the subsequent Independent Foreclosure Review Guidelines and subsequent Consent Order with the OCC, where they were mandated to provide the loan for which she was approved for on July 29th, 2009.

As to Trust Defendants as successors to the loan and as U.S. Bank on behalf of their Trust, under their own Consent Order, they were mandated to provide the same but instead elected to foreclose before properly "boarding" the loan. Both BANA and U.S. Bank violated their Consent Orders.

As to Count VII, Violation of the Virginia Code, Countrywide, BANA/Fay/PROF/White,

Deeds of -- Deeds of Corporations with regard to signatures, assignments, et cetera, together with Count VIII, Lack of Standing to Foreclose/Wrongful Foreclosure, clearly Plaintiff has pled for validity to the actual assignments or the party's rights to foreclose, after discovery that all the assignments per the Audit were invalid and by the securitation (sic) process did not possess the power of assignment. This will be further evidenced by the requested Judicial Notices pled for herein.

This is also supported, once again, in that BANA and PROF/U.S Bank were mandated to suspend foreclosure per Consent Order and Independent Foreclosure Guidelines, and if foreclosure had already taken place and still remained in noteholders' hands, they were mandated to rescind that foreclosure and pay Plaintiff even higher funds.

As to Count IX, International Infliction of Emotional Distress, and Count X, Slander of

Title, Plaintiff has pled that all of the Defendants contributed to the wrongdoings imposed on Plaintiff, and clearly all they needed to do was to offer the OCC IFR's Guidelines mandated by the Consent Order that being the HAMP modification she had been approved for July 29, 2009, and this case would not have existed.

Neither BANA nor PROF followed through and did so knowing full well they were inflicting emotional distress. Also, had Bank Defendants followed through, Plaintiff would never have discovered the predatory lending and -- loan -- the predatory loan and fraud charges they now face. In addition to all of the injustices over the 11 years plus, Plaintiff has been through hell; and Defendants, all of them, know quite well their intentional infliction of emotional distress was created by them, and the further stress from the slander of title which gives rise to a great deal of physical injury resulting from stress as well as to be determined by this Court at trial.

As to Count XI, Fraud with the IRS, and Count XII, Unlawful Detainer of Both Counts against Fay as Servicer and Power of Attorney for PROF/U.S. Bank, Trust Defendants do not bother to address, but has pled therein has caused and will continue to cause irreparable financial damage, and is a serious act of extortion against her property, her reputation and her physical, mental and financial well-being, again to be determined by Court at trail.

In addition, Your Honor, I might add that through my plea for this, which is attached and which has the attachment of the Power of Attorney that was submitted -- or the Power of Attorney that BANA had signed over there -- had transferred or made that assignment from BANA to PROF did not indicate any ownership as to this Power of Attorney that the lender, who signed the document -- it went to a hedge fund, it was sold, the "Seller", Bank of America presumably being the seller, sold to this Hedge Fund, PRMF, and there

is no mention of them anywhere. They have concealed all of that as well. They have -- they have concealed a great deal. And I think by -- even by their demurrers, they continue to want to conceal what Plaintiff's trying to bring out through evidence of these documents that I've proposed.

THE COURT: All right. Thank you.

Any response?

MS. HAMPTON: Oh, Your Honor, one more thing.

THE COURT: Okay.

MS. HAMPTON: I do not seek to -- to avoid having them take over the house. I seek my home of 21 years. I do not want to leave my home of 21 years. And I have made payments. I've made a great deal of payments, and, in fact, I've made payments through the end of 2009, not nine to ten years ago. Ten years ago, it was the loan itself or the refinance.

And I have since that point been trying

to get this all taken care of.

I have this HAMP, which was put into law on my birthday, and in '09. I have -- and I knew at that time that -- I didn't know I was going to have to take it this far, but I knew at that time that I qualified. And it may -- I noted that I have no reason -- I have no reason to doubt that they don't want discovery to go any further. But I believe that I am entitled to take this further and discover the wrongs that they have created.

THE COURT: Thank you.

MS. HAMPTON: And I do this on behalf of not just myself, I believe that there are millions others that have been abused.

THE COURT: Thank you.

Any response?

MS. KIM: Your Honor, we don't speak for Countrywide and Bank of America. Attorney Lee is here to make those arguments, but we would, as a housekeeping matter, point out that because of these assignments, which have been recorded in the

Public Lands Records, it's not even appropriate to have those two Defendants here today.

There is no dispute in our understanding that Fay Servicing is the servicer for this loan pre-foreclosure, and that U.S. Bank or the Trust that we're calling "PROF" today is -- was the Deed of Trust lienholder and noteholder.

With respect to the pleading filed this morning, thank you for the indulgence of an opportunity to review it, unfortunately it is a reiteration of the opposition in previous pleadings that have been filed with Ms. Hampton. So Counsel is intimately familiar with same.

It seeks Judicial Notices to be made which would strike me as being more of proffers or stipulations that we may make if this survives demurrer prior to trial, or what I see is something more akin to a declaratory judgment seeking multiple declaratory findings to be made by the Court when a Dec action hasn't been filed.

So I'm returned, Your Honor, to the

procedural posture of today's hearings, which is a demurrer, and the standard for a demurrer under 8.01-273 is within the four corners of the Complaint, have any of the Counts, with respect to the three Defendants I am defending, Fay Servicing, the Trust, and Samuel I. White, the Substitute Trustee, have any of those been stated in their prima facie elements in supporting factual allegations adequately and sufficiently as a matter of law to equip us to defend this suit and to be on notice of these claims, with the exception of fraud, and then it must be pled very specifically and very particularly.

None of the claims that she has cited in this 150-page document are recognized in Virginia or adequately pled. I believe the only two that are recognized potentially had they been adequately pled are Intentional Infliction of Emotional Distress and Slander of Title, and we've previously argued why those are deficient with just a reiteration at best of the prime facie

elements and even those are lacking.

But when I return to hearing Ms. Hampton and in reading her pleadings, she's very articulate, but these are all malfeasances in Servicing and in loan origination. This has nothing to do with the actual sale and the recording of that sale. It is all about ownership and authority and securitization and pooling. None of these things does she have a standing to enforce. None of these things are equivalent to rising to the level of a private right of action. And we have the authority in this FAM versus Bank of New York Mellon case, recognized by the Eastern District of Virginia in 2012 that says, very plainly, "just as a noteholder is not required to come to a court of law and prove its authority or standing to foreclose on secured property so too a nominal beneficial or substitute trustee, like Samuel I. White, should not be required to prove in court that it has the noteholder's authority to foreclose, or to conclude otherwise would allow

borrowers to compel Judicial intervention in any foreclosure proceeding where a Deed of Trust has changed hands or where a substitute trustee has been appointed", because Virginia law unequivocally disallows a Show Me the Note claim against a noteholder; it also disallows similar Show Me the Noteholder Authority claims against Defendants such as MERS and Substitute Trustees.

That is, Your Honor, exactly what we have in this illegal foreclosure, failure to have authority to foreclose, a lack of securitization of the note and a lack of recording of authorizations and similar claims that have been reiterated in this now third bite of the apple in this suit.

So respectfully, Your Honor, without speaking for Defendants Countrywide and BANA, we would ask that these three Defendants be dismissed with prejudice and without granting further leave to this Plaintiff to amend.

THE COURT: All right. Thank you.

With respect to the other Defendants.

MR. LEE: Yes, Your Honor. Patrick Lee here representing Countrywide, Bank of America, and Fannie Mae. My colleague representing co-Defendants has eloquently gone through essentially the arguments in the case.

Bank of America is a former servicer of the loan. Servicing was transferred in 2015 to Fay; Bank of America had nothing further to do with it at that point. There's nothing -- Bank of America doesn't have a standing in foreclosing at this point, it doesn't have any authority at all within the loan anymore. All that authority entitled us, Fay, as servicer of the Trust.

Many of the other allegations made against Bank of America relates to the loan origination or events in 2008 and 2009. All of that part what's called the Statute of Limitations as argued in our Plea in Bar. But, again, Bank of America, Countrywide, which doesn't really exist anymore as an entity, and Fannie Mae really had

nothing to do with the foreclosure itself. So any allegations regarding that should be solely directed to Fay even if they were correctly stated.

She doesn't plead any Count in her Complaint with any specificity to survive the demurrer, so we request that it be dismissed without, you know.

THE COURT: All right.

And with respect to the Plea in Bar, are you standing on the argument with respect to the Statute of Limitations for Counts I, II, III, IV, and V?

MR. LEE: That's correct, Your Honor.

THE COURT: Okay.

Do you have any response to the Plea in Bar?

MS. HAMPTON: Yes, Your Honor.

As to the -- what I have claimed here with the predatory lending --

THE COURT: Well, I just want you to

address specifically with respect to the Statute of Limitation issue with respect to Counts I, II, III, IV, and V.

MS. HAMPTON: With respect to that, Your Honor, with respect to Counts I through IV, as to the Statute of Limitations, since discovery of this did not -- Plaintiff's discovery of this did not happen until January of 2015 with Blank Rome's letter, dated December 31st of 2014. Plaintiff did not discover the documents that were in the loan of 2016 -- or 2006. And at that point when I received them for the first time, because they were not upon my settlement package, Plaintiff believes that this is where that begins.

But upon finding -- but upon -- but in review all of those things, I also discovered what I believed to be and has developed over the course of this time, almost two years, the discovery of the fraud and the predatory lending, and only discovered it because of Bank of America's failure -- if they had given me the modification that they

were mandated to give me, I wouldn't have had to even request a qualified written request.

And in their -- in Blank Rome's response, when they provided all the documents which I had not seen and I'm not even sure were really truly at settlement, it was through that discovery that -- that Plaintiff believes that her statute of limitations begins. Because she could not possibly have known to go and seek after these documents.

I had no idea of their -- there was no reason for Countrywide not to have sent the documents to me except for that fact, I believe, that they were concealing -- they were actually concealing the loan and its terms. And I truly do believe this to be the time of discovery, and I have filed suit within that time.

THE COURT: All right. Thank you.

MS. HAMPTON: As to Count V, the Breach of Contract, that was something that Countrywide -- involved Countrywide. And

Plaintiff believes that her information may have been sold to someone who may, at this point, be part of the ownership of it now.

And I opted out of a Class Action suit against them and reserved the right to sue at a later date. And for my understanding, by opting out of that suit, for which I have provided in one of the Exhibits, that there was no stature, further Statute of Limitations with regard to it.

THE COURT: All right. Thank you.

MS. HAMPTON: Also, under -- under Predatory Lending --

THE COURT: Ma'am, that's not -- I just wanted you to limit yourself -- I've already heard the Predatory Lending arguments, I just wanted you to limit yourself to the Statute of Limitation response.

MS. HAMPTON: Okay.

THE COURT: All right.

Anything on behalf of the Defendants?

MR. LEE: None, Your Honor.

THE COURT: All right.

MS. KIM: Only, Your Honor, that we join also in these Pleas in Bar and demurrer arguments that are common to all Defendants.

THE COURT: Okay.

All right. Very good.

With respect to count I, Predatory Lending and Fraud in the Inducement as Countyside (sic), I find that Plaintiff failed to allege a cause of action for fraud based upon general allegations in the demurrer, will be sustained without leave to amend.

With respect to Count II, Fraud in the Inducement, Fraud in the Concealment, Alteration of the Deed of Trust, and Property Descriptions and Violations of TILA/RESPA and Rescission, the Court finds that there's no allegation with respect to fraud that was alleged with sufficient particularity.

I find that the claim allegations with respect to the Deed of Trust was altered is

without merit.

Plaintiff's own exhibits reveal that the Deed of Trust was re-recorded in October of 2005 to correct the legal description.

Plaintiff did not specifically state how the Deed of Trust was allegedly altered, who -- when it was altered, or who altered it.

MS. HAMPTON: Can I object --

THE COURT: No, ma'am, I'm ruling.

MS. HAMPSON: Okay.

THE COURT: In additional, no specific amount of damages was pled.

There's no cognizable cause of action for an alteration for a Deed of Trust and Property Description. And there was no elements pled with respect to a claim for Violation of RESPA/TILA or Rescission, so the demurrer to Count II will also be sustained.

With respect to Count III is sustained and with prejudice.

With respect to Count III, Fraud in the

Concealment as to Countrywide and Bank of America, I find that there was not sufficient allegations of fraud with particularity. The general statements that she would have not entered into the loan had the truth been disclosed is a conclusory statement. The statements about misrepresentations and concealment were also conclusory, but they further failed to allege any actions with particularity. So demurrer to Count III should also -- will also be sustained without leave to amend.

Count IV, Fraud in the Inducement as to Countrywide and Bank of America, again I find that the Plaintiff failed to allege fraud with sufficient particularity as well as to what specific misrepresentations were made. Furthermore, the foreclosure sale is conducted and completed over a year ago.

I am going to sustain the demurrer as to Count IV, with prejudice, without leave to amend.

Count V, Breach of Contract, I'm going to

sustain that demurrer as well. Plaintiff did not allege how an alleged disclosure of her personal information constituted a breach of contract. She failed to specifically indicate what provision of what contract was allegedly breached. Her allegations are based upon her belief and therefore are insufficient. She failed to specify an amount of damages; only that she was damaged in an amount to be proven at trial.

Count VI, Violations of HAMP, IFR Guidelines, the Consent Order with OCC/Treasury as to Countrywide, Bank of America, Fay, PROF Bank and U.S. Bank, Plaintiff appears to take issue with Plaintiff's failure to offer HAMP modification. Further she argues that Defendants have violated Plaintiff by not complying with Fannie Mae's mandated guidelines.

I find that she was failed to state the cognizical (sic) -- cogni -- can't say the word -- a claim -- or a cause of action with respect to Count VI, and thus the demurrer to Count VI will

also be sustained without leave to amend and with prejudice.

Count VII, Violation of Virginia Code Section 55-119 as to Countrywide, Bank of America, Fay, PROF and White. I find that Plaintiff's argument that the Deeds of Trust were not properly assigned to be without merit. I don't find that there's any authorization that -- that the statute would authorize a cause of action by a person such as the Plaintiff. There's no reported cases regarding this statute and the cause of action such as the one that the Plaintiff alleges. I, therefore, am going to sustain Count VII without leave to amend and with prejudice.

Count VIII, Lack of Standing to Foreclose, Wrongful Foreclosure as to BofA, PROF, Fay and White. The Plaintiff argues that Countrywide and its successors lacks the power of exercise on behalf of the PSA. The Plaintiff furthermore disputes the validity of the assignment of the Deed of Trust. The Plaintiff

admits in her pleadings that she does not allege specifically to each Defendant as to their actions are accountable.

In Counts IX and X, however, she also claims Intentional Infliction of Emotional Distress and Slander of Title through an attempt to foreclose, Bait and Switched, Methods in Servicing, Dual Tracking, you know, running the Plaintiff through the mill over seven years of HAMP applications.

Again, I find that she's failed to allege facts sufficient to support a cause of intentional infliction of emotional distress. Plaintiff's allegations are conclusory. She does not allege any actual emotional distress for which she sought medical attention. Rather, she stated that she suffers from a lack of sleep, anxiety, and depression as a result of the Defendants attempting to collect a debt.

I am going to demurrer the Count -- I am going to grant the demurrers to Count IX, with

prejudice without leave to amend.

Count X, Slander of Title as to all the Defendants listed. Plaintiff admits in her pleadings that she has no special damages. These Defendants did not conduct a foreclosure and they're not properly named in this particular count.

She does not specifically allege as to each Defendant as to what their actions for which they need to be held accountable in Counts IX and X.

Her claim of Intentional Infliction of Emotional Distress and Slander of Title through an Intent of Foreclosure or Bait and Switch, Dual Tracking, again, the HAMP applications are not appropriate. She must demonstrate a dissemination of slanderous words, a falsehood, a malicious intent and special damages, she's done none of those, therefore, her allegations are not sufficient. Again, I find are merely conclusory. And the demurrer to Count X will also be sustained

with prejudice and without leave to amend.

With respect to the Plea in Bar as to the Defendants of Bank of America, Fannie Mae, Countrywide, to Plaintiff's Second Amended Complaint, the Court will grant the Plea in Bars to Counts I, II, III, and V, as to be barred under the two-year statute of limitations period for fraud is set forth in Virginia Code Section 8.01-243(a).

In addition, I'm going to find Count II is barred by this one-year statute of limitations under RESPA, U.S. Code Section 12, Section 2614. And I will further find that Rescission could be barred under TILA 15 U.S. Code Section 1635 af.

I have also considered the five-year statute of limitations with respect to Count V.

In addition, I know they -- the Defendant, BANA, contended that no cause of action arose under 55.119 as alleged in Count VII, and in the extent that it could have arisen, it would be barred by the two-year statute of limitation as

set forth in 8.01-248.

With respect to the demurrer of the Defendants of Fay Servicing, MERS, Samuel White, I find that it is appropriate to sustain the demurrer as to all counts. I find that it fails to meet the pleadings standard. Again, this is a demurrer to the Defendants of the Second Amended Complaint, actually the third lawsuit. This was also litigated in Federal Court. This matter has been exhaustively litigated for a number of years. The foreclosure sale has been conducted. I don't find that the Plaintiff has any cause of action at this point that would allow this suit to continue, and granting her leave I believe would be inappropriate use of the Court's resources and of the parties' resources, and I am, again, sustaining all of the demurrers with prejudice without leave to amend at this point.

Are there any questions about the Court's ruling?

I just want to -- are there any

questions, any clarifications?

MS. KIM: Your Honor, we have a proposed order.

THE COURT: Okay. If you would then share that with Ms. Hampton so that she can note her objections and provide it to the Bailiff and I will sign it.

Anything else?

MR. LEE: Just for clarification. You mention the three Defendants.

THE COURT: I meant -- well, okay. So -- well, Fay, MERS, Sam White -- is that -- I've got -- Fay, MERS, Sam White, and I have Bank of America, Fannie Mae, Countrywide. Right?

Okay.

MR. LEE: Thank you, Your Honor.

THE COURT: Because some of them were in some -- I tried to get them all, but some were in some counts, not in the others.

So to the extent that I wasn't clear, demurrers as to all parties. Pleas in Bar as to

some.

MS. KIM: So just as a final housekeeping note, we had an order for the demurrer to be sustained as to all Counts with prejudice to my three Defendants, we already added his three, Countrywide/BANA/Fannie Mae, and then I have an order separate and apart for -- to memorialize the Court's ruling on your Plea in Bar?

THE COURT: Correct. Okay.

All right. Very good. And then, again, ma'am, you can note your objections when you sign the order. All right?

MS. HAMPTON: Thank you, Your Honor.

THE COURT: All right. Thank you.

Court will stand in recess.

(Whereupon, the hearing was concluded.)

COUNTY OF PRINCE GEORGE'S:

STATE OF MARYLAND SS:

I, E. Marsellas Coates, a Notary Public of the State of Maryland, do hereby certify that these proceedings were recorded by the Loudoun County Circuit Court at the time and place herein set out, and the proceedings were transcribed by me from a CD format and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 30th day of January, 2017.

My commission expires _____

December 14, 2020 Notary Public

VIRGINIA

NOTED ON P. 10 OF MOTION FOR RECONSIDERATION

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHLEEN C. HAMPTON	)	
	)	
Plaintiff, *pro se*	)	
	)	
v.	)	**CASE NO. 98163**
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE, *et al.*	)	
	)	
Defendants.	)	

PLAINTIFF'S MOTION FOR RECONSIDERATION

NOW COMES Plaintiff Kathleen C. Hampton (hereinafter "Plaintiff") and submits Plaintiff's Motion for Reconsideration as follows:

First, the hearing held January 3, 2017, was not only set for hearing of Defendants' Demurrers and Pleas in Bar, but included Plaintiff's Opposition to the Demurrers and Pleas in Bar and further Pleas for Requests of Judicial Notice, as were filed together with Praecipe indicating the same hearing date. At the scheduling hearing to set the January 3, 2017, hearing, Defendants stated they would only need 20 to 30 minutes, but Plaintiff requested two hours on the Demurrers (since previously in her experience with the earlier hearing on her First Amended Complaint where all Counts (I thru IV) were dismissed for failure to pled sufficiently, it took approximately 45 minutes. In that earlier Complaint, Plaintiff had not combined her Federal case with the Circuit case, but was permitted to Amend the same to permit her to do so, which the

Second Amended Complaint is the result of. Thus with the Second Amended Complaint stating new Counts (I through XII), not at issue in the First Amended Complaint, Plaintiff felt she needed at least two hours, and Plaintiff also requested an additional hour for the Pleas for Requests of Judicial Notice, and was granted the same, for a total of three hours to plead. Accordingly, this hearing was to include a ruling on the Pleas for Requests of Judicial Notice, filed according to Rule 4:1, and this Court failed in not permitting the further evidence to be presented, which evidence clearly would support Plaintiff's allegations and arose and discovered after the facts to the Second Amended Complaint; and had the new evidence been permitted, it is believed that this Court would have come to a different conclusion and judgment on what Plaintiff has pled as to the "continuous wrongful or negligent treatment" that the Defendants have placed on Plaintiff since the initial loan in 2005, in addition to supporting Plaintiff's allegations of fraud.

Had the Court accepted the further evidence, Plaintiff could have made motion for summary judgment of the same and this court could have found instead that, in fact, the Deed of Trust was *void ab initio* and, as such, was not barred by the Statute of Limitations; and, as has been pled in this case and the Probate case. With the claim to Predatory Lending to the loan itself, the court could have found and ordered the lender to modify the terms of the loan or cancel the debt, or take any other equitable action and the same was not barred by the Statute of Limitations, particularly as discovered at a later date, as part of the continuous wrongful and negligent manner that Defendants have imposed on Plaintiff. These issues have been pled throughout Plaintiff's Second Amended Complaint and further pleadings, but the failure of the court to allow the further evidence, has deprived Plaintiff of procedural due process, as noted in her objection to this Court's Final Order.

As to the Legal Standard: "A plea in bar asserts a single issue, which, if proved, creates a bar to a plaintiff's recovery." *Hawthorne v. VanMarter*, 279 Va. 566, 577, 692 S.E.2d 226, 233 (2010). In the absence of evidence in support of a plea in bar, this Court is to only consider the pleadings and the facts as stated in the complaint are deemed true. *Lostrangio v. Laingford*, 261 Va. 495, 497, 544 S.E.2d 357, 358 (2001).

To this Plaintiff notes Defendants have not produced any evidence in support of a plea in bar, and further Plaintiff has requested the Judicial Notices in support of her claim and as pled under the following:

> "Under Virginia Rules of Evidence, approved and promulgated, Supreme Court of Virginia, September 12, 2011, Rule 2:104 Preliminary Determinations, (b) Relevancy conditioned on proof of connecting facts: Whenever the relevancy of evidence depends upon proof of connecting facts, the court may admit the evidence upon or, in the court's discretion, subject to, the introduction of proof sufficient to support a finding of the connecting facts.
>
> Further, under Code of Virginia §8.01-389. Judicial records as evidence; full faith and credit; recitals in deeds, deeds of trust, and mortgages; "records" defined; certification, A. The records of any judicial proceeding and any other official records of any court of this Commonwealth shall be received as prima facie evidence provided that such records are certified by the clerk of the court where preserved to be a true record, through F. The certification of any record pursuant to this section shall automatically authenticate such record for the purpose of its admission into evidence in any trial, hearing, or proceeding.
>
> Still, further, under Code of Virginia §8.01-386. Judicial notice of laws (Supreme Court Rule 2:202 derived in part from this section). A. Whenever, in any civil action it becomes necessary to ascertain what the law, statutory or otherwise, of this Commonwealth, of another state, of the Unites States, of another country, or of any political subdivision or agency of the same is, or was, at any time, the court shall take judicial notice thereof whether specially pleaded or not. And B. The court, in taking such notice, may consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject.

> Under the above Rules and Codes, Plaintiff requests this Court to give Judicial Notices ... in accordance with her Pleas as pled throughout her Oppositions to both Bank Defendants' and Trust Defendants' Demurrers, and more particularly as pled, this new evidence supports Plaintiff's allegations and arise and discovered after the facts to the Second Amended Complaint"

As to the Court's Final Order dated January 3, 2017, Plaintiff has objected to the Court ruling, as noted throughout her Complaint and pleadings that: "The result of Plaintiff's inability to obtain the information necessary to Rule 9(b), the dismissal of the claim, is a material injur[y] constituting a deprivation of Plaintiff's right to procedural due process."

This court did not consider Plaintiff's pleas, nor rule on them prior to ruling on the Demurrers, which Plaintiff had not only requested be done following acceptance of the same, but instead seems to accept Defendants' position wherein they claimed such evidence as merely reiterative, and claimed the Probate Court confirmed that the foreclosure was ruled on as to their acceptance, when, in fact, Probate Court's confirmation did not apply "as to the correctness and validity of the classifications and amounts set forth under 'Amounts Credited to Note' or similar language on the Account of Sale, nor the amount of alleged deficiency, express or implied, if any, on the Account of Sale." Clearly, the Probate Court does not consider the validity of the actual documents placed on file, as they would have found those documents improper. Plaintiff had already been advised by the Commissioner of Accounts as to her hands being tied as to their authority to rule on the same. She also advised that if she had more authority to do so, a good deal of cases would not need to be filed in civil actions, although her burden in ruling would be greater, but Loudoun County has not permitted those authorities yet, as have been permitted in other counties in Virginia.

Further, as pled by Defendants, the statement that Plaintiff has lived in her home free over the past eight to nine years, is simply not true and, as pled, Plaintiff has been harmed by

having to file Bankruptcy three times, not to mention the cost of the same, which by the filing thereof, has caused substantial damage to her reputation, physical damage to her health from stress, and financial damage which is obvious from her credit bureau record (which the first bankruptcy carries through until December of 2019 – filed per the requirements of BANA regarding the HAMP modification – and the final bankruptcy carries through April of 2022 – filed to stop a foreclosure proceeding which occurred right before the purported sale of the loan to PROF – and further damages, more likely than not, of being unable to secure a position in the workforce since this wrongful behavior commenced. In addition, as pled, Plaintiff was forced to pay higher taxes on her income and was not permitted to have payments to her attorney (funds of over $30,000) credited to her taxes, which payments could have and should have been made to BANA, under the HAMP modification had they provided the same.

Bank Defendants continuous negligent behavior is clearly evident by the Independent Foreclosure Review's (IFR) findings and the violations of BANA/TRUST's "Consent Orders" with the Office of Comptroller of the Currency (OCC)/Treasury mandated the remedy which Plaintiff has pled for both in and out of Court for over seven years, although as can be shown from the evidence already in this case and the evidence to which Plaintiff pled in Requests for Judicial Notice, Defendants' negligent behavior emanates from the original Countywide loan in 2005 per Predatory Lending. Further, to this, Bank Defendants claim that Plaintiff has no right under their Consent Judgment under the National Mortgage Settlement; however, Plaintiff at no time claimed to have a right under that settlement, as Plaintiff was neither solicited to participate, as BANA should have done, nor was a participant. But under the Consent Order with the OCC under Guidelines of the IFR, both Banks were mandated to comply and neither of them have, in clear violation of their Order. Clearly, this is negligent behavior and the Request for Judicial

Notice to the OCC and Consumer Financial Protection Bureau (CFPB) records would support these findings and confirm that Plaintiff is also entitled to bring action on these matters for Defendants failure to comply.

The clear evidence that has been submitted in this Second Amended Complaint, which has substantially been expanded on from the First Amended Complaint, should have been recognized by this Court, as this Court had suggested to Defendants previously in the First Amended Complaint that: "I would like both parties – again, I can't order this – to explore the possibility of a loan modification … Because when this is all over, the Bank is going to have to find and sell this property. I mean at the foreclosure sale, the Bank would be the person who bought it?" … followed by Ms. Czekala: "Yes." … with the Court continuing: "Right. So you're holding it on your books and just looking for a pragmatic solution. You've got somebody who wants to be here. If there's a loan modification that can address this issue, perhaps that would be the viable solution. … again, that's a suggestion. I can't order anyone to do anything. I will grant the Plaintiff's need to file her second amended complaint within 21 days from this date." It appears to Plaintiff that this Court did recognize that the extension of the loan modification was a viable solution to this case and this is what Plaintiff has requested continuously both prior to and within her case before this Court. And as she has specifically pled were mandated by the IFR Guidelines and the Consent Order with the OCC with both BANA and US Trust.

That at the hearing, Plaintiff specifically pled, as follows:

> "With regard to both Bank Defendants' and, more particularly, Trust Defendants' Demurrer stating the Second Amended Complaint 'is largely non-sensical, ambiguous, vague, and frankly hard to decipher and comprehend, let alone defend efficiently and effectively' and further 'fails to state any plausible, valid, recognized Virginia claim upon which relief can be granted,' should this Court agree, under Rule 3:7, 'a bill of particulars may be ordered to amplify any pleading that does not provide notice of a claim or defense

adequate to permit the adversary a fair opportunity to respond or prepare the case.' However, Plaintiff believes she has not failed to state any factual or legal basis for any of her Counts and by Plaintiff's further Pleas for Request for Judicial Notice, she has called in further evidence to connecting the facts in this case. Still, should this Court agree with the Defendants, this court may order a Bill of Particulars under Rule 3:7 and Plaintiff will comply."

This Court did not grant the same to Plaintiff, but according to its own findings, this should have been permitted, particularly since this Second Amended Complaint was being heard on new Counts that were not in the First Amended Complaint, nor Plaintiff's initial Complaint. Plaintiff was not trying to "take two *(or three)* bites of the apple" (emphasis added) and was not attempting to forestall an ultimate sale per foreclosure sale – she has always been fighting for her home of 21 years, which the Defendant's have continuously, through their negligent behavior, failed to offer the modification that she was entitled to and in clear violation of Defendants' Consent Orders.

Had the Court ruled to allow the further evidence that clearly connects the evidence, the Court could have found both the DOT *void ab initio,* for which there is no statute of limitations, and could have ruled on the Predatory Lending practice, as plaintiff had pled the court to do so, both here in this case as well as the Probate Court; and had the evidence been allowed, Plaintiff would have made motion to do so. By this Court's failure to admit the evidence, Plaintiff has been denied due process and the right of discovery.

The court ruled in favor of Defendants' Demurrers and took them at their word, when in fact, Defendants deceived the court on many issues, particularly never addressing those Consent Orders and the mandated modifications that should have been extended and, had they done so, there would be no issue before any court, and Plaintiff has made it very clear as to this being the crux of her Complaints; and further foreclosure proceedings were barred as the Consent Order

IFR Guidelines called specifically for "suspension of foreclosure" and, if foreclosed upon and still in the hands of the Noteholder, the Guidelines specifically called for "rescission of the foreclosure sale." Clearly, this claim is not barred by the Statute of Limitations and is a clear and precise pleading in Plaintiff's Second Amended Complaint and pleadings.

Further, through the Defendants' continuous wrongful, negligent behavior as determined through the IFR, and their behavior continuing on through this suit and the foreclosure sale, Plaintiff believes that: "[T]hat the statute runs from the last date of the continuous negligent treatment is just and equitable. A rule to the contrary often results in miscarriage of justice and penalizes a patient who, under continuous treatment, assumes that due care and skill will be exercised." *Farley v. Goode*, 219 Va. 969, 252 S.E.2d 594, 600 (1979) (*quoting Hotelling v. Walther*, 169 Or. 559, 130 P.2d 944 (1942))." And in Plaintiff's opinion, the continuous negligent behavior has not stopped as yet for these Defendants have failed the remedies of their Consent Orders and have against those Consent Orders foreclosed on Plaintiff and have not rescinded the foreclosure as was required by the IFR Guidelines. Clearly Bank Defendants' (and Trust Defendants' as successors) continuous negligent behavior began with the loan origination and, accordingly, Plaintiff's claims in Counts I and II, regarding both the validity of the DOT and Predatory Lending should not be barred by the Statute of Limitations, as their negligent behavior has been continuous.

Plaintiff also, from a review of the taped hearing, has found that Trust Defendants coached this Court "as a housekeeping matter" that the Demurrers of the Defendants were sustained with prejudice without granting Plaintiff leave to further amend the Second Amended Complaint and further that Plaintiff's Second Amended Complaint was dismissed with prejudice and without granting Plaintiff further leave to amend and all the defendants were dismissed with

prejudice and further this ruling was to ALL Counts. It is clear from that hearing, that the Court failed to address Counts XI - Fraud with the IRS and XII - Unlawful Detainer, which could further have been ruled differently had Plaintiff's Request for Judicial Notice been admitted to this Court. This Court, without addressing either of these Counts, has ruled them to be included in ALL Counts as dismissed with prejudice per Defendants' coaching. And again, with regard to Defendants' Plea in Bar, this Court ruled on some counts but not all; however, the Final Order sustains with prejudice without leave to further amend and dismisses with prejudice Plaintiff's Second Amended Complaint without granting Plaintiff leave to further amend, and further dismisses all Defendants with prejudice. It is not understood by Plaintiff why Counts XI and XII were neither addressed nor made a part of any ruling herein, but Plaintiff respectfully requests an explanation or ruling on the same, for to merely move on ALL the Counts, as coached by the Defendants, is a clear injustice to the Plaintiff herein.

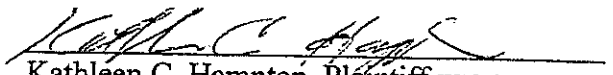
As Plaintiff did file her objection to this Court's ruling, repeating here: "The result of Plaintiff's inability to obtain the information necessary to Rule 9(b), the dismissal of the claim, is a material injur[y] constituting a deprivation of Plaintiff's right to procedural due process" coupled with this Court's failure to accept the Requests for Judicial Notice, Plaintiff respectfully Motions for Reconsideration. Again, as Plaintiff has pled throughout her case, Plaintiff believes her evidence is clearly shown in the volumes of Exhibits and Plaintiff believes this evidence to fully support a cause of action and has petitioned this court to rule on, even if insufficiently pled, and with the acceptance of the Request for Judicial Notice, the burden of proving a cause of action would have been lifted and the cause of action would have exposed itself to this court.

Further, Plaintiff submits herewith Plaintiff's Memorandum in Support to Motion for Reconsideration, wherein Plaintiff attempts to clarify for this Court the exhibits which show

clear evidence, in support of her allegations, as Plaintiff believes that some of this Court's ruling did not consider or had been misinterpreted as to some of the evidence submitted supporting Plaintiff's allegations. And, in the interest of justice, Plaintiff pleas for Reconsideration based on the same.

Dated: January 10, 2017

Respectfully submitted,



Kathleen C. Hampton, Plaintiff *pro se*
For Security Purposes, Please Note
Change of Address to:
P.O. Box 154
Bluemont, Virginia 20135
540-554-2042

VIRGINIA * NOTED ON PAGE 10 OF MOTION FOR RECONSIDERATION

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

KATHLEEN C. HAMPTON	)	
	)	
Plaintiff, *pro se*	)	
	)	
v.	)	**CASE NO. 98163**
	)	
PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE, *et al.*	)	
	)	
Defendants.	)	

2017 JAN 10 P 12:25

LOUDOUN CIRCUIT COURT

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

NOW COMES Plaintiff Kathleen C. Hampton (hereinafter "Plaintiff") and submits Plaintiff's Memorandum in Support of Motion for Reconsideration, and as this applies to this Court's rulings at the hearing of January 3, 2017. Plaintiff will also make these clarifications on a Count by Count basis as the Court did in their rulings. Plaintiff submits the following as clarifications to some of the pleadings, particularly as supported in the Exhibits, which Plaintiff believes the court had in its rulings failed to consider or misinterpreted as to some of the evidence submitted supporting Plaintiff's allegations and, in the interest of justice, Plaintiff pleas for Reconsideration based on the same.

As to Count I, Predatory Lending and Fraud in the Inducement as to Countrywide, this court ruled that Plaintiff failed to write a cause of action. Plaintiff takes the position that Countrywide, notoriously known for its Predatory Lending practices, who also greatly

contributed to the "crash" in the housing industry by their inflated appraisals, which further contributed the subsequent crash in our economy, fraudulently sold Plaintiff a mortgage loan that they had to have known would never be able to be fully paid back and further imposed a prepayment penalty not disclosed earlier and not understood, in addition to failures to provide TILA/RESPA documents required. Had the appraisals been true appraisals, Countrywide would have had only one first mortgage. Plaintiff requested this Court to make an assessment on her case as supported by her loan documents, Am. Compl. Exhs. 1 (original Deed), 2-A through 2-B (original Deeds of Trust), together with new Exhibits 2-C through 2-D (original HUD Settlement Statements) and if the Court determines that a loan was predatory, it could order the lender to modify the terms of the loan or cancel the debt, or take any other equitable action. It is not clear that this court has examined those loan documents; for if they had it would have found a cause of action. Plaintiff also wishes to clarify here that, with regard to the property description, this court could compare the initial DOTs with the re-recorded DOTs and found that the only change made therein was the substitution of 5.24 acres for the 24.0463 acres listed in the original Deeds. Plaintiff discovered, in 2015, that these descriptions were still incorrect and placed a claim with her Title Insurance Company, whose attorney advised that such placed a "Cloud on Title" and could only be corrected by a "Corrective Affidavit" as to all Deeds on record in the court's Recorder of Deeds. Plaintiff mentions this here because the Court seemed confused as to the Alteration of the Deed of Trust and the property description thereto, as claimed in Count II.

As to Count II, Fraud in the Inducement, Fraud in the Concealment, Alteration of Deed of Trust and Property Description, and Violations of TILA, RESPA and Rescission as to Countrywide, to which Plaintiff requested the court to look at each of the factors which constitute predatory lending and in this Count particularly more so, as was supported by the

exhibits thereto and would have been further supported by the Blank Rome attachments to their letter of December 31, 2014, had the same been permitted to be entered in this case per Plaintiff's Request for Judicial Notice. Absent all of the documents pertaining to this refinance, it is not made totally clear, but what is clear from the documents already identified as exhibits is that fraud is evident, particularly with a transfer of the secondary loan to HSBC where Countrywide gave no notice, the letter dated April 1, 2006, was effective April 1, 2006, and as such Plaintiff's first and only payment was on May 1, 2006, with a June payment being included in the refinance. For a better understanding of the fraud here, please refer to Am. Compl. Exh. 5. First, please note this Corporate Assignment of Deed of Trust was purportedly executed on August 4, 2005, and attaches the property description as to the original Deed of Trust, but references the corrected Deed of Trust filed on October 17, 2005. How could Countrywide have known on August 4, 2005, that the Deed of Trust would be filed on October 17, 2005 – they could not have – and Plaintiff believes that this fraudently recorded document was filed to conceal the fact that Countrywide was not entitled to a prepayment penalty in its refinancing of the loan, which not only increased Plaintiff's loan amount by $16,800, but the subsequent refinance was a further predatory lending loan, which harmed Plaintiff even further in the loan product they sold was set up to fail. See further Am. Compl. Exhs. 4-A, consolidation loan application for $407,400, based on an appraisal of $582,000, dated 5/26/2006 and compare this to Am. Compl. Exh. 4-B, end loan product refinance without cash back application for $391,800, based on an appraisal of $501,000, dated 6/8/2006; therefore, it would seem that the same home lost $81,000 over a period of 13 days. This is a clear sign of Predatory Lending and, although Plaintiff had requested a loan without cash back, strictly a refinance, not being satisfied with the higher offer in the consolidation loan, nor with its future payments, and under the same terms as

the consolidation loan, i.e., a five-year interest only arm, which lender still failed to advise Plaintiff as to its loan product, the loan requested was not what she ultimately received and the same was concealed from her, particularly since she was never provided with an amortization schedule, nor HUD Settlement Statement, as well as documents under TILA, RESPA and Rescission. Other new Exhs. 4-C and 4-D further support the claim of predatory lending.

As to the Alteration of the DOT, the court should compare Am. Compl. Exhs. 6-A (as recorded in the court records) with 6-B (Plaintiff's copy given at settlement). Clearly, from the alteration on page 1, it is shown that someone crossed the reference to the loan being a refinance out, which again Plaintiff believes was done to conceal the fact that Countrywide was not entitled to a prepayment penalty and the loan was one of predatory lending. As to Plaintiff pleading with specificity as to who, what, where, when, or why, Plaintiff could only find out this through discovery, as she was not in the presence of who, what, where, when or why as this alteration took place outside of the settlement which took place at Plaintiff's employment and the representative for Countrywide was not employed by Countrywide, except by being a notary was employed to obtain Plaintiff's signatures. Perhaps it was the notary who failed to give Plaintiff all of the documents that she had been missing until Blank Rome supplied the same. Clearly, this alteration was done after Plaintiff's signing of the same. Further to this, the alteration to description on page 13 of the Deed of Trust, which page was not at settlement as can be determined by the lack of Plaintiff's initial thereto, was not discovered until April or May of 2015, as it was furnished by Wittstadt Title and Escrow in an attempt to foreclose. It was at this time that Plaintiff put in her claim with her Title Insurance Company to correct this wrong description, that is, after Plaintiff did a title search on her property, revealing the true description

that it should have been from the original sale. Plaintiff was advised by counsel that this put a "Cloud on Title" and, until corrected, should have prevented anyone from foreclosing.

This information was provided to White, not only by Plaintiff's Loss Mitigation Specialist ("Burch") in a Cease & Desist and further QWR, but by counsel for Plaintiff's Title Insurance Company, as White was listed in the original DOT and he needed to approve the Corrective Affidavit as well. However, Plaintiff is the main party to this Corrective Affidavit being the original holder of the Deed from the original sale and Plaintiff did not receive her copy of those Corrective Affidavits until December 7, 2015, after the foreclosure sale, and Plaintiff could not approve the same since they were still erred. Since this court seemed quite confused as to the alteration to the description and seemed to believe that it was corrected in the October 17, 2005, re-recorded Deed and Deeds of Trust, Plaintiff first points to Am. Compl. Exh. 6-A, p.13 to compare to that of any of the re-recorded Deed descriptions filed October 17, 2005, and to perhaps save some time in comparing the same, Plaintiff can point specifically to her edited version as published in the newspaper prior to BANA's attempt to foreclose as mentioned above through Wittstadt in Am. Compl. Exh. 41 referenced in its Exhibit A attachment. Plaintiff has been advised by counsel that any Deeds, Deeds of Trust, Deeds of Assignment, etc. must be, in their description, verbatim to that on the record. As to the what, where, when, who or why, Plaintiff could not advise since this was never provided at settlement as evidenced by the lack of her initials thereto. This alteration clearly did put a "Cloud on Title" as well. However, and further to this, the real "Cloud on Title" exists as to the real description that has not been filed on this property and has to date not been corrected via "Corrective Affidavit."

Fast forward to White and the foreclosure procedure of December 7, 2015, and BANA's Assignment of Deed of Trust to PROF, executed December 17, 2015 (10 days after foreclosure),

and filed in this court December 28, 2015 (21 days after foreclosure), BANA places a description on the property "Of Nassau on April 3, 1947 as Map No. 4390, which said portions of said lots, when taken together, are more particularly," which only muddies the "Cloud on Title" further (Am. Compl. Exh. 56). Further, as Plaintiff has requested for Judicial Notice of the Power of Attorney as given to the attorney in fact who signed this Deed of Trust, BANA conceals its sale to a hedge fund named PRMF Acquisition LLC. Plaintiff also believes that with the purported sale to PRMF, BANA no longer had the power to Assignment of the Deed of Trust directly to PROF. Nor did PROF have the power to Assign a Substitute Trustee. This concealment causes further confusion and Plaintiff never trusted that PROF had any rights to assign or foreclose, particularly since BANA never advised Plaintiff of a sale and was required to do so per the DOT.

By the filing of a Deed of Foreclosure (new Exh. 60) dated December 7, 2015, wherein it purports that Plaintiff "did grant and convey the hereinafter described property to Samuel I. White, Trustee(s), in trust, to secure the payment of the principal sum of $391,800.00, with interest thereon as evidenced by one negotiable promissory note" is completely incorrect, particularly since Plaintiff filed suit, per Plaintiff's right in the DOT, and further owed no interest or principal per bankruptcy filing six years earlier, and further, the description of the property is not stated verbatim to prior Deeds and Deeds of Trust and further fails as a correct description of the property, but it is the description of the property per counsel's first "Corrective Affidavit," which has not been approved or filed since it still remains incorrect. Clearly, White is attempting to alter the description where Plaintiff through the original Deed has not approved the correction and nothing verbatim to the Deeds on file has been provided.

Plaintiff has further requested via Request of Judicial Notices this Court's Recorder of Deeds records of Trustee White's Certificate of Partial Release, filed August 16, 2016, and

recorded as Instrument No. 20160816-0052847, as it applies to the Property in this case. Plaintiff should point out here that this instrument purports to release some 21.88 acres of Plaintiff's neighbors' adjoining properties, which clearly demonstrates White's failed understanding as to the incorrect description of the property that puts a "Cloud on Title," and seems to desire to correct the description, but fails and merely places more mud on the "Cloud of Title."

Had this court allowed the Request of Judicial Notice, Plaintiff believes that with motioning for judgment on the same, this court could have and should have found, based on the evidence alone, that the Deed of Trust is *void ab initio* and could have found further that Plaintiff's refinance loan of 2006 does in fact constitute predatory lending and could order the lender to modify the loan or cancel the debt, or take any other equitable action. Further Plaintiff does not believe the same to be barred by any Statute of Limitations, as the wrongful, negligent behavior has continued throughout the life of this loan.

As to Counts III – Fraud in the Concealment and IV – Fraud in the Inducement, Plaintiff relies on the Bloomberg Audit, which should be recognized Nationwide.

As to Count V – Breach of Contract, Plaintiff believes that permitted Discovery, should it be found that Countrywide in fact sold my information to an investor, this is a breach of duty of care and contract, and it continues as wrongful, negligent behavior throughout the life of the contract.

As to Count VI – Violations of HAMP, IFR Guidelines and the Consent Order with OCC/Treasury, Plaintiff believes that her count here is patently clear and has patently demonstrated all Defendants continuous wrongful, negligent behavior, but as requested for Judicial Notice, Plaintiff could confirm this wrongful, negligent behavior with the records of the

OCC/Treasury and CFPB. Further, as to the National Mortgage Settlement, Plaintiff was not a part of, having not been solicited by BANA, but as to the Consent Order with the OCC, that Order mandated the remedies of the IFR Guidelines. This clearly is a cognizable cause of action and a patently clear violation of Defendants Consent Orders.

As to Count VII – Violation of Virginia Code §55-119 and as requested for Judicial Notice of this court's Probate Court, this court could and should rule on the validity of those documents placed on file and which are invalid, as further supported in Plaintiff's Request for Probate Court's records.

As to Count VIII – Lack of Standing to Foreclose / Wrongful Foreclosure, this court stated merely Plaintiff's position taken and moved onto Counts IV and X. Plaintiff believes she has clearly stated the elements supported by evidence and, per the DOT, recites paragraphs which support her claims.

As to Counts IX – Intentional Infliction of Emotional Distress and X – Slander of Title, Plaintiff has pled this clearly throughout her Complaint. She has not however pled it to the point where she could have included her doctor bills, and, as advised previously, had Plaintiff included all of her evidence with regard to all of her claims, this court would have to weed through five feet of documents. It should also be noted that Plaintiff continues to be burdened with requirements too difficult to prove without the power of discovery. Had Plaintiff been permitted to proceed with discovery, the further discovery would have supported Plaintiff's claims and this Court's ruling Plaintiff believes would be in Plaintiff's favor, especially given the continuous wrongful, negligent treatment that these Defendants are guilty of.

As to Counts XI – Fraud with the IRS and XII – Unlawful Detainer, clearly Fay is a foreclosure mill and has caused a serious conflict to arise with the IRS and in clear violation of the Bankruptcy laws, which will damage Plaintiff and can cause irreparable financial damage and it is believed Fay did this intentionally as a serious act of extortion against her property, her reputation and her physical, mental and financial well being. As to the Unlawful Detainer, this has already damaged Plaintiff since this in now on public record and with such on my record, will continue to cause damage as to renting a home, obtaining a job, and even obtaining credit. This wrongful negligent procedure has further caused this Plaintiff a great amount of stress and Plaintiff is certain Fay did this intentionally as a serious act of extortion against her property, her reputation and her physical, mental and financial well being. Further to this, this court neither addressed these counts, nor ruled on them, only stating "as to Defendants housekeeping matter" that Defendants Demurrers were dismissed as to all counts with prejudice and without leave to amend.

In addition to the above, Plaintiff wishes to address what Trust Defendants seem to emphasize in their Demurrers, that being that Virginia does not recognize "a show me the note" or "show me the noteholder authority to foreclose" claims. Plaintiff responds that pursuant to U.C.C. – Article 3-§3-501(b)2(1), Plaintiff is entitled to demand presentation of the negotiable instrument. That demand has been ordered multiple times by Plaintiff, beginning June 11, 2012, followed by August 17, 2013, and further included in the QWRs that were ordered every year by Plaintiff's attorney's office. The demand was for presentation for inspection of "MY UNALTERED, ORIGINAL WET INK SIGNATURE PROMISSORY NOTE (front and back) and ALLONGE together with the ORIGINAL WET INK MORTGAGE AGREEMENT in Loudoun County." At no time did BANA provide the same for inspection and provided only

copies of the same. Plaintiff has pled in her Request for Judicial Notice the presentation of the Note with her original wet ink signature promissory note, because as pled, Plaintiff does NOT believe the signature to be hers and had requested that at a subsequent hearing, the same be examined by a forensic expert. Trust Defendants should have no issue with presentation of the same, if in fact they hold the original wet ink signature promissory note. The issue with their authority to foreclose was based on the Assignments validity, not their Authority.

Also further to all of the court's rulings, Plaintiff did proffer to file a "Bill of Particulars," under Rule 3:7, in order to clarify her claims should this court fail to find them sufficient.

Finally, according to Virginia Code §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) On this final note, Plaintiff Requested for Judicial Notice from the Security and Exchange Commission (SEC) to give clear evidence that PROF was never registered with the SEC and thereby was not secured by the DOT and had no powers to assign, which was done in their Assignment to Trustee White.

In the interest of justice, Plaintiff pleas for Reconsideration based on all of the above.

Dated: January 10, 2017

Respectfully submitted,

Kathleen C. Hampton, Plaintiff *pro se*

VIRGINIA

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE **Appellee,** **Plaintiff, Unlawful Detainer** **Defendant, Counterclaim**	)	
v.	)	**CL00118604-00, Unlawful Detainer** **CL00118605-00, Counterclaim**
KATHLEEN C. HAMPTON **Appellant, *pro se*** **Defendant, Unlawful Detainer** **Plaintiff, Counterclaim**	)	

DEFENDANT'S MOTION TO DISMISS

COMES NOW, Appellant/Defendant/Counterclaim Plaintiff, Kathleen C. Hampton ("Defendant" or "Hampton"), pursuant to the *Rules of Supreme Court of Virginia* Rules 12(b)(1) and 12(h)(3) and all other applicable statutory, common law, and legal and equitable authorities, to respectfully move this Court on *Defendant's Motion to Dismiss*, as this court lacks subject-matter jurisdiction.

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."

APPENDIX W

First, this is an Unlawful Detainer Appeal proceeding, where the Plaintiff does not possess and Hampton claims possession of property as a Constitutional Right from the "unlawful taking" by PROF-2013-S3 Legal Title Trust and where the Plaintiff's right of possession has been disputed.

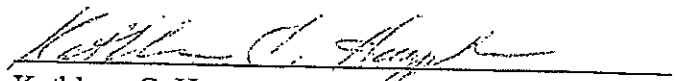
Second, this is also a combined suit where Hampton filed Counterclaims based on the "wrongful" foreclosure sale, an alleged "forged" *Note*, a material breach to the *Deed of Trust* (DOT) thus *Void Ab Initio*, an invalid 404 Notice, improper notices to foreclosure, breaches to the DOT as not all conditions precedent met, improper assignment to Substitution of Trustee, wrong party proceeding, a known "Cloud on Title," in addition to filing suit challenging the foreclosure prior to the foreclosure, and a multitude of other torts, including the validity of all Deeds, Assignments (including challenging the initial Assignment signed by MERS), and all such other records on file.

In addition to my case before the U.S. Supreme Court on my Constitutional Rights to Due Process, set to go to Conference October 1st, Hampton has filed Complaints with the Office of Attorney General, Predatory Lending Unit, with regard to her Predatory loans initiated through Countrywide and taken over by BANA, who is under investigation, and both BANA and US Bank (on behalf of its Trusts, including PROF) are under investigation in that office, with regard to Hampton's mortgage loan as to violations of the "Consent Judgment" on the National Mortgage Settlement and the "Consent Orders" on the Independent Foreclosure Review with the OCC/US Treasury.

The General District Court erred in judgment and award of possession and imposing an $8,000 Appeal Bond on Hampton, where they should have dismissed the same in light of *Parrish* and the fact that I had raised that case and "a bona fide dispute of title," including its validity.

WHEREFORE, for all of the reasons stated above, and in the hopes of being considered at Pre-Trial Conference on October 20, 2019, Defendant respectfully request this Court for an *Order to Dismiss* without prejudice, on the basis that the lower court erred in making that judgment, the award of possession be void, and Hampton's Appeal Bond be released to her, and for any further award of reasonable expenses incurred in this Appeal, which should never have been imposed on Hampton, who is only trying to defend herself from the "unlawful taking" of her property by PROF.

Respectfully submitted,

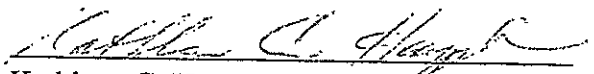


Kathleen C. Hampton, Appellant *pro se*
Defendant/Counterclaim Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2019, a true copy of the foregoing *Motion to Dismiss* is being sent via first class US Mail to and e-mailed to lkim@siwpc.com for early receipt:

Appellee
Plaintiff/Counterclaim Defendant
Lisa Hudson Kim, Esq.
SAMUEL I. WHITE, P.C.
5040 Corporate Woods Drive, Suite 120
Virginia Beach, Virginia 23462
Counsel for PROF-2013-S3 Legal Title Trust,
by US Bank National Association, as Legal Title Trustee



Kathleen C. Hampton, Appellant *pro se*
P.O. Box 154
Bluemont, Virginia 20135
540-554-2042

STATE OF VIRGINIA
COUNTY OF LOUDOUN

CERTIFICATION

I, Kathleen C. Hampton, hereby certify that I am the Appellant in this action. I have read the foregoing *Motion to Dismiss* and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia that the foregoing is true and correct.

Date of execution: September 18, 2019

Kathleen C. Hampton, Appellant *pro se*

SWORN to and subscribed before me, this 18th day of September, 2019.

NOTARY

My Commission Expires: 1/31/2020

7668252

#6

Transcript of Hearing of October 4, 2019

VIRGINIA

IN THE CIRCUIT COURT OF LOUDOUN COUNTY

PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE Appellee, Plaintiff, Unlawful Detainer Defendant, Counterclaim	)	
v.	)	CL00118604-00, Unlawful Detainer CL00118605-00, Counterclaim
KATHLEEN C. HAMPTON Appellant, *pro se* Defendant, Unlawful Detainer Plaintiff, Counterclaim	)	

October 4, 2019

Leesburg, Virginia

Hearing before The Honorable Stephen E. Sincavage, Chief Justice at the Loudoun County Circuit Court, 118 East Market Street, Leesburg, Virginia 20176 and were present on behalf of the respective parties:

APPEARANCES:

On behalf of the Appellant:

Kathleen C. Hampton, *pro se*
P.O. Box 154
Bluemont, Virginia 20135

On behalf of the Appellees:

Daniel J Pesachowitz, Esq., standing in for
Lisa Hudson Kim, Esq.
SAMUEL I. WHITE, P.C.
5040 Corporate Woods Drive, Suite 120
Virginia Beach, Virginia 23462
Counsel for PROF-2013-S3 Legal Title Trust,
by U.S. Bank National Association, as Legal Title Trustee

PROCEEDINGS

AUDIO 15:45:22

JUDGE SINCAVAGE: Hampton versus PROF-2013-S3. Good afternoon.

MR. PESACHOWITZ: Good afternoon Your Honor. Daniel P. for PROF-2013.

JUDGE SINCAVAGE: Yes sir.

MS. HAMPTON: Kathleen Hampton.

JUDGE SINCAVAGE: Yes ma'am. I'd give each about ten minutes.

MR. PESACHOWITZ: And this is for Motion.

JUDGE SINCAVAGE: Yes. Alright go ahead Ms. Hampton

MS. HAMPTON: We are here on my Motion to Dismiss and I have prepared a package which I think will help make it easier to follow along with. As further evidence in support of my Motion to Dismiss I offer first my notes read at court 11-14-18 where I raised *Parrish*, as well as *Ramos v. Wells Fargo Bank* and *Mathews v. PHH Mortgage Corp.* And where the General District Court should have dismissed without prejudice this case. Here on Appeal, where again I have raised a bonafide question as to the validity of title, the case must be dismissed without prejudice because the General District Court lacks original subject matter jurisdiction to adjudicate the validity of title and this court lacks subject matter jurisdiction on the trial… on Appeal. As to validity of

title I submit my, my copy of my reply to SCOTUS and direct your attention to particularly the asterisk marked and also the Exhibits attached to it as well. On the bottom page of number one... page one not only should a court of record find the Deed of Trust void ab initio as it is, is 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 and then 7) intentionally engage in the act or practice of refinancing a mortgage loan within twelve months following the date the refinanced mortgage was originated unless the refinancing is in the favor... is in the borrower's best interest. Both Exhibit A and Exhibit B... Exhibit B is the second page. It's just the first page of the Deed of Trust it is obvious here that at the time of signing the same the blank spaces were a violation of that code. Blank space with blanks referred to page numbers of the re-financed subprime loans and were never filled in thereafter and in fact, they were struck through. This is evident on 6A as if it were not a re-finance, concealing the fact that Countrywide 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 here regarding HSBC in, in further support of Hampton's claim to a void ab initio Deed of... Deed of Trust. Notable also is this refinance was done within eleven months and not in Hampton's best interest since it was set to fail as clearly it was unaffordable. In addition her loan increased by nearly seventeen thousand dollars ($17,000) for a re-finance recorded not as a re-finance and without cash out. Continuing from page three in the extract portion this... The parties

secured by the Deed of Trust 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 of right authority or duty conferred by the original Deed of Trust is exercised. And on Exhibit 54 the substitution of the Trustee here PROF appointed a substitute Trustee while it no longer owned the loan as it had been sold to PRMF Acquisitions on June 19, 2015. An exercised a power of right, authority or duty conferred by the original Deed of Trust without being assigned the same or recording the same in the Office of the Clerk where the original Deed of Trust was recorded. This is but one merit to Hampton's case that was pled and judicially noticed. Thus the wrong party appointed a substitute Trustee and could not make claim to being secured by the Deed of Trust nor had an assignment of the Deed of Trust been made to them prior to exercising foreclosure. Where further shown in the Bloomberg Audit Reports highlights taken from pages 24 through 31 of the second amended complaint that the Plaintiffs have submitted herein. I don't know if you've had an opportunity to review any of that. At the bottom of page three Bloomberg Loan Securitization Audit Report Highlights and referring to the first assignment of the Deed of Trust, Exhibit 27 filed six years after the loan. Number 1) There is no evidence on record to indicate that the mortgage was ever transferred concurrently with the purported legal transfer of the note. Such that the mortgage and the note has been irrevocably separated thus making a nullity out of the purported security in a property as claimed. Continuing on page 4 Although MERS records an assignment in the real property

records the promissory note which creates the legal obligation to repay the debt has not been transferred nor negotiated by MERS. MERS is not a party to the alleged mortgage indebtedness underlying the security instrument for which it serves as nominee. In *Carpenter v. Longan* the United... the US 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. Where the mortgagee has transferred only the mortgage, the transaction is a nullity and his assignee having received no interest in the underlying debt or obligation has a worthless piece of paper. That's citing from *Powell* on real property. The mortgage loan becomes ineffectual when a noteholder did not also hold the mortgage. Thus Hampton's claim to no one having a right to foreclose. This is precisely what can be seen in the assignment from MERS to BANA where the mortgage loan becomes ineffectual when a noteholder does not also hold the mortgage. Accordingly a court of record should also find that no one had a right to foreclose since the Deed of Trust is secured to the note by assignment had separated there from. When MERS assignments don't transfer the loan which MERS itself say they don't then nothing was assigned as you can't assign the Deed of Trust without the note. This should be sufficient evidence all previously submitted and plead but never previously actually tried. But if this isn't enough evidence for this court I have more. This court per *Parrish* should dismiss this case because the General District Court had no jurisdiction to try title and neither does the Circuit Court on Appeal from the GDC. PROF was filed... refiled in Circuit Court where as a Defendant I will defend my property rights and where I

should be afforded a fair trial on the merits of my case. And where the foreclosure sale has yet to be actually litigated or tried on the merits but only previously been dismissed on Demurrers with prejudice. Of course SCOTUS could put an end to all of this should they accept my petition therein but as I am sure you are aware they only hear about one percent (1%) of the cases submitted. Still I am hopeful that I am in that one percent (1%). On still another note as to PROF's opposition to this dismissal on page 3 footnote 1 I have no idea where counsel ever came up with the idea of that, quote "The parties agree upon present knowledge, information, and belief that if the US Supreme Court defeats Hampton's Appeal, she has no further grounds available to challenge this eviction proceeding." For if this Appeal proceeds to an unfair trial not on the merits as in my evidence, as they seem to want it to continue without my evidence, I shall continue to Appeal until my case is heard fairly on its merits. There is no end that I will not go to, to defend my Constitutional Rights to protect my property from the unlawful taking of the same by anyone without due process. Also to date the parties have not agreed on anything and to the contrary, it was through PROF's responses to admissions and interrogatories that I realized they would obstruct justice by not allowing my evidence, witnesses, etc. As can be clearly seen by the multiple untimely filed dispositive motions filed to favor them and to be heard in two weeks from today. Right before the trial on Monday. Appellant respectfully requests this Honorable court grant my Motion to Dismiss.

JUDGE SINCAVAGE: Alright thank you. Response.

MR. PESACHOWITZ: Your Honor the claims that she's asserting have

already been determined by this Court and don't survive a Demurrer. In fact they were... the Demurrer was granted and the *Parrish* stand for the proposition that the *Parrish* case stand for the proposition that the General District doesn't have jurisdiction if the defendant raises an attack to title that is bon... that's a bonafide attack. This court's already determined in the case that she... in the insular case that it didn't survive her Demurrer. And it didn't survive her Demurrer. It was appealed through the Virginia Supreme Court. The Supreme Court didn't... the Supreme Court affirmed it or didn't take... didn't take it... didn't grant (inaudible) and then it's been appealed now to the Supreme Court but it's always been determined that her, her claims are not a bonafide attack on title and it can't survive a Demurrer and that's just what *Parrish* said. If you can't survive a Demurrer it's not an attack on title. So for those... For that reason her, her Motion to Dismiss should be denied. We should proceed with trial.

JUDGE SINCAVAGE: Alright thank you. I'll give you a couple minutes to respond if you wish Ms. Hampton

MS. HAMPTON: I do have a response to that. As to my pending Appeal before the Supreme Court of the United States my primary claim has to do with my Constitutional Rights to due process. And to date no court has afforded me the same. So if my earlier complaints were dismissed on Demurrers and pleas in barr as to finding no cause of action, insufficiently pled as to fraud and finding no cognizable claim and by, by the statute of limitations. Those judgements never addressed the merits of the case nor the evidence that supported them and in fact there was no trial, no discovery, no witnesses

examined and/or cross examined just the hearing where the Honorable Judge Jeannette A. Irby found in favor of PROF and the other defendants, predecessors to PROF where Hampton's objection to that ruling in the Order stated objected to per the result of Plaintiff's inability to obtain the information necessary to satisfy the stringent requirements of Rule 9B, the dismissal of the claim is material injury constituting a depravation of Plaintiff's right to procedural due process. The Supreme Court of Virginia did not address the due process errors but denied the Petition on finding no error on the Judgment complained of. And refused Petition and further denied Hampton's Petition for a re-hearing. Thus the due process case before SCOTUS. So anything that has to do with Res judicata, collateral estop was plain and issued completion. None of that should apply here because none of the merits have ever been tried on my case. As I have just presented to you as well. But the basics of, of why this case should be dismissed.

JUDGE SINCAVAGE: Thank you.

16:00:31 - 16:28:42 PAUSE (Side conversations)

JUDGE SINCAVAGE: (Inaudible) for your patience. We'll start with this. In looking at the, the Motion that's before the Court, the Motion to Dismiss filed on September 18th. What Ms. Hampton has asked the court to do… request the court for an Order to Dismiss without prejudice on the basis that the lower court erred in making that judgment. And then she asked for the repossession to be void and the Appeal Bond to be released and so on, and so forth. This court does not sit in review of the General District Court so it's ineffectual to ask this court to find the General District Court erred.

Which is essentially asking the court to do here. And I think the Motion could be denied on that basis alone but I'll go a little bit further. I do find that under the rules of *Parrish* that the burden that is Ms. Hampton's to establish, a bonafide question of title to *Parrish* which invokes a Demurrer standard as the threshold for a bonafide claim. That the ones brought in these combined actions 118604 and 118605 are in substance the same as the claim brought in 98163 which were found to be insufficient to survive Demurrer. And that the court has not been persuaded how the claims in this case are additionally down the road as sufficiency to survive a Demurrer standard and the *Parrish* requirements. So for those reasons I have denied the Motion to Dismiss. I'll note your exception. Counsel will you draft an Order consistent with the court's ruling?

MR. PESACHOWITZ: Certainly Your Honor.

JUDGE SINCAVAGE: Alright thank you. (Side conversations)

COURT ATTENDANT: All rise. The court is in recess.

AUDIO 16:31:38 - END OF HEARING

I, RACHEL L. BROWN do hereby certify that these proceedings were recorded by the Loudoun County Circuit Court at the time and place herein set out, and the proceedings were transcribed by me from an audio file and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel nor related to any of the parties, nor in any way interested in the outcome of this action.

RACHEL L. BROWN

North Carolina - Brunswick County

I Kaitlyn Mo a Notary Public for said County and State do hereby certify that RACHEL L. BROWN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 26 day of March, 2020.

Notary Public

Kaitlyn Mo Notary Public My Commission Expires 09-09-23 New Hanover County, NC

10-4-19 Exhibits/Documents given to Court

First: A copy of Hampton's Notes, as read, to the General District Court November 14, 2018, in the Unlawful Detainer suit & Counterclaim, which resulted in the Appeal to the Circuit Court.

Second: Hampton's Reply Brief to SCOTUS dated September 25, 2019 (recited portions in Hampton's Notes), together with the following Exhibits:

Exhibit 5: From Hampton's Amended List of Exhibits: A copy of the first page of the Deed of Trust from the Countrywide refinance, filed in the County Register June 14, 2006, as instrument no. 20060614-0052490, showing the strick-out copy re re-finance (ie, alteration after Hampton's signing of the DOT). This exhibit 5 previously identified as Exhibit 6-A (CL98163) and identified in Hampton's Request for Admissions as Exhibit A;

Exhibit 6: From Hampton's Amended List of Exhibits: A copy of Hampton's first page of the Deed of Trust, as signed, showing open spaces to be filled in later with the re-finance information of the two prior predatory loans. This exhibit 6 previously identified as Exhibit 6-B (CL98163) and identified in Hampton's Request for Admissions as Exhibit A;

Exhibit 22: From Hampton's Amended List of Exhibits: A copy of the Substitution of Trustee from PROF to White filed electronically November 10, 2015, and identified as instrument no. 20151110-0074973. This exhibit 22 previously identified as Exhibit 54 (CL98163) and identified in Hampton's Request for Admissions as Exhibit E;

Exhibit 34: From Hampton's Amended List of Exhibits: A copy of the Limited Power of Attorney from BANA to Avenue 365 Lender Services, LLC, relating to BANA's sale of Hampton's Mortgage Loan Purchase as sold June 19, 2015, to PRMF Acquisitions LLC, recorded in the Maricopa County Recorder on August 26, 2015, as instruction no. 20150617207. This exhibit 34 previously identified as #4 Request for Judicial Notice (CL98163) and identified in Hampton's Request for Admissions as Exhibit J;

Exhibit 12: From Hampton's Amended List of Exhibits: A copy of the Notice of Assignment of the Deed of Trust from MERS to BofA, filed in the County Register March 30, 2012, as instrument no. 20120330-0023523. This exhibit 12 previously identified as Exhibit 27 (CL98163) and identified in Hampton's Request for Admissions as Exhibit B.

JUDGE DEBORAH . KELLY

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NOTES FOR GEN. DISTR. CT. 11-14-18

I WOULD LIKE TO ADDRESS THE COURT

Your honor, this is the 12th time that I have appeared in this court over what I consider to be a "Wrongful" Unlawful Detainer, where I have called into question not only the validity of the foreclosure, but the validity of the Deed of Foreclosure and all Assignments leading up to it, including the Deed of Trust, and PROF's claim to my property by Wrongful Foreclosure conducted Dec. 7, 2015, where I had already challenged that foreclosure via filing suit Dec. 4, 2015, prior to that foreclosure, where SIW on behalf of PROF should have been barred from proceeding.

As pled before the Supreme Court 10-16-18, the Circuit Court should have found predatory lending, a *void ab initio* Deed of Trust and the "Cloud on Title" evident requiring a "Corrective Affidavit" and clearly with the violation of the Consent Orders with the OCC/US Treasury, a "wrongful foreclosure" had occurred and, more particularly, I had exercised my rights to file suit before the same challenging the foreclosure, which SIW on behalf of Fay/PROF ignored. I did just yesterday receive the initial refusal from the Supreme Court of Va. to which I shall file my Petition for Rehearing. From a conversation with Doug Roubelin, Deputy Clerk of that Court, I have been advised that these initial refusals are common and thus a Petition for Rehearing is permitted to spell out to the court with more specificity the reversible errors. (~~OFFER A~~ CC)

In addition to the continuance of my Petition for Rehearing, should the Supreme Ct of Va. still refuse that further Petition, I shall continue to fight for my due process rights to defend my property from its unlawful taking by PROF.

Meanwhile, it is my request herein that this court refuse to entertain this unlawful detainer case any further and dismiss this case based on ~~that~~ the fact that I have raised bona fide dispute of title

from the foreclosure sale. And, specifically, in *Parrish v. Federal National Mortgage Association*, the Supreme Ct of Va 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. This Court had admitted on 8-3-18 that it could not invalidate the Deed of Foreclosure or any other deeds on record and further there was no recordation of trial. In these circumstances, I have alleged facts sufficient to place the validity of the trustee's deed in doubt. In such cases, the General District Ct's lack of subject matter jurisdiction to try title supersedes its subject matter jurisdiction to try unlawful detainer and the court must dismiss the case without prejudice.

Additionally, in two cases, *Ramos v. Wells Fargo Bank* (2015) and *Mathews v. PHH Mortgage Corp.* (2012), the Supreme Court of Virginia confirmed that any challenge to a foreclosure based on the pre-foreclosure conduct of the lender must be filed before the foreclosure sale has taken place, if the borrower wants to avoid a foreclosure sale. Clearly, I had filed my first suit Dec. 4, 2015, prior to the foreclosure of Dec. 7, 2015, which foreclosure should be found "wrongful" and/or "void" by the fact that I have filed before the foreclosure action took place.

Continuing this Unlawful Detainer suit is a waste of this court's time and resources. Should this court continue entertaining this suit, which would ultimately be appealed back to the Circuit Court, I should wish to move on my Motion for Reconsideration of any future Pending Order granting possession and/or a monthly bond, as clearly this was a "wrongful foreclosure" wherein I filed suit to prevent the same from going thru.

2nd ATTACH 1

No. 18-9127

OFFER THIS 1ST

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; ET AL.
Respondents.

On Petition for Writ of Certiorari to the
The Supreme Court of Virginia

PETITIONER'S REPLY TO WAIVER OF BANK OF AMERICA, N.A., FANNIE MAE, AND COUNTRYWIDE HOME LOANS, INC., AND TO BRIEF IN OPPOSITION OF FAY SERVICING, LLC, PROF-2013-S3 LEGAL TITLE TRUST, BY U.S. BANK, N.A., AS LEGAL TITLE TRUSTEE, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AND SAMUEL I. WHITE, P.C., AS SUBSTITUTE TRUSTEE

Kathleen C. Hampton
Petitioner, pro se
P.O. Box 154
Bluemont, Virginia 20135
(540) 554-2042
khampton47@yahoo.com

Petitioner, Kathleen C. Hampton ("Petitioner" or "Hampton"), *pro se*, respectfully submits her Reply to Waiver of Bank of America, et al. and Reply to Brief in Opposition of PROF-2013-S3 Legal Title Trust, et al. to her Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia.

AS TO WAIVER OF BANK OF AMERICA, ET AL.

Petitioner believes this Superior Court should request a response of Bank of America, N.A., Fannie Mae, and Countrywide Home Loans, Inc. ("CW") ("Bank Defendants"), particularly since the loan origination began with predatory loans dating back to 2005, and resulting in the subject predatory re-finance loan of 2006, and the Deed of Trust, which accompanied it, which should be found *void ab initio.*

Further, in investigations pending in the Virginia Office of Attorney General, Predatory Lending Unit, Hampton has learned more violations to the Deed of Trust:

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."

Further, at no time have any of the Respondents, particularly Bank Defendants addressed their mandated compliance with Fannie Mae Guidelines "Announcement 09-05R" dated April 21, 2009 (the last two pages of Exhibit 15), or any mandates to their "Consent Orders" under the Independent Foreclosure Review (IFR) through the OCC/U.S. Treasury, which Hampton qualified for. Clearly, these are Federal programs which this court should have jurisdiction over.

AS TO REPLY TO BRIEF IN OPPOSITION OF PROF-2013-S3 LEGAL TITLE TRUST, ET AL.

In reply to the Brief in Opposition by PROF-2013-S3 Legal Title Trust, et al. ("Trust Defendants"), and particularly to their arguments on this Superior Court's Jurisdiction, Hampton stated that this Court's jurisdiction is invoked under 28

U.S.C. §1257(a) and perhaps misplaced §2101(c), as it applied to the petition being timely filed within ninety days after the judgment on the *Petition for Rehearing*.

Pertinent constitutional and statutory provisions were set forth in the Appendix to Hampton's Petition (App. N), which Hampton draws this Court's attention to the last paragraph on the last page thereof:

> "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)

Here, Trust Defendants appointed a substitute trustee, while they no longer owned the loan as it had been sold to PRMF Acquisitions on June 19, 2015, and exercised a "power, right, authority or duty conferred by the original deed of trust" without being assigned the same or recording the same "in the office of the clerk wherein the original deed of trust was recorded." This is but one merit to Hampton's case that was pled and Judicially Noticed. Thus, wrong party appointed a substitute trustee and could not make claim to being secured by the Deed of Trust, nor had an Assignment of the Deed of Trust been made to them prior to exercising foreclosure.

Where further shown in the Bloomberg Audit Reports Highlights pages 24-31 of the Second Amended Complaint:

> "<u>Bloomberg Loan Securitization Audit Report HIGHLIGHTS</u>
>
> 1. There is no evidence on Record to indicate that the Mortgage was ever transferred concurrently with the purported legal transfer of the Note, such that the Mortgage and Note has been irrevocably separated, thus making a nullity out of the purported security in a property, as claimed." ...

- Although MERS records an assignment in the real property records, the promissory note which creates the legal obligation to repay the debt has not been transferred nor negotiated by MERS." ...

- MERS is not a party to the alleged mortgage indebtedness underlying the security instrument for which it serves as "nominee". ...

The loan was originally made to Countrywide Home Loans, Inc. and may have been sold and transferred to Fannie Mae Remic Trust 2006-67. There is no record of Assignments to either the Sponsor or Depositor as required by the Pooling and Servicing Agreement.

In 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."

An obligation can exist with or without security. With no security, the obligation is unsecured but still valid. A security interest, however, cannot exist without an underlying existing obligation. It is impossible to define security apart from its relationship to the promise or obligation it secures. The obligation and the security are commonly drafted as separate documents – typically a promissory note and a Mortgage. If the creditor transfers the note but not the Mortgage, the transferee receives a secured note; the security follows the note, legally if not physically. If the transferee is given the Mortgage without the note accompanying it, the transferee has no meaningful rights except the possibility of legal action to compel the transferor to transfer the note as well, if such was the agreement. (Kelley v. Upshaw 91952) 39 C.2d 179, 246 P.2d 23; Polhemus v. Trainer (1866) 30C 685).

"Where the mortgagee has "transferred" only the mortgage, the transaction is a nullity and his "assignee" having received no interest in the underlying debt or obligation, has a worthless piece of paper (4 Richard R. Powell), Powell on Real Property, § 37.27 [2] (2000).

By statute, assignment of the mortgage carries with it the assignment of the debt. .. Indeed, in the event that a mortgage loan somehow separates interests of the note and the Mortgage, with the Mortgage lying with some independent entity, the mortgage may become unenforceable. The practical effect of splitting the Mortgage from the promissory note is to make it impossible for the holder of the note to foreclose, unless the holder of the Mortgage is the agent of the holder of the note. Without the agency relationship, the person holding only the trust will never experience default because only the holder of the note is entitled to payment of the underlying obligation. The mortgage loan becomes ineffectual when the note holder did not also hold the Mortgage."

Thus, Hampton's claim to no one having a right to foreclose.

Furthermore, the Supreme Court of Virginia refused the petition for appeal on their "opinion there is no reversible error in the judgment complained of." The Court did not address any errors assigned other than the judgment complained of. Still further, upon the Petition for Rehearing, the prayer of the petition was denied, and the only court of Appeal beyond that State Supreme Court is rightfully in the hands of this Superior Court.

Further, beginning on pages 23-33, of Hampton's Petition, she had pled with "factual" evidence (exhibits) that drew a reasonable inference that the defendants were liable for the misconduct alleged, and **for Hampton's case not to be heard on the merits thereto is a clear violation of her rights to procedural due process.**

Hampton's Constitutional Rights are supported by the Jurisdictional Statement bridging pages 33 through 36. Clearly, this Superior Court has jurisdiction over Hampton's Appeal.

Petitioner in her "questions presented" and throughout her Petition is seeking "clarity and uniformity" and believes that this case, upon being heard, may aid in establishing the same.

Continuing here from page 40 of Hampton's Petition:

> It would seem that in light of the bad practices of these servicers, including Fay on behalf of PROF/US Bank, uniform non-foreclosure rules should be developed to protect citizens nationwide from the unlawful taking of their homes in violation of their Constitutional rights and without due process. ... It is time for the courts to stand up to these TBTF banks and/or their servicers. The solution is always uniformity and clarity must be achieved. Perhaps the better solution would be to bar non-judicial foreclosures altogether until our faith in home ownership can be restored.

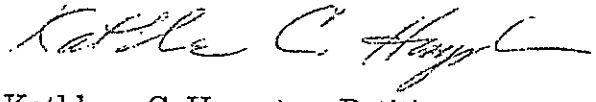
CONCLUSION

Once again, Petitioner respectfully request certiorari be granted for this Petition, in order that this Court may restore and protect citizens' Constitutional rights as they were created to be. I trust in God and this Superior Court.

The petition for a writ of certiorari should be granted.

Dated: September 25, 2019

Respectfully submitted,



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