No. 21-5987

IN THE
SUPREME COURT OF THE UNITED STATES

KATHLEEN C. HAMPTON,
Petitioner,

v.

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

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

PETITION FOR REHEARING

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Petitioner, Kathleen C. Hampton ("Petitioner" or "Hampton"), *pro se*, respectfully submits her Petition for Rehearing, before the full nine-member Court, from the Court's decision issued on November 22, 2021, denying her Petition for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia in the case against PROF-2013-S3 Legal Title Trust, by U.S. Bank National Association as Legal Title Trustee ("PROF"). Pursuant to Supreme Court Rule 44, this Petition for Rehearing is filed within 25 days of this Court's decision and is presented in good faith and not for delay.

A denial of my Petition for Writ of Certiorari, herein on application of *res judicata*, even setting aside considering the Constitutionality of demurrers or non-judicial foreclosure laws, is a clear "miscarriage of justice" where the grossly unfair outcome in the judicial proceedings below are not only unjust, but have deprived me of my life, liberty and property and my pursuit of happiness. Petitioner has been punished by an "unlawful taking" of her property and the courts have denied her due process and a "fair" trial. Where this court should review from is found in the Bill of Rights – Fifth Amendment – Rights of Persons:

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

as noted in my Petition page 15, and more particularly as noted on page 7 and referenced to Appendix P, "Statement of the Facts," pages 6 through 22 (App. 71-87), which provided undeniable facts, evidence and merits. The egregious error of

judgment in the lower court amounts to abuse of human rights. We should not need to turn to International Law to set our constitutional standard, but the Universal Declaration of Human Rights Preamble states:

> "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. ... Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,"

and further under those articles applicable to this case, Articles:

> 3. Everyone has the right to life, liberty and security of person.
>
> 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishments.
>
> 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
>
> 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.
>
> 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
>
> 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
>
> 17. 1) Everyone has the right to own property alone as well as in association with others. 2) No one shall be arbitrarily deprived of his property.
>
> 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

This Supreme Court is this Petitioner's court of last resort and its failure to decide on the merits of this case would amount to an abuse of those human rights and the protection of the rule of law.

This case offers a clean vehicle for resolving various torts in this matter, particularly with regard to the application of *res judicata*. Further, since PROF waived their response initially, they therefore offer no persuasive reason to think or act otherwise. Accordingly, this Court's review is warranted and by the Peoples' Bill of Rights will re-examine the evidentiary basis regarding the questions posed, particularly with the lower courts' decisions, and further are of exceptional importance, especially in the wake of mass foreclosures and unlawful detainer suits.

Petitioner has learned first-hand that "there are no provisions in the Court rules for a Response to a Waiver," as evidenced by the Office of the Clerk's response of November 18, 2021, returning my Responses to Waivers noted as received November 18, 2021 (although postal records indicate receipt November 17, 2021, as signed by K. Hackerson) and it was hoped that the same would be considered at conference November 19, 2021. And the following is as stated in my response to those waivers and also are my grounds to circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Petitioner believes this Superior Court should grant this Petition for Rehearing requiring a response of PROF, and it would seem to this Petitioner that PROF, by waiver, has once again dodged filing a Corporate Disclosure Statement pursuant to Rule 29.6, where PROF, as a derivative of Wall Street, clearly had investors owning a percentage in Hampton's property at time of foreclosure. Hampton once again should not be denied knowing who the investors are who have taken her home from her. As an intuit, Hampton has always believed (or at least

since 2008) that when Countrywide Home Loans, Inc. ("CW") sold her loan and personal information to someone, it is believed to be a local investor who may be masked by PROF, herein.

Although Petitioner doesn't doubt she has failed to perfect her Petition herein, she wishes to make one known and *obvious* correction to her Petition as it appears on page 17, last full paragraph, last two lines, referencing "violation of the Fifth and [Fourteenth] Amendments, as due process is defined by this Court" instead was referenced to the Eleventh.

Further to page 40 and Petitioner being a remnant from the last economical collapse and the governing Deeds of Trust being predatory and still further CW's neglect to provide remedies to correct the problems regarding the same, Petitioner has since reviewed the Settlement Agreement made the 19th day of December, 2008, between the Commonwealth of Virginia ... and ... Countrywide Home Loans, Inc. ("CW"), a New York corporation, which this Superior Court can take judicial notice of. Petitioner has found still further violations, where CW never offered the modification Petitioner was eligible for. And, although I had applied to CW for the same several times, I was denied the modification, which was to have no settlement costs, and only offered a re-finance, if I were to bring $8,000 to the settlement table. Within mere months of the denial of that modification, and my reveal of interested parties in an attempt to secure that modification, the President of CW wrote advising my personal and loan information had been sold – my claim of the first Breach to the Deed of Trust or "duty of care."

Further, at the lower court hearing on Hampton's *Motion to Dismiss*, Petitioner presented, as an exhibit, her *Reply Brief* from her first appeal before SCOTUS, dated September 25, 2019 (No. 18-9127), submitted herein as Appendix W's attachment (App. 264-270), in her case against purported parties having interest in her home, including John Does, which stated:

> "Here, Trust Defendants [PROF] 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 ... :
>
> "<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, as further supported by the DOT being *void ab initio*. Accordingly, common sense is clear that if a DOT can be found *void ab initio* and/or an *Assignment of the DOT* a "nullity," there can be no valid foreclosure, nor any unlawful detainer suits. It also stands to reason that based on Hampton's claims at the *Motion to Dismiss*, the court erred in denying the same. Further, this claim and evidence were in the prior suit, which the circuit court again ignored, thus could not have been decided on merits and, therefore, *res judicata* should not have applied in this suit.

As I understand it, judges use precedent when deciding a case in the common law legal system. This decision becomes an example, or authority, for judges deciding similar issues later. *Stare decisis* is the doctrine that obligates courts to look to precedent when making their decisions. These two principles allow American law to build case-by-case, and make our legal system a common law system. And the application of this doctrine ensures that there is uniformity and certainty in the law. Here, however, the lower court ignored that judicial doctrine under which a court follows the principles, rules, or standards of decisions of higher tribunals when deciding a case with arguably similar facts as in this Court's decision in *Carpenter v. Longan* and my claims, which are supported by the facts, evidence and merits herein.

Petitioner is not asking this Court to overrule or overturn some prior decision "herein," but to use the principles of *stare decisis*, and affirm the decision in *Carpenter v. Longan*, and use my case to give further clarification in upholding that decision. The lower court's decision was egregiously wrong on the day it was handed down and the fundamental deprivation of liberty and property interest deserved heightened protection, but instead was ignored, as was the evidence, and was not just erroneous, but an abuse of discretion. The lower court's decision is the decision Petitioner wants this Court to overturn, as clearly wrong in sustaining *Demurrer*, as argued, and has caused great harm and damages to Petitioner.

Where to ignore the evidence and render such an error of judgment clearly is the most egregious abuse of human rights and is a fundamental deprivation of

liberty, equality and the rule of law. This can only lead to the public's lack of trust and the belief that corruption is being permitted to filter into our justice system by allowing these wrongdoers to continue their dishonest and fraudulent behavior (that is violating nearly every controlling regulation and/or rule), which will only exacerbate and lay bare America's affordable housing crisis that continues to leave far too many people on the brink of eviction or foreclosures, and in the worst cases, experiencing homelessness, such as I have experienced first-hand; and further the court's loss of confidence in the judicial power and to function as the Supreme Court of a nation dedicated to the rule of law. What is "at stake" here is not only our loss of liberty, but, *if the court remains silent*, the conquest of our intellects and sense of right and wrong and indeed our very humanity.

This Petition is rightfully in the hands of this Superior Court.

CONCLUSION

Once again, Petitioner respectfully request this petition as well as the writ of certiorari be granted for the reasons set forth herein and in her earlier Petitions, the questions being substantial and of immediate public importance, and thus should be heard and decided on this appeal.

The petition for a writ of certiorari should be granted.

Dated: December 17, 2021

Respectfully submitted,

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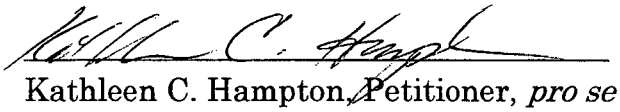
CERTIFICATION

I, Kathleen C. Hampton, Petitioner herein, hereby certify that this *Petition for Rehearing* is presented in good faith and not for delay (as noted on page 1, first paragraph) and that its grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented (as further noted on page 3, second paragraph and following). This is a corrected *Petition for Rehearing* originally dated December 17, 2021, as required by this Supreme Court and in accord with Rule 44.6.

January 6, 2022



Kathleen C. Hampton, Petitioner, *pro se*