

Supreme Court, U.S.
FILED

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No. 21-76

In The
Supreme Court of the United States

LINDA B. VACCHINO,

Petitioner,

v.

NATIONSTAR MORTGAGE LLC,

Respondent.

**On Petition For Writ Of Certiorari
To The Supreme Court Of Florida**

PETITION FOR WRIT OF CERTIORARI

LINDA B. VACCHINO
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Pro Se as Petitioner

July 15, 2021

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SUPREME COURT, U.S.

QUESTION PRESENTED FOR REVIEW

Petitioner, Linda B. Vacchino for Herself And on Behalf of Unnamed, Countless Others Impacted by the 2007 Mortgage Crisis and Those To Be Impacted by the Looming Similar Crisis Following the 2020 COVID Virus Pandemic, Asks the following Questions:

1. Are the Constitutional Rights guaranteed under the Fifth and Fourteenth Amendments of the Constitution of the United States . . . "deprived of life, liberty or property without due process of law" violated when Foreclosures and subsequent Sale of Primary Residential Properties are Sold at Auction without Due process of law. Absent of knowledge as to what grounds were considered for the decision to grant Summary Judgment and later when conflicting evidence was properly and timely introduced the decision was not reversed, without a hearing or written opinion in the lower tribunal and appeal process as to why.

Additionally, the Decision not to reverse on Appeal was in direct conflict with similar cases within the Florida District Court of Appeal system.

2. Are Constitutional Rights also violated when Judicial process is tainted with fraud, made evident with new evidence, is not given proper consideration based on existing procedures, rules and statutes.

LIST OF PARTIES

The following parties were not named as co Plaintiffs/Appellees/Respondents but have executed documents and/or performed other services on Nationstar Mortgage LLC behalf.

Mr. Cooper, d/b/a of Nationstar Mortgage LLC
(Answered Florida Attorney General Complaint for Nationstar Mortgage LLC)

Rushmore Loan Services LLC
c/o Rushmore Correspondent Lending Services
(Signed as Power of Attorney for Nationstar Mortgage LLC on a Quit Claim Deed July 19, 2019 To U.S. National Bank, not in its individual Capacity but Solely as Trustee for RMAC Trust Series 2016-CTT. POA was not attached and per Florida Secretary of State, Fictitious name was not filed until July 25, 2019.)

U.S. Bank National Association
c/o Marinosci Law Group, P.C.
Andrew Arias, Esq, FBN: 89501
Yonna Evertz, Esq, FBN: 19232
(An Assignment of Mortgage was executed and recorded with Clerk of Court Hillsborough County FL by Nationstar Mortgage LLC on May 21, 2018. Court was not notified and there was no Substitution of Plaintiff)

RMAC Trust Series 2016-CTT
c/o Rushmore Loan Management Services
(No Trust documents recorded and no registrations with Florida Department of State)
(Rushmore has also signed as Power of Attorney for Nationstar Mortgage LLC)

LIST OF PARTIES – Continued

Auction.com; a/k/a auction.com LLC;
a/k/a auction.com Inc
(Online auction company actively marketing the subject
property)

McPeak Realty Group, Inc
Attn: James McPeak II
Local Brandon FL Real Estate Broker representing
U.S. Bank National Association and auction.com)

RELATED CASES

Linda B. Vacchino, et al. v. Nationstar Mortgage LLC,
Case No. SC-21-218, in the Supreme Court of Florida

Denial of Jurisdiction February 15, 2021

Linda B. Vacchino v. Nationstar Mortgage LLC, Case
No. 2D19-3807, in the Second District Court of Appeal,
Lakeland, FL

Affirmed/Per Curiam/No Opinion November 25, 2020

Linda B. Vacchino v. Nationstar Mortgage LLC, Case
No. 2D15-5397, in the Second District Court of Appeal,
Lakeland, FL

Affirmed/Per Curiam/No Opinion September 28, 2016

RELATED CASES – Continued

Nationstar Mortgage LLC v. Linda B. Vacchino, et al., Case No. 12-CA-018383, in the Circuit Court of the Thirteenth Judicial Circuit for Hillsborough County, Florida Civil Division, Tampa, FL

Mortgage Foreclosure with Original Complaint Filed October 26, 2012. Pending Case subject of Appeal.

GMAC Mortgage LLC v. Linda B. Vacchino, Case No. 07-CA-017088, in the Circuit Court of the Thirteenth Judicial Circuit for Hillsborough County, Florida Civil Division, Tampa, FL

Mortgage Foreclosure Dismissed October 22, 2010

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
RELATED CASES	iii
TABLE OF CONTENTS	v
TABLE OF AUTHORITIES	ix
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
BASIS FOR JURISDICTION IN THIS COURT.....	1
CONSTITUTIONAL AND STATUTORY PROVI- SIONS AT ISSUE	2
INTRODUCTION	2
STATEMENT OF THE CASE.....	3
Course of The Proceeding.....	3
Timeline for Florida Supreme Court and Dis- trict Court of Appeal	4
SUMMARY OF THE ARGUMENT	5
FIRST ARGUMENT – CONFLICTING OPINIONS WITHIN DISTRICT COURT OF APPEAL.....	5
SECOND ARGUMENT – NEW EVIDENCE RE- VEALING FRAUD	14
TIMELINE FOR NEW EVIDENCE.....	14
SECOND ARGUMENT.....	15
STANDARD OF REVIEW	16
De Novo	16

TABLE OF CONTENTS – Continued

	Page
Decisions of Law	16
SECOND ARGUMENT SUMMARY	17
SUBSTANTIVE FACTS	18
BASIS IN LAW	18
STATUTORY BASIS	20
SECOND ARGUMENT – 1-A JURISDICTION ..	23
1-B NEW EVIDENCE	23
SECOND ARGUMENT – ARGUMENT 2 – LACK OF CONSIDERATION	24
SECOND ARGUMENT – ARGUMENT 3 – OWN- ERSHIP	25
SECOND ARGUMENT – ARGUMENT 4 – PRI- VATE MORTGAGE PROCEEDS NOT RE- PORTED	28
SECOND ARGUMENT – ARGUMENT 5 – CRE- ATION OF FRAUDULENT ASSIGNMENT	29
SECOND ARGUMENT – ARGUMENT 6 – WHO IS THE PLAINTIFF?	30
REASONS FOR GRANTING PETITION	31
CONCLUSION	32

TABLE OF CONTENTS – Continued

	Page
APPENDIX	
Dismissal of Case by Supreme Court of Florida based on Notice to Invoke Discretionary Jurisdiction to Supreme Court. Supreme Court lacks jurisdiction to review an unelaborated decision from a district court. Case #SC21-218 (February 15, 2021).....	App. 1
Order Denying Motion for Rehearing and issuance Of Written Opinion by Second District Court of Appeal Case # 2D19-3807 Non Final Appeal (January 11, 2021).....	App. 3
Order, Affirmed – Per Curiam from Second District Court of Appeal for “Non Final Appeal of Defendant’s Motion to Set Aside Final Judgment of Foreclosure Dated October 27, 2015 and Vacate Plaintiff’s Order to Ratify and Confirm Foreclosure Sale, filed September 27, 2019”. Case 2D19-3807 Non Final Appeal (November 25, 2020)	App. 4
Order of Denial from Thirteenth Judicial Circuit Hillsborough County FL for “Non Final Appeal of Defendant’s Motion to Set Aside Final Judgment of Foreclosure Dated October 27, 2015 and Vacate Plaintiff’s Order to Ratify and Confirm Foreclosure Sale, filed September 27, 2019”. Case 12-CA-018383 Non Final Appeal (August 28, 2019).....	App. 5
Order – Denied Motion for Rehearing En Banc from Second District Court of Appeal Case #2D15-5397 Final Appeal (January 3, 2017)....	App. 7

TABLE OF CONTENTS – Continued

	Page
Order, Affirmed – Per Curiam from Florida Second District Court of Appeal Case #2D15-5397	
Final Appeal (September 28, 2016)	App. 8

TABLE OF AUTHORITIES

	Page
CASES	
<i>Angel L. Perez v. Deutsche Bank National Trust Company</i> , 2D17-1043	10
<i>Anthony Newton v. Caterpillar Financial Services Corporation, et al.</i> , No. SC 17-67	7
<i>Aoude v. Mobil Oil Corp.</i> , 892 F.2d 1115 (1st Cir. 1989)	18
<i>Ashwood v. Patterson</i> , 49 So.2d 848 (Fla. 1951)	19
<i>Carlos Rodrigues v. Bank of America</i> , 5D18-2228	12
<i>Catherine M Rivera v. The Bank of New York Mellon</i> , 2D17-4417	10
<i>Cox v. Burke</i> , 706 So.2d 43 (Fla. 5th DCA 1998)	19
<i>Daniel Lewis and Rosanna Lewis v. U.S. Bank National Association, et al.</i> , 4D19-942	11
<i>David L. Griffin v. LaSalle Bank, N.A., etc., et al.</i> , No. SC 18-1132	7
<i>First Options of Chicago, Inc. v. Kaplan</i> , 514 U.S. 938 (1995)	17
<i>GMAC Mortgage, LLC v. Linda B. Vacchino, et al.</i> , #07-CA-017088	16
<i>Horjales v. Loeb</i> , 291 So.2d 92 (Fla. 3d DCA 1974)	19
<i>Hugo Villasmil v. Roosevelt REO US LLC</i> , 3D18-2009	11

TABLE OF AUTHORITIES – Continued

	Page
<i>James A. Wardell and Michael Courson v. Fifth Third Mortgage Company</i> , 5D18-2481	12
<i>Kornblum v. Schneider</i> , 609 So.2d 138 (Fla. 4th DCA 1992)	19
<i>Leonardo N. Digiovanni v. Deutsche National Bank Trust Company</i> , 2D18-530	9
<i>Linda B. Vacchino v. Nationstar Mortgage LLC</i> (Fla. 2d DCA 2019) 2D-19-3807.....	3, 5
<i>Moore v. Morris</i> , 475 So.2d 666 (Fla. 1985).....	17
<i>Mullane v. Central Hanover Bank</i> (1950).....	33
<i>Savino v. Florida Drive In Theatre Management, Inc.</i> , 697 So.2d 1011 (Fla. 4th DCA 1997)	20
<i>Tony Robinson and Debra Robinson v. Nationstar Mortgage LLC</i> , 2D18-2842	9
<i>U.S. Bank National Association v. George E. Buchanan and JoAnne Buchanan</i> , 4D19-1416.....	11

CONSTITUTIONAL PROVISIONS

Fla. Const. Art. V, § 3(b)(3)	6, 7
U.S. Const. Amend. V	2, 3, 32
U.S. Const. Amend. XIV	2, 3, 32

RULES

Fla. R. App. P. 9.020(h)	24
Fla. R. App. P. 9.030(a)(2)(A)(iv)	6

TABLE OF AUTHORITIES – Continued

	Page
Fla. R. App. P. 9.130(4).....	23
Fla. R. App. P. 9.330	8
Fla. R. App. P. 9.330(a)(2)(D)(i).....	8
Fla. R. App. P. 9.330(a)(2)(D)(i)(ii)(iii)(a)(b)	8
Fla. R. App. P. 9.330(a)(2)(D)(ii)	9
Fla. R. App. P. 9.330(a)(2)(D)(iii)	12
Fla. R. App. P. 9.4	17
Fla. R. Civ. P. 1.115	22, 30
Fla. R. Civ. P. 1.115(a)(b).....	23
Fla. R. Civ. P. 1.260(2)(c)(a)(1)	23
Fla. R. Civ. P. 1.540(b)(2).....	22
Fla. R. Civ. P. 1.540(b)(2)(3)	23
 STATUTES	
28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1257	1
28 U.S.C. § 2202	2
Fla. Stat. § 28.241	6
Fla. Stat. § 59.081	6
Fla. Stat. § 90.104 (2019).....	20
Fla. Stat. § 673.2031 (2019).....	21, 29
Fla. Stat. § 673.3011 (2018).....	30
Fla. Stat. § 701.01 (1985).....	25

TABLE OF AUTHORITIES – Continued

	Page
Fla. Stat. § 701.02.....	20, 26
Fla. Stat. § 701.02(4).....	21, 25
Fla. Stat. § 701.2.....	26
Fla. Stat. § 702.015(3)(4) (2013).....	27

PETITION FOR WRIT OF CERTIORARI

Linda B. Vacchino respectfully petitions for a Writ of Certiorari to review and reverse the decisions of the Florida Supreme Court, Florida Second District Court of Appeal and the Circuit Court of the Thirteenth Judicial Circuit for Hillsborough County, Florida, Circuit Civil Division.

OPINIONS BELOW

Florida Supreme Court decision was delivered Denied/Per Curiam/No Opinion. Florida, Second District Court of Appeal decisions were Affirmed/Per Curiam/No Opinion and the Circuit Court of the Thirteenth Judicial Circuit for Hillsborough County, Florida, Circuit Civil Division decisions were Denied without hearing or opinion.

BASIS FOR JURISDICTION IN THIS COURT

28 U.S.C. § 1257. The denial of review for jurisdiction was entered by the Florida Supreme Court on February 15, 2021. The petition for Writ of Certiorari was filed with the U.S. Court of Appeals, Eleventh District.

28 U.S.C. § 1254(1). By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

28 U.S.C. § 2202 provides in relevant part, "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

U.S. Constitution Amendment XIV provides in relevant part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Constitution Amendment V provides in relevant part, "These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures".



INTRODUCTION

Petitioner, Linda B. Vacchino is requesting a review and reversal as to why Court decisions rendered in this matter are consistently denied, without opinion or hearing when factual evidence, timely and properly presented by Petitioner and if properly reviewed by the Courts, could quite possibly render a different decision. One is left "in the dark" as to reasoning behind those

decisions and this lack of knowledge leaves few avenues for resolution. Rights to Due Process as guaranteed by the United States Constitutional Amendments V and XIV, when being deprived of real, homestead property, have been grossly violated.

This is a residential foreclosure with the first case initiated in 2007, dismissed in 2010, refiled in 2012. Decisions rendered in the latter case and subsequent appeal is subject of this Writ of Certiorari.

The desired result is review and reversal of the decision of the Second District Court of Appeal, Denied on January 11, 2021, on Motion For Issuance Of A Written Opinion, Rehearing And For Rehearing En Banc, filed December 9, 2019, and review and reversal of the underlying case, *Linda B. Vacchino v. Nationstar Mortgage LLC* (Fla. 2d DCA 2019) 2D-19-3807, was Affirmed – Per Curiam – without Opinion entered November 25, 2020.

STATEMENT OF THE CASE

Course of The Proceeding

This Non Final Appeal is based on a Lower Tribunal Motion to Set Aside “Uniform Final Judgment of Foreclosure Dated October 27, 2015” and To Vacate “Plaintiff’s Order to Ratify and Confirm Foreclosure Sale”, “Validate Certificate Sale”, “Issue Certificate of Sale”, “Certificate of Title” and “Corrected Certificate

of Title", filed on July 25, 2019. Basis was new evidence.

Motion was denied August 28, 2019, without a hearing.

This denied Motion is the basis for the Non Final Appeal and based on new evidence submitted by Respondent in their reply to a complaint filed with Florida Attorney General Ashley Moody's office by Petitioner.

**Timeline for Florida Supreme Court
and District Court of Appeal**

1. Notice of Appeal for Case No. 2D-19-3807 dated 9/27/2019.
2. Disposition with Second District Court of Appeal dated November 25, 2020. Affirmed – Per Curiam without opinion.
3. Motion for Written Opinion, Rehearing and Rehearing En Banc filed December 9, 2020.
4. Order Denying Motion for Written Opinion, Rehearing and Rehearing En Banc dated January 11, 2021-Denied/Per Curiam/Without Opinion.
5. Notice of Discretionary Jurisdiction to Florida Supreme Court filed February 9, 2021.
6. Notice of Discretionary Jurisdiction denied and case closed February 15, 2021.

7. Jurisdictional Brief to Florida Supreme Court filed February 18, 2021.

SUMMARY OF THE ARGUMENT

Basis for request is twofold.

The first being Conflicting Opinions from the Florida District Appeal Courts for similar cases dealing with residential foreclosures and presenting the same underlying faults.

The second being discovery of new evidence that revealed fraudulent activity, dating from the 2007 inception of this ongoing litigation.

Desired result is reversal of Foreclosure Judgment but just as important a "message" is sent to those who choose not to play by judicial and moral rules and expect to reap ill-gotten rewards, will not be tolerated. By so doing to give the courts consistent guidance as their "gate keeping" decisions are made day to day.

FIRST ARGUMENT – CONFLICTING OPINIONS WITHIN DISTRICT COURT OF APPEAL

Linda B. Vacchino, Defendant/Appellant/Petitioner, seeks review and reversal of the decision rendered in the Second District Court of Appeal, for Case *Linda B. Vacchino v. Nationstar Mortgage LLC* (Fla. 2d DCA 2019) 2D-19-3807. The response was a Per Curiam – Affirmed Opinion entered November 25, 2020, without

written opinion. Once reviewed, remanded for reversal to lower tribunal to void the Uniform Judgment of Foreclosure signed on October 22, 2015 and thereby cancel the sale completed April 29, 2019 along with related documents, including those filed with the Clerk of Circuit Court, Hillsborough County, Florida.

Notice to Invoke Discretionary Jurisdiction with the Florida Supreme Court was timely filed on February 9, 2021, as per Fla. Stat. § 59.081 *Time for invoking appellate jurisdiction of any court* and appropriate fee paid as per Fla. Stat. § 28.241 *Filing fees for trial and appellate proceedings*.

Supreme Courts had jurisdiction per the following:

Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., Jurisdiction of Courts, ***Discretionary Jurisdiction***. *The discretionary jurisdiction of the Supreme Court may be sought to review: (iv) expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law;*

1. Florida Constitution Art. V, § 3(b)(3) JURISDICTION. – The supreme court: “*May review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.*”

As to Florida Constitution Art. V, § 3(b)(3). Supreme Court found they did have jurisdiction on the following cases based on Article 5:

1. *Anthony Newton v. Caterpillar Financial Services Corporation, et al.*, Supreme Court of Florida, No. SC 17-67, as to “*we have jurisdiction*”, and
2. *David L. Griffin v. LaSalle Bank, N.A., etc., et al.*, Supreme Court of Florida, No. SC 18-1132, as to “*we have jurisdiction*”. Supreme Court guidelines and Rules of Appellate procedure clearly grant jurisdiction to review conflicting district court opinions and adopt rules to provide clarification.

Outlined in the Motion for Written Opinion to the Second District Court of Appeal, filed January 11, 2021, six (6) mirror image cases were identified as compared to the present case where opposite decisions were reached between February 20, 2019 and November 25, 2020.

Every decision rendered in this case has been denied, without hearing in the lower tribunal or a written opinion as to why clear and convincing evidence, properly and timely presented, would render a more positive outcome is not given consideration.

The Second District Court of Appeal has followed suit and Affirmed, Per Curiam, without written opinion the Non Final Appeal and Denied the Motion for Written Opinion, also without opinion.

The Florida Supreme Court clearly had jurisdiction over this matter and my request is to have that evidence given fair, unbiased consideration and reverse and remand the decision of the Florida Second District Court of Appeal.

Fla. R. App. P. 9.330 provides that "when a decision is entered without opinion, and the party believes that a written opinion would provide a legitimate basis for supreme court review, the party may request the court issue a written opinion." Such is the case here.

1. This case was Affirmed Per Curiam, without Opinion, on November 25, 2020. Petitioner requested a Written Opinion in accordance with Fla. R. App. P. 9.330(a)(2)(D)(i)(ii)(iii)(a)(b) and was denied January 11, 2021.

2. The case is a Non Final Appeal seeking reversal of a Uniform Foreclosure Judgment that is long running, complicated and riddled with fraud from the inception. Standard of review was De Novo. Clarification is needed to resolve this issue as well as other similar cases that will soon flood the courts due to the pandemic and resulting economic chaos.

3. Fla. R. App. P. 9.330(a)(2)(D)(i) to establish "*a legitimate basis for supreme court review*". Without guidance from the court for a basis for the "Affirmed", without opinion decision, it is unclear as to which of the six (6) elements presented in the Initial Brief are at issue, as none were refuted in Respondent/Appellee's Answer Brief. They include: Jurisdiction and New Evidence; Lack of Consideration; Ownership; Private

Mortgage Proceeds Not Reported; Creation of Fraudulent Assignment and Who is the Plaintiff. Each separately and certainly combined would support a "Reversed" opinion based on evidence and law.

4. Fla. R. App. P. 9.330(a)(2)(D)(ii) to provide "*an explanation for an apparent deviation from prior precedent*".

Upon review of recent decisions rendered by several Florida District Courts of Appeal, ranging from February 20, 2019 to November 25, 2020 reflects a discrepancy in decisions of cases with a similar basis, Standing to Foreclosure and procedural irregularities.

There are four (4) from the Second District; one (1) from the Third District; two (2) from the Fourth District and two (2) from the Fifth District for a total of 9.

Cases from the Second District include:

Leonardo N. Digiovanni v. Deutsche National Bank Trust Company, 2D18-530, https://www.2dca.org/content/download/691107/opinion/180530_DC13_11252020_083413_i.pdf

Reversed and remanded for dismissal, November 25, 2020.

Similar to present case in that Respondent failed to prove ownership and the right to proceed as Plaintiff at time of filing the original complaint.

Tony Robinson and Debra Robinson v. Nationstar Mortgage LLC, 2D18-2842, https://www.2dca.org/content/download/691107/opinion/180530_DC13_11252020_083413_i.pdf

2dca.org/content/download/613523/opinion/
182842_39_12042019_08593173_i.pdf

Reversed and remanded for entry of involuntary dismissal, December 4, 2019.

Similar to present case in that Respondent failed to prove standing at inception of law suit.

Catherine M Rivera v. The Bank of New York Mellon, 2D17-4417, https://www.2dca.org/content/download/611628/opinion/174417_39_07242019_08235305_i.pdf

Reversed and remanded for further proceedings, July 24, 2019.

Similar to present case in that Respondent's evidence for Summary Judgment was insufficient. This included a fraudulent assignment.

Angel L. Perez v. Deutsche Bank National Trust Company, 2D17-1043, https://www.2dca.org/content/download/595862/opinion/171043_39_02202019_08292193_i.pdf

Reversed and remanded for involuntary dismissal, February 20, 2019.

Similar to present case in that Respondent failed to provide proper evidentiary documents prior to judgment. Lack of Consideration; Private Mortgage Proceeds not Reported; Creation of Fraudulent Assignment and Who is Plaintiff.

Cases from the Third District include:

Hugo Villasmil v. Roosevelt REO US LLC,
3D18-2009, https://www.3dca.flcourts.org/content/download/596470/opinion/182009_812_08142019_10204593_i.pdf

Reversed and remanded for further proceedings, August 14, 2019.

Similar to present case in that Respondent lacked standing.

Cases from the Fourth District include:

Daniel Lewis and Rosanna Lewis v. U.S. Bank National Association, et al., 4D19-942, https://www.4dca.org/content/download/637999/opinion/190942_DC13_06182020_114052_i.pdf

Reversed June 17, 2020.

Similar to present case in that Respondent (Nationstar) was an Assignee and party to erroneous assignments and therefore did not have standing in the original complaint. In the present case Respondent created fraudulent Assignments as attached to Original Complaint and no Assignment, Certification or Affidavit attached to Amended Complaint upon which Judgment was obtained.

U.S. Bank National Association v. George E. Buchanan and JoAnne Buchanan, 4D19-1416, https://www.4dca.org/content/download/635922/opinion/191416_DC05_05202020_092907_i.pdf

Affirmed without further comment. May 20, 2020.

Similar to present case in that Respondent did not prove standing through Assignment.

Cases from the Fifth District:

Carlos Rodrigues v. Bank of America, 5D18-2228, https://www.5dca.org/content/download/600328/opinion/182228_1260_11222019_09414610_i.pdf

Reversed and remanded. November 22, 2019.

Similar to present case in that Respondent failed to respond to a motion and Court did not rule prior to Judgment.

James A. Wardell and Michael Courson v. Fifth Third Mortgage Company, 5D18-2481, https://www.5dca.org/content/download/598653/opinion/182481_1260_02142020_08202912_i.pdf

Reversed February 14, 2020.

Similar to present case in that Respondent's Judgment was granted over an unheard motion.

These issues were presented to the lower tribunal at final hearing on October 22, 2015 and over ruled. They were also the subject matter of the Final Appeal filed November 25, 2015 and Affirmed/Per Curiam/No Opinion September 28, 2016, Case 2D15-5397. Petitioner is also asking this appeal be set aside.

Fla. R. App. P. 9.330(a)(2)(D)(iii) *guidance to the parties or lower tribunal when: (a) the issue decided is also present in other cases pending before the court or another district court of appeal and (b) The issue*

decided is expected to recur in future cases. Petitioner is seeking guidance for the present case as well as direction for current pending and future similar cases that are sure to come before the court system at all levels in light of the continuing economic chaos ensuing as pandemic issues are resolved.

As a note, Respondent has quite a history of dishonest dealings as evidenced by a recent *Stipulated Final Judgment and Order* from the Bureau of Consumer Financial Protection for violation of several consumer laws. Decision was released December 7, 2020. This is merely a slap on the wrist, settled for pennies as compared to the countless foreclosures they lied and cheated their way through for considerable profit.

The assertion of “authority” is false as to the “servicer”, the “trust” and the “trustee”.

When do we start reversing wrongful foreclosures and provide clear guidelines to the courts to prevent initial filings at inception.

For Stipulated Final Judgment and Complaint see https://files.consumerfinance.gov/f/documents/cfpb_nationstar-mortgage-llc-dba-mr-cooper_stipulated-final-judgment-and-order_2020-12.pdf, https://files.consumerfinance.gov/f/documents/cfpb_nationstar-mortgage-llc-dba-mr-cooper_complaint_2020-12.pdf.

**SECOND ARGUMENT –
NEW EVIDENCE REVEALING FRAUD**

Underlying case in the Lower Tribunal is No. 12-CA-018383 with the Circuit Court of The Thirteenth Judicial Circuit in and for Hillsborough County, Florida, General Civil Division, filed November 19, 2012. It is currently in Division M, created to deal with foreclosure cases 2012 and prior and assigned to Judge Sandra Taylor.

TIMELINE FOR NEW EVIDENCE

Summary Judgment was obtained October 22, 2015, recorded October 27, 2015 and appealed to the Florida Second District Court of Appeal, Lakeland, Florida, Case No. 2D15-5397, on November 25, 2015. It was Affirmed/Per Curiam/No Opinion September 28, 2016, Motion for Rehearing En Banc was filed October 13, 2016 and Denied 01/03/2017. Mandate was issued January 23, 2017.

Motion to lift stay and set sale date was filed by Nationstar December 21, 2017.

The case was dormant again for 10 months.

The final sale was held April 29, 2019 as per Bid Information Sheet.

Petitioner filed a complaint with Attorney General Ashley Moody's office on June 29, 2019 against Nationstar Mortgage LLC alleging unfair business practices.

Nationstar responded July 10, 2019 and the response, through a subsidiary Mr. Cooper, and supporting documents provided the New Evidence basis for July 25, 2019 Motion. The response was provided to Petitioner by email from Anthony Bradlow, Assistant District Attorney, Tampa Florida office and received July 17, 2019.

Petitioner filed the Motion to Set Aside "Uniform Final Judgment of Foreclosure Dated October 27, 2015" And To Vacate "Plaintiff's Order to Ratify and Confirm Foreclosure Sale", "Validate Certificate Sale", "Issue Certificate of Sale", "Certificate of Title" and "Corrected Certificate of Title", on July 25, 2019.

Motion was Denied August 28, 2019, without a hearing.

SECOND ARGUMENT

This is a complicated case based on a very simple premise. Fraud was perpetrated on an unsuspecting member of the public and the Court. The conversation centers around presenting activities revealed through documents obtained from the Respondent in answer to a complaint filed with Attorney General Ashley Moody. There are many twists and turns but points covered are limited to seven.

There were two separate cases in the Lower Tribunal and it was in the first case where Nationstar Mortgage LLC fraudulently gained control through a self-created assignment. This case was dismissed for

lack of prosecution October 4, 2010 and again on October 22, 2010. *GMAC Mortgage, LLC v. Linda B. Vacchino, et al.*, #07-CA-017088. Nationstar Mortgage LLC substituted as Plaintiff through Assignment recorded with the Hillsborough County Clerk of Court, Instrument #2009197616, with Respondent as Assignor and Assignee and signed by an employee of Respondent. GMAC Mortgage LLC did not assign the case or participate in any manner. The original Mortgagee was Aegis Wholesale Mortgage.

The same assignment was used as basis as a Holder to initiate the second and present case. The document was brought many times before the lower tribunal and ignored. It was appealed following issuance of Uniform Final Judgment in 2015 but was not heard.

STANDARD OF REVIEW

De Novo

The suggested Standard of Review is De Novo. The very foundation of this case is tainted with fraud since inception.

Decisions of Law

“Where the decision rests either on a pure matter of law or on documentary evidence that can be evaluated equally well by the appellate and trial courts, the standard of review is de novo.”

“In the summary judgment and directed verdict contexts, the test is whether there are factual

questions whose resolution would permit a reasonable jury to decide in a different way than that directed by the court. *See Moore v. Morris*, 475 So.2d 666 (Fla. 1985). In both contexts, appellate review is actually a two-step process: 1) whether a genuine issue (or, in the case of the directed verdict, a disputed issue) of material fact exists; and 2) whether the trial court applied the correct rule of law. *See Florida Appellate Practice* 9.4 at 148-49.

Finally, it should be noted that Florida's use of de novo review is consistent with that of federal law. *See, e.g., First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995)." Page 3, 3rd paragraph.

SECOND ARGUMENT SUMMARY

There are six elements revealed in the Attorney General information as to why Judgment should be set aside and Sale Documents vacated:

1. 1A. – Jurisdiction and 1B. – New Evidence
2. Lack of Consideration
3. Ownership
4. Private Mortgage Proceeds Not Reported
5. Creation of Fraudulent Assignment
6. Who is the Plaintiff?

SUBSTANTIVE FACTS

There was no consideration when mortgage was "boarded".

There is no proof of ownership.

Private Mortgage Insurance proceeds not reported or credited to mortgage balance.

Fraudulent documents created to attempt to provide an illusion of ownership and lack of required documents to establish ownership for foreclosure proceeding.

Fraudulent Assignment tainting the entire time span Nationstar Mortgage LLC has been involved.

BASIS IN LAW

The law is clear that a trial court and certainly a district court, has the inherent authority to dismiss actions based on fraud and collusion as well as to strike sham pleadings. Such a power is indispensable to the proper administration of justice because no litigant has a right to trifle with the courts. It is a power, however, which should be cautiously and sparingly exercised and only upon the most blatant showing of fraud, pretense, collusion or other similar wrongdoing.

Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118
(1st Cir. 1989)

The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable

scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense."

Ashwood v. Patterson, 49 So.2d 848 (Fla. 1951)

There is, however, a fundamental equitable principle that "no one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or found any claim upon his own iniquity, or profit by his own crime;"

Cox v. Burke, 706 So.2d 43 (Fla. 5th DCA 1998)

The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct must be discouraged in the strongest possible way.

Horjales v. Loeb, 291 So.2d 92 (Fla. 3d DCA 1974)

Under these circumstances, the trial court had the right to dismiss the plaintiff's case. One who engages in a fraudulent scheme forfeits all right to the prosecution of a law suit.

Kornblum v. Schneider, 609 So.2d 138, 139 (Fla. 4th DCA 1992)

The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an

action when a plaintiff has perpetrated a fraud on the court, or where a party refuses to comply with court orders.

Savino v. Florida Drive In Theatre Management, Inc., 697 So.2d 1011 (Fla. 4th DCA 1997)

However, where a party lies about matters pertinent to his own claim, or a portion of it, and perpetrates a fraud that permeates the entire proceeding, dismissal of the whole case is proper.

STATUTORY BASIS

§ 90.104, *Fla. Stat. (2019)* Rulings on evidence.

(1) A court may predicate error, set aside or reverse a judgment, or grant a new trial *on the basis of admitted or excluded evidence* when a substantial right of the party is adversely affected and:

§ 701.02, *Fla. Stat. (2019)* Foreclosure of Mortgages and Statutory Liens.

Assignment not effectual against creditors unless recorded and indicated in title of document; applicability.

(1) An assignment of a mortgage upon real property or of any interest therein, is not good or effectual in law or equity, against creditors or subsequent purchasers, *for a valuable consideration*, and without notice, unless the assignment is contained in a document that, in

its title, indicates an assignment of mortgage and is recorded according to law.

(5) Notwithstanding subsection (4), a creditor or subsequent purchaser of real property or any interest therein, *for valuable consideration* and without notice, is entitled to rely on a full or partial release, discharge, consent, joinder, subordination, satisfaction, or *assignment of a mortgage upon such property made by the mortgagee of record*, without regard to the filing of any Uniform Commercial Code financing statement that purports to perfect a security interest in the mortgage or in a promissory note or other right to payment or performance secured by the mortgage, and the filing of any such financing statement does not constitute notice for the purposes of this section. For the purposes of this subsection, the term "*mortgagee of record*" means the person named as the mortgagee in the recorded mortgage or, if an assignment of the mortgage has been recorded in accordance with this section, the term "*mortgagee of record*" means the assignee named in the recorded assignment.

§ 673.2031, Fla. Stat. (2019) (2) Transfer of instrument; rights acquired by transfer.

(2) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the *transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in*

due course if the transferee engaged in fraud or illegality affecting the instrument.

Fla. R. Civ. P. 1.540(b)(2). Relief From Judgment, Decrees, Or Orders

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may *relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;*

Fla. R. Civ. P. 1.115. Pleading Mortgage Foreclosures

(a) Claim for Relief. A claim for relief that seeks to foreclose a mortgage . . . : (1) *contain affirmative allegations expressly made by the claimant at the time the proceeding is commenced that the claimant is the holder of the original note secured by the mortgage; or (2) allege with specificity the factual basis by which the claimant is a person entitled to enforce the note under § 673.3011, Florida Statutes.*

(b) *Delegated Claim for Relief. If a claimant has been delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the claim for*

relief shall describe the authority of the claimant and identify with specificity the document that grants the claimant the authority to act on behalf of the person entitled to enforce the note. The term "original note" or "original promissory note" means the signed or executed promissory note rather than a copy of it.

Fla. R. Civ. P. 1.260(2)(c)(a)(1). Survivor: Substitution of Parties

Fla. R. Civ. P. 1.115(a)(b). Delegated Claim for Relief

Fla. R. App. P. 9.130(4)

SECOND ARGUMENT – 1-A JURISDICTION

Fla. R. Civ. P. 1.540(b)(2)(3). Relief from Judgment or Orders

"This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, decree, order, or proceeding or to set aside a judgment or decree for fraud upon the court."

1-B NEW EVIDENCE

This Non-Final Appeal is based on Petitioner's denied Motion to Set Aside "Uniform Final Judgment of Foreclosure Dated October 22, 2015" and To Vacate "Plaintiff's Order to Ratify and Confirm Foreclosure Sale", "Validate Certificate of Sale", Issue Certificate of Sale", "Certificate of Title" and "Corrected Certificate of Title".

Motion was filed July 25, 2019 and denied August 28, 2019, without a hearing. The Notice of Appeal was filed September 27, 2019, filed with the Second District Court of Appeals on October 02, 2019, within Fla. R. App. P. 9.020(h) and 1996 Amendment guidelines.

The basis for the Motion was new evidence obtained in Respondent's answer to a Complaint filed by Petitioner with Attorney General Ashley Moody's office on June 29, 2019, with answer received on July 17, 2019. The answer included an Activity Report with entry's beginning February 17, 2007 and ending April 03, 2019. Several entries provided information exposing underlying fraudulent issues for consideration paid by Respondent at time of boarding as well as time and circumstances of ownership. The reply and AG Activity Report were attached to the denied Motion.

SECOND ARGUMENT - ARGUMENT 2 - LACK OF CONSIDERATION

As evidenced in the *AG Activity Report* Page 34, the 1/2/2009 initial entry was apparently when the loan was "boarded", states **NEW LOAN NO CASH** without a corresponding monetary entry.

Since there was no valuable consideration, Respondent was not damaged and there is no basis for judgment based on damages.

Respondent is seeking damages for the balance of the Note, plus interest and expenses. Appellee was not the original Lender and having boarded the "loan" at

no cost has no monetary investment, therefore no damages.

This clearly violates § 701.02(4), "a creditor or subsequent purchaser of real property or any interest therein, *for valuable consideration*".

Respondent Nationstar was a subsequent servicer and did not render consideration at boarding nor did an assignment exist. Boarding occurred January 2, 2009 and fraudulent Assignment is dated May 26, 2009.

The statute also states "*there must be a recorded proper assignment at the time of boarding*". There is not a link between Aegis Wholesale Mortgage, the originator of the mortgage and Nationstar Mortgage LLC.

SECOND ARGUMENT - ARGUMENT 3 - OWNERSHIP

At the time of "boarding" on January 2, 2009, there is no recorded assignment. For a Mortgagee to proceed with a foreclosure action, in addition to proof of damages is proof of ownership or the right to move forward as outlined in the following Statutes and Civil Procedures.

§ 701.01 *Fla. Stat.* (1985) Assignment. – "Any mortgagee may assign and transfer any mortgage *made to her or him*". The original mortgage was originated by Aegis Wholesale Mortgage.

§ 701.02 Fla. Stat. (2005) (1) further emphasizes the importance of consideration and properly drafted, recorded assignment.

§ 701.2 Fla. Stat. (2005) (5) *“mortgagee of record” means the person named as the mortgagee in the recorded mortgage or, if an assignment of the mortgage has been recorded in accordance with this section, the term “mortgagee of record” means the assignee named in the recorded assignment.*

The only assignment is as attached to the Original Complaint, was created by a former attorney representing Nationstar, with Nationstar named as Assignor and Assignee and signed by an employee of Nationstar Christine Odom, and evidenced in Petitioners Amended Motion to Set Aside of June 28, 2019, Nationstar Mortgage LLC is not the originating mortgagee and lacks capacity to sign as assignor. See Note and Mortgage as Attached to Amended Complaint August 9, 2013 for originating mortgagee.

This Fraudulent Assignment was created May 26, 2009 and recorded June 17, 2009 with the Hillsborough County Clerk of Circuit Court in BK: 19311 PG: 1608 and attached to Original Complaint.

Plaintiff also failed to attach the required Certification setting out Assignment's original location, name and title of person giving the Certification, name of the person who personally verified such possession, time and date on which possession was verified and did not attach to the Amended Complaint in which they claim

to be a Holder with authority to proceed with the foreclosure.

The Judgment of Foreclosure was based on the Amended Complaint.

See § 702.015(3)(4) Fla. Stat. (2013) Elements of Complaint. "(3) If a plaintiff has been *delegated the authority to institute a mortgage foreclosure action on behalf of the person entitled to enforce the note, the complaint shall describe the authority of the plaintiff and identify, with specificity, the document that grants the plaintiff the authority to act on behalf of the person entitled to enforce the note.* This subsection is intended to require initial disclosure of status and pertinent facts and not to modify law regarding standing or real parties in interest. *The term "original note" or "original promissory note" means the signed or executed promissory note rather than a copy thereof.*

"If the plaintiff is in possession of the original promissory note, the plaintiff must file under penalty of perjury a *certification with the court, contemporaneously with the filing of the complaint for foreclosure, that the plaintiff is in possession of the original promissory note. The certification must set forth the location of the note, the name and title of the individual giving the certification, the name of the person who personally verified such possession, and the time and date on which the possession was verified. Correct copies of the note and all allonges to the note must be attached to the certification.*"

**SECOND ARGUMENT - ARGUMENT 4 -
PRIVATE MORTGAGE
PROCEEDS NOT REPORTED**

Plaintiff received funds through a claim for Private Mortgage Insurance as evidenced from an entry on the Activity Report, attached to the denied motion. This document was Respondent's reply to Attorney Generals Complaint.

The last entry for monthly MI premium payments in the amount of \$160.05 was November 9, 2012. In addition, there was a total of \$7,522.35 in total PMI premiums included in Judgment expenses. That is approximately 47 months of premiums. According to Nationstar's they had control of the mortgage beginning January 2, 2009, add the 47 months when PI payments ceased yields a date close to January 2013. This is within a few months of when Original Complaint was filed. According to standard calculations used by MGIC Insurance Company, the Holder of the policy, the amount received would be approximately \$100,000. Petitioner was charged with the expense but not given credit through a reduced mortgage balance or reduced judgment sought. The principal amount owed was not adjusted in the Original or Amended Complaints. This is yet another fraudulent activity and unjust enrichment on Nationstar's part.

**SECOND ARGUMENT - ARGUMENT 5 -
CREATION OF FRAUDULENT ASSIGNMENT**

The original Mortgagee is Aegis Wholesale Mortgage.

The loan was boarded by Nationstar, Petitioner January 9, 2009.

The first recorded Assignment was created May 26, 2009.

The Assignment names Nationstar Mortgage LLC as Assignor and Assignee.

The Assignor's signature is a Nationstar Mortgage LLC employee.

This Assignment is clearly a fraudulent document created by Respondent, Nationstar in conjunction with their attorney, the infamous David Stern, naming Nationstar as Assignor and Assignee and signed by a Nationstar employee, Christine Odom. *It was created five months after the loan was "boarded" with "no cash".*

§ 673.2031 Fla. Stat. (2019) (2) *transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.*

Further when the Original Complaint was created October 22, 2012 by Nationstar Mortgage LLC as Plaintiff and *Amended Complaint dated August 9, 2013, with no Certification or Affidavit stating how Plaintiff came to have the purported possession of the*

mortgage and to initiate and proceed with this litigation.

This is a requirement outlined in *Fla. R. Civ. P. 1.115*, Pleading Mortgage Foreclosures: (a) claim for relief and (2) *"allege with specificity the factual basis by which the claimant is a person entitled to enforce the note under § 673.3011 (2018) (1) Florida Statutes."* Also see *"Ownership"* above.

Respondent, Nationstar Mortgage LLC created a fraudulent assignment to present the illusion of a Holder, with the right to pursue this litigation.

SECOND ARGUMENT - ARGUMENT 6 - WHO IS THE PLAINTIFF?

The story begins with Respondent, Nationstar Mortgage LLC being substituted as Plaintiff in the former case, #07 CA 017088, Circuit Court of the Thirteenth Judicial Circuit for Hillsborough County Florida Circuit Civil Division, with an Order signed by Judge Williams Levens on November 23, 2009, replacing GMAC Mortgage LLC who initiated the case on a mortgage created by Aegis Mortgage Corporation. GMAC also lacked an assignment and under what authority they preceded is another mystery. Aegis filed bankruptcy in late 2007 and GMAC followed in 2012, leaving no one with authority to fix the problem. The fraudulent assignment created by David Stern's office with Nationstar Mortgage LLC as Assignor and Assignee, signed by a Nationstar employee Christine

Odom was the supporting evidence to validate the Plaintiff substitution.

Given the circumstances that the assignment was a fraudulent document, Respondent, Nationstar Mortgage LLC has never been authorized as Plaintiff for the former or present case.

This same fraudulent assignment was attached to the Original Complaint in the present case but *not to the Amended Complaint, on which the Judgment was based*. It was also attached to *Final Uniform Foreclosure Judgment*. Again, Nationstar lacks authority to proceed as Plaintiff and various Assignments of Bid and Quit Claim Deeds create additional fraudulent documents. Additionally, through this long winding sequence of events, six (6) other parties have some level of participation were included by Respondent. See "Parties" for a complete list and involvement.

Respondent, Nationstar Mortgage LLC has deliberately and maliciously prosecuted this case with full knowledge it was based on lies and deceit.

REASONS FOR GRANTING PETITION

This Writ of Certiorari should be granted as the entire case is riddled with fraud, deceit and lies. Clear, convincing evidence and proper judicial process has been presented to accomplish a granting.

Among the items on Judge Henry Friendly's list of "kinds of procedures" included in "due process",

includes among others 1) an unbiased tribunal and 10) requirement that the tribunal prepare written findings of facts and reasons for its decision. The lower tribunal did not allow opportunity for a hearing or provide a written opinion as to why the Non-Final Motion was denied and District Court of Appeal followed suit did not issue a Written Opinion. By so doing the opportunity to correct a blatant miscarriage of justice was missed.

Guidance should be provided to lower courts to more consistently render rulings and opinions within their jurisdiction. Providing written opinions would bring closer attention to semantics of the individual case and interrelation with like cases. A review and reversal in the present matter would call attention to the need for change.

The evidence presented clearly proves fraudulent activity and had the documents been reviewed, perhaps a more open-minded conclusion would have been reached. At this very late point in these proceedings, I request the documents and process be reviewed and a remand with reversal of the Final Foreclosure Order and all sale documents be issued to the lower tribunal.

CONCLUSION

We as citizens of the United States of America are guaranteed Due Process of Law under our Constitution with Amendments Five and Fourteen. I respectfully

close with following quotes and thank for this opportunity.

"In past two centuries, however, states have developed a variety of institutions and procedures for adjudicating disputes. Making room for these innovations, the Court has determined that due process requires, at a minimum: (1) notice; (2) an opportunity to be heard; and (3) an impartial tribunal". *Mullane v. Central Hanover Bank* (1950). As quoted from constitutioncenter.org.

"There is, however, a fundamental equitable principle that no one shall be permitted to profit by his own fraud, or take advantage of his own wrong, or found any claim upon his own iniquity, or profit by his own crime;"

Cox v. Burke, 706 So.2d 43 (Fla. 5th DCA 1998)

Respectfully submitted,

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