

No. 22-1864

4/28/2023

*In The  
Supreme Court of the United States*

\_\_\_\_\_ Δ \_\_\_\_\_  
HAYWOOD JACKSON MIZELL, pro se

Petitioner,

v.

THE CITIZENS BANK and  
James Weatherford, et al

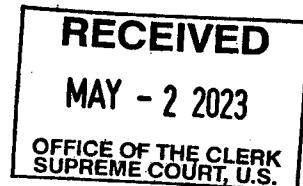
Respondent(s),

\_\_\_\_\_ Δ \_\_\_\_\_  
On Petition For Writ Of Certiorari to The  
United States District Court for the Middle District of  
Alabama, United States Court of Appeals for the  
Eleventh Circuit

\_\_\_\_\_ Δ \_\_\_\_\_  
PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_ Δ \_\_\_\_\_  
HAYWOOD JACKSON MIZELL,  
pro se  
767 Bush Creek Road  
Opelika, AL 36804  
(334) 498-4187  
jackmizell@gmail.com

\_\_\_\_\_  
CERTIORARI PRINTING  
info@certiorariprinting.com  
Fax (805) 995-3881, Phone (805) 801-1881



**QUESTION(s) PRESENTED:**

1. Is it a conflict of interest for the Respondent's attorney to be appointed a Bankruptcy Chapter 7 Trustee that, after appointment, uses a "perfected security agreement" absent an attached promissory note, which a non-existent note, the trustee swore, under oath, to have never seen? Normally a change in promissory note, a re-finance unit, will remove certain real estate as security and replace it with a revised security asset list. Should the bank have re-financed and paid off the original when the FM license (FCC regulated and with no bankruptcy court jurisdiction) used as security, instead separating the original note from the original mortgage without the FM as security and selling the original note alone?
2. Do unfiled original instruments, and that have not been authenticated, deny complainant standing status and deny courts the gaining of subject matter jurisdiction, especially when unsworn and unverified statements of counsel are instead considered competent evidence?
3. Are attorneys allowed to operate outside court rules in the court proceedings such as FRCP 1002 (Rule 1002. Requirement of the Original.) An original writing, recording, or photograph is required in order to prove its content? Especially when Defendants' Attorney gave no reasonable evidence of representative authority and failed to comply with court rule FRCP 1002, which requires the filing for proof of claim with the clerk for authentication the original instrument, the instrument that the attorney said his client possessed, which client was contractually

obligated to surrender yet refused even after the unlisted mortgage instrument satisfaction by a sale?

4. Is withhold filing of the debt instrument a violation of Title 18 §1512(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding?

5. Is it not against equity to deprive freemen of the free disposal of their own property. Or is a creditor allow to decide to whom a property can be sold?

6. Whether or not the security agreement for 2.3 million dollars could be used for the sale of TV and FM. Defendant sold both and received 4.1 million dollars from the sale without returning the excess funds of 1.8 million dollars to plaintiff for which a remand and accounting would resolve.

**LIST OF PARTIES**

**The name of the Petitioner is:**

**Haywood Jackson Mizell**

**The names of the Respondents are:**

**Citizens Bank, and James Weatherford, et al**

**NO REQUEST FOR ORAL ARGUMENT.**

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
LIST OF PARTIES.....	iii
TABLE OF AUTHORITIES.....	vi
CONSTITUTION, FED STATUTES AND RULES..	x
RELATED CASES.....	xii
CONFLICTING CASES WHERE CITIZEN BANK RELIED UPON, "COPY" NOT ORIGINAL.....	xiii
STATEMENT OF THE CASE.....	1
OPINIONS BELOW.....	1
STATEMENT OF JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
HISTORY AND PROCEDURAL BACKGROUND	
REASONS FOR GRANTING THE WRIT.....	4
Facts.....	6
"COW TAIL" RULING.....	14
FCC MISLEAD, ACTED FROM COURT DECREE.....	16
FEDERAL RULES OF CIVIL PROCEDURE.....	19
INSTRUMENTS: PART 5. DISHONOR.....	21
MAXIM OF LAW.....	22
NOTE: ONE CANNOT ACQUIRE PROPERTY, ONLY TITLE TO THE PROPERTY CAN BE ACQUIRED U.C.C. - ARTICLE 3 - NEGOTIABLE .....	24
IMPORTANCE OF THE CASE.....	27
REASONS FOR GRANTING THE WRIT.....	36
I. Federal Rules of Civil Procedure Rule 1002 requires an original instrument to prove stand- ing and subject matter jurisdiction.....	4, 8, 12, 19, 29, 35, 36

CONCLUSION.....37

## APPENDICES

### APPENDIX A

March 24, 2023 Request for Rehearing DENIED by the United States Court of the United States Court of Appeals for the Eleventh Circuit Appeal No. 22-10853.....App.1

### APPENDIX B

January 10, 2023, Writ of Opinion Mandate of the United States Court of Appeals for the Eleventh Circuit affirming District Court dismissal of case No. 22-10853 before WILSON, LUCK, and ANDERSON, Circuit Judges.....App. 2

### APPENDIX C

January 10, 2023, Clerk's Judgment entered of the United States Court of Appeals for the Eleventh Circuit with CLERKS April 03, 2023, Letter as mandate Appeal No. 22-10853-AA.....App.7

### APPENDIX D

March 03, 2022, Final Judgment of the United States District Court for the Middle District of Alabama, W. Keith Watkins, District Judge, D.C. No. 2:21-CV-337-WKW [WO].....App.8

### APPENDIX E

March 03, 2022 FINAL JUDGEMENT: ORDER, JUDGMENT, and DECREE of this court that this action is DISMISSED; Further: Plaintiff is ENJOINED from filing new actions in any federal court related to In re Stage Door Development, Inc., No 07-11638 (M.D. Ala. Bankr., filed Nov.26, 2007) without obtaining, the permission of a district judge of the court; DIRECTING the Clerk to enter this document on the civil docket as a final judgment

pursuant to FRCP 58. Signed by Judge W. Keith  
Watkins on 3/3/2022.....App.19

#### TABLE OF AUTHORITIES

CASES:	Page
<b>FEDERAL</b>	
<i>Anderson v. Liberty Lobby, Inc.,</i> 477 U.S. 242 (1986).....	8, 35, 36
<i>Carpenter v. Longan</i> , 83 U.S. 271, 274, L. Ed. 313 (1872).....	19
<i>Clearfield Trust Co.</i> [318 U.S 363-371].....	10
<i>Cooper Vs. Aaron</i> . 358 U.S. 178 S.Ct. 1401 (1958)...	26
<i>Elliott v. Peirsol</i> , 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) .....	27
<i>Jesinoski v. Countrywide Home Loans</i> , 574 U.S. 13- 684 (2015).....	3
<i>In re Sawyer</i> , 124 U.S. 200 (1888).....	26
<i>Kokkonen</i> , 511 U.S. at U.S. at 377.....	15
<i>Matter of Staff Mortg. &amp; Inv. Corp.</i> , 550 F.2d 1228 (9th Cir 1977).....	19, 26
<i>Melo v. U.S.</i> 505 F 2d 1026.....	21
<i>Mills v. Duryee</i> , 11 U.S. (7 Cranch) 481 (1813).....	17
<i>U.S. v. Tweel</i> , 550 F.2d 297 (1977) .....	18

*United States Supreme Court Jesinoski v.  
Countrywide Home Loans,  
574 U.S. 13-684 (2015).....3*

*Yates Vs. Village of Hoffman Estates, Illinois,  
209 F. Supp. 757 (N.D. Ill. 1962).....26*

*Zenith Radio Corp. v. Matsushita Elec. Indus. Co.,  
Ltd., 494 F.Supp. 1161 (D.C. Pa., 1980).....15*

**STATE**

*Babcock & Wilson v. Parsons Corp.,  
430 F.2d 531 (1970).....17*

*Best Fertilizers of Arizona, Inc. v. Burns, 117 Ariz.  
178, 179, 571 P.2d 675, 676 (Ct.App.), reversed on  
other grounds, 116 Ariz. 492, 570 P.2d 179  
(1977)).....20, 28*

*Citizen Bank Bank, v. Byrd, 178 Ohio App.3d 285,  
2008-Ohio-4603, 897 N.E.2d 722 (2008)....13, 18, 24*

*Citizen Bank, Litton Loan v. Farmer,  
867 N.Y.S.2d 21 (2008).....17, 31*

*Citizen Bank v. Reyes,  
867 N.Y.S.2d 21 (2008).....18, 25, 32*

*Diane Gray v. Federal National Mortgage  
Association 2120087. Decided: January 10, 2014  
Ala. Civ. App 2012) .....15, 21, 23*

*Harton v. Little, ....  
Ala. 267, 57 So. 851 (1911).....14, 20*

<i>Holms v. Citizen Bank Home Mortgage, Inc. et al,</i> 43rd Jud. Cir. Ct. Div II, No. 08CN-CV00944 (Jan. 26, 2015).....	20, 24, 25, 31
<i>In re Jacobson</i> , 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009).....	18
<i>In re Hwang</i> , 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008).....	18
<i>In Re Investors &amp; Lenders, Ltd.</i> 165 B.R. 389 (Bkrtey.D.N.J.1994).....	26
<i>In re Jacobson</i> , 402 B.R. 359, (Bankr. W.D. Wash. 2009).....	18
<i>In re Nosek</i> , 406 B.R. 434, 440 (D. Mass 2009).....	34
<i>Johnston v. Hudlett</i> , 32 So. 3d 700 (Fla 4d DCA 2010 .....	25, 28
<i>Kelley v. Upshaw</i> , 39 Cal. 2d 179, 246 P.2d 23 (1952).....	17
<i>Khan v. Bank of America</i> (Fla: Dist. Court of Appeals, 5th Dist. 2011) No. 5D10-3288.....	11, 20
<i>Kumar Corp. v Nopal Lines, Ltd, et al</i> , 462 So. 2d 1178, (Fla. 3d DCA 1985).....	24
<i>Little v. U.S. Fidelity&amp; Guaranty Co.</i> , 217 Miss. 576, 64 So. 2d 697.....	11, 20

<i>Mack</i> , 541 So.2d at 800.....	15
<i>Menominee River Co. v. Augustus Spies L &amp; C Co.</i> , 147 Wis. 559 at p. 572; 132 NW 1118 (1912).....	18
<i>Overby v. Overby</i> , 457 S.W.2d 851 (Tenn. 1970).....	22
<i>Patton v. Diemer</i> , 35 Ohio St. 3d 68; 518 N.E.2d 941; 1988).....	17
<i>Perry v. Fairbanks Capital Corp.</i> , 888 So.2d 725, 726 (Fla. 5th DCA 2004).....	25, 28
<i>Rook v. Rook</i> , 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987).....	22
<i>TRG-Brickell Point NE, Ltd v. Wajsblat</i> , 34 So.3d 53, 55 (Fla. 3d DCA 2010).....	15
<i>Von Kettler et.al. v. Johnson</i> , 57 Ill. 109 (1870) .....	27
<i>Wells Fargo Bank, v. Byrd</i> , 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (2008).13, 18, 24, 31	
<i>Wells Fargo, Litton Loan v. Farmer</i> , 867 N.Y.S.2d 21 (2008).....	31
<i>Wells Fargo v. Reyes</i> , 867 N.Y. S.2d 21 (2008).....	18, 25, 32
<i>Wright v. Emory</i> , 41 So. 3d 290, 292 (Fla. 4th DCA	

2010) Attorney's unsworn statements.....19

*Wright v. Mid-Penn Consumer Discount Co.*, 133  
B.R. 704 (Pa. 1991).....17

**CONSTITUTIONAL, FEDERAL STATUTES,  
AND RULES**

U.S. Const., Art., 1. §10.....2, 33

**CODE**

11 USC §727(a)(2).....12

11 USC §727(a)(4).....12

11 USC § 548( e)(1 )(D) - illegal transfer of property  
up to 10 years before filing for BK.....12

11 USC §548( e )(2)(B) - illegal sale or purchase of  
securities in SEC 15d entity (REMICS).....13

11 USC §523(11).....13

11 USC §523(19)(A)(ii).....13

15 USC Chapter 41 § 1601-1667z .....3

15 U.S. Code § 1635(3).....5

28 U.S.C. §1253(1).....2

**REGULATIONS**

7 CFR 1951 §1951. 154 Satisfaction and release of  
documents.....2

34 CFR 674.19(4) (Fiscal procedures and  
records).....2

**FEDERAL RULES OF CIVIL PROCEDURE:  
CIVIL PROCEDURE**

Fed. R. Civ. P 12 (b)(1).....	27
Fed. R. Civ. P. 12(h)(3).....	16
Fed. R. Civ. P.17(a)(1).....	21
Rule 1002. Requirement of the Original.....	8, 12, 19, 28, 35, 36

**State**

**Alabama code sections:**

Ala. Code §7-3-302 .....	4
Ala. Code §7-3-305c).....	3, 29
Ala. Code §7-3-308(a) (a).....	3
Ala. Code §7-3-309(a) (A)(ii).....	4
Ala. Code §7-3-407(a)(i).....	4
Ala code 7-3-501(b)(2).....	2
Ala. Code §7-3-501(b)(2)(i) .....	3
Ala. Code §7-3-501(b)(2)(ii).....	3
Ala. Code §7-3-501(b)(2)(iii).....	3, 28
Ala. Code §8-9-1.....	4
Ala. Code §13A-9-12 (3) (3).....	5
Ala. Code §35-4-51.....	5
Ala. Code § 35-10-1, Ala. (1975).....	22

**Uniform Commercial Code**

U.C.C. - ARTICLE 3 - PART 5 § 3-501(b)(2) .....	21
U.C.C. § 3-305.....	21
<b>TORT</b>	
Restatement (Third) of Property: Mortgages § 5.4, Reporter's.....	14

Restatement (Third) of Property: Mortgages § 5.4,..	20
---	----

<b>ALABAMA UNIFORM SECURITIES ACT</b> Page 46 Paragraph 11(a).....	19
---	----

AMERICAN JURISPRUDENCE 2d under Interest  
and Usury §76.....9, 12

AMERICAN JURISPRUDENCE 2d Volume  
25 §19. Strength of own title.....9

**MAXIMS OF LAW:**

Rule 12(h)3 Lack of Subject-Matter Jurisdiction.....23

Rule 12 (b)(1) dismissal.....23

**RELATED CASES**

*Holms v. Wells Fargo Home Mortgage, Inc and  
Federal Home Loan Mortgage Corporation* (Freddie  
Mac). Case No. 08N-CV00944 Clinton  
County, Missouri Division II).....20, 24, 25, 31

Holms v. Wells Fargo Home Mortgage, Inc. et al,  
43rd Jud. Cir. Ct. Div II, No. 08CN-CV00944 (Jan.  
26, 2015).....24

Wells Fargo, Litton Loan v. Farmer, 867 N.Y.S.2d 21  
(2008).....39

Wells Fargo v. Reyes,  
867 N.Y.S.2d 21 (2008) .....,22, 29, 39

**PETITION FOR A WRIT OF CERTIORARI**

Petitioner, Haywood Jackson Mizell, petitions this court for a Writ of to review a dismissal of petition for rehearing by the United States Court of Appeals for the Eleventh Circuit (entered March 24, 2023) at App.1, dismissal of appeal (January 10, 2023) App. 2 and judgment affirming Middle District of Alabama's dismissal at App.7.

**OPINIONS BELOW**

The January 10, 2023 Order of dismissing appeal App. 2 and JUDGMENT App.7 of the United States Court of appeals for the Eleventh Circuit (WILSON, LUCK, and ANDERSON, Circuit Judges) is included in the Appendix. The final DISMISSAL OF THE PETITION FOR REHEARING of the United States Court of appeals for the Eleventh Circuit is reproduced in the Appendix A (App 1).

FINAL JUDGEMENT: ORDER, JUDGMENT, and DECREE of this court that this action is DISMISSED App.19; Further: Plaintiff is ENJOINED from filing new actions in any federal court related to In re Stage Door Development, Inc., No 07-11638 (M.D. Ala. Bankr., filed Nov.26, 2007) without obtaining the permission of a district judge of the court; DIRECTING the Clerk to enter this document on the civil docket as a final judgment pursuant to FRCP 58 App.8-18. Signed by Judge Keith Watkins on 3/3/2022 are included in Appendix D and E.

**STATEMENT OF JURISDICTION**

The Eleventh Circuit Court of Appeals entered its

judgment on April 03, 2023 (APPENDIX C) App.3. On March 24, 2023, the Court of Appeals denied the Petitioner's request for rehearing and rehearing en banc (Appendix A) App. 1. Jurisdiction of this court is invoked under 28 U.S.C. §1253(1). The USMD Bankruptcy Court in error used "a perfected security agreement", a "tail" instead of an authenticated promissory note, a "cow" as subject matter jurisdiction. The case saw an FM license regulated by the FCC transferred by fraud without subsequent action by the USCA11 who had exclusive subject matter jurisdiction over the FCC rules and regulations. This entire case concerns a "wrongful foreclosure." done outside established subject matter jurisdiction application.

#### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. Constitution, §§10.) No state or Federal law can **impair their obligation**, which is to surrender the notes, after authentication and no assignment filed, that all have been paid, each to be stamped "paid-in-full".

34 CFR 674.19(4) (Fiscal procedures and records)

Once paid in full the mortgage loan promissory note **instrument must be returned to the borrower stamped paid-in** full.

7 CFR §1951. 154 (Satisfaction and release of documents.)

Return of paid-in-full or satisfied notes to borrower).

Ala code 7-3-501(b)(2) PRESENTMENT,  
**Surrender the instrument if full payment is made.**  
15 USC Chapter 41 § 1601-1667z-TILA (Consumer protection through Truth in Lending Act) Also, see the unanimous ruling by the *United States Supreme Court Jesinoski v. Countrywide Home Loans*, 574 U.S. 13-684 (2015).

(See Ala. Code § 7-3-305c), Defenses and Claims in Recoupment.

An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

§ 7-3-501(b)(2)(i) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument

§7-3-501(b)(2)(ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so.

§7-3-501(b)(2)(iii) Surrender the instrument if full payment is made.

§7-3-308(a) (a) If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity,..

(b) ...If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a

holder in due course which are not subject to the defense or claim.

§7-3-407(a)(i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

§7-3-302 "holder in due course" means the holder of an instrument.

§7-3-309(a) (A)(ii) the loss of possession was not the result of a transfer by the person or a lawful seizure.

§8-9-1 Except as may be otherwise provided by Title 7 a mortgage of or security interest in personal property is not valid unless made in writing and subscribed by the mortgagor or debtor. (FCC signal licenses cannot be used as security for a private debt.)

This case is a simple subject that is lack of subject matter jurisdiction. At no time before any court does the Citizens Bank provide for authentication a genuine original promissory note with a corresponding mortgage instrument that granted a power of sale for the FM broadcast license.

Contrary to FCC rules and regulations, the Citizens Bank required the pledge of the FCC FM license which was incidental to the demands of a promissory note. Citizens Bank refusal to possess the debt instrument it claimed to have led to not allowing a 2007 buyer's sale funds for note satisfaction as

necessary for clear title. Citizens Bank was determined to select a buyer of their choice necessary for goal achievement without allowing the borrower to satisfy the debt through means of his own making.

§35-4-51 Except as may be otherwise provided by the Uniform Commercial Code, all deeds, mortgages, deeds of trust, bills of sale, contracts, or other documents purporting to convey any right, title, easement, or interest in any real estate or personal property and all assignments of mortgages, deeds of trust, or other securities for debt or extension agreements with respect thereto, when executed in accordance with law, shall be admitted to record in the office of the probate judge of any county.

§13A-9-12 (3) (3) Knowing he lacks the authority to retain a governmental record he refuses to deliver up the record in his possession upon proper request of a person lawfully entitled to receive such record for examination or other purposes.

#### **ALABAMA UNIFORM SECURITIES ACT**

Evidence of indebtedness secured by a mortgage must be sold as a unit. Page 46 Paragraph 11(a)

#### **FEDERAL RULES OF CIVIL PROCEDURE**

(Rule 1002. Requirement of the Original.)

An original writing, recording, or photograph is required in order to prove its content.

#### **Title 15, § 1635 (3)). Right of rescission as to certain transactions**

(3) Right of recoupment under State law.

Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

## **HISTORY AND PROCEDURAL BACKGROUND**

### **REASONS FOR GRANTING THE WRIT**

Reason for writ request: the U.S. Supreme Court, states "because of the public interest involved, equitable relief against a judgment obtained by fraud in a patent infringement suit will not be denied because the party seeking it has not exercised the highest degree of diligence in uncovering the fraud".

The U.S. Supreme Court is firm, "that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgments regardless of the term of their entry.

### **FACTS:**

In 2007 a promissory note and mortgage was signed for Josie Park broadcasting Inc. with citizens Bank with the funds used to construct a TV station license to Troy Alabama. The promissory note was for 2.9 million and the security agreement, the mortgage, included as security assets that were totally real estate and the equipment and tower for the operation of the TV.

Years later, a change in the security assets was requested by the Citizens Bank. The assets to be placed were the license for the TV which was licensed to Josie Park broadcasting Inc. and the license of the FM which was licensed to state door development Inc. wholly owned by the petitioner.

No broadcast license can be used as security for a promissory note. The equipment necessary to produce a signal can become a pledged asset. Since the foundation of the Federal Communications

Commission, which regulates broadcast signals, FCC has never allowed the license to be placed as security.

Citizens Bank, nonetheless, required the pledge of the license even after it was informed that the pledge of the broadcast license was not lawful.

Bank regulations required that the refinance of the 2007 note would satisfy the 2007 note and mortgage and the refinanced note would be stamped paid in full and returned to the signers. However, no promissory note was ever signed that was secured by the new list of pledged assets, which included the FM license as security. Courts gave merit to that which does not exist.

There has never been a promissory note that included the license of the FM as a pledged security. The “perfected security agreement”, as demanded and established is incidental and is worthless having no promissory note to secure.

When asked to present the promissory note, citizens Bank instead filed in state court a request for a temporary injunction prohibiting the sale of the FM and the TV license. Such act prompted the petitioner to file in federal bankruptcy court knowing that the court would require proof of claim, which had been withheld though claimed as possessed creating a “cloud” that made their value zero and both unmarketable.

The bankruptcy court transformed the bankruptcy petition from a Chapter 11 to a Chapter 7 and appointed a trustee which had previously been the attorney for Citizens Bank. The trustee, under sworn oath, stated that the non-existing promissory note was not needed. Although the trustee had never seen a promissory note, he believed that one must existed

and was around somewhere, although he had never seen one. He declared that there existed a "perfected security agreement," which was enough authority in his opinion to liquidate the FM in bankruptcy.

A consultant was hired to receive bids for the FM license and partially selected a preferred bidder who would have no trouble having the FM license transferred to the already holder of many licenses, which the bidder was licensed for many other wide-ranging broadcast signals.

In summary, the 2007 bankruptcy court acted without lawful and gained NO subject matter jurisdiction. When the issue was brought before the 11th Circuit Court of Appeals, which had exclusive jurisdiction over the FCC agency operations, USCA11 chose not to act on that jurisdiction ruling the FCC regulation be thus changed. Anyone now can secure a debt with a FCC License.

The Eleventh Circuit Dismissal ignored the Federal Rules of Civil Procedure Rule 1002, which requires an original written instrument in order to prove its content.

The Eleventh Circuit Dismissal Contradicts this courts holding in, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) (discovery) and summarily sanctioned the District Court's departure from accepted and usual course of judicial proceedings.

Where the nonmoving party has not had the opportunity to discover information that is essential to his opposition, summary judgment must be denied. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986).

By ignoring the requirements of the original for purposes outlined in FRCP 1002, all Federal Courts

prohibited discovery of the original instrument said to be in Citizen's possession.

Absent the instrument placed on file and authenticated, courts (bankruptcy courts require possession for proof of claim) gained no subject matter jurisdiction, instead were the constraints of an unproven and alleged contract that has not appeared and does not exist. Without the instrument of authority that can be verified, The FM seizure was plain theft.

Petitioner urges this Court to grant review based on "divergent decisions emerging from the lower courts." Are counsel's unsworn and unverified statements or, a "copy," competent evidence? Should a real ORIGINAL INSTRUMENT be the admissible standard, when, after examination, be declared

**AUTHENTICATED EVIDENCE?**

This Court's review is warranted based on petitioner's assertion that those courts apply different rationales reaching their uninformed decision departing from the Rules which govern judicial conduct. Attorneys should not be allowed to knowingly ignore court rules.

American Jurisprudence 2d Volume 25 §19.  
Strength of own title.

"A well-established principle which has acquired the force of a maxim is to the effect that a plaintiff in ejectment can recover only on the strength of his own title, and not on the weakness of his adversary's. The defendant is not required to show title in himself, and he may lawfully say to the plaintiff, "Until you show title, you have no right to disturb me.

Lower courts have ignored the best evidence rule. The trial court never required Citizens Bank to enter into evidence the commercial instrument as required by the Supreme Court Ruling in the Clearfield Doctrine,

*Clearfield Trust Co. [318 U.S 363-371].*

"an entity cannot compel performance upon its corporate statutes or corporation rules unless it, like any other corporation, is the "holder-in-course" of some contract or commercial agreement between it, and the one on whom its demands for performance are made, and is willing to produce said document, and to place the same into evidence before trying to enforce its demands, called statutes in this case."

The "holder-in-course" was never established. The courts permitted movement of parties without standing.

The federal courts of appeals have exclusive jurisdiction to review final FCC orders- even one resulting from a primary jurisdiction referral made by a federal bankruptcy court. Accordingly, an aggrieved party may seek review of the FCC's decision only in a UNITED STATES COURT OF APPEALS.

July 29,2010

This case is a simple subject that is lack of subject matter jurisdiction. At no time, before any court, did the Citizens Bank provide for, authentication a genuine original promissory note

with a corresponding mortgage instrument that granted a power of sale for the broadcast license.

Contrary to FCC rules and regulations, the Citizens Bank required the pledge of the FCC FM license which would have been incidental to the demands of the non-existent promissory note.

Had there been a single unit of two parts, a promissory note and a mortgage pledging as security and FM equipment, the demands of the alleged promissory note would have been met instantly upon its presentment by of the FM and TV along with studios in the amount of \$10 million, which the sale proceeds would have instantly satisfied all encumbrances.

When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. Little v. U.S. Fidelity & Guaranty Co., 217 Miss. 576, 64 So. 2d 697.

While Bank of America ALLEGED IN ITS UNVERIFIED COMPLAINT THAT IT WAS THE HOLDER OF THE NOTE AND MORTGAGE, the copy of the note attached to the amended complaint CONTRADICTS that allegation. WHEN EXHIBITS ARE ATTACHED TO A COMPLAINT, THE CONTENTS OF THE EXHIBITS CONTROL OVER THE ALLEGATIONS OF THE COMPLAINT. Khan v. Bank of America (Fla: Dist. Court of Appeals, 5th Dist. 2011)

What does not appear and what is not, is the same; it is not the defect of the law, but the WANT OF PROOF. (Maxim of Law)

**ALABAMA UNIFORM SECURITIES ACT**

Evidence of indebtedness secured by a mortgage must be sold as a unit. Page 46 Paragraph 11(a)

**FEDERAL RULES OF CIVIL PROCEDURE**

(Rule 1002. Requirement of the Original.)

An original writing, recording, or photograph is required in order to prove its content.

When no original evidence of debt is presented. American Jurisprudence 2d under Interest and Usury §76 Generally; act or omission of creditor. In the absence of an agreement to the contrary, when a debtor is ready and willing to pay an obligation, and intends to do so, but is prevented from doing so by the act or omission of the creditor, the accrual of interest on the obligation is suspended. Thus, the running of interest is suspended by the latches or unwarranted delay of a creditor in pressing his claim.

American Jurisprudence 2d under Interest and Usury §76 Generally; act or omission of creditor:

In the absence of an agreement to the contrary, when a debtor is ready and willing to pay an obligation, and intends to do so, but is prevented from doing so by the act or omission of the creditor, the accrual of interest on the obligation is suspended. Thus, the running of interest is suspended by the latches or unwarranted delay of a creditor in pressing his claim, but the un-exercised right of a decedent's creditor to institute probate proceedings for the appointment of administrator does not preclude the accrual of interest on the debt.

These sections are important for setting aside a bankruptcy due to fraud:

11 USC §727(a)(2)

11 USC §727(a)(4)

11 USC § 548(e)(1)(D) - illegal transfer of property up to 10 years before filing for BK

11 USC §548(e)(2)(B) - illegal sale or purchase of securities in SEC 15d entity (REMICS)

11 USC §523(11)

11 USC §523(19)(A)(ii)

### **MAXIMS OF LAW**

What does not appear and what is not is the same; it is not the defect of the law, but the want of proof.

The judge ought to decide according to the allegation and the proof.

A debtor may come demand the original wet-ink signature note as proof of claim. The claimant must provide the original note as proof the claim if it is demanded.

When the proofs of facts are present what need is there of words.

The burden of the proof lies upon him who affirms, not he who denies.

“A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of an action.” *Citizen Bank Bank, v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (2008). It went on to hold, “If plaintiff has offered no evidence that it owned the note and mortgage when the

complaint was filed, it would not be entitled to judgment as a matter of law."

No judgment by default shall be entered against the state or an officer or agency thereof or against a party in any case based upon a negotiable instrument, unless the original negotiable instrument is filed with the court and merged with the judgment, or where the damages claimed are unliquidated unless the claimant establishes the claimant's claim or right to relief by evidence satisfactory to the court. New Mexico Supreme Court Uniform Commercial Code.

#### **VALUE OF THE ORIGINAL PROMISSORY NOTE**

C. The owner of the property subject to foreclosure has a civil cause action against a person who has violated this section, and shall be entitled to recover from such person compensatory damages in the amount of three times the damages incurred by the owner as a result of the violation in addition to reasonable attorney fees and costs.

#### **"COW TAIL" RULING**

"Alabama law specifically contemplates that there can be a separation. See § 35-10-12 and *Harton v. Little*, 176 Ala. 267, 57 So. 851 (1911)]. The Restatement (Third) of Property: Mortgages takes the position that a note and mortgage can be separated but that '[t]he mortgage becomes useless in the hands of one who does not also hold the obligation because only the holder of the obligation

can foreclose.' Restatement (Third) of Property: Mortgages § 5.4, Reporter's Note—Introduction, cmt. a at 386. The Restatement explains: "The note is the cow and the mortgage the tail. The cow can survive without a tail, but the tail cannot survive without the cow." ' Id. at 387 (quoting *Best Fertilizers of Arizona, Inc. v. Burns*, 117 Ariz. 178, 179, 571 P.2d 675, 676 (Ct.App.), reversed on other grounds, 116 Ariz. 492, 570 P.2d 179 (1977))." Court of Civil Appeals of Alabama. Diane *GRAY v. FEDERAL NATIONAL MORTGAGE ASSOCIATION*. 2120087. Decided: January 10, 2014 "cow and tail".

1.510(c). "[I]t is apodictic that summary judgments may not be granted ... absent the existence" of admissible evidence in the record. *TRG-Brickell Point NE, Ltd v. Wajsblat*, 34 So.3d 53, 55 (Fla. 3d DCA 2010). Without evidence demonstrating appellee's status as holder and owner of the note and mortgage, genuine issues of material fact remain, and summary judgment was improper.

Accordingly, we reverse the entry of final summary judgment in favor of appellee and remand for further proceedings. We note that a summary judgment motion may be filed "at any time" under Rule 1.510(a), and "this opinion does not preclude a re-filing of such motion, if and when, the necessary legal documents are before the court." *Mack*, 541 So.2d at 800. (See FRCP Rule 4)

"Subject matter jurisdiction can never be waived and can be raised at any time, even after trial". *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, 494 F.Supp. 1161 (D.C. Pa., 1980).

Therefore, a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* "at the

earliest possible stage in the proceedings." Id. at 410. "It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkonen*, 511 U.S. at U.S. at 377. "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

#### **FCC MISLEAD, ACTED FROM COURT DECREE**

Judge Dwight Williams took the position that the bank and all the attorneys held, "The court has no control on whether or not Citizens Bank will produce or has not produced the "wet-ink" original of the Note you seek. That issue is for consideration by another case.

Request made of Judge Williams for "lawfully required Proof of Claim" were addressed by Judge *Myron H. Thompson* in CIVIL ACTION NO. 1:08cv786-MHT (WO). All claims against Judge Williams were dismissed, protected by judicial immunity writing "his conduct amounted to nothing more than normal, lawful, and relatively common action incident to bankruptcy proceedings." Mizell argues that Judge Williams "has volunteered to become a defendant in this case" because, in the course of the bankruptcy proceedings, he appointed a trustee to Manage Stage Door Development, Inc. a radio broadcaster owned by Mizell. Moreover, Mizell contends, there can be no judicial immunity when a judge acts "under color of law."

The trustee appointed, after the Chapter 11 case was judicially moved to a Chapter 7, was an attorney

who once served Citizen Bank as one of his clients. The record confirms that "Proof of Claim" form was required of all creditors, except Citizens Bank.

The Trustee accepted an unverified statement from an IRS agent and used it for IRS payment, without proof, despite the facts that more than adequate refund had never been refunded that was well in excess of the agent stated amount.

*Kelley v. Upshaw*, 39 Cal. 2d 179, 192, 246 P.2d 23 (1952). **Assigning only the deed without a transfer of the promissory note is completely ineffective.**

*Mills v. Duryee*, 11 U.S. (7 Cranch) 481 (1813) Merits of case settled by courts of one state must be recognized by the courts of other states Record pg 101

(The following court case was unpublished and hidden from the public) *Citizen Bank, Litton Loan v. Farmer*, 867 N.Y.S.2d 21 (2008). "Citizen Bank does not own the mortgage loan... Therefore, the... matter is dismissed with prejudice."

"Subject matter jurisdiction cannot be waived by parties, conferred by consent, or ignored by court". *Babcock & Wilson v. Parsons Corp.*, 430 F.2d 531 (1970).

*Patton v. Diemer*, 35 Ohio St. 3d 68; 518 N.E.2d 941; 1988). A judgment rendered by a court lacking subject matter jurisdiction is void ab initio. Consequently, the authority to vacate a void judgment is not derived from Ohio R. Civ. P. 60(B), but rather constitutes an inherent power possessed by Ohio courts. I see no evidence to the contrary that this would apply to ALL courts.

A violation such as not responding to the TILA rescission letter, no matter how technical, it has no

discretion with respect to liability. Holding that creditor failed to make material disclosures in connection with loan. Title 15 USCS §1605(c) *Wright v. Mid-Penn Consumer Discount Co.*, 133 B.R. 704 (Pa. 1991).

“Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading.” *U.S. v. Tweel*, 550 F.2d 297 (1977).

Federal Rule of Civil Procedure 17(a)(1) which requires that “[a]n action must be prosecuted in the name of the real party in interest.” See also, *In re Jacobson*, 402 B.R. 359, 365-66 (Bankr. W.D. Wash. 2009); *In re Hwang*, 396 B.R. 757, 766-67 (Bankr. C.D. Cal. 2008).

“If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise.” *Menominee River Co. v. Augustus Spies L & C Co.*, 147 Wis. 559 at p. 572; 132 NW 1118 (1912).

“A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of an action.” *Citizen Bank Bank, v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (2008). It went on to hold, ” If plaintiff has offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law.”

(The following court case was unpublished and hidden from the public) *Citizen Bank v. Reyes*, 867

N.Y.S.2d 21 (2008). Case dismissed with prejudice, fraud on the Court and Sanctions because Citizen Bank never owned the Mortgage.

Both cannot be valid. The original is true. The copy is false and cannot be used the same as the true instrument.

We cannot rely on the representations of counsel alone. *Wright v. Emory*, 41 So.3d 290, 292 (Fla. 4th DCA 2010) ("[An] attorney's unsworn, unverified statements do not establish competent evidence.").

#### **FEDERAL RULES OF CIVIL PROCEDURE**

(Rule 1002. Requirement of the Original.)

An original writing, recording, or photograph is required in order to prove its content.

Evidence of indebtedness secured by a mortgage must be sold as a unit. ALABAMA UNIFORM SECURITIES ACT pg 46 Paragraph 11(a) *Carpenter v. Longan*, 83 U.S. 271, 274, 21 L. Ed. 313 (1872). However, for there to be a valid assignment, there must be more than just assignment of the deed alone; the note must also be assigned. "[t]he note and mortgage are inseparable; the former as essential, the latter as an incident"; adding that "[a]n assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity".

Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977),

#### **FEDERAL RULES OF CIVIL PROCEDURE**

(Rule 1002. Requirement of the Original.)

An original writing, recording, or photograph is required in order to prove its content.

Evidence of indebtedness secured by a mortgage must be sold as a unit. ALABAMA UNIFORM SECURITIES ACT pg 46 Paragraph 11(a)

While Bank of America ALLEGED IN ITS UNVERIFIED COMPLAINT THAT IT WAS THE HOLDER OF THE NOTE AND MORTGAGE, the copy of the note attached to the amended complaint CONTRADICTS that allegation. WHEN EXHIBITS ARE ATTACHED TO A COMPLAINT, THE CONTENTS OF THE EXHIBITS CONTROL OVER THE ALLEGATIONS OF THE COMPLAINT. *Khan v. Bank of America* (Fla: Dist. Court of Appeals, 5th Dist. 2011)

When a judicial officer acts entirely without jurisdiction or without compliance with jurisdiction requisites he may be held civilly liable for abuse of process even though his act involved a decision made in good faith, that he had jurisdiction. *Little v. U.S. Fidelity& Guaranty Co.*, 217 Miss. 576, 64 So. 2d 697.

“No title is conveyed through the sale when a party who lacks a right to enforce the note proceeds with foreclosure sale.” *Williams*, supra. Cited in *Holms v. Citizen Bank Home Mortgage, Inc. et al*, 43rd Jud. Cir. Ct. Div II, No. 08CN-CV00944 (Jan. 26, 2015).

“Alabama law specifically contemplates that there can be a separation. See § 35-10-12 and *Harton v. Little*, 176 Ala. 267, 57 So. 851 (1911)]. The Restatement (Third) of Property: Mortgages takes the position that a note and mortgage can be separated but that ‘[t]he mortgage becomes useless in

the hands of one who does not also hold the obligation because only the holder of the obligation can foreclose.' Restatement (Third) of Property: Mortgages § 5.4, Reporter's Note—Introduction, cmt. a at 386. The Restatement explains: "The note is the cow and the mortgage the tail. The cow can survive without a tail, but the tail cannot survive without the cow." ' Id. at 387 (quoting *Best Fertilizers of Arizona, Inc. v. Burns*, 117 Ariz. 178, 179, 571 P.2d 675, 676 (Ct.App.), reversed on other grounds, 116 Ariz. 492, 570 P.2d 179 (1977))." Court of Civil Appeals of Alabama. *Diane GRAY v. FEDERAL NATIONAL MORTGAGE ASSOCIATION*. 2120087. Decided: January 10, 2014 "cow and tail" Record pg 260 Record pg 394.

1-055 "No judgment by default shall be entered against the state or an officer or agency thereof or against a party in any case based upon a negotiable instrument, unless the original negotiable instrument is filed with the court and merged with the judgment, or where the damages claimed are unliquidated unless the claimant establishes the claimant's claim or right to relief by evidence satisfactory

**U.C.C. - ARTICLE 3 - NEGOTIABLE INSTRUMENTS: PART 5. DISHONOR**  
**§ 3-501(b)(2) .PRESENTMENT.**

*Surrender the instrument if full payment is made.*

**§ 3-305. Defenses and Claims in Recoupment.**

**3-305c** An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due

course and the obligor proves that the instrument is a lost or stolen instrument.

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S.* 505 F 2d 1026

A judgment obtained without jurisdiction over the defendant is void. *Overby v. Overby*, 457 S.W.2d 851 (Tenn. 1970).

"A void judgment is one that has been procured by extrinsic or collateral fraud or entered by a court that did not have jurisdiction over the subject matter or the parties." *Rook v. Rook*, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987)

#### Maxim of Law

"A well-established principle which has acquired the force of a maxim is to the effect that a plaintiff in ejectment can recover only on the strength of his own title, and not on the weakness of his adversary's. The defendant is not required to show title in himself, and he may lawfully say to the plaintiff, "Until you show title, you have no right to disturb me."

#### Maxim of Law from Bouvier's Dictionary

WHEN THE PROOFS OF FACTS ARE PRESENT, WHAT NEED IS THERE OF WORDS.

§ 35-10-1, Ala. Code 1975, provides:

“Where a power to sell lands is given to the grantee in any mortgage, or other conveyance intended to secure the payment of money, the power is part of the security, and may be executed by any person, or the personal representative of any person, who, by assignment or otherwise, becomes entitled to the money thus secured; and a conveyance of the lands sold under such power of sale to the purchaser at the sale, executed by the mortgagee, any assignee or other person entitled to the money thus secured, his agent or attorney, or the auctioneer making the sale, vests the legal title thereto in such purchaser.” (Emphasis added.)

#### **MAXIMS OF LAW:**

It is against equity to deprive freemen of the free disposal of their own property.

**Rule 12(h)3 Lack of Subject-Matter Jurisdiction.**  
If the court determines at any time that it lacks subject-matter jurisdiction, the court **MUST** dismiss the action.

Rule 12 (b)(1) lack of subject-matter jurisdiction.  
Standing requires that the party prosecuting the action have a sufficient stake in the outcome and that the party bringing the claim be recognized in the law as being a real party in interest ENTITLED to bring the claim. This entitlement to prosecute a claim in Alabama courts rests exclusively in those persons granted by substantive law, the power to enforce the claim. [t]he mortgage becomes

useless in the hands of one who does not also hold the obligation because ONLY THE HOLDER OF THE OBLIGATION CAN FORECLOSE.' Court of Civil Appeals of Alabama. *Diane GRAY v. FEDERAL NATIONAL MORTGAGE ASSOCIATION.* 2120087. Decided: January 10, 2014.

Both foreclosures without the original were wrongful. Wrongful foreclosure damages are secured by a mandatory Mortgage Banker Bond. Incidentally, Citizens Bank did not comply with the Uniform Bonding Code that has been adopted by all states. Failure to do so makes both corporation's individual liability unlimited.

An original filing makes for legitimacy. A Mortgage filing is false when an original promissory note does not appear.

What does not appear and what is not, is the same; it is not the defect of the law, but the WANT OF PROOF. (Maxim of Law)

**NOTE: ONE CANNOT ACQUIRE PROPERTY,  
ONLY TITLE TO THE PROPERTY CAN BE  
ACQUIRED.**

*"No title is conveyed through the sale when a party who lacks a right to enforce the note proceeds with foreclosure sale."* Williams, supra. Cited in *Holms v. Citizen Bank Home Mortgage, Inc. et al*, 43rd Jud. Cir. Ct. Div II, No. 08CN-CV00944 (Jan. 26, 2015).

**WHY NOT PRESENT THE ORIGINAL?**

“A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of an action.” *Citizen Bank Bank, v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (2008). It went on to hold, “If plaintiff has offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law.” Also, *Kumar Corp. v Nopal Lines, Ltd, et al*, 462 So. 2d 1178, (Fla. 3d DCA 1985).

*Citizen Bank v. Reyes*, 867 N.Y.S.2d 21 (2008). Dismissed with prejudice, Fraud on Court & Sanctions. Citizen Bank never owned the Mortgage.

**No debt instrument has been surrendered for authentication, which can be replaced by a court judgment.**

Moreover, in the case of original mortgages and promissory notes, they are not merely exhibits but instruments which must be surrendered prior to the issuance of a judgment. The judgment takes the place of the promissory note. Surrendering the note is essential so that it cannot thereafter be negotiated. See *Perry v. Fairbanks Capital Corp.*, 888 So.2d 725, 726 (Fla. 5th DCA 2004). THE JUDGMENT CANCELS THE NOTE. THE CLERK CANNOT RETURN THESE INSTRUMENTS TO THE PARTIES. *Johnston v. Hudlett*, 32 So. 3d 700 (Fla 4d DCA 2010)

NOTE: ONE CANNOT ACQUIRE PROPERTY, ONLY TITLE TO THE PROPERTY CAN BE ACQUIRED. Title is separate from a wrongful foreclosure.

"No title is conveyed through the sale when a party who lacks a right to enforce the note proceeds with foreclosure sale." *Williams*, supra. Cited in *Holms v. Citizen Bank Home Mortgage, Inc. et al*, 43rd Jud. Cir. Ct. Div II, No. 08CN-CV00944 (Jan. 26, 2015).

Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by **actual possession of the security**. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977), "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is **actual possession by the secured party, his agent or bailee**." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession ..."

The Court in *Yates Vs. Village of Hoffman Estates*, Illinois, 209 F. Supp. 757 (N.D. Ill. 1962) held that, "Not every action by any judge is in exercise of his judicial function. It is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the Courthouse. When a judge acts as a Trespasser of the Law, when a judge does not follow the law, the judge loses subject matter jurisdiction and the judge's orders are void, of

no legal force or effect." The United States Supreme Court has stated that "No State legislator, or executive, or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper Vs. Aaron*. 358 U.S. 178 S.Ct. 1401 (1958)

If a judge does not fully comply with the Constitution, then his orders are void. *In re Sawyer*, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of **TREASON!** It is also Contempt of Constitution,

Should the judge not have subject-matter jurisdiction, then the law states that the judge has not only violated the law but is also a **trespasser of the law**. -- *Von Kettler et.al. v. Johnson* , 57 Ill. 109 (1870)

"If the magistrate has not such jurisdiction, then he and those who advise and act with him, or execute his process, are **trespassers**." -- *Elliott v. Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)

"Without authority, its judgments and orders are regarded as nullities. They are not voidable, but **simply void**; and **form no bar to a recovery sought**, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as **trespassers**.

### IMPORTANCE OF THE CASE

This is an important case asking for a ruling to settle conflicting lower court decisions as to what is admissible in a seizure or mortgage case, an available withheld signed real original instrument or, instead, a filed computer-generated copy submitted

with a counsel's unsworn and unverified statement that in turn the court accepts as declared to be admissible as competent evidence, based on unsworn and unverified and unauthorized statements made in open court by a barred attorney representative.

Citizens Bank both possesses and retains the original instrument. Citizens Bank refuses to surrender the paid-in-full instrument or to file it into the court case for authentication by the clerk so that standing and subject matter jurisdiction can be established. Citizens Bank insists on retaining the original instrument at whatever the cost and regardless of challenges to the courts.

Ala. Code §7-3-501(b)(2)(iii) **Surrender the instrument if full payment is made.**

*Johnston v. Hudlett*, 32 So. 3d 700 (Fla. 4d DCA 2010) Moreover, in the case of original mortgages and promissory notes, they are not merely exhibits but instruments which must be surrendered prior to the issuance of a judgment. The judgment takes the place of the promissory note. Surrendering the note is essential so that it cannot thereafter be negotiated. See *Perry v. Fairbanks Capital Corp.*, 888 So.2d 725, 726 (Fla. 5th DCA 2004). The judgment cancels the note. The clerk cannot return these instruments to the parties.

Citizens Bank has been erroneously declared to have gained, for the courts, subject-matter jurisdiction having filed a "computer-generated copy" said not to be counterfeit and not to be subjected to examination for authentication.

A computer-generated copy is outside the range of tolerance that has been established by the Federal Rules of Civil Procedure Rule 1002 and "best evidence state rules" that governs a dedication to truth.

In addition, in dozens of written requests **Citizens bank has offered no evidence that it was the creditor or the holder-in-due course with the right to seize an FM or TV or be entitled to any proceeds from a subsequent absent of "power of sale" authority.**

**CITIZENSD BANK** refuses to surrender the original instrument. Multiple recoupment request, with notice per state law was made by Mizell to Citizens Bank for the paid-in-full sold original instrument and was, after 21-day silence, promised a future surrender by Citizens Bank .

The **OPERATION OF LAW** had no meaning to Citizens Bank . The instrument **remains retained** by Citizens or by the entity to which the original was sold having no FM as security. Citizens Bank did not allow a sale that would have satisfied the note. Citizens Bank cannot be enabled to evade its contractual obligation using delay tactics.

Citizens Bank's status is not the holder in due course and it cannot be established without possession of the original instrument. Only the holder-in-due-course can seize only assets pledged as security not broadcast licenses regulated by the FCC.

(See Ala. Code § 7-3-305. Defenses and Claims in Recoupment. §7-3-305c An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder

in due course and the obligor proves that the instrument is a lost or stolen instrument.

Citizens Bank and Haywood Jackson Mizell are entangled in a conflict of intentions.

Mizell maintains, as a competing bank director, that all obligations must be met. Mizell sensed the need for pre-payment of the Josie Park Broadcasting, Inc. debt. Mizell could do so by the sale of three assets to a single distant entity in an amount beyond that needed to satisfy all encumbrances.

Citizens Bank sought a promissory note it could sell, altering the note as needed to reflect the conditional demands of its buyer.

Josie Park TV's ability to repay debt was considered by the bank as deficient. The sale of the TV alone as the record proves an amount sufficient for complete debt satisfaction. Citizens note purchaser needed the FM and the TV but at a discount. Citizens seized the FM first at one third value and afterwards refused to complete the TV sale to one other than its buyer. Had the contents of the 2000 note and mortgage without the FM as part of the note's security appeared, the court proceedings that enabled the fraud would never have happened.

Feeling deceived, Mizell, nonetheless, continues to act on the belief that justice will eventually prevail. Mizell's effort toward that end is never ending. Citizens Bank was limited in funds in the amount of the note obligation. Where has the excess fund amount gone? Mizell confirms their whereabouts as undisclosed.

Mizell's intention was to satisfy the obligation with funds from the sale of three assets. Citizens

never intended to meet its obligation. The policy that was to be practiced was to not disperse any original instrument. Claim it abandoned and rightfully theirs.

As a competing bank director, Mizell expected to enjoy the benefit of established legal practice in having the paid-in-full instrument surrendered to him stamped paid-in-full after the FCC transfer of the TV as published was completed. Citizens determined to deny the TV sale and to retain the note, the original note that had been sold years before the bankruptcy proceedings.

Citizens Bank has a track record that reflect its written policy that Citizens does not disburse original documents that relinquishes ownership to the obligor if full payment is made. Citizens will accept payment but will not surrender the note that it has already transferred yet pretends to possess as "alleged" servicer. Challenges in court is met with hearsay evidence of a "power of sale" consent after default based on a copy and not the authenticated original. When Citizens is in default, the obligor is said to be in default and Citizens proceeds with an unlawful enforcement. Below are some cases that expose similar Citizens Bank's policy.

(See *Holms v. Wells Fargo Home Mortgage, Inc and Federal Home Loan Mortgage Corporation (Freddie Mac)*. Case No. 08N-CV00944 Clinton County, Missouri Division II).

"No title is conveyed through the sale when a party who lacks a right to enforce the note proceeds with foreclosure sale." *Williams*, supra. Cited in *Holms v. Wells Fargo Home*

*Mortgage, Inc. et al*, 43rd Jud. Cir. Ct. Div II, No. 08CN-CV00944 (Jan. 26, 2015).

“A party lacks standing to invoke the jurisdiction of a court unless he has, in an individual or a representative capacity, some real interest in the subject matter of an action.” *Wells Fargo Bank, v. Byrd*, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722 (2008). It went on to hold, “If plaintiff has offered no evidence that it owned the note and mortgage when the complaint was filed, it would not be entitled to judgment as a matter of law.”

(The following court case was unpublished and hidden from the public) *Wells Fargo, Litton Loan v. Farmer*, 867 N.Y.S.2d 21 (2008). “Citizen Bank does not own the mortgage loan... Therefore, the... matter is dismissed with prejudice.”

(The following court case was unpublished and hidden from the public) *Wells Fargo v. Reyes*, 867 N.Y.S.2d 21 (2008). Dismissed with prejudice, Fraud on Court & Sanctions. Wells Fargo never owned the Mortgage.

**Citizen Bank challenges even Maxims of Law.**

A deed or a bond found with the debtor is presumed to be paid.

Despite numerous promises, no purchased instrument has been surrendered to Mizell, even those instruments that had been satisfied by renewal.

Citizen Bank Bank, N.A. intentions were to seize the deposited funds, but NOT to surrender the instrument when full payment was made and forever keep the instrument that Citizen Bank now declares as abandoned by Mizell. The retained paid original promissory note has been accounted as claimed from

abandonment by Citizen Bank and accounted as a non-performing asset on Well Fargo's investment banking side.

The FBI has labeled such asset accounting as "accounting control fraud".

Citizen Bank gave no notice to Mizell of its hidden intentions to seize the deposited funds and to retain the instrument and to register his signed asset as theirs. It has been accounted an asset by Citizen Bank in the amount of the signed obligation to pay.

Citizen Bank's keeping of the note prevented Mizell from voluntarily transferring the deposited funds. Mizell expected to offer the timber-generated and deposited funds in an exchange for Citizen Bank Bank's surrender of Mizell's signed instruments that would be stamped paid-in-full after full payment had been made. **Citizen Bank has consistently refused and today will not meet its contract obligation.**

Today, twenty plus years later, Citizen Bank wrongfully maintains possession of the paid-in-full debt instrument. Citizens Bank continue to demand that the courts impair its obligation contrary to the dictates of the constitution.

**U.S. Const., Art., 1. §10: No State shall ....  
pass any Law impairing the Obligation of  
Contracts,**

Mizell, as a competing local bank director, questioned the bank's seizure of his FM, He wanted to see proof of the bank's authority that was used to fulfill Citizens Bank's intentions rather than his intentions to satisfy all encumbrances. Citizens Bank could not verify its claim showing possession of NO promissory note that the FM secured. The bank refused to make available the promissory note for

satisfaction thereby sabotaging the sale of two assets. Had Mizell known of Citizens Bank's lack of authority, he would have accepted the offer to buy the FM made in writing in 2004 for \$3 million that would have left all questions mute. He chose to sale the FM as part of three asset sale that was sabotaged by Citizens Bank.

CITIZEN BANK could provide no evidence of debt. Refused was the intended legal and final payment in full offered voluntarily by Mizell that was made in an exchange for the satisfied obligation instrument that Citizens Bank could not show possession.

Citizen Bank seized the FM to offset the debt but refused to surrender the already paid in full note and claimed the negotiable instrument as abandoned and therefore their accounted asset. Citizen Bank has since offered an un-authenticated computer-generated counterfeit as substitute satisfaction of its obligation to Mizell.

Citizen Bank really wants all to believe that its attorneys can make such plunder legal.

The CITIZEN BANK attorneys convinced the courts, listed above, to accept the computer-generated document copy of a "perfected security agreement" as the substitute original promissory note, assuring the court that there was no need for authentication to determine whether or not it was a counterfeit.

The attorneys gave their word that the standing and subject matter jurisdiction questions raised were just Mizell's frivolous ravings that were simple waste of the court's time.

No application of funds has been made to the obligor's account either from the sale of the instrument to an unknown investor, or for the instrument value that has now been converted into an unsecured check. CITIZEN BANK even kept all the Mizell's otherwise unencumbered assets as theirs, even proceeds generated from the sale of the 2007 promissory secured only by real estate. No accounting for the sale of the FM and TV has been made available.

CITIZEN BANK has produced no evidence of debt. Having failed to do so, authentication reason requires that when any evidence is surrendered, an independent document laboratory evaluate the presentment for its validity.

*In re Nosek*, 406 B.R. 434, 440 (D. Mass 2009) bankruptcy trial court decision.

It is the creditor's responsibility to keep a borrower and the Court informed as to who owns the note and mortgage and is servicing the loan, not the borrower's or the Court's responsibility to ferret out the truth...It is worth repeating as a warning to lenders and servicers that the rules of this Court apply to them. Their private agreements and the frenzied trading market for mortgages do not excuse compliance with Bankruptcy Rules any more than they would justify ignoring the Bankruptcy Code.

The 2000 promissory note and mortgage had been satisfied by a transfer to an unknown lender, and again from insurance proceeds, and yet again from seizure of the FM auction sale funds. The bank has retained the instrument even after it having

been paid in full at least three times. Plus, the note is now being used as an "asset" on the Bank's investment side.

Again, the instrument has not been surrendered, but instead retained as a non-producing asset in what the FBI has labeled, "accounting control fraud".

An FBI Forensic Accountant said he knew the practice to be illegal, but the conviction of a person who worked for the corporation "too big to fail" was might near impossible. "For the past couple of decades, that is just the way it's done".

Δ

---

#### REASONS FOR GRANTING THE WRIT

The Eleventh Circuit Dismissal ignored the Federal Rules of Civil Procedure Rule 1002, which requires an original written instrument in order to prove its content, NO proof of claim.

The Eleventh Circuit Dismissal Contradicts this courts holding in, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) (discovery) and summarily sanctioned the District Court's departure from accepted and usual course of judicial proceedings.

Where the nonmoving party (Mizell) has not had the opportunity to discover information that is essential to his opposition, summary judgment must be denied. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986).

By ignoring the requirements of the original for purposes outlined in FRCP 1002, both State and Federal Courts prohibited discovery of the original instrument said to be in Citizen Bank's possession.

Absent the instrument placed on file and authenticated, courts gained no subject matter jurisdiction,

instead were the constraints of an unproven and alleged contract that has not appeared and does not exist. Without the instrument of "power of sale" authority that can be verified, Citizen Bank FM seizure was plain theft.

There is conflict among the state Courts and the Courts of appeals on the question presented by Petitioner. Petitioner urges this Court to grant review based on "divergent decisions emerging from the lower courts." Are counsel's unsworn and unverified statements or a "copy" competent evidence? Should an ORIGINAL INSTRUMENT be the admissible standard, when, after examination, be declared AUTHENTICATED EVIDENCE?

This Court's review is warranted based on petitioner's assertion that those courts apply different rationales reaching their uniformed decision departing from the Rules which govern judicial conduct. Attorneys should not be allowed to knowingly ignore court rules.

---

Δ

---

### CONCLUSION

For the foregoing reasons, petitioner Haywood Jackson Mizell respectfully request that this Court grant his Petition for Writ of Certiorari.

Respectfully submitted,

DATED: April 28, 2023

---

s/  
HAYWOOD JACKSON MIZELL,  
Pro se Counsel of Record

767 Bush Creek Road  
Opelika, AL 36804  
(334) 498-4187  
[jackmizell@gmail.com](mailto:jackmizell@gmail.com)