

No. ~~23-~~ 22A973

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**IN THE SUPREME COURT OF THE UNITED STATES**

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Levar-Curtis: Johnson

*Applicant,*

v.

BANK OF NEW YORK MELLON

*Respondents,*

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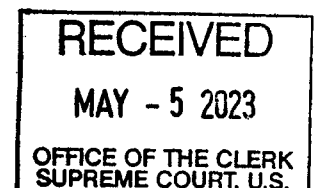
From THIRD DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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**EMERGENCY RULE 23 APPLICATION FOR STAY  
OF ENFORCEMENT OF MONEY JUDGMENT**

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Levar-Curtis: Johnson  
In Propria Persona / Sui Juris  
[vartohtm@gmail.com](mailto:vartohtm@gmail.com)  
c/o 1176 Northwest Forty-ninth Street  
Miami, Florida near [33127]  
(561)571-2949



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**To: Justice Clarence Thomas Associate Justice and Justice for the Eleventh Circuit**

Applicant and non-prevailing party below, Levar-Curtis: Johnson, asks that enforcement of the underlying judgment be stayed pending the disposition of this case in this court, subject to Johnson's posting of security.

The question presented is this: If a party has an assignment of mortgage without an endorsement of the note is it not a nullity, misrepresentation, and fraud to allege and file documents as a holder of the note endorsed in blank?

**A. Johnson has satisfied the procedural prerequisites of Supreme Court Rule 23.**

A foreclosure sale of the subject real property is set for May 8, 2023.

Johnson requests stay relief in this court after being denied such relief and due process of law in the 11<sup>th</sup> Judicial Circuit Civil Court in and for Miami-Dade County. The 11<sup>th</sup> Judicial Circuit Civil Court in and for Miami-Dade County entered a money judgment of \$331,824.39 for Respondents ("BANK OF NEW YORK MELLON") on October 12, 2022. The judgment permitted BANK OF NEW YORK MELLON to foreclose on the real property whose standing is being contested.

Johnson filed a Notice of Appeal and Emergency Motion to Stay Proceedings in regard to the lower courts Final Judgment of Mortgage Foreclosure with Florida Supreme Court on April 29,2023. On Monday May 1<sup>st</sup>. 2023 the Florida Supreme Court Clerk John A. Tomasino dismissed the case, due to the fact that the Court lacked jurisdiction to review an unelaborated decision from a Florida District Court of Appeal. On Tuesday May 2<sup>nd</sup>, 2023, the Florida Supreme Court Clerk John A. Tomasino Denied Johnson's Emergency Motion to Stay of Enforcement of Money Judgment as moot. Florida Supreme Court the court of last resort in this state is without jurisdiction and the relief sought is not available from any other court. Pursuant to Article III Section 2 of the Constitution for united states of America this court has appellate jurisdiction and is the only court that can grant relief sought. Johnson has posted security of \$420,000.00 via negotiable instrument to Miami-Dade County Government Chief Financial Officer: Edward Marquez on March 27, 2023, received on March 29, 2023, at 12:47 pm Certified Mail Tracking Number 7022 0410 0000 7270 2752. See Federal Rule of Civil Procedure 62(b); 28 U.S.C. § 2101(f).

**B. A stay of enforcement is warranted.**

The 2018 amendments to the Federal Rules of Civil Procedure (Rule 62) and Federal Rules of Appellate Procedure (Rule 8) stipulate that “stays pending appeal should be the norm in mortgage foreclosure appeals.” *Deutsche Bank Nat’l Tr. Co. as Tr. For GSAA Home Equity Tr. 2006-18 v. Cornish*, 759 F. App’x 503, 504(7<sup>th</sup> Cir, 2019). Due to the fact that (1) the lender has the real property as the security it bargained for and (2) residential borrower’s suffer irreparable damage during the appeal. *Id.* The lender’s risk is harm to the collateral or dissipation of the borrower’s assets, *id.*, but both can be addressed with an order requiring the borrower to care for the home and pay taxes and insurance, *id.* At 509-510.

In this case, Johnson intends to preserve the house’s condition, and as is usual in these kinds of cases, the Servicer has been paying the property taxes and insurance. Johnson has sent a tender of payment in the amount of \$420,000.00 via negotiable instrument and will defray future property taxes and insurance.

Even under the traditional standards, however, a stay of enforcement is warranted. See *id.* At 510-511 (dissent notes former standards).

It is **highly feasible that Johnson will succeed on the merits.** The United States Supreme Court decision in *Carpenter v. Longan*, 83 U.S. 271, 274 (1872) “The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.” Pursuant to the United States Supreme Court decisions Florida First District Court of Appeal in *Sobel v. Mutual Development, Inc.*, 313 So. 2d 77 (Fla. App. 1st Dist. 1975) “A mortgage is a mere incident of, and ancillary to, the note or other obligation secured thereby, and an assignment of the pledge of the mortgage without an assignment of the pledge of the note or obligation secured thereby creates no right in the assignee or pledgee” and ten (10) years prior a decision with the same result in *Vance v. Fields*, 172 So. 2d 613, 614 (Fla. 1st DCA 1965) “An assignment of the mortgage without an assignment of the debt creates no right in the assignee.” Why would Florida Third District Court of Appeal decision be to the contrary?

Because real property is an inheritance and unique, foreclosure may cause **irreparable harm** to the owner. See *Sundance Land Corp. v. Community First Fed. Sav. & Loan Ass'n*, 840 F.2d 653, 661–62 (9th Cir.1988). Johnson inherited the property from his deceased father stemming from a three (3) year Probate proceeding. Given Johnson’s financial condition, the burden of foreclosure proceedings, and untimely death of his mother’s funeral expenses loss of the home would be grievous and irreparable.

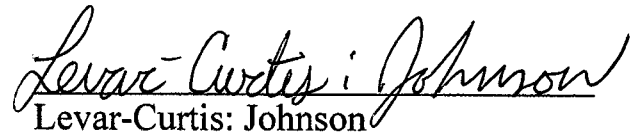
The Bank will **not be injured**. Its collateral will still be there. Taxes and insurance are current. Johnson has sent a tender of payment to the Miami-Dade County Government Chief Financial Officer: Edward Marquez via negotiable instrument in a sum ample amount of \$420,000.00 to settle judgment.

The public interest is served by preventing a sale which may result in later, additional litigation to set the sale aside, possibly involving a purchaser other than the Bank, should Johnson prevail. *Tannenbaum v. Shea*, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014). “Generally, a judgment is void if:(1) the trial court lacks subject matter jurisdiction;(2) the trial court lacks personal jurisdiction over the party; or (3) if, in the proceedings leading up to the judgment, there is a violation of the due process guarantee of notice and an opportunity to be heard.”

## CONCLUSION

For the reasons above, Levar-Curtis: Johnson asks that the judgment be stayed conditioned on Johnson's tender of payment in the amount \$420,000.00 via negotiable instrument in security and preservation of the real property until proceedings in the U.S. Supreme Court are completed. Further, that this motion be accorded emergency consideration post haste given the time constraints and the pending notice of a May 8, 2023, Deputy Clerk sale.

Respectfully Submitted,



Levar-Curtis: Johnson

In Propria Persona / Sui Juris

[vartohtm@gmail.com](mailto:vartohtm@gmail.com)

c/o 1176 Northwest Forty-ninth Street

Miami, Florida near [33127]

(561)571-2949

Dated: May 2, 2023



## CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of this foregoing Emergency Application upon counsel listed below, by email and postage prepaid first-class U.S. mail, on May 2, 2023.

Orlando Deluca: [odeluca@delucalawgroup.com](mailto:odeluca@delucalawgroup.com)

Shawn Taylor: [staylor@delucalawgroup.com](mailto:staylor@delucalawgroup.com)

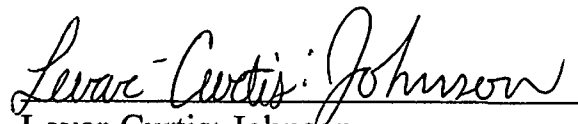
Brandi Wilson: [bwilson@delucalawgroup.com](mailto:bwilson@delucalawgroup.com)

Joseph Garard Paggi: [jpaggi@delucalawgroup.com](mailto:jpaggi@delucalawgroup.com)

David Adamian: [dadamian@delucalawgroup.com](mailto:dadamian@delucalawgroup.com)

Deluca Law Group: [eservice@delucalawgroup.com](mailto:eservice@delucalawgroup.com)

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Fort Lauderdale, Florida 33305



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# APPENDIX A

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2018-040275-CA-01

SECTION: CA32

JUDGE: Mark Blumstein

**Bank of New York Mellon (The)**

Plaintiff(s)

vs.

**LEVAR C JOHNSON et al**

Defendant(s)

**FINAL JUDGMENT OF MORTGAGE FORECLOSURE**

**THIS ACTION** was heard before the Court at the Final Hearing on September 12, 2022. On the evidence presented, **IT IS ORDERED AND ADJUDGED** that Plaintiff's Final Judgment is **GRANTED** against all Defendants listed by name: LEVAR C. JOHNSON A/K/A L VAR C. JOHN ON A/K/A LEVAR CURTIS JOHNSON; UNKNOWN SPOUSE OF LEVAR C. JOHNSON A/K/A L VAR C. JOHN ON A/K/A LEVAR CURTIS JOHNSON; ROY L. WEINFELD, P.A.; CITY OF MIAMI; STATE OF FLORIDA; MIAMI-DADE COUNTY CLERK OF COURT; STATE OF FLORIDA DEPARTMENT OF REVENUE; UNKNOWN TENANT # N/K/A GLORIA ORR

1. **Amounts Due and Owing.** THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS INC., ASSET-BACKED CERTIFICATES, SERIES 2006-BC5, is due:

Principal due on the note secured by the mortgage foreclosed:       \$       140,000.13

Interest on the note and mortgage from 01/01/2014 to                       \$       113,233.54  
9/12/2022

Pre-Accelerated Late Charges	\$	779.61
Escrow Balance at Loan Transfer	\$	51,125.06
Insurance	\$	4,398.58
Taxes	\$	1,468.79
Escrow Disbursements	\$	2,246.42
BPO/Appraisal Cost	\$	486.00
Title Cost	\$	295.00
Property Inspection	\$	540.00
Recording Cost	\$	13.00

Attorney Cost	\$	8,739.00
Court Cost	\$	493.80
Property Preservation	\$	1,029.00
FC Costs	\$	1,607.50
Additional Hearings	\$	1,000.00
Prior Servicer Cost	\$	4,033.96
Foreclosure Trustee	\$	335.00

**GRAND TOTAL \$ 331,824.39**

2. **Interest.** The grand total amount referenced in Paragraph 1 shall bear interest from this date forward at the prevailing legal rate of interest, 4.34% a year.

3. **Lien on Property.** Plaintiff, whose address c/o: Newrez LLC, F/K/A New Penn Financial, LLC D/B/A Shellpoint Mortgage Servicing, 75 Beattie Place, Suite 300, Greenville, SC 29601, holds a lien for the grand total sum superior to all claims or estates of the defendant(s), on the following described property in Miami Dade County, Florida:

**LOT 10, BLOCK 3, CRESTWOOD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, AT PAGE 7, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.**

A/K/A Property Address: **1176 NW 49<sup>TH</sup> STREET, MIAMI, FL 33127**

4. **Sale of property.** If the grand total amount with interest at the rate described in Paragraph 2 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Court shall sell the subject property at public sale on **November 28, 2022** at **9:00 A.M.** to the highest bidder for cash after having first given notice as required by Section 45.031, Florida Statutes. The subject property shall be sold by electronic sale at: [www.miamidade.realforeclose.com](http://www.miamidade.realforeclose.com).

5. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for documentary stamps affixed to the certificate of title. If plaintiff is the purchaser, the Clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

6. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the plaintiff's costs;

second, documentary stamps affixed to the Certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to the plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 2 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this Court.

7. **Right of Possession.** Upon filing of the Certificate of Sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under Chapter 718 or Chapter 720, Fla. Stat., if any. Upon filing of the Certificate of Title, the person named on the Certificate of Title shall be let into possession of the property, subject to the provisions of the Protecting Tenants at Foreclosure Act of 2009, which was extended until 12/31/14 by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

8. **Jurisdiction.** The Court specifically reserves jurisdiction to enter further orders the Court deems just and proper to include, without limitation, the following: orders related to pursuit and entry of deficiency judgment, if Defendant has not been discharged in bankruptcy, or it is not prohibited by federal law or mutual settlement agreement; orders to correct any scrivener's errors in the final judgment; orders granting Plaintiff additional attorney's fees and costs; writs of possession; orders determining the amount and responsibility for assessments that may be due a condominium or homeowner's association pursuant to sections 718.116 or 720.3085 of the Florida Statutes; orders arising out of re-foreclosure, to include permitting a supplemental complaint to add an interest-holder, omitted defendant, and/or; orders involving reformation of the mortgage instrument or deed to perfect title.

9. Plaintiff's Counsel, DeLuca Law Group, PLLC. is entitled to bid on behalf of Plaintiff and the Clerk shall allow DeLuca Law Group, PLLC. bidding rights at the foreclosure sale.

**IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.**

**IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.**

(If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type.)

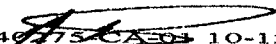
**IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI, FLORIDA (TELEPHONE: (305) 375-5943), WITHIN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.**

**IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID SOCIETY AT THE DADE COUNTY BAR ASSOCIATION, 123 N.W. FIRST AVENUE, SUITE 214, MIAMI, FLORIDA, (TELEPHONE: (305) 579-5733), TO SEE IF YOU QUALIFY FINANCIALLY**



**FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.**

**DONE and ORDERED** in Chambers at Miami-Dade County, Florida on this 12th day of October, 2022.

  
2018-040275-CA-01 10-12-2022 9:

2018-040275-CA-01 10-12-2022 9:44 AM

Hon. Mark Blumstein

**CIRCUIT COURT JUDGE**

Electronically Signed

Final Order as to All Parties SRS #: **3** (Non-Jury Trial)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

**Electronically Served:**

Brandi Wilson, bwilson@delucalawgroup.com  
Brandi Wilson, eservice@delucalawgroup.com  
Brandi Wilson, krobertson@delucalawgroup.com  
David Adamian, dadamian@delucalawgroup.com  
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Shawn L Taylor, staylor@delucalawgroup.com

Shawn L Taylor, service@delucalawgroup.com  
Shawn L Taylor, krobertson@delucalawgroup.com

**Physically Served:**

# APPENDIX B

# Supreme Court of Florida

MONDAY, MAY 1, 2023

Levar Curtis Johnson,  
Petitioner(s)

v.

The Bank of New York Mellon  
et al,

Respondent(s)

**SC2023-0594**

Lower Tribunal No(s).:

3D22-1894;

132018CA040275000001

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This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

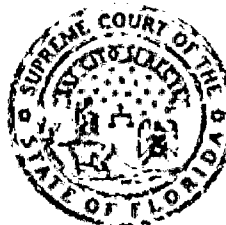
A True Copy

Test:

SC2023-0594 5/1/2023

John A. Tomasino

Clerk, Supreme Court



**CASE NO.: SC2023-0594**

Page Two

SC2023-0594 5/1/2023

TD

Served:

HON. MARK BLUMSTEIN  
ORLANDO DELUCA  
KIMBERLY LYN GEORGE  
LEVAR CURTIS JOHNSON  
HON. LUIS GONZALO MONTALDO  
JOSEPH G. PAGGI III  
HON. MERCEDES M. PRIETO  
BRANDI N. WILSON

# APPENDIX C

# Supreme Court of Florida

TUESDAY, MAY 2, 2023

Levar Curtis Johnson,  
Petitioner(s)

v.

The Bank of New York Mellon  
et al,

Respondent(s)

**SC2023-0594**

Lower Tribunal No(s):

3D22-1894;

132018CA040275000001

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Petitioner's Emergency Motion to Stay of Enforcement of Money Judgment Fla. R. App. P.9.310 filed in the above styled cause is hereby denied as moot.

A True Copy

Test:

SC2023-0594 5/2/2023

John A. Tomasino

Clerk, Supreme Court

SC2023-0594 5/2/2023



TD

Served:

HON. MARK BLUMSTEIN  
ORLANDO DELUCA  
KIMBERLY LYN GEORGE  
LEVAR CURTIS JOHNSON

**CASE NO.: SC2023-0594**

Page Two

HON. LUIS GONZALO MONTALDO

JOSEPH G. PAGGI III

HON. MERCEDES M. PRIETO

BRANDI N. WILSON



# APPENDIX D

# Third District Court of Appeal

State of Florida

Opinion filed March 15, 2023.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D22-1894  
Lower Tribunal No. 18-40275

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**Levar Curtis Johnson,**  
Appellant,

vs.

**The Bank of New York Mellon, etc., et al.,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Mark Blumstein, Judge.

Levar Curtis Johnson, in proper person.

DeLuca Law Group, PLLC, and Joseph G. Paggi III and Kimberly George (Fort Lauderdale), for appellee.

Before SCALES, GORDO and BOKOR, JJ.

PER CURIAM.

Affirmed.

# APPENDIX E

**AFFIDAVIT FOR REHEARING, REHEARING EN BANC  
AND,  
TO CERTIFY QUESTIONS OF GREAT PUBLIC  
IMPORTANCE**

March 20, 2023

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA, THIRD DISTRICT

CASE NO. 3D22-1894  
L.T. CASE NO. 2018-040275-CA-01

**LEVAR CURTIS JOHNSON**  
Appellant,

v.

**THE BANK OF NEW YORK MELLON,  
ETC., ET AL.,**  
Appellee,

i, Levar Curtis Johnson, an aggrieved man, appear before this court specially and not generally, hereinafter Affiant, and respectfully moves this court for rehearing, rehearing en banc, and for the certification of questions of great public importance. Rehearing is necessary because the Affiant /Appellant were never given an opportunity to brief the application of Article III, section 2 and Article VI Paragraph 2 of the united States of america Constitution, to this case and because the Court overlooked the fact that a certified copy of “Delegation of Authority Order” from the Supreme Court confirmed by Congress, pursuant to Article III Section 2 united States Constitution, expresses a clear constitutional law

that the trial court is, pursuant to Article VI of the united States of America Constitution, obligated to consider. Alternatively, Affiant seek rehearing en banc and the certification of a question of great public importance on these same issues.

## **I. THE COURT SHOULD GRANT REHEARING**

Under Rule 9.330 of the Florida Rules of Appellate Procedure, a party may, within fifteen days, move for rehearing on matters the “court has overlooked or misapprehended in its order or decision.” Fla. R. App. P. 9.330(2)(A). A motion for rehearing is not the place for either new arguments or the rehashing of things already briefed. See *Ratley v. Batchelor*, 599 So. 2d 1298, 1303-04 (Fla. 1st DCA 1991); *Unifirst Corp. v. City of Jacksonville*, 42 So. 3d 247, 248 (Fla. 1st DCA 2009).

### **A. The Court Has Overlooked that the Appellant Were Not Given the Opportunity to Address that Article III Section 2 of the united States of america Constitution is a Law—Not Facts..**

The Court has overlooked that Article III Section 2 of the united States of america Constitution was not an extrinsic fact, but is instead a binding federal law that the courts must have its jurisdiction confirmed by Congress. The extrinsic fact that a

certified copy of the “Delegation of Authority Order” was requested and Appellant was never provided proof of the lower court jurisdiction over the matter from the Plaintiff/ Pettitioner/Party for its actions and filings pursuant to Article III Section 2 of the united States of America Constitution. *“Congress has the power to create certain other federal tribunals under its constitutionally delegated powers found in Article I. One type of federal tribunal acts as an "adjunct" to the Article III federal courts, a term used by the Supreme Court to describe the role of certain administrative agencies and the magistrate courts.”- in In re Schwartz-Tallard, 2014 "The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to ...- in Mabry v. State Bd. of Comm. Coll. & Occ. Educ., 1987*

*“A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance.” Rescue Army v. Municipal Court of Los Angeles. 171 P2d 8: 331 US 549,91 L. ed. 1666, 67 S.Ct 1409. Pursuant to Article III Section 2 the court can’t decide its own jurisdiction which is why it must obtain a “Delegation of Authority Order”, or its judgments are void. People v. Wade, 506 N.W.2d 954 (Ill. 1987). “A void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction, or acted in a*

*manner inconsistent with due process of law” Eckel v. McNeal 628 N.E. 2d 741 (Ill. App. Dist. 1993).*

Because it appears the Court overlooked that the parties have a due process right to be heard on these issues, the Appellant respectfully request the Court rescind its prior order and reverse the lower court’s ruling and dismiss with prejudice.

**B. The Court Has Overlooked that the Appellant Were Not Given the Opportunity to Address that Article VI of the united States of america Constitution is a Law—Not Facts.**

The Court has overlooked that Article VI of the united States of america Constitution is not an extrinsic fact but is instead a binding law that is the supreme law of the land that executive and judicial officers, both of the United States and of the several states, is bound by oath or affirmation, to support this Constitution. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n. 14, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983) (“A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is preempted by a federal statute [over] which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve.”). “It is basic to this constitutional command that all

*conflicting state provisions be without effect." Maryland v. Louisiana, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981) (citing McCulloch v. Maryland, 17 U.S. 4 Wheat. 316, 427, 4 L.Ed. 579 (1819)). The pre-emption doctrine is derived from the Supremacy Clause. Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 108, 112 S.Ct. 2374, 120 L.Ed.2d 73 (1992). Supreme Court caselaw has recognized that state law is pre-empted under the Supremacy Clause in three circumstances. English v. Gen. Elec. Co., 496 U.S. 72, 78, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990). First, "Congress can define explicitly the extent to which its enactments pre-empt state law." *Id.* Second, "state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively." *Id.* at 79, 110 S.Ct. 2270. Third, state law is pre-empted "to the extent that it actually conflicts with federal law ... where it is impossible for a private party to comply with both state and federal requirements, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." The Supremacy Clause "invalidates state laws that 'interfere with, or are contrary to,' federal law." Hillsborough County, Fla. v. Automated Med. Labs., Inc., 471 U.S. 707, 712, 105 S.Ct. 2371, 2375, 85 L.Ed.2d 714 (1985)(quoting Gibbons v. Ogden, 9 Wheat., 1, 211, 6 L.Ed. 23 (1824)); U.S. Const., Art. VI, cl. 2. Federal laws may supersede state law either expressly or by inference. *Id.* at 713, 105 S.Ct. at 2371. All state law in a particular field is*



*preempted "where the scheme of the federal regulation is sufficiently comprehensive to make reasonable inference that Congress 'left no room' for supplementary state regulation." Id. (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947)) "The legislative **power** of the United States is vested in the **Congress**, and the exercise of quasi-legislative **authority** by governmental departments and agencies must be rooted in a grant of such **power** by the **Congress** and subject to ...*

*- in Mabry v. State Bd. of Comm. Coll. & Occ. Educ., 1987.*

Therefore, the Appellant respectfully request the Court to reconsider its affirmance and reverse the trial court's ruling and dismiss with prejudice.

## **II. ALTERNATIVELY, THE COURT SHOULD GRANT REHEARING EN BANC.**

Alternatively, the Court should grant rehearing en banc. This case is of "exceptional importance" because Amendment 6 involves a fundamental change in Florida Law that will affect numerous pending appeals. Fla. R. App. P. 9.331(d). En banc review is necessary to establish, that Article III Section 2 of the united States Constitution applies retroactively to all courts, and the appropriate remedy is to dismiss with prejudice instead of remanding the case to a lower court for reconsideration or

rehearing which lacks jurisdiction pursuant to Article III Section 2 of the united States of america Constitution. In addition to the executive and judicial officers of United States and of the several states being bound by oath or affirmation to support and uphold the united States of america Constitution as the supreme law of the land. The federal cases interpreting the "*exceptional importance*" basis for *en banc* consideration under Rule 35, Federal Rules of Appellate Procedure, suggest two general types of cases that the federal courts have found worthy of *en banc* review: (1) cases that may affect large numbers of persons, and (2) cases that interpret fundamental legal or constitutional rights. 24 Idaho L.Rev. 255, 265 (1987-1988). *In Interest of D.J.S*, 563 So. 2d 655, 657 n.2 (Fla. Dist. Ct. App. 1990). On consideration of the briefs, and constitutional rights violations Appellant moves this court to dismiss this case with prejudice.

### **III. ALTERNATIVELY, THE COURT SHOULD CERTIFY A QUESTION OF GREAT PUBLIC IMPORTANCE.**

1. Is it true that the trial court may have infringed upon Article III Section 2 of the Constitution for the united States of america.
2. Is it possible for the trial court to operate legally without a "Delegation of Authority Order" after jurisdiction has been challenged and not proven.

3. Is there a state statute that grants the trial court “statutory jurisdiction” that is not pre-empted by Article III Section 2 and confirmed by Article VI Supremacy Clause of the Constitution for united States of america.
4. The Appellate Courts have an obligation to overlook the lower court Judge and confirm they did not act in a subversive manner towards constitutional rights and due process is that correct.
5. Are there any laws that grant judicial and executive officers power to infringe rights provided by the Constitution for the united States of america.
6. Executive and judicial officers have taken oaths or affirmation to support the Constitution for united States of america is that correct.
7. Is it not considered sedition and waring against the Constitution when a court’s actions are ultra-vires and infringes upon a person’s rights provided by the constitution.

That Affiant, Levar Curtis Johnson, is competent to state the matters included in his affidavit, has knowledge of the facts, and declared that to the best of his knowledge, the statements made in his affidavit are true, correct, and not meant to mislead.

Further Affiant Sayeth Naught.

*Levar - Curtis: Johnson*  
LEVAR CURTIS JOHNSON

In Propria Persona/ Sui Juris (NOT PRO SE)

Paramount Security Interest Holder

Affiant / Appellant

vartohtm@gmail.com

c/o 1176 Northwest Forty-ninth Street

Miami, Florida near [33127]

(561) 571-2949

**JURAT**

State of Florida

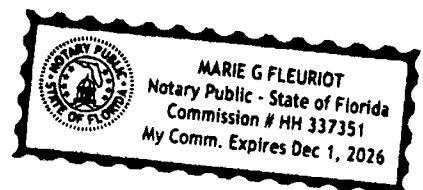
County of Miami-Dade

Subscribed and affirmed before me on this 21 day of March 2023, by Levar-Curtis: Johnson, proved to me on the basis of satisfaction evidence to be the person(s) who appeared before me.

Notary Public *[Signature]*

(SEAL)

My Commission Expire: 12-1-2026



# APPENDIX F

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
APRIL 12, 2023

LEVAR CURTIS JOHNSON,  
Appellant(s)/Petitioner(s),  
vs.  
THE BANK OF NEW YORK MELLON,  
etc.,  
Appellee(s)/Respondent(s),

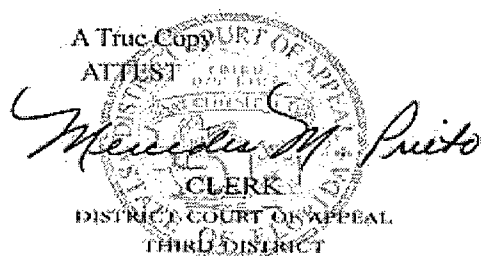
CASE NO.: 3D22-1894

L.T. NO.: 18-40275

Upon consideration, pro se Appellant's Motion for Rehearing,  
and to Certify Questions of Great Public Importance is hereby denied.

Pro se Appellant's Motion for Rehearing En Banc is likewise  
denied.

SCALES, GORDO and BOKOR, JJ., concur.



cc: Brandi Wilson  
Orlando Deluca

Joseph G. Paggi III  
Levar Curtis Johnson

Kimberly L. George

la

# APPENDIX G

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION  
Civil Action No.: 2018-040275-CA-01  
Section: Section, CA 32

BANK OF NEW YORK AS TRUSTEE  
Plaintiff(s) / Petitioner(s)

VS.

JOHNSON , LEVAR C  
Defendant(s) / Respondent(s)

NOTICE OF JUDICIAL SALE BY THE CLERK

NOTICE IS HEREBY GIVEN that pursuant to an Order or Final Judgment entered in the above styled cause now pending in said court, that I will sell to the highest and best bidder for cash on-line at [www.MiamiDade.RealForeclose.com](http://www.MiamiDade.RealForeclose.com) at 09:00 o'clock, AM on May 08, 2023 the following described property:

**LOT 10, BLOCK 3, CRESTWOOD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, AT PAGE 7, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.**

**A/K/A Property Address: 1176 NW 49<sup>TH</sup> STREET, MIAMI, FL 33127**

Any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens must file a claim before the clerk reports the surplus as unclaimed.

WITNESS my hand and the seal of this court on April 10, 2023  
By: Claudia Baker, Deputy Clerk



*Luis G. Montaldo*

Luis G. Montaldo, Clerk AD Interim  
Miami-Dade County, Florida

Law Firm: DELUCA LAW GROUP, PLLC

CLERK  
CIRCUIT & COUNTY COURTS  
MIAMI-DADE COUNTY, FL

2023 APR 10 AM 9:20

FILED FOR RECORD  
CIVIL DIVISION #65