No. 23-391

10/10/2023

IN THE UNITED STATES SUPREME COURT

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ALEXANDER MOSKOVITS,

Petitioner,

vs.

MTGLQ INVESTORS, L.P.,

Respondent.

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**On Petition for Writ of *Certiorari* to the Florida Supreme Court**

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# PETITION FOR WRIT OF *CERTIORARI*

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## QUESTIONS PRESENTED

This case presents a question of public importance: whether Florida state courts can defy *Stare Decisis* on the jurisdictional issue of lack of plaintiff standing to properly invoke the subject matter jurisdiction of a court at the time of filing a foreclosure complaint, in conflict with decisions of the Florida Supreme Court and of this Supreme Court. Third District Court of Appeal (Miami, Florida) caselaw has shown disregard for the rule of *Stare Decisis* on this jurisdictional issue, which should be addressed by this Court because the disregard for precedent has deprived the Petitioner of property without due process of law and denied him the equal protection of the laws. This case presents the issue of whether blatant disregard for *Stare Decisis* constitutes an error of Constitutional magnitude "***so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of this Court's supervisory power***". *See cf.* Rule 10 of the United States Supreme Court (emphasis added).

## PARTIES AND RULE 29.6 STATEMENT

Petitioner Alexander Moskovits was Defendant in the Eleventh Judicial Circuit Miami-Dade County, Florida. Petitioner was Appellant/Petitioner in the Third District Court of Appeal and Florida Supreme Court. Petitioner is a person. Therefore, there are no disclosures. Respondent is MTGLQ Investors, L.P.

## DIRECTLY RELATED PROCEEDINGS

The following proceedings in the Florida state courts and this Court are directly related proceedings:

*Moskovits v. MTGLQ Investors, L.P.*,
Supreme Court of the United States
APPLICATION NO.: 23-A179 (Decided 8/28/2023)

*Moskovits v. MTGLQ Investors, L.P.*,
Florida Supreme Court
CASE NO.: SC2023-0847 (Decided 6/12/2023)

*Moskovits v. MTGLQ Investors, L.P.*,
Third District Court of Appeal
CASE NO.: 3D23-0033 (Decided 3/14/2023; Rehearing Denied 5/10/2023)

*Moskovits v. MTGLQ Investors, L.P.*,
Eleventh Judicial Circuit, Miami-Dade County
CASE NO.: 14-10344 (Decided 12/7/2022)

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## PETITION FOR WRIT OF *CERTIORARI*

Alexander Moskovits hereby petitions for a writ of *certiorari* to review Florida state court orders.

## ORDERS AND OPINIONS BELOW

The final judgment of foreclosure (Eleventh Judicial Circuit, Miami-Dade County, Florida) dated August 14, 2019 is App.1. The order denying Petitioner's motion to set aside the final judgment of foreclosure (Eleventh Judicial Circuit, Miami-Dade County, Florida) dated December 7, 2022 is App.2. The order granting Respondent's motion to re-schedule foreclosure sale (Eleventh Judicial Circuit, Miami-Dade County, Florida) dated December 7, 2022 is App.3. The order to show cause (Third District Court of Appeal) dated February 7, 2023 is App.4. The order dismissing the appeal as "one taken from a non-final, non-appealable order" (Third District Court of Appeal) dated March 14, 2023 is App.5. The order denying Petitioner's motion for rehearing *en banc* (Third District Court of Appeal) dated May 10, 2023 is App.6. The Florida Supreme Court's order dismissing the case dated June 12, 2023 is App.7.

## JURISDICTION

Jurisdiction is supported by 28 U.S.C. § 1257. The Florida Supreme Court entered its order dismissing Petitioner's case on June 12, 2023. Justice Clarence Thomas granted an extension of time to file. *See* U.S. Supreme Court, Application No. 23A179.

## CONSTITUTIONAL PROVISION INVOLVED

The Constitution, 14th Amendment, provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of ... property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

### A. Introduction

The Third District Court of Appeal located in Miami-Dade County, Florida cannot disregard the Florida Supreme Court and the U.S. Supreme Court caselaw holding that only a plaintiff with standing at the time of filing a complaint can properly invoke court jurisdiction. The Third District Court of Appeal caselaw on this jurisdictional issue grossly disregards *Stare Decisis*, which departure from the accepted and usual course of proceedings should be addressed by this Court because the disregard for precedent has deprived Petitioner of property without due process of law and denied him the equal protection of the laws.

### B. Course of the Proceedings - Relevant Facts

On April 18, 2014, HSBC Bank USA, N.A., through PHH Mortgage, filed a Verified Complaint to

Foreclose Mortgage, Case No. 2014-10344-CA-01, in the Eleventh Judicial Circuit, Miami-Dade County, Florida. The original plaintiff's complaint averred that "[p]rior to and continuing through the date of the filing of this Complaint, the Plaintiff was, and remains, the holder of the Note. Plaintiff is the originating lender. The Servicer or counsel as its agent, at the direction of Plaintiff is in possession of the original Note. Certification detailing possession is filed contemporaneously herewith." App. 8 (complaint) (brackets added).[1] An essential part of the complaint, the "certification of note possession" declared:

"I, the undersigned, under penalties of perjury, declare as follows: 1. I am the Collateral Documents Custodian of Aldridge Connors, LLP (Counsel). Counsel has been retained to represent HSBC Bank USA, N.A. in legal proceedings to enforce a promissory note secured by property located at: 5055 Collins Avenue, #4-N, Miami Beach, FL 33140... 2. On January 31, 2014, at 10:52 a.m., I personally reviewed the collateral file located at 1615 South Congress Avenue, Suite 200, Delray Beach, FL 33445, that was provided to Aldridge Connors, LLP for purposes of its representation of HSBC Bank USA, N.A. in connection with enforcing the note secured by the Property. I confirm that the collateral file contained the original promissory note evidencing the debt secured by the Property, and attached hereto is a correct copy of the original promissory note and allonge(s), if any."

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[1] The "originating lender" of the October 2007 loan was actually HSBC Mortgage Corp. (USA), *not* HSBC Bank USA, N.A.

App. 8 (verified complaint). MTGLQ Investors, L.P., substituted for the original plaintiff in 2017.

On August 14, 2019, Respondent's motion for a Summary Final Judgment of Foreclosure was granted. *See* App. 1 ("FINAL JUDGMENT OF FORECLOSURE This action was heard before the Court on Plaintiff's Motion for Summary Final Judgment on August 14, 2019. On the evidence presented, IT IS ORDERED AND ADJUDGED that Plaintiff's Motion for Summary Final Judgment is granted against all defendants... The Clerk of Courts shall conduct the sale... on October 1, 2019, to the highest bidder for cash"). Petitioner appealed *pro se* arguing that the original plaintiff lacked standing when it filed the complaint, but he never raised the invalidity of the "certification of note possession" under Fla. Stat. § 92.525 as a ground to challenge standing before the final judgment of foreclosure was entered or on appeal. On a record without challenge to the invalid "certification of note possession", the Third District Court of Appeal affirmed the final summary judgment. *Moskovits v. MTGLQ Inv'rs, L.P.*, 2020 Fla. App. LEXIS 4824, *1 (Fla. 3d DCA):

[Petitioner] argues that final summary judgment was improper because [Respondent] MTGLQ Investors, LP failed to prove standing. We disagree. ***Based on the record before us, a copy of the note with a blank endorsement was attached to the verified foreclosure complaint. This was sufficient to establish standing to bring the foreclosure action.***

(emphasis and brackets added). The foreclosure sale was cancelled on Respondent's motion. Respondent moved to reschedule the sale on February 23, 2022.

On May 18, 2022, the Petitioner, with counsel for the first time since the complaint was filed in 2014, moved, under Rule 1.540(b)(4) of the Florida Rules of Civil Procedure (Fla.R.Civ.Pr.)[2] to set aside the "void" final summary judgment for substitute plaintiff and to dismiss with prejudice as the original plaintiff lacked standing at the time of filing the complaint, given that the "certification of note possession" was a "facially invalid" verification under Fla. Stat. § 92.525. Petitioner filed in opposition to the motion to schedule a judicial sale based on the final summary judgment.

Petitioner showed that successive foreclosure actions had been filed without "evidence" of standing. In 2010, the originating lender filed a foreclosure complaint, *HSBC Mortgage Corp. vs. Moskovits, et al.*, 2010-042059-CA-01 (Eleventh Judicial Circuit, Miami-Dade County, Florida), through the Law Office of Marshall C. Watson. In December 2012, the action was dismissed and the *lis pendens* was cancelled days after Mr. Watson entered his "conditional guilty plea" with the Florida Bar admitting to paying a lawyer to sign, for a dollar a piece, "about 150,000 Affidavits of Reasonable Fees" in foreclosure cases. Twelve Florida Bar files memorialized the rampant document frauds, the so-called "*robosigning*."

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[2] *See* Rule 1.540(b)(4) ("On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, decree, order, or proceeding for the following reasons: ... that the judgment, decree, or order is void")

HSBC Mortgage Corp. had filed the dismissed action without standing *in August 2010, **before*** the receipt of a letter notifying that the mortgage had only been transferred back to the original mortgage lender HSBC Mortgage Corp. *in late September 2010. See Jeff-Ray Corp. v. Jacobson*, 566 So.2d 885 (Fla. 4th DCA 1990) (lack of standing at case initiation cannot be cured by acquisition thereafter). Mr. Watson was suspended from practicing law, but this case file and Mr. Watson's Documents Supervisor/Custodian, one Rosa M. Suttle (Suttle), migrated to the law office that filed this second successive foreclosure in 2014 with a facially invalid "certification of note possession" signed by Ms. Suttle, an individual with at least nine (9) IRS liens and ten (10) previous eviction actions.[3] The motion submitted that the original plaintiff failed to prove standing at the time of filing the complaint because it filed a "certification of note possession" that was "facially invalid" under the statute governing the verification of documents, *citing* Fla. Stat. § 92.525, which provides in relevant part, as follows:

(1) If authorized or required by law, ... that a document be verified by a person, the verification may be accomplished in the following manner:

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[3] This Court can take judicial notice of Broward County, Florida court filings. *See e.g., Symphony Builders vs. Rosa M. Suttle* (eight (8) eviction actions); *Kako Enterprises LLC vs. Rosa M. Suttle* (two (2) eviction actions); IRS liens for nine (9) years (2005-2007, 2009, 2011-2015). Ms. Suttle's long period of financial crisis overlapped the date of her January 31, 2014 "facially invalid" "certification of note possession" filed with the original complaint to purport the original plaintiff's standing at the time of filing its complaint on April 18, 2014. *See* App. 8 (complaint including "certification of note possession").

(a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths;

(b) Under oath or affirmation taken or administered by an officer authorized under s. 117.10 to administer oaths; or

***(c) By the signing of the written declaration prescribed in subsection (2).***

***(2) A written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration.... The written declaration shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration.* (emphasis added).**

Petitioner's motion showed that the "certification" was not verified under oath or affirmation, and that it was "facially invalid" under § 92.525. App. 8 ("certification of note possession" without required averment "that the facts in it are true" and not "printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration"). *See RBS Citizens N.A. v. Reynolds*, 231 So. 3d 591, 592 (Fla. 2nd DCA 2017) (Fla. Stat. §702.015(4) requires original note possession to be "verified") (approving of statement directly above the signature: "Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in

it are true."); *Ledesma v. Highlands Wood Golf & Country Club, Inc.*, 2012 U.S. Dist. LEXIS 45951 (M.D. Fla. 2012) (Section 92.525 satisfied where signature appeared under the statement that "[she] declares under penalty of perjury that the above is true and correct."). Petitioner also submitted that under Florida law, subject matter jurisdiction cannot be created by any waiver, acquiescence or agreement of the parties, or by any mistake or inadvertence of the parties or their counsel, nor by the unwarranted exercise of power by the court, *citing 84 Lumber Co. v. Cooper*, 656 So.2d 1297, 1298 (Fla. 2nd DCA 1994). Lack of standing, which cannot be cured after the initial case filing, [4] and the resulting improper invocation of subject matter jurisdiction can be raised at any time, notwithstanding the final summary judgment entered in 2019 in this case. "[S]ubject matter jurisdiction is so vital to a court's power to adjudicate the rights of individuals, that its absence can be questioned ***at any time even after the entry of a final judgment***". *Id.*

(emphasis and brackets added).

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[4] *See Progressive Exp. Ins. Co. v. McGrath Community Chiropractic*, 913 So.2d 1281, 1285 (Fla. 2d DCA 2005) (lack of standing at case inception is fatal defect that cannot be cured by acquiring standing after case is filed); *id.* at 1286 (Fla.R.Civ.Pr. 1.190(c) does not authorize establishing the right to maintain action retroactively by party acquiring standing after the filing); *Jeff-Ray, supra*, at 886 (assignee cannot maintain a foreclosure action where assignment was dated months after case filing).

Petitioner asked the Court to treat his motion as a motion to set aside the final judgment as "void" under Rule 1.540(b)(4), given the lack of competent evidence of original note possession at the time of filing. Petitioner sought a dismissal ***with prejudice*** because the case was filed with invalid evidence of standing which caused the unwarranted exercise of court power without properly invoked jurisdiction. On May 25, 2022, Respondent filed its opposition, arguing that *res judicata* should bar relief since Petitioner's previous challenges to standing had been adjudicated against him. On June 8, 2022, Petitioner replied that *res judicata* did not apply as the invalidity of the "certification of note possession" under § 92.525, to prove standing, is a jurisdictional defect that was never raised or adjudicated before. Petitioner submitted that court records conclusively show he had attacked standing on different grounds. He argued that the void judgment ***must*** be vacated, *citing Horton v. Rodriguez Espaillat y Asociados*, 926 So.2d 436, 437 (Fla. 3d DCA 2006) ("If it is determined that the judgment entered is void, the trial court has no discretion, but is obligated to vacate the judgment"); *Dep't of Transp. v. Bailey*, 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992) (successive motion to set aside void judgment granted for lack of jurisdiction). "[B]ecause the mere passage of time cannot make a void judgment valid, a motion to vacate a judgment as void may 'reasonably' be filed ***many years after the judgment was entered***." *See Johnson v. Dep't of Revenue ex rel. Lamontagne*, 973 So. 2d 1236, 1238 (Fla. 1st DCA 2008) (emphasis added). Petitioner noted that even a judgment affirmed on appeal on the

grounds of *res judicata* had been subsequently set aside as void under Fla.R.Civ.Pr. 1.540(b)(4). *See Falkner v. Amerifirst Fed. Sav. & Loan Ass'n*, 489 So. 2d 758, 759 (Fla. 3d DCA 1986) (lack of notice); *id.* at 760 ("Assuming that a judgment is ***null and void for lack of jurisdiction*** does a Rule 1.540(b) motion for relief not brought within a reasonable time have the effect of making a void judgment valid? ***The answer is 'no.'***") (emphasis added). Petitioner submitted that standing in foreclosures must be proven at the time the complaint is filed, *citing May v. PHH Mortgage*, 150 So. 3d 247, 248-249 (Fla. 2d DCA 2014) ("However, standing must be established at the time the complaint was filed. Thus, the bank ***needed to introduce evidence that it was in possession of the original note with the blank endorsement at the time it filed the complaint.***") (emphasis added). Petitioner noted that "PHH Mortgage" also filed the complaint here for HSBC Bank USA, N.A., and that it failed to bring valid ***evidence*** of the possession of the original note to prove standing, as the "certification of note possession" was "facially invalid" under § 92.525.

Petitioner's motion papers to set aside the final judgment relied on Florida Supreme Court law for the principle that lack of standing improperly invokes the court's jurisdiction. *See Rogers & Ford Constr. Corp. v. Carlandia Corp.*, 626 So.2d 1350, 1352 (Fla. 1993) ("determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party."). Petitioner submitted that only a foreclosure plaintiff with proven standing (*i.e.*, ***evidence*** of original note possession at time of filing) can properly invoke the court's jurisdiction.

The court held a hearing on December 6, 2022. On December 7, 2022, Petitioner's motion was denied. *See* App. 2 ("Motion to Dismiss for Lack of Standing *Ab Initio* ...is hereby DENIED. ***Any purported lack of standing does not affect the Court's subject matter jurisdiction***. *See Godfrey v. Reliance Wholesale, Inc.*, 68 So. 3d 930 (Fla. 3d DCA 2011)") (emphasis added). Respondent's motion to reschedule the sale was granted. On January 5, 2023, Petitioner filed notice of appeal. On January 25, 2023, Petitioner filed a motion to stay the order rescheduling the sale pending resolution of his appeal from the denial of his motion to set aside the final summary judgment. Petitioner quoted Fla. Stat. § 702.015(4) in his motion, which requires, in relevant part, as follows:

> (4) If the plaintiff is in possession of the original promissory note, ***the plaintiff must file under penalty of perjury a certification with the court, contemporaneously with the filing of the complaint for foreclosure, that the plaintiff is in possession of the original promissory note.***
>
> (emphasis added).

Petitioner emphasized that the "fatal defect" of the certification of note possession is its facial invalidity under § 92.525, *citing RBS Citizens N.A. v. Reynolds*, 231 So. 3d 591, 592 (Fla. 2nd DCA 2017) (Section 702.015(4) requires original note possession to be properly "verified") (approving averment right above the signature: "Under penalties of perjury, I declare

that I have read the foregoing and that the facts stated in it are true."). Petitioner also noted that the "certification of note possession" of ***January 31, 2014***, cannot conclusively show plaintiff "***is*** *in possession of the original promissory note*" on ***April 18, 2014***, *i.e.*, "*contemporaneously* with the filing of the complaint". § 702.015(4), *supra.* Petitioner expanded discussion of Florida Supreme Court law in his motion for a stay. Petitioner's counsel argued that the court holding that "any" lack of standing has no effect on jurisdiction over a case is contrary to Florida Supreme Court caselaw, *citing Lovett v. Lovett*, 112 So. 768, 775-76 (Fla. 1927), which noted a definition of subject-matter jurisdiction "in the general abstract sense," but explained that its "full meaning" included the "potential jurisdiction of the subject-matter" ***and also its proper invocation***. Petitioner further submitted that *Lovett*'s discussion of subject matter jurisdiction confirms that the power of the court to adjudicate the class of cases to which the particular case belongs is only one of the elements of subject matter jurisdiction, but a trial court is only vested with subject matter jurisdiction over a case if it is properly invoked by plaintiffs with standing. *Id.* Petitioner also argued that if standing does not affect subject matter jurisdiction, standing is still required for what the Florida Supreme Court in *Lovett* referred to as jurisdiction over the subject matter of the cause. Petitioner continued to rely on Florida Supreme Court caselaw, *Rogers & Ford Constr. Corp.*, *supra*, at 1352, for the guiding principle that the "determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party." *Id.* In moving for a stay, Petitioner

reiterated that the subject matter jurisdiction of the court over foreclosure cases is not disputed, it is the original plaintiff's invalid evidence of standing to invoke jurisdiction when it filed its complaint which is at issue. Petitioner submitted that the requested stay was merited to avoid manifest injustice as the court decision on the jurisdictional issue is contrary to Florida Supreme Court law, *citing Lovett and Rogers.* Petitioner suggested a likelihood of success if Florida Supreme Court law is followed and irreparable harm by denial of a stay, which would allow a sale where jurisdiction was improperly invoked. The stay was denied on January 27, 2023. On January 30, 2023, Petitioner filed an amended notice of appeal to include the order denying the stay, and he filed emergency motions for a stay of the sale and for a summary reversal before the Third District Court of Appeal. Within hours, the emergency motion for a stay and the emergency motion for summary reversal were denied. On February 7, 2023, a day after the sale resulted in Respondent MTGLQ Investors, L.P. placing the top bid of $402,000, the Third District issued an Order to Show Cause. App. 4 ("Appellant shall show cause, within ten (10) days from the date of this Order, as to why the appeal should not be dismissed as one taken from a non-final, non-appealable order.").

On February 17, 2023, Petitioner responded to the Order to Show Cause, arguing that his appeal from the order denying his Rule 1.540(b)(4) motion to set aside the ***final judgment*** as "void" could not be dismissed without *de novo* review, in violation of due process rights, *citing Nationstar Mortg., LLC v. Diaz,* 227 So. 3d 726, 729 (Fla. 3d DCA 2017) ("As a trial

court's ruling on whether a judgment is void presents a question of law, an appellate court reviews the trial court's ruling *de novo*."). Petitioner emphasized that the Third District opinion in *Godfrey v. Reliance Wholesale, Inc.*, 68 So. 3d 930, 932 (Fla. 3d DCA 2011) ("We do not agree that a circuit court that otherwise had jurisdiction over the subject matter, i.e., 'the general power of the court over the case,' would lose such jurisdiction because the plaintiff may lack standing") is contrary to Florida Supreme Court law holding that a court has subject matter jurisdiction over a case *only if* jurisdiction is invoked by one with standing. *Lovett v. Lovett*, 112 So. 768, 775-76 (Fla. 1927); *Rogers & Ford Const. Corp. v. Carlandia Corp.*, 626 So.2d 1350, 1352 (Fla. 1993) ("The determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party"). Petitioner argued for the first time that *Godfrey*, the case cited to deny him relief, is also contrary to caselaw from the U.S. Supreme Court, *citing Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) ("standing to sue doctrine" developed in U.S. Supreme Court jurisprudence to ensure the courts do not exceed their authority); *United States v. Hays*, 515 U.S. 737, 742 (1995) ("federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of [the jurisdictional] doctrines.") (brackets in the original). Finally, on March 14, 2023, the Third District ordered the appeal dismissed. App. 5 ("Upon the Court's own motion, it is ordered that the above-styled appeal is hereby dismissed as one taken from a non-final, non-appealable order").

On March 29, 2023, Petitioner filed a motion for rehearing *en banc*, certification, and a written opinion, under Rule 9.330, Fla.R.App.Pr. Petitioner suggested the court *en banc* panel should reconsider the denial of appellate review. At a minimum, Petitioner argued the Third District should issue an opinion certifying the long existing "express and direct conflict" between *Askew v. Hold The Bulkhead-Save Our Bays, Inc.*, 269 So. 2d 696, 698 (Fla. 2d DCA 1972) and *Godfrey v. Reliance Wholesale, Inc.*, 68 So. 3d 930, 932 (Fla. 3d DCA 2011), as *Godfrey* is the caselaw cited by the court to deny Petitioner's motion to vacate the final judgment as "void" under Rule 1.540, Fla.R.Civ.Pr. Petitioner pointed to the analysis offered by the court in *Streicher v. U.S. Bank Nat'l Ass'n.*, 2016 U.S. Dist. LEXIS 33235, at *24-*25 (S.D.Fla. 2016), who noted "confusion" over the term "subject matter jurisdiction" and its relationship to standing at the time of filing resulted in conflicting Florida state court opinions. *Ferreiro v. Phila. Indem. Ins.*, 928 So. 2d 374, 378 (Fla. 3d DCA 2006) (standing is "threshold determination necessary for the maintenance of all actions"); *Askew v. Hold The Bulkhead-Save Our Bays, Inc.*, 269 So. 2d 696, 698 (Fla. 2d DCA 1972) ("Standing has been equated with jurisdiction of the subject matter of litigation and has been held subject to the same rules, one of which is that jurisdiction of the subject matter (thus standing to bring suit) cannot be conferred by consent."); *Silver Star Citizens' Comm. v. City Council of Orlando*, 194 So. 2d 681, 682 (Fla. 4th DCA 1967) ("The record shows no right of the petitioners to bring the suit. This left the circuit court with lack of jurisdiction over the subject matter"); *but compare*

*with Godfrey v. Reliance Wholesale, Inc.*, 68 So. 3d 930, 932 (Fla. 3d DCA 2011) ("We do not agree that a circuit court that otherwise had jurisdiction over the subject matter, i.e., 'the general power of the court over the case,' would lose such jurisdiction because the plaintiff may lack standing.") Petitioner pointed out that two Third District panels in *Ferreiro* and *Godfrey* reached conflicting opinions, and there is an express and direct conflict between *Askew* and *Godfrey, supra.* Petitioner also argued that an appeal from the denial of a Rule 1.540 motion to vacate a final judgment as "void" for lack of jurisdiction cannot be treated as taken from "a non-final, non-appealable order" as the ***final*** summary judgment entered on August 14, 2019 was never enforced by a sale until February 6, 2023, 60 days ***after*** the hearing held on December 6, 2022 on the motion to vacate the ***final*** judgment as "void." Petitioner asked the court to rehear his appeal *en banc* on the jurisdictional issue, deeming that the question merits certification as one of great public importance because the holding in *Godfrey* gives *carte blanche* for parties without standing to file bogus complaints and clog court dockets. Petitioner again argued that the order following the *Godfrey* opinion that any lack of standing does not affect court jurisdiction, App. 2, is contrary to the Florida Supreme Court law holding that jurisdiction is only vested on a court if properly invoked by a plaintiff with standing, *citing Lovett v. Lovett*, 112 So. 768, 775-76 (Fla. 1927); *Rogers & Ford Const. Corp. v. Carlandia Corp.*, 626 So.2d 1350, 1352 (Fla. 1993) ("standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party.").

Petitioner also sought the rehearing *en banc* because *Godfrey* is also contrary to the "standing to sue doctrine" developed by the U.S. Supreme Court. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (Supreme Court developed "standing to sue doctrine" to ensure courts do not exceed their authority); *United States v Hays*, 515 U.S. 737, 742 (1995) (courts have independent duty to examine their own jurisdiction, and "standing is perhaps the most important of [the jurisdictional] doctrines.") (brackets in original).

Petitioner asked the court for certification that *Godfrey* is in "express and direct conflict" with *Askew* to vest the Florida Supreme Court with certified conflict jurisdiction under Art. V, § 3(b)(4) of the Florida Constitution. *See* Rule 9.330, Fla.R.App.Pr. (motion for written opinion must set forth reasons that party believes that a written opinion would provide a legitimate basis for review by the Supreme Court; motion for certification must set forth the case that "expressly and directly conflicts with the order or decision or set forth the issue or question to be certified as one of great public importance."). Petitioner's motion stated with particularity the point of jurisdictional law that the Third District overlooked or misapprehended in its order dismissing the appeal. On May 10, 2023, the Petitioner's motion was denied. App. 6 ("Appellant's Motion for Rehearing *En Banc*, Certification, and Issuance of a Written Opinion is treated as having included a motion for rehearing. The motion for rehearing, certification, and issuance of a written opinion is denied. The Motion for Rehearing *En Banc* is denied.").

On June 9, 2023, Petitioner filed his notice to invoke the jurisdiction of the Florida Supreme Court because the court's denial of a rehearing *en banc* left *Godfrey* undisturbed even though the case expressly and directly conflicts with *Askew*, a decision of the Second District Court of Appeal, and directly conflicts with Florida Supreme Court law on whether the lack of evidence of plaintiff's standing at the time of case filing improperly invokes the jurisdiction of the court. *Lovett v. Lovett*, 112 So. 768, 775-76 (Fla. 1927) ("court has subject-matter jurisdiction over a case only if ... it is properly invoked by ... those with standing"); *Rogers & Ford Const. Corp. v. Carlandia Corp.*, 626 So.2d 1350, 1352 (Fla. 1993) ("standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party.").

On June 12, 2023, the Florida Supreme Court dismissed the case. *See* App. 7 ("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.").

Petitioner filed for an extension of time to file in Application No. 23A179. On August 28, 2023, the Honorable Justice Clarence Thomas extended the time to file until October 10, 2023, and this timely petition for a writ of *certiorari* now follows.

## REASONS FOR ISSUING THE WRIT

### *Stare Decisis* Must Be Respected

Justice Stephen Breyer, wrote for this Court in *Randall v. Sorrell*, 548 U.S. 230, 243-44 (2006):

> The Court has often recognized the "fundamental importance" of *stare decisis*, the basic legal principle that commands judicial respect for a court's earlier decisions and the rules of law they embody. *See Harris v. United States*, 536 U.S. 545, 556-557 (2002) (plurality opinion) (citing numerous cases). The Court has pointed out that *stare decisis* "'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *United States v. International Business Machines Corp.*, 517 U.S. 843, 856, 116 S. Ct. 1793, 135 L. Ed. 2d 124 (1996) (*quoting Payne v. Tennessee*, 501 U.S. 808, 827 (1991)). *Stare decisis* thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to our prior case law be the norm.

The Third District is the renegade on this issue. A failure to bring competent evidence of standing at the time of filing a complaint for foreclosure would warrant court relief if one's residence happens to be located in other Florida districts. *See, e.g., Olivera v. Bank of Am., N.A.*, 141 So. 3d 770, 771-774 (Fla. 2d DCA 2014) (reversing a final summary judgment of

foreclosure as the original plaintiff lacked standing, despite substitute plaintiff's possession of the note); *Lloyd v. Bank of N.Y. Mellon*, 160 So. 3d 513, 515-16 (Fla. 4th DCA 2015) (reversing case for "entry of a judgment in favor of Defendants" where standing to foreclose at the time of filing the complaint was not supported by competent substantial evidence); *Lamb v. Nationstar Mort., LLC,* 174 So.3d 1039, 1040 (Fla. 4th DCA 2015) ("In addition to proving standing when the complaint is filed, a bank must also establish its standing at the time final judgment is entered."); *May v. PHH Mortgage*, 150 So. 3d 247, 248-249 (Fla. 2d DCA 2014) ("However, standing must be established at the time the complaint was filed. Thus, the bank ***needed to introduce evidence that it was in possession of the original note with the blank endorsement at the time it filed the complaint.***") (emphasis added). *But see* App. 2 (denying motion to set aside final judgment as void for lack of standing) ("*Any purported lack of standing does not affect the Court's subject matter jurisdiction. Godfrey v. Reliance Wholesale, Inc.*, 68 So. 3d 930 (Fla. 3d DCA 2011)"). Petitioner showed that the original plaintiff lacked standing because of the facial invalidity of the verification in the complaint attesting to original note possession under the statute governing verifications. App.8 (January 2014 "certification of note possession" in complaint to purport original note possession at the time of filing on April 18, 2014). The case outcome would have been in favor of Petitioner in any other Florida district court where *Stare Decisis* is respected. Petitioner submits that smacks of injustice.

Relying on settled Florida Supreme Court law, Petitioner argued that lack of standing improperly invoked the subject matter jurisdiction of the court to hear the foreclosure case. *See Rogers & Ford Constr. Corp. v. Carlandia Corp.*, 626 So.2d 1350, 1352 (Fla. 1993) ("determination of standing to sue concerns a court's exercise of jurisdiction to hear and decide the cause pled by a particular party."); *Lovett v. Lovett*, 112 So. 768, 775-76 (Fla. 1927) ("court has subject-matter jurisdiction over a case only if ... it is properly invoked by ... those with standing"). The Third District Court of Appeal's defiance of *Stare Decisis* on this issue must be corrected as it results in the deprivation of property without due process and denies the equal protection of the laws, where there is no valid evidence proving the plaintiff's standing at the time of filing. The Third District case cited to deny relief, *Godfrey*, conflicts with Florida Supreme Court law, *see Rogers and Lovett, supra*, and U.S. Supreme Court law. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) ("standing to sue doctrine" developed in Supreme Court jurisprudence to ensure the courts do not exceed their authority); *United States v Hays*, 515 U.S. 737, 742 (1995) ("federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of [the jurisdictional] doctrines.") (brackets in original).

As the Third District Court of Appeal has been allowed dispensation from the rule of *Stare Decisis*, Petitioner did not prevail on his motion to vacate the final judgment of foreclosure, even though he showed there was no competent evidence filed by the original plaintiff to establish its standing to sue by law. App. 2

("Motion to Dismiss for Lack of Standing *Ab Initio* filed by Defendant, Alexander Moskovits, is hereby DENIED. *Any purported lack of standing does not affect the Court's subject matter jurisdiction. See Godfrey v. Reliance Wholesale, Inc.*, 68 So. 3d 930 (Fla. 3d DCA 2011).") (emphasis added). On the same date, the court granted Respondent's motion to reschedule the foreclosure sale for February 6, 2023. *See* App. 3 ("This Court previously entered Final Judgment of Foreclosure on August 14, 2019, but the judicial foreclosure sale did not take place as scheduled therein. ...The judicial foreclosure sale is hereby rescheduled to take place on February 6, 2023"). Despite the finality of a judicial sale and law requiring *de novo* review of the motion to set aside the final judgment under Rule 1.540(b)(4), Fla.R.Civ.Pr., *see Nationstar Mortg., LLC v. Diaz*, 227 So. 3d 726, 729 (Fla. 3d DCA 2017) ("ruling on whether a judgment is void presents a question of law, an appellate court reviews the trial court's ruling *de novo*"), the Court arbitrarily dismissed the appeal "as one taken from a non-final, non-appealable order." *See* App. 5.

The subject matter jurisdiction of the court in Florida over foreclosure cases has not been disputed. It is the original plaintiff's invalid proof of standing to invoke jurisdiction when it filed its original pleadings which is at issue in this case. As the "certification of note possession" is an essential part of the complaint to prove standing to invoke the court's jurisdiction, the invalidity of the "certification" under the dictates of Fla. Stat. § 92.525 shows the complaint was an invalid filing which improperly invoked the state trial court's jurisdiction, rendering the court's final judgment void.

*See Falkner v. Amerifirst Fed. Sav. & Loan Ass'n*, 489 So. 2d 758, 759-60 (Fla. 3d DCA 1986) ("Assuming that a judgment is ***null and void for lack of jurisdiction*** does a Rule 1.540(b) motion for relief not brought within a reasonable time have the effect of making a void judgment valid? ***The answer is 'no.'***") (emphasis added) (*citing Ramagli Realty Co. v. Craver*, 121 So.2d 648, 654 (Fla. 1960) ("The passage of time cannot make valid that which has always been void.")); *see also Streicher v. U.S. Bank Nat'l Ass'n*, 666 F. App'x 844, 847 (11th Cir. 2016) ("Under Florida law, it is clear that a dismissal for lack of standing is a dismissal for lack of jurisdiction."). A copy of the note with a blank endorsement but without valid evidence of *original note possession* at the time of filing the complaint does not prove the necessary standing.

This Court should not countenance the defiance of *Stare Decisis*. Through the simple device of issuing an arbitrary and "unelaborated decision ... without opinion or explanation", the Third District insulates decisions ignoring *Stare Decisis* from review. App. 7 (Florida Supreme Court "lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation").

## CONCLUSION - RELIEF REQUESTED

A court justice system wherein a court could ignore *Stare Decisis* would have been unimaginable to the Framers. The Third District ignoring *Stare Decisis* on the jurisdictional issue of standing presents error of Constitutional magnitude. The writ should issue.

Ignoring *Stare Decisis* is so "***far departed from the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's supervisory power***". *Cf.*, Rule 10, *supra* (emphasis added).

Respectfully submitted,

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