No. 21-76

In the Supreme Court of the United States

LINDA B. VACCHINO,

Petitioner,

v.

NATIONSTAR MORTGAGE, LLC,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the United States of America

PETITION FOR REHEARING

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OCTOBER 29, 2021
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QUESTIONS PRESENTED

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.

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INTRODUCTION

Pursuant to Supreme Court Rule 44.1, Linda B. Vacchino, respectfully petitions for rehearing of the Court's denial for Writ of Certiorari, *Vacchino v. Nationstar Mortgage LLC*, Case #21-76, on October 4, 2021. Ms. Vacchino moves this Court to grant this petition for hearing and consider her case with merits briefing and oral argument. Pursuant to Rule 44.1, this petition for rehearing is filed within 25 days of the Court's decision in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Basis for Rehearing Petition is U.S. Code, Rule 44(1)(2), Supreme Court Rules and is timely submitted within 25 days of Denial of *The Writ*, Rule 33(1)(b)(c)(d)(e)(f)(g)(h), Document Preparation; Rule 34(1)(a)(b)(c)(d)(e)(f)(g), Document Preparation; Rule 38(b), Fees; and Rule 29(1)(2)(3)(5)(6) Filing and Service of Documents.

STATEMENT OF FACTS

The Writ of Certiorari, Case #21-76, *Vacchino v. Nationstar Mortgage*, herein after referred to as "*The Writ*", presented two arguments:

1. Conflicting opinions within the Florida District Court of Appeal, as presented in Writ of Certiorari; Case # 21-76, *Vacchino v. Nationstar Mortgage LLC* herein after referred to as "*The Writ*" pages 5-12 and first presented in the Second District Court of Appeal, Lakeland, FL Case # 2D19-3807, *Vacchino v. Nationstar Mortgage LLC*, Motion for Written Opinion, pages 2-6.

2. New evidence revealing fraud, *The Writ*, pages 14, 17, 23-31 and Second District Court of Appeal, Lakeland, FL *Vacchino v. Nationstar Mortgage LLC*, Appellant's Initial Brief, 2D-19-3807, pages 7-17 and first presented in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Tampa, Florida, Case 12-CA-018383, *Nationstar Mortgage LLC v. Linda B. Vacchino*, Defendant's "Motion to Set Aside Uniform Final Judgment of Foreclosure date October 27, 2015, and To Vacate applicable orders relating to the Judgment.

ARGUMENT

This Petition addresses the following issues:

1. Standing and includes two cases (A and B) along with a published narrative summarizing B.
2. Consideration with introduction of U.C.C. § 9-203(b)(1), Enforceability, specifically "value has been given".
3. Also addressed is lack of consideration as a cornerstone for standing, with a narrative from the Florida Bar Journal including citing's.

I. TWO CASES NOT PREVIOUSLY SUBMITTED IN *THE WRIT* REINFORCE THE BASIC PREMISE OF STANDING.

They include *U.S. Bank v. Verhagen*, Intermediate Court of Appeals for the State of Hawaii and *U.S. Bank v. Nelson* Court of Appeals for the state of New York.

A. First Discussion Is *U.S. Bank v. Verhagen*

NO. CAAP-17-0000746, Intermediate Court of Appeals of the State of Hawai'i, *U.S. Bank v. Verhagen*, 473 P.3d 783 (Haw. Ct. App. 2020) Decided Oct 2, 2020.

This case discusses the question of standing and the hearsay rule as used for verification of documents.

Plaintiff failed to establish standing, with a unbroken chain of title at filing of initial complaint citing *Reyes-Toledo I*, 139 Hawai'i at 367-70, 390 P.3d

at 1254-57. As expressed by the Hawai'i Supreme Court, "a foreclosing plaintiff must prove "the existence of an agreement, the terms of the agreement, a default by the mortgagor under the terms of the agreement, and giving of the cancellation notice," as well as prove entitlement to enforce the defaulted upon note"".

Second citing; " . . . that U.S. Bank failed to establish possession of the original Note when U.S. Bank filed the Verified Complaint, and thus failed to establish standing under *Bank of Am., N.A. v. Reyes-Toledo*, 139 Hawai'i 361, 390 P.3d 1248 (2017) (Reyes-Toledo I)."

Also cited in the hearsay discussion was *Nationstar Mortgage LLC v. Kanahele*, 144 Hawai'i 39 4, 402-404, 443 P.3d 86, 94-96 (2019), "under the hearsay rule as applicable to the "qualified witness" to establish a sufficient foundation for admission of business records not created by Plaintiff".

"Viewing the facts and inferences in the light most favorable to Verhagen, as we must for purposes of reviewing a summary judgment ruling, *Reyes-Toledo I*, 139 Hawai'i at 371, 390 P.3d at 1258, there is a genuine issue of material fact as to whether U.S. Bank had standing and was entitled to enforce the subject Note when this foreclosure action was commenced. Thus, under *Reyes-Toledo I, Mattos and Behrendt*, U.S. Bank has not met its initial burden to show that it was entitled to summary judgment for the decree of foreclosure."

The foreclosure judgment was reversed by the Court of Appeals.

This case is similar to present case in the following capacity: Second Argument #2 "Lack of Consideration",

#3 Ownership, #4 Private Mortgage Proceeds Not Reported and #5 Creation of Fraudulent Assignment, *The Writ*, Pages *24-31.*

B. Second Discussion Is *U.S. Bank v. Nelson*
Certiorari to the Intermediate Court of Appeals (CAAP-16-0000319; CIV. NO. 14-1-0584(2)). *U.S. Bank v. Nelson*, 36 N.Y.3d 998 (N.Y. 2020) 139 N.Y.S.3d 118 163 N.E.3d 49 2020 N.Y. Slip Op. 7661 Decided Dec 17, 2020.

This is a "standing" issue. An important point was made by Judge Wilson that if applied to the initial Complaint filing of foreclosure cases, could possibly relieve the entire court system of its workload by eliminating those cases with lack of standing and failure to have suffered actual damages, two primary cornerstones for initiating a foreclosure action. This decision was affirmed due to timeliness of issue being raised as being unpreserved.

Judge Wilson states: "Although I can join neither the majority's rationale nor the numerous courts' mistaken treatment of negotiable instrument ownership as a question of standing, I concur in the result. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Feinman concur; Judge Wilson concurs in result in an opinion." *U.S. Bank v. Nelson*, 36 N.Y.3d 998, 1012 (N.Y. 2020)."

An article from the Cadwalader Law Firm gives insight to the issue of "standing" as opposed to "party to a contract", based on the *U.S. Bank v. Nelson* case.

"Here, the defendants' failure to argue "lack of standing," albeit a misnomer, in the lower court should not have been the basis for the Court of Appeals to

affirm the lower court's grant of summary judgment in favor of the plaintiff. True lack of standing would in fact have to be raised as an affirmative defense in the lower court; however, because this argument goes to the merits of the case by attacking an essential element of a breach of contract action, this argument should have been permitted to be raised at any point. The issue for the Nelsons, however, is that U.S. Bank, N.A. was able to provide sufficient evidence that it was the noteholder, and the Nelsons were unable to refute it."

"Judge Wilson puts it concisely: "Needless to say, when someone purporting to be a party to a contract sues to enforce that contract, no issue of standing is involved. You're either a party to the contract or not."" https://www.cadwalader.com/ref-news-views/index.php?nid=26&eid=128

The Nelson case is similar and different to present case in that the standing issue was raised as an affirmative defense in the lower court, Thirteenth Judicial Circuit Hillsborough County FL, Case 12-CA-018383 and Case 07-CA-017088.

Twice in the Florida District of Appeal, Cases 2D19-3807 and 2D15-5397, in the Florida Supreme Court, Case SC-21-218 and *The Writ.*

2. UCC § 9-203(B)(1), ENFORCEABILITY, SPECIFICALLY "VALUE HAS BEEN GIVEN"

(b) [ENFORCEABILITY.]

Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(https://www.law-cornell.edu/ucc9/9-203)

Review of UCC § 9 establishes the basis to "Perfect" a security interest, in this instance, a promissory note involved in a mortgage foreclosure.

3. THE FOLLOWING NARRATIVE PROVIDES AN EXCELLENT PRESENTATION OF THE ISSUE OF "HOLDER", "OWNER"; THEIR RELATIONSHIP AND REQUIREMENT TO "GIVE VALUE TO A SELLER AUTHORIZED TO SELL" TO FORM THE FORECLOSURE BASIS ON A RESIDENTIAL REAL ESTATE PROPERTY

Thomas Erskine Ice, *Negotiating the American Dream: A Critical Look at the Role of Negotiability in the Foreclosure Crisis*, FLORIDA BAR JOURNAL, Vol. 86, NO. 10, 8 December 2012, https://www.floridabar.org/the-florida-bar-journal/negotiating-the-american-dream-a-critical-look-at-the-role-of-negotiability-in-the-foreclosure-crisis/

"This article explores the historical underpinnings of negotiability and whether the evidentiary shortcut that negotiability appears to offer as a means of proving a plaintiff's standing to sue can or should be applied in the context of the foreclosure cases facing the courts today. Examination of the original purposes of negotiability, as well as recent changes to the Uniform Commercial Code, leads to the conclusion that mere possession of a negotiable instrument (the promissory note) is insufficient to enforce a mortgage. The possessor or "holder" must prove ownership of the instrument — a complete chain of title from the original creditor — to invoke the equitable remedy of foreclosure. (Page 1 ¶ 2)."

"Care should be taken in the rush to extricate ourselves from the current mortgage foreclosure crisis not to elevate negotiability beyond the narrow mercantile milieu from which it developed, where merchants transacted business on an equal footing. In the foreclosure setting, both Article 9 and the common law require proof of the chain of title to the note, making Article 3 negotiability irrelevant to the determination of standing. (Page 11 ¶ 3)."

"Happily, the court need not ponder too long on the puzzle because the very architecture of the UCC answers the question. The common law concept that the lien faithfully tags along after the note is found in Article 9, 76 (U.C.C. §§ 9-203(g) and 9-308(e); Fla. Stat. §§ 679.2031(7) and 679.3081(5) (2012). Not Article 3. The UCC supplants common law (U.C.C. § 1-103(b); Fla. Stat. § 671.103 (2012) and the court must presume that the legislature, in adopting these provisions, intended that mortgages follow Article 9 owners, not Article 3 holders. Moreover, if there is any conflict between Article 9 and Article 3, the rules in Article 9 govern. (U.C.C. § 3-102(b); Fla. Stat. § 673.1021(2) (2012)). and finally, while possession is a means of perfection under Article 9, enforcement of the security interest requires proof that the buyer gave value to purchase the mortgage loan from a seller entitled to sell it. (U.C.C. § 9-203(b); Fla. Stat. § 679.2031(2) (2012)) (Pages 10 ¶ 5 & 11 ¶ 1)."

"As a result, enforcement of a mortgage transferred under Article 9 (*i.e.* by following the note) requires proof of a sale, just as was required by common law under *Johns*. (*Johns v. Gillian*, 184 So. 140 (Fla 1938), And because the foreclosing bank must show that it obtained the mortgage loan from a seller authorized

to sell it, the bank must ultimately prove the sale at each link in the chain of ownership. The belief that an entity in wrongful possession of a note may foreclose on a home is firmly refuted by Article 9, and cases that hold that mere presentment of a note endorsed to the plaintiff is alone sufficient to prove standing to foreclose are misguided. (Page 11 ¶ 2)."

"Care should be taken in the rush to extricate ourselves from the current mortgage foreclosure crisis not to elevate negotiability beyond the narrow mercantile milieu from which it developed, where merchants transacted business on an equal footing. In the foreclosure setting, both Article 9 and the common law require proof of the chain of title to the note, making Article 3 negotiability irrelevant to the determination of standing. (Page 11 ¶ 3)."

CONCLUSION

This Petition for Rehearing should be granted to allow the attention from The United States Supreme Court to address the monumental issue of residential foreclosures, lingering from the 2006/2007 mortgage crisis, which this is one and looming next wave resulting from the COVID Pandemic. Guidance should be provided to lower courts to more consistently render rulings and opinions within their jurisdiction and thereby reduce the number of cases being appealed to higher courts. A revision of the standard forms provided to file a foreclosure case to include chain of title documents and exact amount and form of payment

used to acquire the "property" will eliminate many of the issues currently being addressed.

Respectfully submitted,

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OCTOBER 29, 2021

RULE 44 CERTIFICATE

I, Linda Vacchino, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

Respectfully submitted,

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